

## **Report to Planning Committee – 20 July 2022**

**Consideration of a request for representation on the Adequacy of Consultation for the proposed Energy from Waste (EfW) Combined Heat and Power (CHP) facility generating electricity and steam, (and associated grid connections) on land at Algores Way, Wisbech;**

<b>Proposal:</b>	Plans to develop a new Energy from Waste (EfW) Combined Heat and Power (CHP) facility generating electricity and steam, (and associated grid connections) on land at Algores Way, Wisbech.
<b>Location:</b>	Wisbech, Cambridgeshire
<b>Applicant:</b>	Medworth CHP Ltd
<b>Case Officer:</b>	Lorna Gilbert
<b>SUMMARY</b>	
<p><b>Members will be aware that the Council meeting on 25 February 2021, passed a motion to object to the principle of the proposal for an energy from waste facility in Wisbech.</b></p> <p><b>It is important to note that this remains in place and is unaffected by this very specific, and limited consultation response.</b></p> <p>The Planning Inspectorate (PINS) has invited the council to submit an Adequacy of Consultation (AoC) representation, in response to the submission of the Medworth EfW, CHP Facility and associated grid connections application. The council has 14 days to respond to this specific consultation. The deadline for comments to PINS is Thursday 21<sup>st</sup> July 2022. PINS will consider comments it receives from host and neighbouring authorities in deciding whether or not to accept the application as submitted.</p> <p>This is a Nationally Significant Infrastructure Project (NSIP), so it is considered by PINS and ultimately determined by the Secretary of State.</p> <p>At this stage PINS are only looking for comments on the consultation carried out pre-submission. PINS have made it clear that this is not the stage to consider the merits of the case, that will be later, and the council will have much longer to provide their response. The timetable will be set out by PINS in due course, if they decide to accept the application. A copy of the flow diagram showing the role of local authorities in this process, is attached to this report.</p>	

Comments are made on the AoC by officers in the specific terms of the request received.

## **Key Issues**

- Officers have commented in the report below on the Adequacy of Consultation (as appropriate to the Borough itself), and whether or not the applicant has met their legal duties.
- Whether members have any views on the adequacy of consultation
- Borough council's previous views on the matter.

### **Recommendation:**

1. **Members consider and note the technical response by Officers as set out below:**
  - A. In the absence of firm evidence to demonstrate that all Section 42 prescribed consultations were carried out, raise a HOLDING OBJECTION.
  - B. NO OBJECTION is raised to consultation carried out under sections 47 and 48.
2. **That the views of Members are sought on the adequacy of consultation.**
3. **Members note that the 'in principle' opposition to the proposal for an energy from waste facility in Wisbech remains as agreed by the notice of motion at the Council meeting on 25 February 2021, and is unaffected by this specific technical consultation response.**

## **1.0 BACKGROUND**

- 1.1 During a Council Meeting on the 25<sup>th</sup> February 2021, a Motion was agreed to oppose the principle of the proposal for an energy from waste facility in Wisbech. It is important that we are able to separate this particular technical response, from the wider objection to the proposal.
- 1.2 Notwithstanding the very clear stated position of the Borough Council (motion to oppose the proposal) the council should still engage meaningfully in the technical / legal stages, and it should be noted that we may be disadvantaged at later stages if we do not.

## **2.0 DESCRIPTION OF THE PROPOSAL AND THE CURRENT CONSULTATION**

- 2.1 Medworth CHP Ltd (the Applicant) is applying to the Secretary of State for a Development Consent Order to construct, operate and maintain an Energy from Waste (EfW) Combined Heat and Power (CHP) Facility on the industrial estate, Algores Way, Wisbech, Cambridgeshire, together with associated grid connection, CHP connection, access improvements, water connections and a

temporary construction compound.

