



The Planning Inspectorate

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Date Received

Appeal Ref

The Environmental Permitting (England and Wales) Regulations 2016

Environmental Permitting Appeal Form

If you need this document in large print, on audio tape, in Braille or in another language please call 0303 444 5584.

WARNING: The appeal must reach the Inspectorate with the statutory appeal deadlines as laid out in Schedule 6 of the above mentioned regulations.

PLEASE PRINT CLEARLY IN CAPITALS USING BLACK INK

A. APPELLANT DETAILS

Name SIMON NELSON

Organisation Name (if applicable) NELSON PLANT HIRE LIMITED

Contact reference Number

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Email INFO@NELSONPLANTHIRE.CO.UK

I prefer to be contacted by: Email Post

B. AGENT DETAILS (if applicable)

Name MICHAEL JONES

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N/A

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C. REGULATOR DETAILS – ENVIRONMENT AGENCY/LOCAL AUTHORITY

Name E N V I R O N M E N T A G E N C Y

Contact reference Number E P R / J B 3 3 0 7 S P / A 0 0 1

Date of Application (DDMMYY) 0 9 0 5 2 2

Date of Decision (DDMMYY) 2 2 0 3 2 3

D. APPEAL SITE ADDRESS

Site Address W H I T E H O U S E F I E L D W I N C H E S T E R

R O A D A N D O V E R

Postcode (if known) S P 1 1 7 H W

E. GROUNDS OF APPEAL

Please indicate the grounds for appeal by ticking whichever box applies and then set out your reasons in section F of this form.

- | | |
|--|--|
| 1. Refusal to grant a Permit; | 1. <input checked="" type="checkbox"/> |
| 2. Refusal to grant a variation of the conditions of an existing Permit; | 2. <input type="checkbox"/> |
| 3. Conditions attached to a Permit following an application for a Permit or variation; | 3. <input type="checkbox"/> |
| 4. Refusal of application to transfer or conditions attached to Permit to take account of transfer; | 4. <input type="checkbox"/> |
| 5. Refusal of application to surrender the Permit or conditions attached to Permit to take account of surrender; | 5. <input type="checkbox"/> |
| 6. Variation, Enforcement, Revocation, Prohibition or Suspension Notice; | 6. <input type="checkbox"/> |
| 7. Refusal of approval to initiate closure procedures or is served with closure notice; | 7. <input type="checkbox"/> |
| 8. Failure by regulator to give notice of determination of application for Permit, variation, transfer or surrender within statutory time-period - 'deemed refusal'; | 8. <input type="checkbox"/> |
| 9. Deemed withdrawal of application following failure to provide required information. | 9. <input type="checkbox"/> |

F. REASONS FOR APPEAL

This reply is in response to the decision by the EA to refuse our application for an standard rules environmental permit at the above address:

The purpose of this document is to reply to the reasons for refusal outlining the factual position for the benefit of a planning inspectorate to be read at a subsequent appeal. For ease of reference we will reply in the same order to the points made by the EA.

Summary of the EA decision:

The EA have decided to refuse our application for a standard rules environmental permit at Whitehouse Field. The reasoning for refusal is that the EA believe that we (the applicant) have failed to demonstrate that the proposed activity would be a recovery operation and as such we would not be able to comply with a permit restricting waste operations to recovery. We do not

believe that the EA decision is correct and the decision goes against a previous planning inspectorates' decision.

The EA have previously issued 3 standard rules permits / exemptions on this site to other operators for the same operation for which the site has planning permission and which has not yet been completed. This has been substantiated by a separate planning inspectorate decision which confirms that the scheme and planning permission is not complete and approved levels and spot heights have not been reached.

Within this latest application the EA have continually moved the determination date further and further back resulting in this latest application taking 2 years which is unprecedented. We have not declined to submit further evidence as they EA insinuate and have provided all evidence numerous times to the EA who fail to acknowledge vital correspondence or previous inspectorate decisions.

