

Whitehouse Field

Waste Recovery Plan

784-B028534



September 2021

Prepared on Behalf of Tetra Tech Environment Planning Transport Limited.

Registered in England number: 03050297

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Document control

Document:	Waste Recovery Plan
Project:	Whitehouse Field
Client:	Nelson Plant Hire Ltd
Job Number:	784-B028534
File Origin:	\\southampton14\Data\Projects\Nelson Plant Hire (N05489)\B028534 (Nelson WRP 2021)

Revision:	V1	Status:	
Date:	April 2021		
Prepared by:	Michael Jones	Checked by:	Andrew Bowker
		Approved By:	
Description of revision:			

Revision:	V2	Status:	
Date:	September 2021		
Prepared by:	Michael Jones	Checked by:	Andrew Bowker
		Approved By:	
Description of revision: Alterations following LPA agreement			

Revision:		Status:	
Date:			
Prepared by:		Checked by:	
		Approved By:	
Description of revision:			

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1.0 INTRODUCTION

1.1 Report Context

1.1.1 Tetra Tech has been commissioned to prepare and submit an updated Waste Recovery Plan (WRP) on behalf of Nelson Plant Hire Limited for Whitehouse Field, Romsey Road, Hampshire.

1.1.2 In September 1997, a planning application was submitted to Test Valley Borough Council to extend the golf course in area to the south of the golf course which would comprise the development of a five hole golf course. Planning Permission (reference TVN.6179/8) for the proposed works was granted by Test Valley Borough Council in November 1997. With reference to the decision notice (Appendix A), Condition 6 of the planning permission stipulates the following:-

'No development shall commence until fully detailed plans showing the ground level alterations involved with each tee and green have been submitted to and approved in writing by the Local Planning Authority and the construction of the tees and greens shall be carried out in accordance with these approved plans.'

1.1.3 The aforementioned planning condition was discharged by way of an application to Test Valley Borough Council as shown in the letter from the council enclosed as Appendix B.

1.1.4 In March 1998, a further letter was received from Test Valley Borough Council clarifying that the details submitted were approved regarding the following issues: archaeology, landscaping, seeding and turfing, alterations to levels and a pedestrian crossing. This is provided in Appendix C. The letter is quite specific in stating:-

"Should the scheme not be completed in line with the above planning permission and associated conditions then you will be liable to enforcement action by this authority."

1.1.5 The proposed development comprises the importation of suitable inert materials to facilitate the development. The works will be completed in accordance with the plans approved under planning permission TVN.6179/8 as obligated by the letter in Appendix C.

1.1.6 A further letter was received on 12th December 2011 from TVBC under the heading "Groundworks in land to south east of Wherwell and Winchester Road Junction, Goodworth Clatford at 05 Parcels 3974 and 3300. Again, this stated that the council were:-

"concerned that the site remains incomplete..." and that

"We must remind you that should this scheme not be completed strictly in accordance with the approved planning conditions and all conditions fully discharge in line with your obligations we will have no alternative other than to take steps to secure proper planning control measures being taken, this will include enforcement action if necessary."

This letter is provided in Appendix D.

1.1.7 The original WRP for this site was agreed by the Environment Agency via email on 8th June 2018. The RVD Advice letter is provided in Appendix E.

- 1.1.8 Subsequent to the agreement that the activity on site was a recovery, a recovery permit application was submitted to the Environment Agency (EA) on 13th June 2018, duly made on 16th July 2018 and the permit application was allocated to a permitting officer on 10th August 2018. As the application was not determined within the statutory three months, an appeal for non determination was submitted to the Planning Inspectorate, this was deemed valid on the 13th November 2018.
- 1.1.9 Appeals were also lodged with the Planning Inspectorate regarding aspects of the planning for the site and it was agreed between Nelson Plant Hire and the EA that the above non determination appeal would be put into abeyance pending the outcome of these appeals.
- 1.1.10 The Appeals (Reference Numbers 3220542 and 3220546) were held 26 and 27 November 2019 and the Planning Inspector's decisions were issued on 13 January 2020. Within these decisions there was a clear understanding that the final levels for the site had not been reached as detailed within the below extract from the inspector's report:-

“Mr Thunhurst in giving his evidence confirmed that there was still some headroom with respect to material and levels to be created. The process of complying with the planning permission and also the reinstatement of the land where the bund and hardstanding are, which will form part of margins and fairway for the fifth hole, will require further groundworks. Notwithstanding the breach of planning control in relation to Appeal A therefore, the development has not been substantially completed.”

- 1.1.11 An excerpt of Inspector's decision notice attached in Appendix F.
- 1.1.12 WYG (now Tetra Tech) wrote to Jeanette Stockton, the EA Appeals coordinator, on 2nd March 2020, to point out the Inspector's clear guidance that there is voidspace available on site that needs to be filled to complete the planning permission. This gives a clear indication of a planning imperative to complete the filling works on site and therefore the EA's original agreement that filling on site should be carried out under a recovery permit was correct. This email is attached in Appendix G.
- 1.1.13 Jeanette Stockton replied on 10th March stating that:-

“An appeal for non-determination removes the decision making process from the Environment Agency to the Planning Inspector...”

...Before submitting a new application, we recommend that you prepare and send a new Waste Recovery Plan to us for assessment.”

- 1.1.14 Ms. Stockton's e-mail is attached in Appendix H.
- 1.1.15 While this discussion was ongoing, Nelson Plant Hire received email correspondence, via their planning agent, from Darren Hobson, the Planning Enforcement Manager from Enforcement at Test Valley Borough Council (TVBC) on 4th March 2020, discussing the Appeals findings in general but also stating specifically that:-

“The inspector recognised that there were still works required to deliver on the planning permission for the new golf holes. Therefore, I am now writing to ask what your client's intentions are in relation to completing the development in accordance with the decision and the timescales the Council can expect for such a completion.”

Mr Hobson's e-mail is attached in Appendix I.

1.1.16 Following the above Nelson commissioned WYG (now Tetra Tech) to submit a further updated Waste Recovery Plan with the additional information gleaned for the Inspectors decisions and the planning enforcement demand that the site is completed. This WRP was submitted to the EA in April 2020 and following protracted discussions it was determined that the regulator no longer considered that the proposed activity constituted a recovery operation. However, within those discussions it was clear that the EA considered that there was an obligation on site but were uncertain as to its extent as per the below:-

"...it appears that there could be an obligation to do something on the site. From the documents provided so far, the extent of what is required appears to be unclear. It is also unclear as to whether material needs to be imported to complete the work, there might already be enough on the site..." and

"Our advice is that we are not yet in a position to agree recovery, this is because discussions between the planning authority and operator regarding the work needed to complete the golf course are still ongoing and therefore, it is unclear as to the level of work required for this purpose..."

Emails from Emma Bellamy of the EA are attached in Appendix J.

1.1.17 In January 2021, an appeal was made by Nelson against the non-determination (deemed refusal) by the Environment Agency of environmental permit application ref: EPR/EB3803CU/A001, dated 13 June 2018. The main issues the Inspector considered were whether the Environment Agency's pre-application advice is binding with regard to the determination of a subsequent permit application; and whether the scheme represents a recovery operation. This appeal was dismissed on 18th March 2021.

1.1.18 However, within the appeal decision document it was stated very clearly that:-

"The EA accept that there is an obligation on the appellant to complete the works to fulfil planning permission ref: TVN6179/8, 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." and

"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..." and

"Given all of the above, without robust evidence to set out how much waste is needed to complete the works and a waste recovery plan to reflect this quantity, I simply cannot conclude that the proposals will meet the definition of 20083, recovery in the Waste Framework Directive..."

The appeal decision document is attached in Appendix K.