- 2.2 The EfW CHP Facility site area is approximately 5.3 hectares, and is located within Wisbech, in the administrative areas of Fenland District Council and Cambridgeshire County Council. It is located predominantly on land currently occupied by a waste and aggregates recycling facility and waste transfer station. However, the south-east section of the site (1.3 hectares) is undeveloped scrubland allocated for development.
- 2.3 The EfW CHP Facility would be designed to allow the export of steam and electricity to surrounding businesses via dedicated pipelines and wire cables located along the disused March to Wisbech railway.
- 2.4 A grid connection route comprises a 132KV electrical connection using underground cables. It would run from the EfW CHP Facility underneath New Bridge Lane, before heading north within the verge of the A47 to the Walsoken Substation on Broadend Road. Much of the cable route and the substation is within the Borough of King's Lynn and West Norfolk.
- 2.5 The composition of residual waste received by the EfW CHP Facility and consequently, the energy generated will vary. However, there is a design limit on the amount of waste that could be processed; this is 625,600 tonnes per year.
- 2.6 Once operational, the facility would be capable of processing waste 24 hours a day, up to 365 days a year. Operational hours for the delivery of waste would be limited to 7a.m. to 8p.m. each day.
- 2.7 The proposal is a Nationally Significant Infrastructure Project as it would have capacity of over 50 megawatts. It therefore requires an application for a Development Consent Order to be submitted to the Planning Inspectorate (PINS). PINS will consider the application and make a recommendation to grant or refuse consent. The Secretary of State will then make the final decision on whether to grant the proposal.
- 2.8 The Planning Inspectorate has notified the Borough Council of King's Lynn and West Norfolk (BCKLWN) that the submitted Consultation Report cannot be shared with third parties. This is a decision for the applicant, and is part of the process that the council has no control over. However, previous consultation material is available to view on the Applicant's website: [www.mvv-medworthchp.co.uk/documents](http://www.mvv-medworthchp.co.uk/documents)

### **3.0 PURPOSE OF THE ADEQUACY OF CONSULTATION REPRESENTATION (AoC)**

- 3.1 Under Section 55 of the Planning Act 2008 (as amended) (PA), certain local authorities must be consulted about whether an applicant has complied with their duties under sections 42, 47 and 48 of the Act. These duties are as follows:
  - A) Duty to consult – Section 42
  - B) Duty to consult the local community – Section 47

C) Duty to publicise – Section 48

3.2 The Planning Inspectorate's (PIN's) letter dated 8<sup>th</sup> July 2022 notified the Council of the submission of the application for an Order granting development consent on 7<sup>th</sup> July 2022 for the EfW and CHP Facility. The letter invites the Council to submit a representation by Thursday 21<sup>st</sup> July 2022 relating to the adequacy of the Applicant's pre-application consultation.

3.3 The Applicant has undertaken three main stages of pre-application consultation. Two of these are non-statutory consultation, followed by a statutory consultation.

**A) Duty to consult – Section 42 – HOLDING OBJECTION**

3.4 So far as is relevant to this application, the Applicant must consult the following:

- Such persons as may be prescribed.
- Each local authority that is within section 43, and
- Each person who is within one or more of the categories set out in section 44.

3.5 Schedule 1 of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 provides a list of prescribed consultees required under Section 42 (1) (a). The applicant has considered this list and consulted a selection of prescribed consultees. However, it is noted that the following bodies/organisations on the prescribed list do not appear to have been consulted:

- Design Council (previously The Commission for Architecture and the Built Environment) – they should be consulted for all proposed applications likely to affect land in England.
- The Equality and Human Rights Commission – they should be consulted for all proposed applications likely to affect land in England.
- The Commission for Sustainable Development – they should be consulted for all cases.
- The Gas and Electricity Markets Authority – they should be consulted for all proposed applications likely to affect gas and electricity markets.
- The relevant local resilience forum – they should be consulted for all cases.

3.6 It is unclear why these prescribed bodies do not appear to have been consulted within the document. It therefore appears that the Applicant may not have adequately consulted all relevant persons as may be prescribed and in the absence of firm evidence to the contrary, a holding objection is therefore recommended.

3.7 The following parish councils were included in the prescribed consultees list: Elm Parish Council, Emneth Parish Council, Marshland St James Parish Council, Walpole Parish Council, Walsoken Parish Council, West Walton Parish Council and also Wisbech Town Council. The applicant is therefore considered to have carried out its duty in this regard.

3.8 It should be noted that additional Parish Council's were included within the wider consultee list, such as Outwell Parish Council and Wisbech St Mary Parish Council.

