

**Town and Country Planning Act 1990**

**In the matter of an appeal by Mr Larry Edmunds**

**To be heard at an inquiry**

**For the Restoration of Stowey Quarry by landfilling of Stable Non Reactive Hazardous Waste (SNRHW) and inert wastes**

**Appeal No. APP/F0114/A/13/2195706**

**Application no. 10/05199/EFUL**

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**STATEMENT OF CASE OF STOWEY SUTTON ACTION GROUP**

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13 June 2013

**1. Introduction**

1. Stowey Sutton Action Group (SSAG) was granted Rule 6 status on 16.5.13. This statement of case:
  - 1) sets out the particulars of the case that SSAG will put forward at the forthcoming inquiry;
  - 2) summarises the planning and legal argument;
  - 3) describes the evidence and cites the relevant statutory provisions and case law in support of that argument; and
  - 4) lists the documents SSAG intends to rely upon.
  
2. In outline, SSAG has opposed the proposal since August 2011. It made representations to the Bath & North East Somerset Council (B&NES) the local planning authority (LPA) to refuse the application on the basis that:
  - 1) it failed to comply with national, regional and local planning policy;
  - 2) the evidence presented by SSAG to the LPA demonstrated that the proposal [would give rise to demonstrable harm]
  - 3) the applicant (the Appellant) failed to provide sufficient environmental information about the proposal and, further, that the likely significant

environmental effects arising from the proposal cannot be prevented or mitigated to an acceptable level; and

- 4) there was no demonstrable need for the proposed operations.

## **1. Particulars of the case**

### **a) Background to the appeal**

3. A planning application for the 'Restoration of Stowey Quarry by landfilling of Stable Non Reactive Hazardous Waste (SNRHW) and inert wastes was submitted by the Appellant to B&NES on 9.12.10. The proposal is for the importation of up to 150,000 tonnes of waste/year over 10 years. Hours of operation are from 0700 to 1800 hours Monday to Friday, 0800 to 1300 hours on Saturdays with no operations on Sundays and Bank Holidays.
4. Permission was initially granted in July 2011. This was quashed by the court order of 15.12.11 following a challenge to the unlawfulness of that decision. The matter was reconsidered by Planning Committee on 20.9.12 who adopted the officer's recommendation to refuse permission. The decision notice was issued on 1.10.12 which provided the following reasons for refusal:

It has not been demonstrated that this is an appropriate location for the disposal of the non-asbestos stable non-reactive hazardous waste stream because there is insufficient information on the leachate generation potential of the proposed waste streams, the extent of the unsaturated zone below the quarry floor and the contribution to the flow regime and potential pathways for the water and ecology interests of the Chew Valley Reservoir Special Protection Area. The proposed development is therefore contrary to policies 8, 11 and 12 of the West of England Joint Waste Core Strategy and policies NE10 and NE13 of the Bath and North East Somerset Local Plan, including minerals and waste policies, adopted October 2007.

5. The Appellant appealed this decision on 28.3.13.

### **b) Site location**

6. SSAG agrees that the proposed development is located as the area outlined on the site location map of 2.12.10 (see e.g. p.14, of the ES NTS) and that the application site is as outlined in red on a site location plan of 2.12.10 (see e.g. p. 14 of the ES NTS).

## **2. The planning and legal argument**

7. SSAG will submit that the proposed development is contrary to relevant national, regional and local policy and, in particular, that it is incompatible with national, regional and local planning policy. The key planning concerns are:
- a) sustainable development;
  - b) lack of need for the proposal;
  - c) the principle of landfill and hazardous waste;
  - d) problems with drainage;
  - e) pollution and nuisance including noise, vibration and air quality;
  - f) land instability;
  - g) landscape character and impact on the locality and surrounding areas;
  - h) the impact on ecology and wildlife;
  - i) water source protection;
  - j) flooding; and
  - k) the adverse impact on traffic, highways.

### ***National planning policy***

8. The proposal is incompatible with relevant national planning policies including: the National Planning Policy Framework (NPPF), the NPPF Technical Guidance and also PPS 10: *Sustainable Waste Management*.
9. Relevant parts of the NPPF include:
- a) §§ 6-16, including the pre-ambble relating to sustainable development;
  - b) section 4 on sustainable transport;
  - c) section 11 on conserving and enhancing the natural environment; and
  - d) the Technical Guidance to the NPPF.
10. Relevant parts of PPS 10 include:
- §§ 22-38 relating to determining planning applications; and
  - Annexes B, C and E.

### ***Regional policy***

11. The proposal is incompatible with regional policy including the West of England Joint Waste Core Strategy 2011 (JWCS) on Landfill and, in particular, the requirements that: (i) the waste disposal should be subject to development management policy; (ii) that it will lead to a demonstrable improvement in the quality of the land (2b); and (iii) the proposal is not within major aquifers, source protection zones, European sites for nature conservation or the appropriate buffer (as identified in Figure 6.2) except where it can be demonstrated that the relevant legislative requirements have been met.
  