1.1.19 In light of the above, this WRP was submitted on behalf of Nelson Plant Hire to address the points raised within the appeal document and seek confirmation that the proposed activity constitutes a waste recovery activity in order to complete the site restoration in line with the approved planning permission.

1.1.20 This WRP was rejected by the EA in early August 2021 and it was stated that the works on site

were “...not yet recovery. As this is only advice, you are welcome to apply for an application for a deposit for recovery permit along with an updated Waste Recovery Plan.”

- 1.1.21 Subsequent to this further protracted discussions were held with the LPA and in order to progress the site and get in completed it was agreed to use the LPA’s drawing and volume for the site works. The LPA have agreed to regulate against the plan on the site. The LPA’s agreement is attached in Appendix L.

2.0 SITE DESCRIPTION

2.1 Site Setting

2.1.1 The application site is located approximately 910m east south east from the village of Goodworth Clatford and is centred at approximate National Grid Reference (NGR) SU 37333 41620. The site is accessed from the B3240 off the A3057 Winchester Road, located to the north west of the site.

2.1.2 The immediate surroundings of the site largely comprise an agricultural setting to the south, east and west with a sewage works located approximately 210m west of the site. The Hampshire Golf Club is located to the north of the site and an extensive area of woodland (Upping Copse) is located to the north east of the site and extends approximately 3km eastwards. The closest residential dwelling (Whitehouse Cottage) to the site is located approximately 330m north and east of the site.

Designations

2.1.3 With reference to Natural England's Multi-Agency Geographic Information for the Countryside (MAGIC) mapping website, there are no statutory ecological or heritage designated sites within 500m of the application. The closest designations comprise the Chilbolton Common, Bransbury Common and the River Test which are identified as Sites of Special Scientific Interest (SSSI). At its closest point, these sites are located approximately 1.6km south east from the application site. Upping Copse is a listed ancient woodland and as such the permit boundary well outside the 50m exclusion zone for any tipping as per Standard Rules SR2015 No39 Section 2.4(d). See Drawing Number NPH/B028534/PER/01.

2.1.4 With reference to the Department for Environment Food and Rural Affairs (DEFRA) Air Quality Management Area (AQMA) map, the application is not situated in an AQMA for particulate matter less than 10 microns (PM₁₀).

Hydrogeology

2.1.5 According to the Environment Agency's mapping website 'What's in my backyard' the site is not situated within a Groundwater Source Protection Zone (GSPZ).

2.1.6 The bedrock underlying the site is classed as Principal aquifer, which is defined as '*layers of rock of drift deposits that have high intergranular and/or fracture permeability – meaning they usually provide a high level of water storage*'.

Hydrology

2.1.7 The closest watercourse to the site is the River Anton, which flows in a north to south direction. At its closest point, The River Anton is located approximately 770m west of the site.

2.1.8 According to the Environment Agency flood maps, the site is not situated within a flood risk zone.

2.2 Planning History

2.2.1 In addition to the aforementioned planning permission (reference TVN.06179/8), only one other planning application has been submitted to Test Valley Borough Council regarding the site.

- 2.2.2 Application 16/01105/SCRN was submitted in May 2016 requesting a screening opinion under the Environmental Impact Assessment Regulations 2011 for a 10MW Photovoltaic solar farm. A decision was issued on 27th May 2016 which confirmed that the proposed development would not have significant effects on the environment and therefore would not constitute EIA development.
- 2.2.3 The appeals decisions given by the Inspector in relation to the planning dispute regarding the final surface of the site clearly state that where the site levels have reached those shown on the M J Rees Enforcement Plan they must remain in place but acknowledged that there are areas of the golf course that are yet to reach the correct levels. Given that the Inspector made it clear that it is not permissible to redistribute material around the site and that final levels have not been reached this requires the importation of further material as “it does not follow that all of the work in carrying out the planning permission has been completed...”
- 2.2.4 The Enforcement correspondence issued by TVBC on 4th March 2020 also states that there were still works required to deliver on the planning permission for the new golf holes and asked for clarification for when Nelson’s would be completing the site.
- 2.2.5 Further to the latest Appeal decision which states that “...the EA accept that there is an obligation on the appellant to complete the works to fulfil planning permission ref: TVN6179/8, 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...” additional works have been carried out in consultation with the LPA to create a new restoration scheme for the site.

2.3 Permitting Context

- 2.3.1 Approximately 16,865m³ or 28,670 tonnes of imported material will be required in order to facilitate the development of the five hole golf course in accordance with the plans approved under planning permission TVN.06179/8. The plan provided with this WRP as Drawing Number MJ Rees 9026.
- 2.3.2 Given the proposed quantities of waste material and the site setting detailed above, Nelson Plant Hire Limited wish to apply for the Standard Rules permit SR2015 No39 ‘Use of waste in a deposit for recovery operation (Construction, reclamation, restoration or improvement of land other than by mobile plant)’.

3.0 PROPOSED DEVELOPMENT

3.1 Introduction

- 3.1.1 The proposed development comprises the development of a five hole golf course as an extension to the existing course at Hampshire Golf Course. The location of the site is shown on Drawing No NPH/B028534/PER/01.
- 3.1.2 Suitable materials would be imported over a number of years to enable the correct restoration shape to be created on the land in question. The works will be completed in accordance with Drawing Number MJ Rees 9026.

3.2 Material Requirements

- 3.2.1 Approximately 16,865m³ or 28,670 tonnes of imported material will be required in order to facilitate the development of the five hole golf course in accordance with the plans approved under planning permission TVN.06179/8. The plan provided with this WRP as Drawing Number MJ Rees 9026.
- 3.2.2 As mentioned above, Nelson Plant Hire Limited seeks to gain a Standard Environmental Permit to allow the use of waste for a deposit for recovery operation in accordance with the Standard Rules SR2015 No39. The Standard Rules allows a maximum volumetric capacity of 60,000 m³, which is sufficient to achieve the proposed restoration profile.

3.3 Waste Types

- 3.3.1 In accordance with the Standard Rules SR2015 No39, the following waste types will be used for the proposed restoration works. These waste types are identified by the Environment Agency as suitable for use in the restoration of mineral workings and as general fill material (Environment Agency Guidance: Waste Recovery Plans and Permits: October 2016).

Table 1: Proposed Waste Types

EWG Code	Description	Restriction
01	WASTES RESULTING FROM EXPLORATION, MINING, QUARRYING, AND PHYSICAL AND CHEMICAL TREATMENT OF MINERALS	
01 01	Wastes from mineral extraction	
01 01 02	Wastes from mineral non-metalliferous excavation	Restricted to waste overburden and interburden only
01 04	Wastes from physical and chemical processing of non-metalliferous minerals	
01 04 08	Waste gravel and crushed rocks other than those mentioned in 01 04 07	
01 04 09	Waste sand and clays	
02	WASTES FROM AGRICULTURE, HORICULTURE, AQUACULTURE, FORESTRY, HUNTING AND FISHING FOOD PREPARATION AND PROCESSING	
02 04	Wastes from sugar processing	
02 04 01	Soil from cleaning and washing beet	
10	WASTE FROM THERMAL PROCESSES	
10 12	Wastes from manufacture of ceramic goods, bricks, tiles and construction products	
10 12 08	Waste ceramic bricks, tiles and construction products (after thermal processing)	
10 13	Waste from manufacture of cement, lime and plaster and articles and products made from them	
10 13 14	Waste concrete	
17	CONSTRUCTION AND DEMOLITION WASTES (INCLUDING EXCAVATED SOILS FROM CONTAMINATED SITES)	

