



## COUNCIL – 16<sup>TH</sup> NOVEMBER 2021

**SUBJECT:** **NOTICE OF MOTION – NINE MILE POINT PLANNING DECISION**

**REPORT BY:** **CORPORATE DIRECTOR EDUCATION AND CORPORATE SERVICES**

### **1. PURPOSE OF REPORT**

- 1.1 Council is asked to consider the Notice of Motion as set out in paragraph 5.1 of the report and make an appropriate recommendation. In accordance with Rule 11(3) of the Constitution.

### **2. SUMMARY**

- 2.1 A Notice of Motion has been received from Councillor K. Etheridge and supported by Councillors M. Davies, N. Dix, A. Farina-Childs, R. Gough, C. Mann, B. Owen, T. Parry, G. Simmonds.
- 2.2 The Notice of Motion meets the criteria set out in the Council's Constitution and in accordance with the Council's Rules of Procedures is now referred to the Environment and Sustainability Scrutiny Committee for consideration, prior to its consideration by Council.

### **3. RECOMMENDATION**

- 3.1 Council is asked to consider the notice of motion the Notice of Motion as outlined in paragraph 5.1 and make an appropriate recommendation.

### **4. REASONS FOR THE RECOMMENDATION**

- 4.1 In accordance with the Council's Constitution.

### **5. THE REPORT**

#### **5.1 Notice of Motion**

We the undersigned elected members of the authority request that a full investigation into the Hazrem planning decision takes place.

This investigation should include within its remit any advice given by Planning Officers and advice given on the procedures and policy prior to and during the Planning Committee meeting when the application was originally considered, and any subsequent advice given to Hywel and Hazrem on conditions. Any relevant information provided to Planning Committee Members prior to the decision (including views of objectors and agents).

We request that the investigation also consider any discussions or information provided prior and after the submission of the Judicial Review and during if information requested by residents

This investigation should also detail any potential costs incurred as a result of the legal proceedings and provide a full account of the case law and finding of the advice given by the Monitoring Officer and outside counsel in regard to all matters especially the decision that no Environment Impact Assessment was required and to the oral hearings of Judicial Review. This will include information given to the Leader / Cabinet and the Corporate Management Team, and why members and residents were refused discussion and communication to achieve a compromise prior to a judicial review submitted by a Dr Platt.

- 5.2 The subject of this Notice of Motion was also referenced in a Question to Council and in a Statement from the Leader of Council at the meeting on the 5<sup>th</sup> October 2021. At that meeting it was confirmed that the complaints from the community would be investigated under the council's complaints process.
- 5.3 The Corporate Director of Education and Corporate Services has now concluded the Stage 2 Investigation and has not upheld Dr Platts complaints. Dr Platt has subsequently chosen to take his complaint to the Ombudsman for review.

## **6. ASSUMPTIONS**

- 6.1 As a notice of motion is a procedural matter and must be dealt with in accordance with Council's Constitution, no assumptions have been made.

## **7. SUMMARY OF INTEGRATED IMPACT ASSESSMENT**

- 7.1 This report does not require an Integrated Impact Assessment as it relates to a procedural matter under the Council's Constitution.
- 7.2 The procedural rules regarding a Notice of Motion are contained within Council's Constitution as adopted in May 2002. The Council's Constitution sets out the framework for the decision-making roles and responsibilities.
- 7.3 However the outcome of the Notice of Motion and any subsequent reports arising from it may require an Integrated Impact Assessment.

## **8. FINANCIAL IMPLICATIONS**

- 8.1 There are no financial implications associated with this report.

## **9. PERSONNEL IMPLICATIONS**

- 9.1 There are no personnel implications associated with this report.

