



Appeal Decision

by Robert Sparey MPlan

a person appointed by the Welsh Ministers

Decision date: 29/07/2025

Reference: CAS-04398-Z6Q9F3

Site address: Land At Uskmouth Power Station, West Nash Road, Nash, Newport, NP18 2BZ

- The appeal is made under section 62ZB of the Town and Country Planning Act 1990.
- The appeal is made by Private Energy Partners Limited against a notice of invalidity issued by Newport City Council.
- The Local Planning Authority's reference is 25/0488.
- The notice was issued on 24 June 2025.
- The application is for "S73 application to vary Condition 1 (approved plans) of 23/0835 S73 application to vary Condition 1 (approved plans) and Condition 02 (site investigation and risk assessment) of 22/0823 installation of a 230 MW battery energy storage system (BESS). Amendments include increasing the amount of battery infrastructure, changes to the site layout, changes to the red line boundary and soft and hard landscaping.

Amendments include installation of fire water tanks, amending the layout of the banking compound, raising site levels, repositioning of attenuation pond, adjusting BESS plateau and amending substation positions."

- The requirements of the notice as issued are: "You are seeking to amend the red line boundary, this cannot be done via a S73 application. Please amend."
 - The appeal is made on the [ground set out in section 62ZB (2)(c) of the Town and Country Planning Act 1990 (as amended) ('the 1990 Act').
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Decision

1. The appeal is allowed, and the notice of invalidity is hereby quashed.

Reasons

2. The Local Planning Authority (LPA) state in the notice that it is not possible to amend the red line via a Section 73 application with no further justification or explanation. Regulation 4(2) of the Town and Country Planning (Validation Appeals Procedure) (Wales) Regulations 2016 is clear that the LPA's notice is to be considered as their representation in any appeal.
3. The applicant has provided recent caselaw which makes it clear that there are tests to be applied in considering whether granting a Section 73 application would be inconsistent with the operative part of the earlier planning permission. These tests are matters of judgement for the LPA in the first instance. Paragraph 7.2.22 of the Welsh Government's Development Management Manual (Revision 3, May 2025) is clear that "Validating

planning applications should essentially be an administrative process". It would be open to the LPA to refuse the application if they felt it would create conflict with the original permission, but this matter of judgement goes beyond the validation stage.

4. I also note that the requirement of the notice as written does not refer to any validity requirement from Section 62 of the Town and Country Planning Act 1990 (as amended) [‘the 1990 Act’] or to the relevant Article of the Town and Country Planning (Development Management Procedure) (Wales) Order 2012 (as amended), despite the requirement to do so which arises from S62ZA of the 1990 Act.

Conclusion

5. For the foregoing reasons I find that the matter of whether it is possible to change the approved red line plan via a Section 73 application is a matter of judgement which goes beyond the scope of the validation process. The appeal under section 62ZB (2)(c) succeeds and the notice is quashed.

Robert Sparey

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APPOINTED PERSON