17 01	Concrete, bricks, tiles and ceramics	
17 01 01	Concrete	
17 01 02	Bricks	
17 01 03	Tiles and Ceramics	
17 01 07	Mixtures of concrete, bricks, tiles and ceramics other than those mentioned in 17 01 06	Metal from reinforced concrete must have been removed.
17 05	Soil (including excavated soil from contaminated sites) soil and dredging spoil	
17 05 04	Soil and stones other than those mentioned in 17 05 03	Restricted to topsoil, peat, subsoil and stones only.
19	WASTES FROM WASTE MANAGEMENT FACILITIES	
19 12	Wastes from the mechanical treatment of waste (for example sorting, crushing, compacting, pelletising) not otherwise specified	
19 12 09	Minerals (for example sand, stones) only	Restricted to wastes from treatment of waste aggregates that are otherwise naturally occurring minerals. Does not include fines from treatment of any non-hazardous waste or gypsum from recovered plasterboard
19 12 12	Other wastes (including mixtures of materials) from mechanical treatment of wastes other than those mentioned in 19 12 11	Restricted to crushed bricks, tiles, concrete and ceramics only. Metal from reinforced concrete must be removed. Does not include fines from treatment of any non-hazardous waste or gypsum from recovered plasterboard
20	MUNICIPAL WASTES (HOUSEHOLD WASTE AND SIMILAR COMMERCIAL, INDUSTRIAL AND INSTITUTIONAL WASTES INCLUDING SEPARATELY COLLECTED FRACTIONS)	
20 02	Garden and park wastes	
20 02 02	Soil and stones	Restricted to topsoil, peat, subsoil and stones only

4.0 JUSTIFICATION FOR WASTE RECOVERY

4.1 Introduction

4.1.1 The EA Regulatory Guidance on Waste Recovery Plans and Permits (published on 21st April 2021), sets out the EA's approach to determining the "Waste Recovery Test" as follows:-

"Depositing waste is only a recovery activity if you have shown that you could and would have carried out the works using non-waste material. Your waste recovery plan must include evidence to support this. The Environment Agency refer to this as 'substitution'.

The Environment Agency will assess your proposals and advise you on your waste recovery plan. If you submit your proposals with a permit application and they do not agree that your proposals meet the waste recovery test, they will refuse your application..."

Evidence to support recovery of waste

4.1.2 The EA guidance states there are three main factors that may indicate that non waste would be used for the proposed works. But the EA also states that it will consider all relevant, available information and take a view based on all circumstance. The three factors are as follows:-

- Financial gain or other worthwhile benefit by using non-waste materials (including funding to use non-waste materials);
- Obligations to complete the scheme; and
- Evidence the waste is serving a useful purpose.

4.1.3 This Waste Recovery Plan is based on the fact that there is a specific obligation to complete the site which was explicitly mentioned by the Inspector in his appeal decision document which is attached in Appendix K.

4.1.4 The EA guidance on an obligation states:-

"You may provide evidence that you are obliged to carry out the scheme. This could be because a regulator has imposed a requirement on you so you would have to do the work whether you use waste or non-waste. For example, if you operate a quarry and are required by planning conditions of an already implemented planning permission to restore it according to an approved plan. This is not the same as having a planning permission which allows you to do certain work but does not require you to do it.

If there is an existing planning condition or obligation the Environment Agency will look at all the available information. This may include:-

- *the extent to which the local planning authority was directly involved in the design of the scheme when planning was granted and the condition was imposed; and*
- *whether the local planning authority would be likely to agree anything significantly different.*

Specific Obligations

Obligations may specify the scheme you have to carry out. If you have specific obligations to complete the scheme you propose, the Environment Agency will normally accept recovery where your waste recovery plan includes:-

- evidence of the obligation;
- plans and cross sections that show your proposal matches the obligation on you; and
- evidence that the waste is serving a useful purpose.”

4.2 Obligation to Undertake Works

4.2.1 As mentioned previously in Section 1, planning permission (TVN.6179/8) was granted by Test Valley Borough Council to allow the development of a 5-hole golf course to the south of the existing golf course at Hampshire Golf Club. With reference to the decision notice (Appendix A), Condition 6 of the planning permission stipulates the following:-

‘No development shall commence until fully detailed plans showing the ground level alterations involved with each tee and green have been submitted to and approved in writing by the Local Planning Authority and the construction of the tees and greens shall be carried out in accordance with these approved plans.’

4.2.2 From December 1997 to January 1998, plans were submitted which detail the proposed ground level alterations for each tee and green for the five hole golf course. These plans were subsequently approved by Test Valley Borough Council in February 1998 and a copy of the decision notice is provided in Appendix B.

4.2.3 In March 1998, a further letter was received from Text Valle Borough Council clarifying further that the details submitted were approved regarding the following issues: archaeology, landscaping, seeding and turfing, alterations to levels and a pedestrian crossing (please see Appendix C). The letter is quite specific in stating:-

“Should the scheme not be completed in line with the above planning permission and associated conditions then you will be liable to enforcement action by this authority.”

4.2.4 Another letter was received from TVBC in December 2011 (please see Appendix D) which stated:-

“We must remind you that should this scheme not be completed strictly in accordance with the approved planning conditions and al conditions fully discharge in line with your obligations we will have no alternative other than to take steps to secure proper planning control measures being taken, this will include enforcement action if necessary.”

4.2.5 Furthermore, with reference to Test Valley Borough Council's planning policies and their planning enforcement guidance notes, the Council is committed to investigate and employ enforcement action against any activities that fail to comply with the conditions of the planning permission. As such, if the development of the five hole golf course is undertaken with disregard to the approved plans, this would result in a breach of Condition 6 and therefore Test Valley Borough Council would be obliged to employ enforcement action.

4.2.6 In light of the above and in particular the final paragraph of the letter dated 5.3.98 and the letter dated 12.12.11, the requirements provided in Condition 6 of planning permission TVN.6179/8, it can be clearly demonstrated that there's a statutory obligation for the five hole golf course to be developed in accordance with the approved plans or be subject to enforcement action by Test Valley Borough Council.

4.2.7 The Appeals (Reference Numbers 3220542 and 3220546) decisions issued on 13 January 2020 (Appendix F) showed a clear understanding that the final levels for the site had not been reached as follows:-

"...Mr Thunhurst in giving his evidence confirmed that there was still some headroom with respect to material and levels to be created..." and

"Notwithstanding the breach of planning control in relation to Appeal A therefore, the development has not been substantially completed."

4.2.8 The above demonstrates that the inspector agrees there is void space available on site that needs to be filled to complete the planning permission and gives a clear indication of a planning imperative to complete the filling works on site and therefore the EA's original agreement that filling on site should be carried out under a recovery permit was correct.

4.2.9 The TVBC Enforcement officer's correspondence (Appendix I) also makes it clear that there is a planning imperative that the site be completed:-

"The inspector recognised that there were still works required to deliver on the planning permission for the new golf holes. Therefore, I am now writing to ask what your client's intentions are in relation to completing the development in accordance with the decision and the timescales the Council can expect for such a completion."

4.2.10 The purpose of the scheme is to import suitable inert material to facilitate the development of a five hole golf course as approved under planning permission TVN.6179/8 and obligated by TVBC as set out in the final paragraph of their letter dated 5.3.98 (Appendix C) and reinforced in their letter dated 12.12.11 (Appendix D).