12. Relevant policies of the JWCS include:
  - 8: Landfill, landraise, engineering and other operations - Principles
  - 9: Landfill, landraise, engineering and other operations - Details
  - 11: Planning designation
  - 12: General considerations.

### ***Local planning policy***

13. The proposal is contrary to local planning policy within the B&NES Local Plan 2007 including:
  - ES5: Foul and surface water drainage
  - ES9: Pollution and nuisance
  - ES10: Air quality
  - ES12: Noise and vibration
  - ES14: Unstable land
  - NE1: Landscape character
  - NE2: Areas of Outstanding Natural Beauty
  - NE8: Nationally important wildlife sites (SSSIs)
  - NE9: Locally important wildlife sites
  - NE10: Nationally important species and habitats
  - NE11: Locally important species and habitats
  - NE13: Water source protection areas
  - NE14: Flood risk

- M9: Minerals development and impact on traffic and highways  
T24: General development control and access policy

### ***Environmental impact assessment***

14. The proposal and the supporting documentation fail to satisfy the obligations of the EIA Directive 2011/92/EU and to provide adequate environmental information in support of the proposal in accordance with Article 5(3) and Annex IV of the Directive.
15. Annex 4 of the EIA Directive requires an ES (and any EIA) to consider alternatives to the proposal in order to prevent the adverse environmental impacts that may arise. There has been no evaluation of the use of alternative existing sites in order to avoid the need for hazardous waste disposal at Stowey Quarry.

### ***Precautionary principle***

16. Recital 2 of the EIA Directive requires
- ... (2) Pursuant to Article 191 of the Treaty on the Functioning of the European Union, Union policy on the environment is based on the precautionary principle and on the principles that preventive action should be taken, that environmental damage should, as a priority, be rectified at source and that the polluter should pay. Effects on the environment should be taken into account at the earliest possible stage in all the technical planning and decision-making processes.
17. With continuing uncertainty as to effects on the locality including amenity, watercourses and ecology, SSAG consider that a precautionary approach should be applied to the proposal.

### **3. Evidence and relevant statutory and judicial provisions**

18. For the reasons set out in the Noise and Vibration Report of Environmental Pollution Management Ltd (April 2012) (the Noise Report) and supplementary reports the proposal is likely give rise to unacceptable noise nuisance (§1.3 of the Noise Report).

19. For the reasons contained within the Preliminary Slope Stability Assessment of Intégrale Ltd (April 2012) (the Stability Assessment) and subsequent representations the proposal is likely to increase land instability in the immediate locality (§4.0, the Stability Assessment).
20. For the reasons set out in the Intégrale critique (April 2012) there are unresolved hydro-geological concerns arising from the proposal (§6.0).
21. The proposal will generate a significant and unacceptable increase in HGV traffic involving up to 100 lorry movements a day, six days a weeks; see e.g. §§8.1-11 of the SSAG representations (April 2012).
22. SSAG will present evidence from the following factual witnesses:
  1. Heather Clewett of Bishop Sutton, a local resident and committee member of SSAG.
  2. David Elliott of Hinton Blewett, a local resident who has raised concerns about the legality of the decision including the application of the EIA Directive.
  3. Dr Phil Hammond of Bishop Sutton, a local resident who lives around half a mile from the development site.
  4. Councillor Vic Pritchard, a local resident and member of B&NES for the Chew Valley South Ward who made representations on behalf of local residents on the proposal.
  5. Mr Keith Betton, Chair of Stowey Sutton Parish Council who made written representations on behalf of local residents on the proposal.
  6. Mr David Beacham, a local resident from Bishop Sutton who lives close to the quarry.
23. SSAG will present the following expert evidence:
  1. EPML opinion and analysis on dust, noise and air quality.

2. Opinion and analysis from Intégrale Ltd on hydrology and land instability.
24. The relevant statutory provisions are those contained in the EIA Directive 2011/92/EU and transposing EIA Regulations 2011, the Town & Country Planning Act 1990 and supporting regulations.
25. Relevant case law includes:
  - Berkeley v Sec of State* [2001] 2AC 601, on the extent and scope of an environmental statement; and
  - Case C-127/02 Landelijke Waddenzee v Landbouw* [2004] on the application of the precautionary principle.

#### **4. Document list on behalf of Stowey Sutton Action Group**

26. SSAG will rely upon the following documents at the inquiry.
  1. The SSAG submissions of 10.4.12.
  2. The SSAG consultation responses of June 2012.
  3. EPML noise report 10.4.12.
  4. EPML supplementary information of 30.4.12.
  5. Intégrale comments on the conceptual site model of March 2012.
  6. Intégrale preliminary slope stability assessment of April 2012.
  7. Intégrale further representations of 15.5.12.
  8. Submissions of David Elliott in relation to land use policy & EIA legislation of 18.4.12.
  9. The proofs of evidence of the above-named factual witnesses.

10. Relevant correspondence from residents including but not limited to the representations by Cameley, Chew Magna, Chew Stoke, Compton Martin, Farrington Gurney, Hinton Blewett, Stowey Sutton and West Harptree Parish Councils.
11. Relevant national, regional and local policy documents.
12. Relevant legislation and jurisprudence (summarised above).

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13 June 2013