DEVELOPMENT CONTROL DELEGATED REPORT

REPORT BY PHIL WATSON

Subject: Non Material Amendment of 13/00098/WASFUL, Carbonarius, Pebble Hall Farm, Marston Trussell.

Applicant: Carbonarius Ltd.

Recommendations: That planning permission is granted subject to the conditions specified in this report.

1. Background

1.1 Planning permission was granted for a Renewable Energy Generation Facility (REGF) at the Development Control Committee meeting on 24 September 2014 and the decision was issued on the 24 October 2014. This is an application for Non-Material Amendments to the permission.

1.2 Non-Material Amendments (or NMAs) were introduced via Section 190 of the Planning Act 2008 and inserted Section 96A into the Town and Country Planning Act 1990. This allowed, as part of a drive to introduce greater flexibility for planning permissions, minor changes to a planning permission to be regarded as non-material amendments. Guidance on how to deal with NMAs is provided in ‘National Planning Practice Guidance issued by the Department for Communities and Local Government (DCLG).’ An administrative procedure still has to be gone through which involves:

- A standard application form.
- Notification to the landowner and any tenant farmers by the applicant.
- No statutory requirement for consultation but up to the LPA’s discretion.
- Recording of the application and decision on the Planning Register.
- A 28 day period for determination.
- Planning conditions can be amended or new conditions added.
- No right of appeal for refusal or non-determination.

1.3 It should be noted that there is no statutory definition of a NMA. This is because it is dependent on the context of the overall scheme. What may be non-material in one context may be material in another. The planning authority has to make this judgement.

2. Proposal

2.1 Following the approval of the application the applicant has engaged with the contractor for the construction of the REGF plant and as is common with major schemes this process has resulted in a number of minor changes to facilitate the installation of the equipment in a well-designed safe manner. In addition the applicant has been in discussion with Western Power Distribution (WPD) which has enabled plans for the on-site substation to be finalised. The applicant has therefore submitted an architectural review report which
identifies a number of amendments considered by the applicant to be minor non material amendments.

2.2 A summary of the changes proposed is as follows:

- Removal of feedstock conveyor from the wood processing area to the fuel hall.
- Repositioning of the Air Cool Condensor.
- Increase the height of the Turbine Hall by 5m to 13.6m
- Erection of an Electricity Sub-Station surrounded by a 2m fence. This will be a brick structure 10.7 x 10m x 6.8m to the roof apex with a smaller annex 5.3 x 4.1 x 4.95m. The building and annex have pitched roof with cement slates.
- Installation of a weighbridge into an excavated pit.
- Erection of 2 fire water storage tanks 10m in diameter x 8m high.
- Propane storage area relocation.
- Office roofline amended from flat roof to a single pitched roof.
- Changes to the Feedstock Reception Hall roof to a single pitch.

2.3 Mm

3. Consultation and Notification

3.1 There is no requirement for consultation on Non-Material Amendment (NMA) applications and Local Planning Authorities have discretion on whether and how to choose to notify other interested parties to seek their views. In this instance given the interest that the local community has in this development and the fact that a Local Liaison Group has not yet been established, it was considered appropriate to notify the application to: the local Parish Councils; local County Council and District Council elected councillors; and the other site Regulators. As a result of these notifications five letters of representation have been received objecting to the application (including from Theddingworth Parish Council) on the basis that the objectors consider that the changes are significant and do not constitute an NMA. The reasons put forward are summarised as follows:

- Raising the roof of the Turbine Hall by 5m to 13.06m to the size of a 2 storey house is significant.
- The new Electricity Sub-Station and Transformer compound was not mentioned in the original application and this is a whole new building and at 10.07m x 10m x 6.8m approximates to a couple of houses.
- The Air cool Condenser Building is now almost 2 metres higher (including the associated duct) than the previously stated 18m maximum.
- The development already contravenes Policy CMD10 and these amendments will further affect visual amenity and screening measures.
- The submitted drawings are at different scales to the original application drawings and difficult to scale and compare, through interpolation the overall length of the building has changed from 117m to 125m an increase of 7%.

- If the new drawings which have been submitted had been part of the original application the weight of the officers recommendation would have been even stronger and could have had a material effect on the decision of the Development Control Committee.