4.2.11 These requests have now been definitively reinforced by the Inspector's decisions (Appendix F) which clearly states that *"that there was still some headroom with respect to material and levels to be created..."* and *"Notwithstanding the breach of planning control in relation to Appeal A therefore, the development has not been substantially completed."*

4.2.12 Following the above Nelson commissioned WYG (now Tetra Tech) to submit a further updated Waste Recovery Plan with the additional information gleaned for the Inspectors decisions and the planning enforcement demand that the site is completed. This WRP was submitted to the EA in April 2020 and following protracted discussions the EA decided that they did not agree that the activity was recovery. However, within those discussions it was clear that the EA considered that there was an obligation on site but were uncertain as to its extent as per the below (Please see Appendix J):-

"...it appears that there could be an obligation to do something on the site. From the documents provided so far, the extent of what is required appears to be unclear. It is also unclear as to whether material needs to be imported to complete the work, there might already be enough on the site..." and

“Our advice is that we are not yet in a position to agree recovery, this is because discussions between the planning authority and operator regarding the work needed to complete the golf course are still ongoing and therefore, it is unclear as to the level of work required for this purpose...”

4.2.13 In January 2021, an appeal was made by Nelson against the non-determination (deemed refusal) by the Environment Agency of environmental permit application ref: EPR/EB3803CU/A001, dated 13 June 2018. The main issues the Inspector considered were whether the Environment Agency’s pre-application advice is binding with regard to the determination of a subsequent permit application; and whether the scheme represents a recovery operation. This appeal was dismissed on 18th March 2021. However, within the appeal decision document (Appendix K) it was stated very clearly that:-

“The EA accept that there is an obligation on the appellant to complete the works to fulfil planning permission ref: TVN6179/8, 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.” and

“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...” and

“Given all of the above, without robust evidence to set out how much waste is needed to complete the works and a waste recovery plan to reflect this quantity, I simply cannot conclude that the proposals will meet the definition of 20083, recovery in the Waste Framework Directive...”

4.2.14 All the above makes it absolutely clear that there is a specific obligation to complete the filling of the site.

4.2.15 Following the submission and rejection of the previous WRP by the EA, Nelson’s and the LPA have continued their discussions regarding the site and in order to get the site completed my client has agreed with the LPA’s figures and volumes. The LPA’s agreement is attached in Appendix L.

4.3 Other Information Required

4.3.1 Other information that the EA suggests may be needed within a Waste Recovery Plan are as follows:-

- Purpose of the work;
- Quantity of waste used; and
- Meeting quality standards.

Purpose of the use

4.3.2 The purpose of scheme is to import suitable inert material to facilitate the development of a 5-hole golf course as approved under planning permission TVN.6179/8 and obligated by TVBC as set out in the final paragraph of their letter dated 5.3.98 (Appendix C) and their letter dated 12.12.11 (Appendix D) and reiterated in the Inspector’s decision (Appendix F) and the TVBC enforcement

note (Appendix I) and further reiterated in the more recent Inspector's decision (Appendix K). This has now been agreed by the LPA (Appendix L).

Quantity of waste used

- 4.3.3 Approximately 16,865m³ or 28,670 tonnes of imported material will be required in order to facilitate the development of the five hole golf course in accordance with the plans approved under planning permission TVN.06179/8. The plan provided with this WRP as Drawing Number MJ Rees 9026.

Meeting quality standards

- 4.3.4 Nelson Plant Hire Limited seeks to apply for a Standard Environmental Permit to allow the acceptance and use of waste for a deposit for recovery operation in accordance with the Standard Rules SR2015 No39 'Use of waste in a deposit for recovery operation'. The proposed waste types that will be used for the proposed activity are detailed in Table 1 above. These waste types are inert and are considered suitable for general fill materials.
- 4.3.5 Many of the proposed waste types are physically similar to the likely primary aggregate non-waste materials which would be used, e.g. soils, sand, stone, gravel, etc., and can therefore be considered direct replacements. They must also be suitable and capable of being sufficiently compacted so that they can form a stable landform for the medium and long term.
- 4.3.6 The strict waste acceptance procedures in the mandatory operating techniques including careful screening of materials entering the site, ensures that no prohibited materials will be accepted at the site. It is therefore considered that the proposed wastes are suitable for use in creating the proposed landform. Any unsuitable materials will be removed from site.
- 4.3.7 The standard rules permit does not allow deposit in a groundwater Source Protection Zones 1 or 2 or if a source protection zone has not been defined then not within 250 metres of any well, spring or borehole used for the supply of water for human consumption. This includes private water supplies. Waste must also not be deposited in any controlled or surface waters or sub-water table.
- 4.3.8 The proposed scheme has been specifically designed to satisfy the requirements of the planning permission. The greens will be developed in accordance with the internationally recognised 'USGA Greens' standard. This standard requires that greens are constructed using gravel raft (150mm depth), with a blinding layer (50mm depth), and 300mm of root zone (80% sand and 20% organic matter).
- 4.3.9 All works, including construction and landscaping, will be carried out in accordance with current industry best practices and the Environmental Permit. Efforts will be made to minimise disruption to local amenity and measures will be taken to cause as little nuisance as possible (e.g. dust emissions or noise) to local receptors.
- 4.3.10 The development of the five hole golf course, in accordance with the approved plans, is considered to be a recovery operation.

5.0 SUMMARY AND CONCLUSIONS

5.1.1 In November 1997, planning permission was approved by Test Valley Borough Council to allow the creation of a five hole golf course to the south of the existing golf course at Hampshire Golf Club. The location of the site is shown on Drawing No NPH/B028534/PER/01.

5.1.2 The development of the golf course will be completed in accordance with the plans as approved by Test Valley Borough Council under planning permission TVN.6179/8 and obligated by TVBC as set out in the final paragraph of their letter dated 5.3.98 (Appendix C) which states:-

“Should the scheme not be completed in line with the above planning permission and associated conditions then you will be liable to enforcement action by this authority.”

5.1.3 And in the TVBC letter dated 12.12.11 which states:-

“We must remind you that should this scheme not be completed strictly in accordance with the approved planning conditions and all conditions fully discharge in line with your obligations we will have no alternative other than to take steps to secure proper planning control measures being taken, this will include enforcement action if necessary.”

5.1.4 And the Appeals (Reference Numbers 3220542 and 3220546) decisions issued on 13 January 2020 (Appendix F) showed a clear understanding that the final levels for the site had not been reached as follows:-

“...Mr Thunhurst in giving his evidence confirmed that there was still some headroom with respect to material and levels to be created...” and *“Notwithstanding the breach of planning control in relation to Appeal A therefore, the development has not been substantially completed.”*

5.1.5 The TVBC Enforcement officer's correspondence (Appendix I) is clear in that there is a planning imperative that the site be completed in accordance with the approved planning permission.

5.1.6 In January 2021, an appeal was made by Nelson against the non-determination (deemed refusal) by the Environment Agency of environmental permit application ref: EPR/EB3803CU/A001, dated 13 June 2018. The main issues the Inspector considered were whether the Environment Agency's pre-application advice is binding with regard to the determination of a subsequent permit application; and whether the scheme represents a recovery operation. Within the appeal decision document (Appendix K) it was stated very clearly that:-

“The EA accept that there is an obligation on the appellant to complete the works to fulfil planning permission ref: TVN6179/8, 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.” and

“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...” and

“Given all of the above, without robust evidence to set out how much waste is needed to complete the works and a waste recovery plan to reflect this quantity, I simply cannot conclude that the proposals will meet the definition of 20083, recovery in the Waste Framework Directive...”

