Jade Clark

From: Joyce, Michael <Michael.Joyce@pins.gsi.gov.uk> on behalf of Team P16 <teamp16@pins.gsi.gov.uk>
Sent: 23 August 2013 09:16
To: john@oaktree-environmental.co.uk; Planning Appeals; cherbert@slrconsulting.com; pstookes@richardbuxton.co.uk
Subject: APP/F0114/A/13/2195706 - Stowey Quarry, Stowey Road , Stowey, Bath and North East Somerset
Attachments: main issues 22-08-2013.doc

Importance: High

Good morning
The Inspector has now completed his initial review of the appeal documents and would like the parties to consider the attached document which sets out matters that are of concern to him and about which he wishes to hear submissions and/or evidence. He hopes that this will assist the parties in their final preparation for the Inquiry. In particular, the appellant will need to be absolutely clear in the initial submissions about the precise nature of the scheme to be considered at the appeal. Having done so, the Council and the Action Group can then respond. The Inspector will then rule on the scheme to be considered. Parties will also note the timescales for the submission of any agreement or undertaking pursuant to s106 of the Act and the Statement of Common Ground. The Inspector is not inviting the submission of any further documents.

<<main issues 22-08-2013.doc>>

Regards

Michael Joyce (Case Officer)

Room 3/10b Kite Wing
The Planning Inspectorate
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

Telephone: 0303 444 5395
e-mail: teamp16@pins.gsi.gov.uk

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LAND AT STOWEY QUARRY, STOWEY ROAD, STOWEY

Appeal under s78 of the Town and Country Planning Act 1990.

I will wish the submissions and the evidence to clarify the following matters:

The application to be considered at this appeal

The proposal refused by the Council is described in the planning application as '*restoration of Stowey Quarry by land filling of Stable Non Reactive Hazardous Waste (SNRHW) and inert wastes.*' This is not materially amended on the Council's decision notice or the appeal form. The Planning Design and Access statement (v.1.4) says:

- The need is driven by the prohibition of co-disposal of SNRHW with non-hazardous waste (2.2.1)
- Hazardous and SNRHW landfills are required at regional and national level (2.2.2)
- Landfill is the only management option for asbestos waste (2.2.3)
- The SNRHW landfill is to facilitate the disposal of up to 150,000 tonnes per annum of waste including cement-bonded asbestos and inert wastes (2.3.1)
- This is split 50:50 between CDE and hazardous waste (application form Q22)
- The site will be developed in a series of separate cells (drawing 2055/126/10 shows a schematic cell construction) with no more than 2 operational at any time (2.3.4 & 2.3.5)
- Possible implication that not all cells will be used for SNRHW (2.3.6)
- The first main benefit of the scheme is described as meeting the regional and national requirement for SNRHW (2.4.1)

The management capacity for SNRHW that would be provided by the proposal seems therefore to have been fundamental to the scheme being brought forward.

The Oaktree letter to the Environment Agency (EA) (25 July 2013) says that in the circumstances set out it is appropriate to 'withdraw the SNRHW element' and progress 'on the basis that….restoration…(will be)…through the landfilling of inert and asbestos wastes only.' This is repeated in para 4.11 of Mr Williams's proof. The EA letter of 6 August confirms that 'if the ….waste compostion is changed and any component which could generate poor quality leachate is removed from the application…' the EA would have no grounds for objection as there would be no potential source of ground water pollution from the lined landfill. The Oaktree letter to PINS, also dated 6 August, says that the appellant has told the EA that the 'unacceptable waste types' will be withdrawn and that these in any event made up only a small part of the proposal with the substantive part being inert and asbestos wastes.

The following questions therefore need to be addressed by advocates in their initial submissions concerning both the amendment to the submitted application that I assume will be requested by the appellant's advocate

and other matters:

1. At para 9.6.3 of the Environmental Statement (ES) reference is made to a Hydrogeological Risk Assessment (HRA) with the further implication that this is the Conceptual Site Model Report (CSMR) at Appendix 10. An addendum to the CSMR was issued as part of the response to consultation comments (v1.2-9 May 2012) and now forms Appendix B to Mr Harper's proof. The Initial HRA Report (20 May 2013) is at his Appendix C. The questions that arise are:
    a. Are either or both of these intended to be part of the ES by way of amendments to it?
    b. If so, when and how were they advertised in accordance with the 2011 Regulations?
2. What waste type(s) does the appellant actually propose to remove from the proposal that I am now asked to consider? In this context I need to be clear exactly what SNRHW comprises and how it differs from asbestos waste (in its various forms). This point assumes a greater importance following the appellant's email dated 22 August. This confirms that in Mr Harper's view, I did misunderstand section 3 of his proof. He appears to maintain the view that SNRHW is still acceptable, albeit of a lesser specification. This advice does not appear to have been acted upon by the appellant since Mr Williams confirms that no SNRHW will be deposited. However, Mr Harper clearly confirms that the SNRHW specification applied for 'would be a problem'. This strongly suggests that the appellant's own evidence no longer supports the appeal scheme. The appellant's advocate really does need to make his position clear.
3. Following on from that, when the EA referred in its 6 August letter to the removal from the proposal of 'any component which could generate poor quality leachate' what 'component' (wastes?) did it have in mind?
4. Views will be required about the decision I should come to in respect of the assumed request by the appellant having regard to the principles established by the *Wheatcroft* judgement.