We are only applying to the planning inspectorate as a last resort due to the unacceptable and unreasonable behaviour and decision to refuse our application taken by the EA.

Site Background:

The application was for a standard rules deposit for recovery (SR2015 No.39 use of waste in a deposit for recovery operations). The waste deposit operation proposed the importation and use of 16,865m³ of waste material for the construction of an extension to a golf course. The works have full planning approval (TVN6179/8) and the works to be completed have been further substantiated by a planning inspectorate decisions (3220542, 3220546) which confirms fully the works to be completed.

A previous application for a standard rules environmental permit was held in obedience by the EA whilst the above planning position was determined by the inspectorate in the above hearing.

The application for a standard rules permit was then re-commenced once the planning position had been fully resolved but the EA failed to determine this application within the timescales afforded to them within their own guidance, they also opted to change their minds from them granting the scheme as a recovery operation, to not being a recovery operation.

We then applied to the planning inspectorate to determine the application (APR-EPR-548). The inspectorate refused our application for a standard rules permit on the basis that (a) the EA can change their mind and their advice on recovery is not binding (b) there was no agreed restoration plan with our application and the EA could not rely on the local authority to police the scheme on their behalf.

Since the last hearing we have subsequently agreed a plan with the LPA which confirms the volume figure of importation to complete the scheme of 16,865m³. This exact drawing and figure has now been included within our latest application and Waste recovery Plan submission to the EA for a standard rules environmental permit, also included within this application is a considerable body of evidence from the LPA threatening further enforcement action and outlining our obligation to complete the works, it was fully accepted in the last hearing by the EA under oath that there is an obligation to complete the works, this was duly noted and further confirmed in the inspectorates findings, as below:-

"The EA accept there is an obligation on the appellant to complete the works to fulfil planning permission ref: TVN 6179/8, which the LPA are evidently keen to see completed. It was established at the hearing that the EA's only concern relates to the level of waste that is needed to complete the works."

"The EA stated at the hearing that if a robust calculation for the amount of waste required to complete the necessary works was put before them, they would very likely issue a recovery permit, as they accept there is an obligation to undertake the works."

Latest Application:

We submitted a Waste recovery plan to the EA for consideration in early 2021, This was then assigned to an officer on 12th May 2021.

The application has been passed around various officers all of whom did not determining the application, missing deadlines and obfuscating. We have only just had a refusal from the EA for this same application on 22 March 2023.

We fail to see how the EA can state that *"we have failed to provide sufficient information for them to determine that the activity is a recovery operation."* It has been determined that we have an obligation to undertake the work therefore we meet the threshold of recovery as determined in the last hearing by a government planning inspector on behalf of the secretary of state.

Every question asked by the EA has been answered both in our WRP and standard rules permit application and numerous times thereafter by the company and its consultants (Tetra Tech).

It cannot be argued that the LPA would accept a lower scheme for the following reasons:-

1. We have planning permission for the current scheme;
2. We have unequivocally demonstrated that under the approval we are using the minimum amount of waste required as demonstrated by the agreed drawings and volumes with the council, which is what the inspectorate requested at the last hearing; and
3. *"The EA stated at the hearing that if a robust calculation for the amount of waste required to complete the necessary works was put before them, they would very likely issue a recovery permit, as they accept there is an obligation to undertake the works."*

There has been a very small amount of material placed on site as a safety feature as advised by our H&S consultant prior to the works commencing. Any material which has been placed on site is minimal and is covered under an exemption. This material is to keep the road in good order for access and egress and another small safety feature (a bump bund on the haul road) as recommended by our H&S consultant, as we have confirmed this very small amount of material will be removed at the end of the scheme and before the golf course is playable.

The LPA cannot discharge the conditions until the scheme is fully completed as defined by the planning inspectorate in hearing (3220542, 3220546).

Our responses to the EA schedule 5 notice were full and complete and re-iterated the answers to the questions that the EA constantly repeat and fail to acknowledge the clear answers that they have been given numerous times.