- 5.1.7 This clearly shows that the Inspector, TVBC and the EA believe there is voidspace available on site and that there is a specific obligation for the filling to be completed and this gives the LPA a clear indication of a planning imperative to complete the filling works on site or enforcement action will be forthcoming.
- 5.1.18 Following the submission and rejection of the previous WRP by the EA, Nelson's and the LPA have continued their discussions regarding the site and in order to get the site completed my client has agreed with the LPA's figures and volumes. The LPA's agreement is attached in Appendix L.
- 5.1.8 Approximately 16,865m³ or 28,670 tonnes of imported material will be required in order to facilitate the development of the five hole golf course in accordance with the plans approved under planning permission TVN.06179/8. The plan provided with this WRP as Drawing Number MJ Rees 9026.
- 5.1.9 Given the proposed quantities of waste material and the site setting detailed above, and subsequent to the approval of this Waste Recovery Plan, Nelson Plant Hire Limited wish to apply for the Standard Rules permit SR2015 No39 'Use of waste in a deposit for recovery operation (Construction, reclamation, restoration or improvement of land other than by mobile plant)'.
- 5.1.10 This Waste Recovery Plan provides information relating to the benefits and legal obligation of the restoration scheme and confirms that the minimum amount of waste is being used to confer these benefits. In addition, the information provided above shows clearly that the scheme meets the test as detailed within Environment Agency Waste Recovery Permit and Plans Guidance.

Drawings

NPH/B028534/PER/01 - Permit Boundary

MJ Rees 9026 – Final Levels

Appendices

Appendix A – Planning Permission TVN.6179/8

NOTICE OF FULL PLANNING PERMISSION

TEST VALLEY BOROUGH COUNCIL

TOWN AND COUNTRY PLANNING ACT, ORDERS AND REGULATIONS

To: Mr T C Fiducia
Hampshire Golf Club
Winchester Road
Andover
Hampshire SP11 7TB

Plan No. TVN.6179/8

In pursuance of its powers under the above-mentioned Act the Council, as local planning authority, hereby grants FULL PLANNING PERMISSION for the following development:

Extension to golf course providing 5 additional holes together with associated ground works

O S Parcels 3974 and 3300, Hampshire Golf Club, Romsey Road/Winchester Road, GOODWORTH CLATFORD

(Amended plans received 04.11.97)

in accordance with the plans and particulars, and any subsequent amendments set out above, submitted with the application registered on 10.09.97 and subject also to due compliance with any conditions specified hereunder:-

- 01 The development hereby permitted must be begun within a period of five years beginning with the date on which this permission is granted.
(Reason: To comply with Section 91 of the Town & Country Planning Act 1990)
- 02 The development hereby permitted shall be carried out and completed strictly in accordance with the submitted plans, specifications and written particulars for which permission is hereby granted or which are subsequently submitted to, and approved in writing by, the Local Planning Authority and in compliance with any conditions imposed by the Local Planning Authority
(Reason: To ensure that the development is completed satisfactorily in all respects.)
- 03 No development shall take place within the application site until the applicant has secured the implementation of an archaeological watching brief programme in accordance with details which have been submitted by the applicant and approved in writing by the Local Planning Authority.
(Reason: The site is of potential archaeological significance).
- 04 No development shall take place until there has been submitted to and approved by the local planning authority a scheme of landscaping, which shall include indications of all existing trees and hedgerows on the land, and details of any to be retained, together with measures for their protection in the course of development.

TEST VALLEY BOROUGH COUNCIL

TOWN AND COUNTRY PLANNING ACT, ORDERS AND REGULATIONS

Continuation sheet:

Plan No. TVN.6179/8

(Reason: To ensure the enhancement of the development and the appearance of the locality.)

- 05 All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the first occupation of any building or the completion of the development, whichever is the sooner. Any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless otherwise agreed in writing by the local planning authority.

(Reason: To ensure implementation of the landscaping scheme in the interests of visual amenity.)

- 06 No development shall commence until fully detailed plans showing the ground level alterations involved with each tee and green have been submitted to and approved in writing by the Local Planning Authority and the construction of the tees and greens shall be carried out in accordance with these approved plans.

(Reason: To ensure that there is no unacceptable visual intrusion).

- 07 The holes hereby permitted shall be used only in conjunction with the golf course shown hatched blue on the approved plan.

(Reason: If used separately from the existing course additional development would be needed on the site, including car parking, which would result in an overall impact likely to have an adverse impact on the landscape).

- 08 No development shall commence until detailed plans showing the layout and precise position of the pedestrian crossing point on the B3420 have been submitted to and approved in writing by the Local Planning Authority.

(Reason: In the interests of highway safety).

- 09 The additional 5 holes hereby permitted shall not be brought into use until the pedestrian crossing on the B3420 road has been formed and made available for use in accordance with the details approved under condition No.08 and the crossing shall thereafter be retained in this form.

(Reason: In the interests of highway safety).

- 10 The additional 5 holes shall not be brought into use until a 2m x 70m sight line to the west of the pedestrian crossing point on the B3420 and on the south side of the road has been provided and this sight line shall thereafter be retained at all times.

(Note: The provision of this sight line will only require trimming of the hedge).

(Reason: In the interests of highway safety).

- 11 The use hereby approved shall not be commenced until the existing access from the site to A3057 has been closed.

TEST VALLEY BOROUGH COUNCIL

TOWN AND COUNTRY PLANNING ACT, ORDERS AND REGULATIONS

Continuation sheet:

Plan No. TVN.6179/8

(Reason: In the interests of highway safety.)

NOTES TO APPLICANT:

- 01 Permission is required under the Highways Act 1980 to construct a pedestrian access. For details of procedure, please contact the Area Surveyor, Hampshire County Council, Jacobs Gutter Lane, Hounslow, Totton, Southampton SO4 4TQ - Telephone 01703 663388 - at least 6 weeks prior to works commencing.
- 02 Under the terms of the Water Resources Act 1991, an Abstraction licence may be required from the Environment Agency for abstraction of water from any underground strata. This is dependant on water resource availability and may not be granted.
- 03 You are advised to contact The Strategic Planning Engineer, Southern Electric, P O Box 62, Dorcan, Swindon SN3 5JU (Telephone 01793 516034) for clarification of safeguarding measures in respect of both overhead and underground power lines that cross the site.

Head of Planning.....

Sarah Richards

Date.....

25 NOV 1997

All enquiries relating to this decision should be made of Planning Services, Beech Hurst, Weyhill Road, Andover, Hants. SP10 3AJ (Tel 01264 364144 Fax 01264 334815)

IMPORTANT NOTE: You are strongly advised to carefully read the attached notes.

Appendix B – Discharge of Condition 6 of Permission TVN.6179/8



TEST VALLEY

B O R O U G H C O U N C I L

The Hampshire Golf Club Ltd
Winchester Road
Goodworth Clatford
Nr Andover
Hampshire
SP11 7TB

PLANNING SERVICES

Sarah Richards BSc (Hons) MPhil MRTPI
Head of Planning
Beech Hurst Weyhill Road
Andover Hants SP10 3AJ
Telephone (switchboard) 01264 364144 Fax 01264 334815
Web site www.cricklade.ac.uk/test-valley

26 February 1998

Ext or DDI: 3392

Your ref:

Our ref: RCG/CRM/
TVN.6179/8

Please contact: Mr Gregory

Dear Sir

**APPLICATION NO. TVN.6179/8: EXTENSION TO GOLF COURSE PROVIDING 5
ADDITIONAL HOLES TOGETHER WITH ASSOCIATED GROUND WORKS AT O S
PARCELS 3974 AND 3300, HAMPSHIRE GOLF CLUB, ROMSEY ROAD/WINCHESTER
ROAD, GOODWORTH CLATFORD**

Your proposals providing for the following details to the above development have been approved:

Details of alterations to ground level for tees and greens – part compliance with Condition 06 of the above Planning Permission granted 25 November 1997, as per plans received 11 December 1997 and 30 January 1998.

A copy of the amended plans duly endorsed with the Council's decision, are enclosed for your retention.

This decision does not of course, in any way affect any conditions which may have been imposed previously, and which continue to apply. You should also note that only those matters listed above have been considered and are authorised by this letter. Furthermore, it may be necessary for you to submit plans of these amendments to the Building Control Section (North) for Building Regulation purposes, if you have not already done so.

