

**In the matter of an application for planning permission**

**Application no. 10/05199/EFUL, Stowey Quarry**

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

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**REPLY ON BEHALF OF DAVID ELLIOTT**

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1. The developer has prepared a Response to Consultation Comments of 9 May 2012. Mr Elliott's representations of 18 April 2012 continue to be relevant are relied upon in full. This is a short reply limited to aspects of Section 3 of the developer's response entitled: 'Response to Representations by David Elliott'.

**1 Background noise assessment**

2. Reference to the comments by the Council's environmental health officer (EHO) by the developer mischaracterises what the EHO, in fact, states. In any event, it is incorrect for the following reasons:
  - 1) The EHO and the developer wrongly assess the background noise level to include those arising from the quarry. The background noise level to which the proposed waste operations should be assessed should be absent of those waste operations and any activity associated with it. It is the impact or increase in background noise levels that will cause the environmental harm. To include quarry operations in background noise assessment will result in the absurd scenario that the locality is being subjected to quarrying on a permanent basis (i.e. 24 hours a day, 365 days a year) and that the noise from proposed waste operations should be judged as an increase over and above this.

Should planning permission be granted based upon the EHO's incorrect analysis of the background noise levels, it will give rise to a material error of fact and will therefore be unlawful.

- 2) The EHO states, and the developer agrees, that to limit noise levels to 37 dB(A) at the nearest noise sensitive premises could be difficult to achieve. This may or may not be the case. However, the EHO and developer then wrongly assume that permission should still be granted but the unacceptable noise levels be permitted. This is incorrect. If it is the case that noise limits are difficult to achieve then planning permission should be refused. In such circumstances, the developer would have failed to demonstrate that adequate mitigation measures are capable of preventing unacceptable environmental harm.
3. In the circumstances, the approach taken by Environmental Pollution Management Ltd of April 2012 of assessing background noise levels at a level that will, in fact, be background noise levels is entirely correct and this approach should be adopted.

## **2 Reliance upon 2008 quarry permission**

4. The EHO and the developer rely upon permission having been granted for the quarrying and that noise levels and HGV traffic should be assessed according to that permission. This is nonsense. Any permission for the quarry should be assessed according to how and the extent to which that permission has been implemented. Further, if the EHO and developer are to rely upon the quarry permission granted in 2008 they should refer to the environmental statement and EIA that was required in support of that proposal and review whether any assessment and predictions made as part of that proposal have been achieved. If it is the case that an EIA was not undertaken for the quarry permission then the Council is required to take effective measures to resolve that and revoke that permission (see e.g. Case C-102/02 *Wells v Secretary of State* [2004] §§64-69).

5. Should the project be determined according to the levels set in the quarry permission rather than the permission as implemented then this will amount to an error of law.

### **3 Unlawful deferment of conditions**

6. The developer has failed to address the concerns raised that the proposal is seeking to defer critical elements of environmental assessment to a point after permission has been granted. Such an approach would be unlawful in that it would be preventing effective public participation on key elements of environmental impact. Article 2(1) of the Directive requires:

Member States shall adopt all measures necessary to ensure that, before consent is given, projects likely to have significant effects on the environment by virtue, inter alia, of their nature, size or location are made subject to a requirement for development consent and an assessment with regard to their effects. Those projects are defined in Article 4.

[underlining added]

7. In the light of the above and having regard to the proposal, the comments previously submitted and any further correspondence, the Council is asked to refuse permission.

Paul Stookes

Richard Buxton Environmental & Public Law

13 June 2012