In response to reasoning within the EA refusal, We as applicant had little option but to correspond directly with the LPA in order to ascertain why there were delays in the LPA replying to the EA as part of the statutory consultation period, this is because it took the LPA in excess of 4 months to reply. This should not be held against us and seemed a sensible thing to do as both parties were clearly struggling to communicate. All that needed to be cross checked by the EA was that the plans and volumes agreed with the council were the same as the plans and volumes within our WRP and standard rules permit application. This took 4 months which is unreasonable.

There does not need to be an agreement in place with the existing golf course in order to construct the scheme. This is not for the EA to become involved in and instead they should focus on the matters in hand.

There have not been discussions between ourselves and the LPA developing the site as a standalone golf course, there had been mis-communication which has now been resolved and once again this is not within the remit of the EA.

I did not at any point confirm to the EA officer on site that we were constructing a standalone golf course. This is a misunderstanding on their part.

1. There is no uncertainty as to the works that are required in order to construct the golf course;
2. There is no uncertainty as to whether there is an obligation to complete the works, particularly when the LPA are now considering their position in relation to enforcement notices that we cannot satisfy until the works are completed;
3. We have demonstrated that we are using the minimum amount of waste needed to construct this scheme in line with the agreed drawings and volumes agreed with the LPA and contained within our WRP and application for a standard rules permit;
4. We do not have to submit a planning application for a lesser scheme because we have approval for the current scheme;
5. We are in danger of further enforcement action if we do not complete the scheme in line with the approval and agreed plans;
6. The EA is putting words into the mouths of the LPA and we do not concur with their agreeing to a lesser scheme, it is our right to complete the planning permission as approved. The EA refer to intimation from the LPA whereas we much prefer to work on fact, law and legislation; and
7. The conditions cannot be discharged until the scheme is fully completed.

The EA seem to contradict their position. There has only been minimal material taken onto site under an exemption and as part of our preparation for works commencing, all which will be removed at the end of the scheme. The EA can be confident that this is the case as confirmed by their officer on site who has also visited previously and confirmed that this was the case.

We have demonstrated that we are using the minimum amount of waste required under the approved planning permission and drawings and volumes as agreed with the LPA and which are exactly the same as are included within our WRP and standard rules permit application.

The EA acknowledge that work is required on site to achieve the planning approval. It is untrue to suggest that the LPA would accept a lower scheme when this would mean a whole new planning application which we do not wish to become involved in, this is our right as the EA accept. There is no doubt over the obligation and there is no possibility over us applying for a lesser scheme or applying to vary the existing conditions because we already have planning approval on the current scheme which has been further confirmed by a Planning inspectorate, therefore an inspectorate can be sure that we have demonstrated using the minimum amount of waste within our application for an EA permit and within our WRP.

The Agency now wishes to change its position from previously agreeing under oath and in a public inquiry with an inspectorate to one which states we don't have an obligation. This is in spite of the LPA threatening to consider its position over enforcement notices that cannot be discharged until the works are complete. By default the EA are prejudicing our commercial position. Clearly the EA and LPA are working together to try and stop this operation going ahead when we have planning approval and have demonstrated that we have also met the criteria to receive an environmental permit.

The materials to be used within the works have been defined and full duty of care will be followed. This is obfuscation from the EA to not issue the permit as any issues in this regard should have been discussed quite some time ago as defined within their own guidance. We fail to accept that the EA simply got waylaid in other topics particularly when we applied initially nearly 2 years ago.

If the EA genuinely believed that any material brought in under and exemption needed to leave site before they could issue a permit, then why didn't they have this conversation with us?

This is yet another excuse to try and muddy the waters with the inspectorate and justify their pre-meditated approach. The EA can be confident of the volume within our WRP and standard rules permit application.

The position is clear as defined by the inspectorate at the last hearing (APR-EPR-548). The EA cannot regulate the planning regime and the planning regime cannot regulate the EA. The system cannot be regulated by good will (which goes both ways) and the agreed plan and volumes are clear within our application and fully correspond with the plan and volumes agreed with the LPA. The WRP is clear and the levels can be checked at any time by the EA which correspond with the volumes. We own the freehold site and the end use as a golf course dictates that the levels must be achieved.