Yours faithfully

For Head of Planning

Enc

DOCUMENT6

DETAIL C

TEST VALLEY BOROUGH COUNCIL
PLANNING DEPARTMENT

Applic No. TW 6179/8

Recd 30 JAN 1998

PLANNING PERMISSION GRANTED

26 FEB 1998

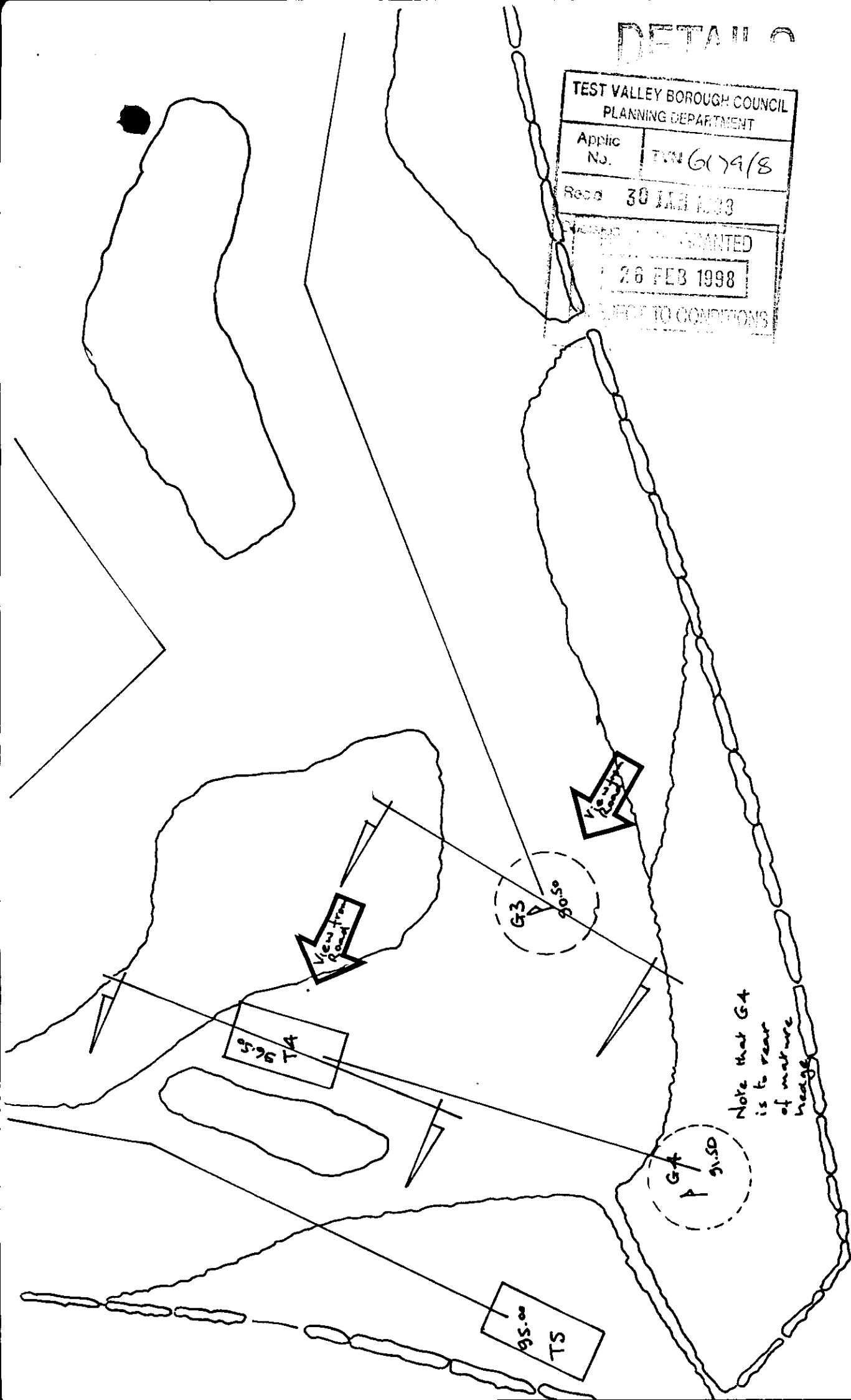
SUBJECT TO CONDITIONS

LOCATION OF SECTIONS INDICATED ON SKETCH 9021

Proposed additional 5 holes at
Hampshire Golf Club
Goodworth Clatford.

Drawn : Jan 98

Sketch No : 9022



Note that G4
is to rear
of mature
hedge

196.5

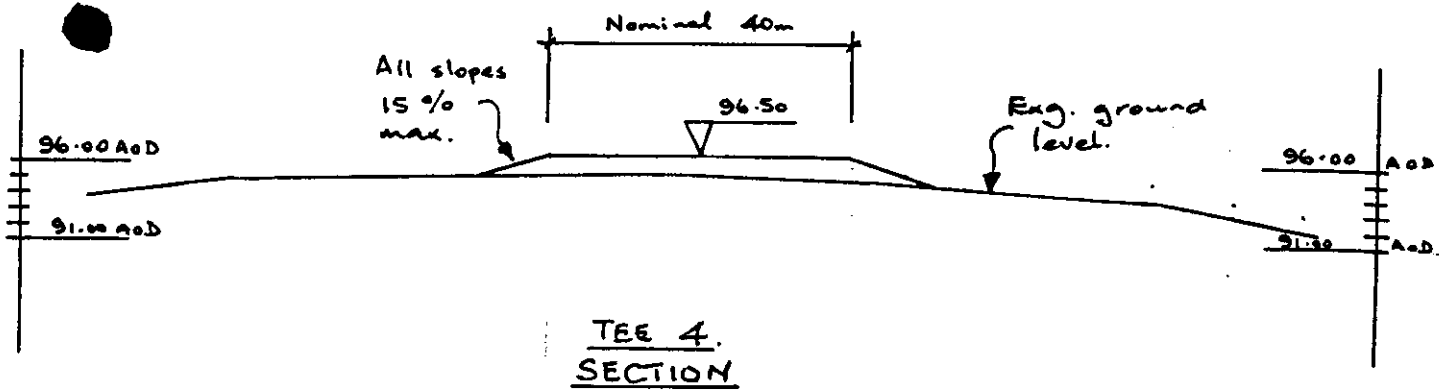
95.00
TS

G3
90.50

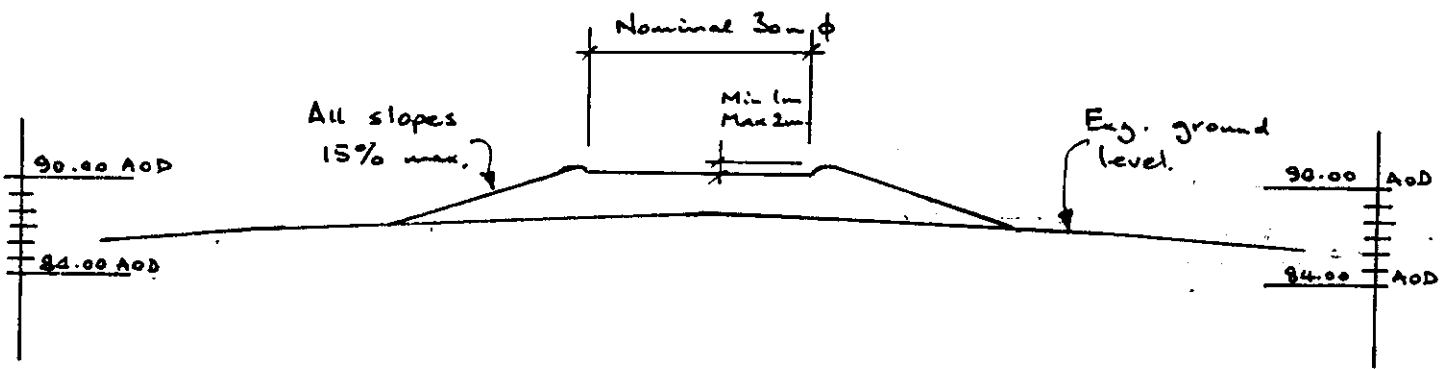
G4
91.50

View from
Quarry

View from
Valley



TEE 4.
SECTION



GREEN 3
SECTION

DETAILS

EAST VALLEY BOROUGH COUNCIL PLANNING DEPARTMENT	
APPROVED	TWN 6179/8
DATE 30 JAN 1998	
PROJECT GRANTED	
26 FEB 1998	
SUBJECT TO CONDITIONS	