Planning policy

1. Given the length of time this application and ES have been in the public domain, many of the references to national, regional and local policy have been overtaken by events. What now comprises the development plan for the purposes of my determination of this appeal?

Principle of the development

1. JWCS policy 8 appears to be the relevant policy. Asbestos cannot be reused or recycled so does the proposal meet clause 1?
2. Only one of clauses 2 (a) to (e) needs to be met and in this case (a) is the basis for the application. However, clause 2 requires only the 'minimum quantity of waste necessary to deliver the sub region's needs'. These are set out in Tables 6.4 and 6.5 both of which are relevant to this proposal. What evidence is there on this point?

3. Although the Figure 6.2 provided with the appeal questionnaire is hard to read there appears little doubt that the appeal site is within the buffer of the Chew Valley SPA. As set out above, my understanding is that the appellant accepts the EA view that the submitted scheme cannot comply with clause 4. Is there agreement that in respect of the amended scheme this clause can be met?

The fall back position

1. Planning permission 07/02326/MINW granted on 8 January 2008 is used in the ES to establish the baseline conditions for several of the topics discussed. It also forms the basis for several of the relevant Council officer views put to the committee and would appear to establish the principle of a form of restoration by the deposit of residual inert waste material. Is there any question that this planning permission has been implemented?
2. Assuming the answer to that is 'no' what are the prospects of that development going forward if this appeal fails?

The objections of the Stowey Sutton Action Group

These are set out in the statement of case and most conveniently in the proof of Heather Clewett, particularly Appendix HC2. Matters relating to the adequacy of the ES raised by David Elliott are for legal submissions rather than evidence. The terms of the Consent Order (Appendix DE2 are noted.

Case law has established that almost anything is capable of being a material planning consideration with the weight given to it being determined by the decision maker. Some of the matters raised by SSAG (need for the site, effect on groundwater and thus on the SPA) should have been addressed in dealing with the 'principle'. The other issues raised appear to me to be embraced by the following:
The effect the development would have on:

a. The enjoyment of users of public rights of way in the area;
b. The safety of users of the highway with regard to HGV and other traffic movements;
c. The living conditions of occupiers of nearby properties with regard to noise and disturbance (including fugitive dust and fibres and lighting) from the operations;
d. The stability of adjoining land;
e. The nature conservation interest of the appeal site including its contribution to the wider interest.
f. The character and appearance of the area.

On most of these issues SSAG disagree with both the appellant' ES and the Council's officer report which led to its formal reason for refusal. However, neither of these parties deal with these issues in their proofs and the Council witnesses may not give evidence at all if I agree to the terms of the application being amended. It will be for the appellant and the Council as appropriate to decide how the evidence of SSAG is to be

tested.

With regard to that part of (c) (asbestos fibres and the health impacts referred to by SSAG), I sense a potential inconsistency between the evidence of Ms Clewett and Dr Hammond. Ms Clewett appears to suggest that (only?) Chrysotile asbestos should never be landfilled while Dr Hammond's evidence is that this is a totally inappropriate site given its particular characteristics. I do not believe that the EA has raised any objection to the appellant's method statement (which is, in terms, to comply with EA requirements and legislation). I therefore need to be clear about the precise nature of the SSAG objection on this issue.

On (f), I need to be clear how the final restoration landform proposed would differ from that which will arise from the extant 2008 permission.

Other matters

1. In section 6 of his proof Mr Williams refers to a planning agreement. Guidance on this is given in Good Practice Advice Note 16 which, at the time of writing, is available on the Planning Portal web site. Since the timescale set out in para 6 of that document can no longer be met, if one is to be considered it will have to be submitted immediately.
2. Mr Williams also refers to a Statement of Common Ground on several occasions but none has so far been produced although the email of 22 August suggests it is imminent. There is much that could be agreed including what will need to be two schedules of conditions. The first would be for the submitted scheme and are included with the appellant's statement of case. An indication by the Council as to which of the appellant's conditions it accepts and which it does not with alternative wording agreed if possible should be provided. The second should relate to the amended scheme against which the Council offers no evidence. The Council should therefore take the lead on these conditions paying particular attention to that which will control the materials to be deposited. These schedules need to be submitted to the case officer not later than noon on Thursday 29 August.