Summary:

- It is clear to the inspectorate that we have fulfilled all requests by the EA as part of this determination process to a satisfactory standard and ensuring that the level of information achieves and answers the questions posed;
- It is clear that we have full approval and have agreed plans and volumes with the LPA;
- It is clear that under the planning approval we have demonstrated using the minimum amount of waste and within our WRP;
- It is clear that the plans agreed with the LPA correspond with the plans in the WRP and permit application;
- It is clear that the EA accepted there is an obligation in the last hearing under oath;
- It is clear that the outstanding enforcement notice jeopardises our position with the LPA;
- It is clear that we cannot discharge this enforcement notice until the works are completed; and
- It is clear that there is no doubt over whether there is an obligation on ourselves to complete the works.

The EA refers to schedule 5, part 1, paragraph 13(1) of the EPR. Our comments are in italics/red.

- (1) Subject to sub-paragraph (3), the regulator must refuse an application for the grant of an environmental permit or for the transfer in whole or in part of an environmental permit if it considers that if the permit is granted or transferred the requirements in sub-paragraph (2) will not be satisfied.

(2) The requirements are that the applicant for the grant of an environmental permit or the proposed transferee, on the transfer of an environmental permit (in whole or in part), must

- (a) Be the operator of the regulated facility. *We would be the operator and have demonstrated this as per our application for a standard rules permit and associated WRP.*
- (b) Operate the regulated facility in accordance with the environmental permit. *The operation is clearly a recovery operation and not a disposal operation and the facility would be operated in accordance with the environmental permit.*

Decision Considerations:

The EA have not considered their duty regarding the desirability of promoting economic growth, this is demonstrated by the fact that we have been liaising with them for in excess of 5 years without success, this is notwithstanding the fact that previously 3 other operators have been issued with a standard rules permits / exemptions before ourselves for the same scheme which is yet to be completed, each time the EA have agreed that the scheme is a recovery operation, yet they EA will not agree that our operation is a recovery operation.

In this regard, the EA role as regulator has not taken into account the applicant has met all of the criteria and has demonstrated beyond any doubt that this operation meets the criteria required to agree recovery and issue an environmental permit, the EA have also failed to consider the adverse effect that their unreasonable behaviour and prolonged behaviour has had on a business during the recent economic downturn and throughout the pandemic.

We are a legitimate operator with a legitimate application which has been prolonged excessively and without good reason, this unreasonable behaviour also goes against previous inspectorate's decisions and does not give the impression that the EA are being consistent and fair.

Responses from organisations:

The EA even acknowledge that the LPA expect the site to be restored in line with the existing approved plans. Therefore we cannot deviate from these plans and have demonstrated that the minimum amount of waste is being used within the scheme. The council also confirm that the extant enforcement notice is unresolved and cannot be resolved until the scheme is completed fully, they are reviewing their position which effectively means that the EA are prejudicing our commercial position and leaving us open to enforcement action by refusing to grant a permit for which we have already met all the criteria for.

The EA's actions and refusal outline the lengths that they have taken to create a reason to refuse our application, we note that the refusal only finally came on the 22nd March which coincidentally was 1 day before the deadline that we had set to commence to appeal as we felt they had purposely continued to delay matters. Clearly the document they have produced has taken considerable time to create so it once again shows to the inspectorate the unreasonable, pre-meditated approach and behaviour that the EA have taken, stringing matters along when they were clearly going to issue refusal anyway.

We will seek costs from the EA for the unreasonable behaviour that they have adopted, we would ask the inspectorate to consider all relevant information up to and including the hearing which will demonstrate the pre-meditated lengths of the unreasonable behaviour adopted by the EA which have had an adverse effect on our business financially.