- 3.9 In terms of consulting Local Authorities, the Applicant has provided a consultation list of the Local Authorities where the proposed development would be located, along with a list of the Local Authorities adjoining these. The compiled list therefore includes Local Authorities falling within Groups A to D as identified under Section 43 (2) of the PA.
- 3.10 In relation to Section 44, the Applicant has identified how they have sought to identify persons with an interest in land, which includes an owner, lessee or occupier of the land, a person interested in the land or has power to sell and convey the land or to release the land. There are not considered to be any issues in this regard.

**B) Duty to consult the local community – Section 47 – NO OBJECTION**

- 3.11 The Applicant must in summary prepare a statement:
  - Setting out how the applicant proposes to consult, people living in the vicinity of the land.
  - Before preparing the statement, the applicant must consult each local authority that is within section 43(1) about what is to be in the statement.
  - The deadline for local authority's consultation response is the end of the 28 period.
  - In preparing the statement, the applicant must have regard to any response to consultation (above) received before the deadline.
  - Once the statement has been prepared, the applicant must:
    - Make it available for inspection by the public in a way that is reasonably convenient for people living in the vicinity of the land,
    - Publish, in a newspaper circulating in the vicinity of the land, a notice stating where and when the statement can be inspected, and
    - Publish the statement in such manner as may be prescribed.
  - The applicant must carry out consultation in accordance with the proposals set out in the statement.
- 3.12 The applicant is therefore required to prepare and publish a statement with regard to how it would consult local people. A Statement of Community Consultation (SoCC) was prepared by the applicant. This was published on 24<sup>th</sup> June 2021. The statutory consultation took place between 28 June 2021 and 13 August 2021.
- 3.13 The preliminary results of the Environmental Impact Assessment (EIA) were also published and consulted on as part of the Stage 2 Statutory Consultation. The Preliminary Environmental Information Report (PEIR) and supporting documents set out the environmental assessments undertaken and explained what is proposed. Views were sought on the information contained in the PEIR and its supporting documents. The council responded to the PEIR following input from its planning committee on the 13<sup>th</sup> August 2021.
- 3.14 Prior to preparing the SoCC, the Applicant undertook non-statutory consultations with the relevant local authorities within section 43(1) i.e. Borough Council of King's Lynn and West Norfolk, Fenland District Council, Cambridgeshire County Council, Norfolk County Council as well as authorities that bordered these. Stage 1 non-statutory Consultation took place between 16 March to 4 May 2020 and

Stage 1B non-statutory Consultation was between 18 September to 29 October 2020.

3.15 The authorities were given at least 28 days to respond to the consultations. The applicant considered the feedback given at the consultation stages, which helped inform subsequent stages. On behalf of the council, officers asked for a rural location for the document inspection. The Applicant clarified that an event was proposed in Walton Highway Village Club. Additionally, BCKLWN asked for a briefing with Councillors. In response the Applicant confirmed a meeting took place on 11<sup>th</sup> March 2020. BCKLWN also requested that press notices were published in Your Local Paper, which the Applicant proceeded to do.

#### Public consultations

3.16 The Applicant has consulted in a variety of ways as detailed below:

3.17 Two consultation zones were set up through the non-statutory and statutory consultation stages. During the non-statutory stages Zone B included a two kilometre buffer around the potential Grid Connection options. For the Statutory Consultations they were defined as:

- Zone A – includes all properties within a two kilometre radius of the main site boundary and grid connection, plus the full extent of residential areas in Wisbech and Elm. At the start of Stage 2 statutory consultation, invitation flyers notified consultees about the consultation and provided a summary of information about the Project and details of the consultation, including how to get involved and where more information can be found.
- Zone B – This covered a five kilometre radius of the main site boundary and grid connection. These did not receive direct mail but were notified of the consultation through a combination of online and printed advertisements.

3.18 Press release and newspaper adverts were undertaken. These included newspaper advertisements detailing consultation dates, exhibition event dates and Document Inspection Locations. Consultation details were published in the Lynn News, Cambs Times, Eastern Daily Press, Fenland Citizen and Your Local Paper. Two advertisements were displayed in each paper in either/and June/July 2021 for the statutory consultation. Additionally, a press release was issued to various publications and organisations including television and radio operators, and MPs.

3.19 A project website contains the consultation documents. Hard copies of the documents were located at exhibition venues and document inspection locations. The document inspection locations were in Wisbech, Wisbech St Mary, Marshland St James and Walton Highway. A project email address, phone line and freepost address were set up as part of the consultation process. Posters/banners were used to publicise public exhibition events and document inspection locations, and consultation booklets were produced.