## **10. CONSULTATIONS**

- 10.1 The notice of motion was considered by the Environment and Sustainability Scrutiny Committee at its meeting on the 26<sup>th</sup> October 2021 and was not supported.
- 10.2 Councillor Etheridge introduced his notice of motion and made reference to a letter sent to Chris Evans MP in relation to the matter under consideration which contained information he felt to be relevant to the Scrutiny Committee's deliberations on the motion, he asked Members to accept the motion, the call for a full public enquiry and appointment of an independent person to take the matter forward.
- 10.3 Dr Platt with the permission of the Chair addressed the Scrutiny Committee and detailed the actions he had undertaken in terms of the Judicial Review process, the outcome of the Judicial Review process and why he had taken his matter forward on behalf of the community. Dr Platt believed the conversion of 1000 tonnes of waste into fuel on this site would cause environmental issues to the detriment of the residents in the area. He advised Members that an Environmental Impact Assessment had not been undertaken when the planning application had been submitted and furthermore the application had erroneously referred to the proposal as an industrial estate rather than a waste disposal plant. He advised that Legal Services had confirmed this as a waste disposal installation in April 2021. He also referenced the letter to Chris Evans MP outlined by Councillor Etheridge and the acknowledgement of this as a waste disposal plant. Dr Platt felt that the lack of an Environment Impact Assessment was a blunder by Caerphilly County Borough Council, and he could not understand why the site was not correctly identified at the time. He also did not understand why Caerphilly County Borough Council had refused to acknowledge this error for so long and believed that this mistake would have serious consequences for the residents who had to live in the area. Furthermore, as a rate payer he expected more from his local authority.
- 10.4 It was confirmed that Dr Platt would be allowed to answer questions from the Scrutiny Committee. A Member of the Scrutiny Committee who had also been a Member of the Planning Committee at the time of the application advised that he had attended a site visit prior to the Planning Committee meeting when this application was first considered. The Member queried the opinion of waste recovery or waste disposal and the difference between both and how they can be applied, which he believed could be interpreted either way and which he found confusing. He also sought clarification if the new application to extend five-year limit had become obsolete as work had commenced on site within that 5 years, so did this even come into play in 2020. He also asked Dr Platt if he was aware of the 6-week period before the Judge used it for his determination that there was no case to answer.

Dr Platt confirmed that there was some room for interpretation here however Legal Services had confirmed this in a letter that the argument put forward that it was a waste disposal plant was correct and would therefore be subject to an EIA. The Member was correct that the development was able to start works and the application to extend was withdrawn. But also, in 2020, 3 pre-commencement conditions were complied with and so works could commence, he advised that the legal challenge was based on these aspects as he believed that these should all

have been subject to an EIA. He confirmed that he was aware of the deadline, but this matter was did fall subject to Judge's discretion however in this case the Judge determined that due to the economic detriment that this would place on the Operator, an extension would not be allowed in this instance. He confirmed that at the moment it the site was as agreed waste disposal plant but he claimed that as the plant also does drying then it should also be considered to be undertaking chemical treatment and therefore be subject to an EIA and in this aspect of the case CCBC disagrees.

- 10.5 The Corporate Director Economy and Environment confirmed that the Operator has submitted a non-material amendment to their planning permission on the basis that they will not be undertaking any drying on the site.
- 10.6 A Member urged the Scrutiny Committee to consider the impact on residents and support the motions' call for an independent external investigation into the matter in the form of a public enquiry.
- 10.7 The Scrutiny Committee were reminded of the internal investigation process led by Mr Richard Edmunds as an independent Corporate Director and the next stage in the process should the complainant not be happy with the outcome of the internal investigation would be to refer the matter to the Ombudsman. Should Dr Platt be minded to do so, he can take advantage of this mechanism and take the matter forward to the Ombudsman for his consideration.
- 10.8 The Environment and Sustainability Committee having considered the motion and the evidence present by majority RECOMMENDED that Council not support the notice of motion.

## **11. STATUTORY POWER**

- 11.1 Local Government Act 2000

Author: Emma Sullivan (Senior Committee Services Officer)

Appendices:

Appendix 1 Signed copy of Notice of Motion.