SECTIONS

See sketch 9022 for location of sections

Proposed additional 5 holes at Hampshire Golf Club Goodworth Clatford.	Drawn : Jan 98
	Scales Horiz 1 : 1,000, Vert 1 : 500
	Sketch No : 9021

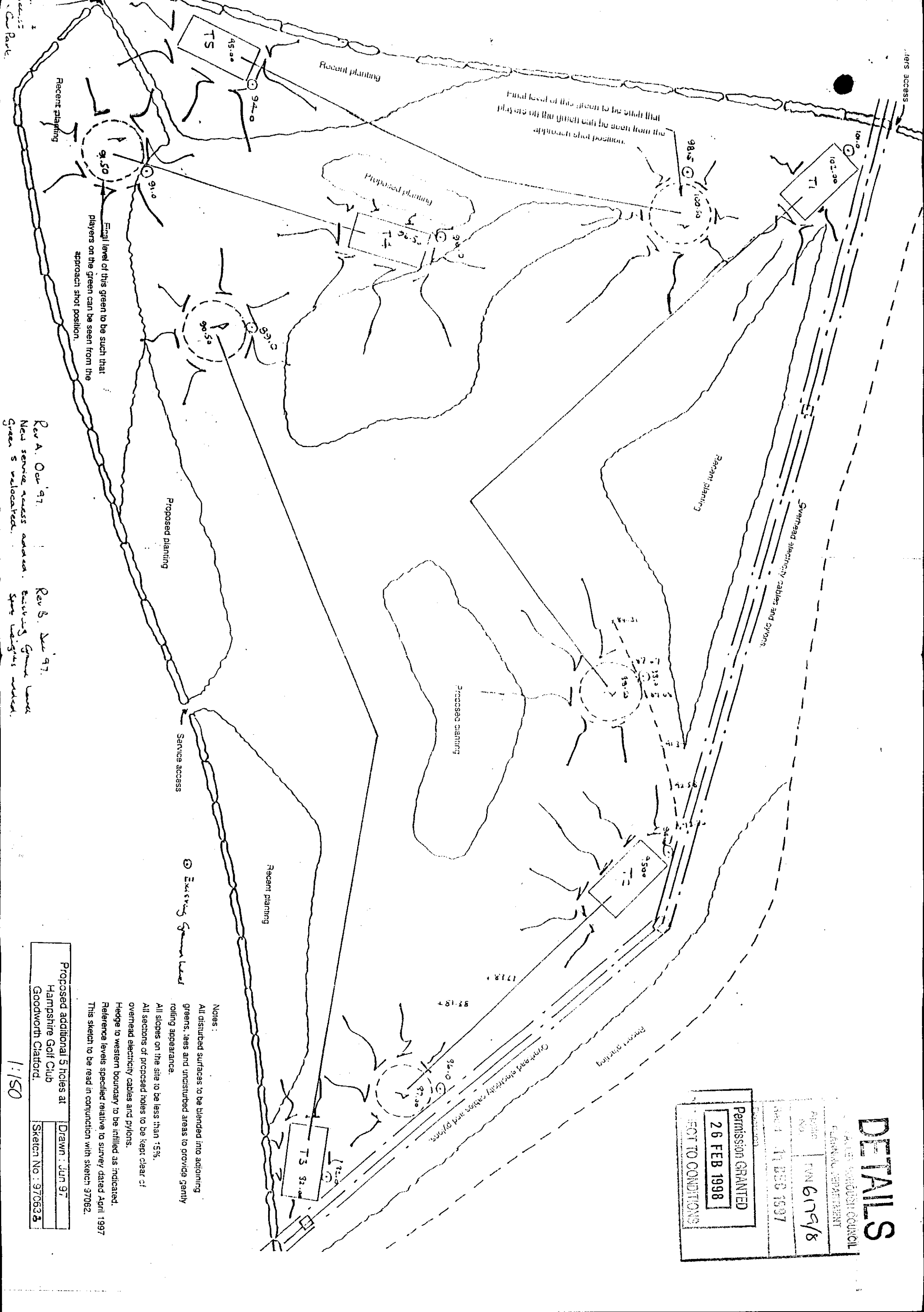
DETAILS

CLARENCE ROAD COUNCIL
CLARENCE DEPARTMENT

Application No: **TWN 6179/8**

Project No: **14 DEC 1997**

PERMISSION GRANTED
26 FEB 1998
SUBJECT TO CONDITIONS



Final level of this green to be such that players on the green can be seen from the approach shot position.

Final level of this green to be such that players on the green can be seen from the approach shot position.

Rev A. Oct 97. New service access added. Existing Green Levels Green 5 relocated.

Rev B. Dec 97. Existing Green Levels Green 5 relocated.

Notes:

- All disturbed surfaces to be blended into adjoining greens, tees and undisturbed areas to provide gently rolling appearance.
- All slopes on the site to be less than 15%.
- All sections of proposed holes to be kept clear of overhead electricity cables and pylons.
- Hedge to western boundary to be infilled as indicated.
- Reference levels specified relative to survey dated April 1997.
- This sketch to be read in conjunction with sketch 37062.

Proposed additional 5 holes at
Hampshire Golf Club
Goodworth Clatford.

Drawn: Jun 97
Sketch No: 97063B

1:150

Appendix C – Obligation Letter from TVBC dated 5.3.98



TEST VALLEY

B O R O U G H C O U N C I L

The Hampshire Golf Club Ltd
Winchester Road
Goodworth Clatford
Nr Andover
Hampshire
SP117TB

PLANNING SERVICES

Sarah Richards BSc (Hons) MPhil MRTP
Head of Planning
Beech Hurst Weathill Road
Andover Hamlet SP10 3AJ
Telephone (winchester) 01264 361114 Fax 01264 334815
Web site www.cricklade.sc.uk/test-valley

5 March 1998

Ext or DDH 3392

Your ref:

Our ref: TVN.6179/8

Please contact: Mr Gregory

Dear Sir

**APPLICATION NO. TVN.6179/8: EXTENSION TO GOLF COURSE PROVIDING 5
ADDITIONAL HOLES TOGETHER WITH ASSOCIATED GROUND WORKS AT O S
PARCELS 3974 AND 3300, HAMPSHIRE GOLF CLUB, ROMSEY ROAD/WINCHESTER
ROAD, GOODWORTH CLATFORD**

Your proposals providing for the following details to the above development have been approved:

Details of archeological watching brief - Part Discharged condition 03 on the basis that no excavation for bunkers will occur. Should this be necessary at a later date HCC Archeology will be contacted. not a condition precedent.

Details of landscaping - Discharged condition 04 of the above planning permission granted 25 November 1997. Plans received 11 december 1997 and 29, 30 January 1998. Not a condition precedent.

Details of seeding and turfing. Part compliance with condition 05 of the above planning permission granted 25 November 1997 as per plans received 11 December 1997, 29, 30 January 1998.