3.20 Due to the Covid-19 pandemic and associated social restrictions, the public exhibitions proposed as part of Stage 1 non-statutory consultation were postponed. Therefore, an additional stage of non-statutory consultation took place prior to Stage 2 statutory consultation (known as Stage 1b non-statutory consultation). This gave a further opportunity for consultees to comment on the proposals.

- 3.21 Public exhibitions took place during the final statutory consultation in Wisbech, Wisbech St Mary, Walton Highway, Marshland St James, and Friday Bridge. Covid-19 restrictions were in place e.g. social distancing and use of masks. The Applicant's project website also included an interactive exhibition webpage.
- 3.22 The Applicant made consultation documents available in large copy print, audio, or Braille on request. Upon request, a translation service made documents available in alternative languages. The exhibition locations used were Disability Discrimination Act (DDA) compliant. Members of the applicants project team were in attendance to facilitate access and assist the public.
- 3.23 The Applicant has explained how they complied with the consultation methods set out in the SoCC. It also highlights where alterations occurred. For instance, the venue times for the exhibition event at Walpole Community Centre had to be altered to enable cleaning at the venue required by Covid 19 health and safety guidelines. The Applicant notified the host local authorities of the change, updated the project website and displayed updated posters at the event. Additionally, due to Covid 19 restrictions and the consequent reduction in customers attending the club, Walton Highway Village Club advised that the opening hours advertised did not match current arrangements. The Applicant notified the host authorities and displayed a poster at the club. The opening hours were also updated on the project website. Although a few amendments took place as set out above, it has been demonstrated there was overall compliance with the consultation methods set out in the SoCC.

#### **Duty to publicise – Section 48 – NO OBJECTION**

- The applicant must publicise the proposed application in the prescribed manner.
- Must make provision for a deadline for receipt of responses to the publicity.

3.24 Details of publications containing the Section 48 notice have been provided. They were published in June 2021 in the:

- Cambs Times
- Daily Mail (England & Wales and Scotland editions)
- Eastern Daily Press
- Fenland Citizen
- Lynn News
- London Gazette
- Metro
- Your Local Paper

3.25 The Applicant is therefore considered to have satisfied their Section 48 duties by including a deadline for responses to the consultation.

#### **4.0 THE NEXT STEPS**

- 4.1 As noted above the Planning Inspectorate (PINS) is currently seeking consultees' comments on the Adequacy of Consultation for the Medworth EfW and CHP Facility. PINS will have regard to the comments received during the statutory consultation, in their determination over whether to accept the application for

Examination.

- 4.2 A diagram outlining the role of Local Authorities in the DCO process is attached to this report for information.

## **5 CONCLUSION OF THE ADEQUACY OF CONSULTATION REPRESENTATION**

- 5.1 PINS is seeking the council's opinion as to whether the Adequacy of Consultation representation is acceptable. The council has 14 days to respond to this request.
- 5.2 Officers consider that a holding objection should be raised to the S.42 aspect of the consultation, given that some of the prescribed bodies appear not to have been consulted. Officers do not raise objection to the section 47 and 48 elements, which it is considered have been complied with.
- 5.3 In the light of Members consideration of the above information they are requested to express any additional views on the adequacy of consultation, particularly as they are likely to have had feedback from local communities and parish councils.
- 5.4 Finally it is important to note the views expressed about compliance with these statutory duties will not prejudice the council's objection in principle to the application, or any future views. Local authorities are not being asked for views on the merits of the application at this stage

## **6.0 RECOMMENDATION:**

- 1. Members consider and note the technical response by Officers as set out below:**
  - A. In the absence of firm evidence to demonstrate that all Section 42 prescribed consultations were carried out, raise a HOLDING OBJECTION.**
  - B. NO OBJECTION is raised to consultation carried out under sections 47 and 48.**
- 2. That the further views of Members are sought on the adequacy of consultation.**
- 3. Members note that the 'in principle' opposition to the proposal for an energy from waste facility in Wisbech remains as agreed by the notice of motion at the Council meeting on 25 February 2021, and is unaffected by this specific technical consultation response.**

# The role of local authorities