G. CHOICE OF PROCEDURE

Please choose option 1, 2 or 3 by ticking one box only

Please note that we must also take the Environment Agency's/Local Authority's preference into account when we decide how the appeal will proceed.

1. Written Representations

This procedure involves an exchange of the parties' written statements, followed by a visit to the appeal site by the Inspector who is responsible for determining the appeal.

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You and a representative of the Environment Agency/Local Authority will be given an opportunity to accompany the Inspector during the site visit.

2. Hearing

A hearing is a discussion, held under the direction of the Inspector. It lets parties exchange their views in a less formal atmosphere than at a public inquiry. Hearings are open to the public, and third parties may be heard at the discretion of the Inspector.

Hearings are not usually suitable for appeals that:

- are complicated or controversial and have created a lot of local interest
- require cross-examination of witnesses.

H

Although you may prefer a hearing, the Inspectorate will also consider whether your appeal would be best dealt with at a more formal inquiry or on the basis of written representations.

3. Inquiry

This is the most formal procedure and is usually the best way to deal with a case that involves complex legal issues and or where many third parties have expressed an interest in the case. Expert evidence is often presented at an inquiry and witnesses may be cross-examined. An inquiry will normally take longer than a hearing, and in some cases could continue for several days. It is not a court of law but proceedings may appear to be quite similar. Inquiries are open to the public and third parties may be heard at the discretion of the Inspector.

An inquiry will be held if you or the regulator decide that you do not want to use the written representations procedure and we decide that a hearing is unsuitable.

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Sometimes even if both parties have opted for the written representations procedure or an informal hearing we may decide to hold an inquiry. If we do, we will tell you why.

If you want us to hold an inquiry please set out you reasons.

"I wish to be heard by an Inspector at an inquiry because..."

N/A

H. ESSENTIAL SUPPORTING DOCUMENTS

The documents listed below, **must** be sent with your appeal form. If we do not receive all your appeal documents within the statutory appeal period we may not be able to accept it.

Please tick the boxes to show the documents you are enclosing.

1. Copy of relevant application (if applicable);

1.

2. Copy of relevant Environmental Permit (if applicable);

2. N/A

3. Copy of the Decision or Notice (the subject of the appeal);

3.

4. Copies of any relevant correspondence, plans etc between you and the regulator.

4.

I. CONFIRMATION

DECLARATION

I understand that:

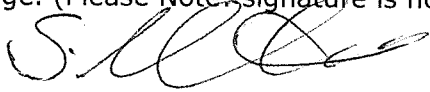
- a) The Planning Inspectorate may use the information I have given for official purposes in connection with the processing of my appeal;
- b) Details from this form, including my name, the site description and my grounds of appeal

may appear on the Planning Portal.

By signing this form I am agreeing to the above use of the information I have provided.

I have completed all sections of the appeal form and confirm that the details are correct to the best of my knowledge. (Please Note: signature is not necessary for electronic submissions)

Signature



Date (DDMMYY)

3 5 23

Name (in capitals)

S I M O N N E L S O N

On behalf of (if applicable)

N E L S O N P L A N T H I R E L I M I T E D

For more information about how we process your personal information please see "Environmental Permitting (England and Wales) Regulations 2016 – The appeal procedure guidance."

Please now send this form and all the necessary supporting documents to:

Environment Team, The Planning Inspectorate, 3A Eagle Wing, Temple Quay House, 2 The Square, Temple Quay, Bristol, BS1 6PN

Or e-mail it to: ETC@planninginspectorate.gov.uk

You also need to send a copy of it to the regulator that issued the Notice.

When we receive your appeal form, we will:

1. Check that the appeal is valid and everything is in order;
2. If everything is in order, we will give you an appeal timetable and **start date**;
3. Inform the regulator of the start date of the appeal (if applicable).

If you submit information or representations late we may be unable to consider them, the Inspector may not see them, and they may be returned to you.

At the end of the appeal process you will receive the Inspector's decision, in writing (including details of the Inspector's reasoning).

J. SUPPLEMENTARY SHEET