

From: Beardmore, Su (County Cllr)
Sent: 10 September 2025 09:32
To: Jane Curley
Subject: Objection to Application NMA/2025/0018 - Incorrect Use of Section 96A

Dear Mrs Curley,

I write in connection with application NMA/2025/0018 (Land East of Cellarhead Substation: Erection of a Flexible Energy Facility) and wish for this information to be used as a late representation.

Having reviewed the application, I must object to the use of Section 96A (non-material amendment) in this case. The proposed amendment seeks to alter the wording Condition 15 so that the requirement for submission and approval of a Materials Management Plan (MMP) is deferred until excavation of soil and bund formation begins, rather than before any development commences.

This is not a non-material amendment for the following reasons:

1. Change to commencement safeguards.

The original condition was a fundamental safeguard to ensure that no development, including site stripping and clearance, could begin without an approved MMP.

The proposed wording materially changes the "trigger point" for compliance, allowing development to commence prior to this safeguard being in place.

2. Material Implications for control and risk management.

By removing the restriction on early works, the amendment alters the enforceability of the permission and reduces the LPAs control over environmental management of the site.

This goes directly to the substance of the permission and is therefore not "non-material."

3. Legal and policy basis

Government guidance (PPG, Paragraph 017 Reference ID:17a-017-20140306) makes clear that Section 96A cannot be used where the effect of the change is material.

In R(Fulford Parish Council) v City of York Council (2019) EWHC 2210 (Admin), the High Court confirmed that Section 96A is limited to genuinely non-material changes and cannot lawfully be applied where amendments alter the operation of a permission in a substantive way.

For these reasons, the amendment cannot properly be considered under Section 96A. The correct procedure is an application under Section 73 of the 1990 Act, dealing with material variations to conditions.

I therefore, request that the Council declines to determine this application under Section 96A and directs the applicant to resubmit under the correct Section 73 procedure. Any decision to the contrary would be procedurally unsound and open to challenge.

Yours sincerely



Su Beardmore | County Councillor for Churnet Valley Division
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