4. **Public Advertisement and Neighbour Notification**

4.1 There is no requirement for advertisement and neighbour notification for applications under Section 96A.

5. **Development Plan Policies**

5.1 This is not a planning application requiring it to be assessed against Development Plan policies.

6. **Assessment**

6.1 It is for the Waste Planning Authority to make a judgement as to whether proposed changes to a planning permission constitute an NMA in the context of the overall scheme. Planning permission has been granted for an REGF facility which comprises several buildings and plant structures. The footprint of the main building and plant complex comprises a process building, reception hall, turbine hall, air cooled condensers, and offices/control room and covers a maximum length of 117m and a maximum width of 50m. The main process building is 18.5 m high and the air cooled condenser 18.0m high. A flue stack is approximately 30m high and a pipe on top of the air cooled condensers is also approved (whilst this pipe is higher than the plant hall a figure on height was not included on the original drawings). The changes being proposed in the NMA have to be judged in the context of the very large buildings and plant already approved.

6.2 It is acknowledged that representations of objection to dealing with the proposed changes as an NMA have been received and considered. However the changes proposed are not considered to be material changes on the basis of the overall context of the size and mass of the currently approved buildings and plant and as they are largely shielded from views beyond the site by the existing building permitted for use as a Thermophilic Aerobic Digester (TAD) facility. It should be noted that:

   a) The 5m increased roof height on the turbine hall takes this building to 13.06m. This is still well below the 18.5m height of the main process building.

   b) The electricity sub-station and transformer is a new building but at 6.8m height is considerably smaller than the main building plant complex and is screened by the existing building for the TAD.

   c) The fire water storage tanks are new as replacement to the tank currently on site and at 8m height is smaller than the main building plant complex and is screened by the existing building for the TAD.
d) The change to the office roofline from flat to a single pitch (height 13.5) where it joins the main process building is not significant and is still smaller than this 18.5m building.

e) The change to the reception hall roofline to a single pitch at 11.95m where it joins the main 18.5m process building roofline is not a significant change.

f) The location of the air cooled condensers has been marginally moved and screened by the existing building for the TAD.

g) The other changes involving the feedstock conveyor, weighbridge location, and propane storage are all minor changes.

6.3 One of the objections alleges that the air cooled condenser building height has increased to 20.3 metres. This is not the case. The building is shown as 18.35m which is only slightly higher than 18m on the original submitted drawings. It is the pipe (turbine steam duct) on the top of the condenser building which takes the overall height up to 20.3m. This pipe/duct is shown on the original approved drawings and therefore there has been no material change.

6.4 A further objection alleges that the whole building complex has increased the footprint length from 117m to 125m. The submitted drawing B34629T-PL03 Rev E actually has annotated measurements which shows that the repositioning of the air cooled condensers actually reduces the length to 107.4m.

6.5 Theddingworth Parish Council objects on the basis that these changes could have had a material effect on the decision of the Development Control Committee. The decision was made to approve and it is not appropriate to consider the application on the basis being suggested. Instead it has to be made in acceptance that permission exists and the consideration is one of whether the changes proposed are material.

6.6 The application for the REGF 13/00098/WASFUL was subject to Environmental Impact Assessment (EIA). National Planning Practice Guidance on NMAs says that there are unlikely to be effects which would need to be addressed under the EIA Regulations. Nevertheless the NMAs were screened under the EIA Regulation requirements and it was determined that EIA was not required. In particular the landscape and visual amenity impacts of the development were assessed with the original application and the proposed changes are not considered to have any material increase in impact.

7. Conclusions

7.1 The changes to the permitted REGF being proposed in this application are not considered to be material changes on the basis of the overall context of the size and mass of the currently approved buildings and plant. It is also significant that the changes are largely shielded from views beyond the site by the existing buildings on the Pebble Hall farm complex. The application should therefore be approved.
Are there any human rights implications: This application has been processed in accordance with the prescribed Town and Country Planning legislation and regulations. These afford individuals the rights to have their say on the development proposed and for the impacts of the development to be assessed having regard to the potential for impact on any individual, and the decision to be made taking into account any views expressed. The most relevant parts of the Human Rights Act are: Article 6 (Right to a Fair Trial); Article 8 (Right to Privacy); Article 10 (Freedom of Expression); and Protocol No1 which entitles every person to peaceful enjoyment of his/her possessions.

SIGNATURES

Case Officer……………………………… Date……………………………

Team Leader……………………………… Date……………………………