Details of alterations to ground level for tees and greens - part compliance with Condition 06 of the above Planning Permission granted 25 November 1997, as per plans received 11 December and 30 January 1998

Condition 07 - The Golf Course to be used in conjunction with existing part compliance.

Details of pedestrian crossing at B3420 - Condition 08 discharged in full as per plans received 29 January 1998.

A copy of the amended plans duly endorsed with the Council's decision, are enclosed for your retention.

This decision does not of course, in any way affect conditions which may have been imposed previously, and which continue to apply. You should also note that only those matters listed above have been considered and are authorised by this letter.

DOCUMENT6



TEST VALLEY

B O R O U G H C O U N C I L

The Hampshire Golf Club Ltd
Winchester Road
Goodworth Clatford
Nr Andover
Hampshire
SP117TB

PLANNING SERVICES

Sarah Richards BSc (Hons) MPhil MRTP
Head of Planning
Beech Hurst Wythill Road
Andover Hants SP10 3AJ
Telephone (switchboard) 01264 361144 Fax 01264 334815
Web site www.cricklade.ac.uk/test-valley

5 March 1998

Ext or DDI 3392

Your ref:

Our ref: TVN.6179/8

Please contact: Mr Gregory

Please note - Should the scheme not be completed in line with the above planning permission and associated conditions then you will be liable to enforcement action by this authority

Yours faithfully

For Head of Planning

Enc

DOCUMENT6

Appendix D – Obligation Letter from TVBC dated 12.12.11



TEST VALLEY

B O R O U G H C O U N C I L

Beech Hurst, Weyhill Road
Andover, Hants SP10 3AJ
Telephone 01264 368000
Fax 01264 368099
Minicom 01264 368052
Web site www.testvalley.gov.uk

12th December 2011

Ext or DDI 01264

Your ref:

Our ref: TVN.6179/8

Please contact: Mr Bob Gregory

Dear Sir

**GROUNDWORKS ON LAND TO SOUTH EAST OF WHERWELL AND WINCHESTER
ROAD JUNCTION, GOODWORTH CLATFORD AT 05 PARCLES 3974 AND 3300.**

Further to our previous site visits on 17 Feb 2010 and 27 May 2011, we are concerned that the site remains incomplete and works ongoing. You are no doubt aware that several conditions associated with this planning permission cannot be fully discharged by this authority until the work is completed. We must remind you that should this scheme not be completed strictly in accordance with the approved planning permission and all conditions fully discharged in line with your obligations, we will have no alternative other than to take steps to secure proper planning control measures being taken, this will include enforcement action if necessary. We would therefore urge you to complete all previously approved works under planning approval TVN6179/8 as soon as possible in order that successful discharge of conditions 5, 7, 10, 11 can be achieved and to avoid further action being necessary.

Yours faithfully

For Head of Planning

Appendix E – Previous RvD Advice Form approving recovery

Nelson Plant Hire Limited
Homestead Farm
Weyhill Road
Penton Corner
Andover
Hampshire
SP11 0QX

Our ref: EPR/EB3803CU/A001
Your ref: Waste Recovery plan – V2
May 2018

Date: 08/06/2018

Dear Sir/Madam,

Environmental Permitting – Recovery or Disposal Operation
Pre-application Reference: EPR/EB3803CU/A001
Proposed Operator: Nelson Plant Hire Limited
Regulated facility: Whitehouse Field
Site Address: Romsey Road/Winchester Road, Goodworth Clatford,
Hampshire, SP11 6PJ

As part of our pre-application discussions, you have submitted information to us that includes your assessment that the activity you wish to undertake at your site amounts to a recovery operation.

We have now fully considered your submission and we would like to advise you that:

We agree with your assessment that your activity is a recovery operation. This advice is based on the information you have provided in relation to waste types, amounts and nature of proposal including any proposed landform. If you change any of these between now and when you submit an application form, this advice may no longer apply. **Please also note that following submission of an application, additional assessment will take place (for example, further assessment of the proposed waste types based on the sensitivity of the site location) and therefore agreement that an operation is a recovery activity does not guarantee that a permit will be granted or a variation issued.**

For the sake of clarity, the following documents are considered to form the approved waste recovery plan;

- Waste Recovery Plan version 2 – May 2018

If you have any questions please phone me or email liam.mccann@environment-agency.gov.uk

Yours sincerely

Liam McCann

Appendix F – Excerpt of Inspector’s decision notice

- area relative to the overall site area, as a matter of fact and degree, constitutes operational development.
33. Some material that can be seen in the aerial photographs including that from 2008 which shows some piled up material but it is not clear whether this is imported material in the process of being redistributed or whether they form bunds. The IKB survey however does not show bunds in place at that time. Piles of material may well at times appear like bunds but could be in the process of awaiting redistribution to form the development.
34. I recognise that the work on site has been put on hold to await the outcome of this appeal but the evidence and what I saw on site indicates that these current large banks of material have a strong degree of permanence. The banks in part surround the compound where portakabins, containers and plant have been positioned and help to enclose that area. Although this material may eventually be spread, as a matter of fact and degree, the formation of the bunds in my view from the evidence available appears to have involved operational development.
35. Mr Hearn confirmed when giving his evidence that the bunds and hardstanding had constituted development albeit that they are necessary to deliver the planning permission for the new golf holes. For this ground of appeal to be successful it would be necessary for these operational developments to be permitted by Article 3 of the Town and Country Planning (General Permitted Development)(England) Order 2015 (the GPDO).
36. The appropriate class within Schedule 2 of the GPDO is Part 4, Class A which provides permitted development rights for "the provision on land of buildings, moveable structures, works, plant or machinery required temporarily in connection with and for the duration of operations being or to be carried out on, in under or over land or on land adjoining that land".
37. The principal effect of this class of permitted development is in relation to structures whose provision would itself amount to an engineering or building operation, but which will not form part of the development that has been permitted. It has been held that there is no reason to adopt a restrictive interpretation of Class A, because it only grants a temporary planning permission for the duration of the operations, after which the buildings and moveable structures would have to be removed.
38. It is however necessary to consider whether the operational developments are reasonably required temporarily as a matter of fact and degree. I have reached a view within my decision on Appeal A that the planning conditions referred to in the alleged breach of planning control set out on that notice have been breached. However, it does not follow that all of the work in carrying out the planning permission has been completed or exceeded and there will be releveling works that will clearly require the use of plant and machinery. Mr Thunhurst in giving his evidence confirmed that there was still some headroom with respect to material and levels to be created. The process of complying with the planning permission and also the reinstatement of the land where the bund and hardstanding are, which will form part of margins and fairway for the fifth hole, will require further ground-works. Notwithstanding the breach of planning control in relation to Appeal A therefore, the development has not been substantially completed.

39. The size of the hardstanding and the bunds themselves do not appear to me to be disproportionate to the activity given the size of machines that are required for such work. There are also health and safety requirements of personnel undertaking the processes involved and other office and security necessities.
40. I therefore consider that the developments are reasonably necessary to complete what has been approved. As such they are permitted under the provisions of Article 3 of the GPDO by reason of compliance with Schedule 2, Part 4, Class A. As such the appeal on ground (c) succeeds.

Appeal B) Conclusion

41. For the reasons given above, I conclude that the appeal should succeed on ground (c). The enforcement notice will be quashed. In these circumstances, the appeal on ground (f) does not fall to be considered.

A Harwood

INSPECTOR

Appendix G – WYG’s (now Tetra Tech) email to Ms. Stockton of the EA

michael.jones

From: michael.jones
Sent: 02 March 2020 15:22
To: Stockton, Jeanette
Cc: info@nelsonplanthire.co.uk; 'Julie Goulbourne'; andrew.bowker
Subject: RE: Appeal ref APP/EPR/548

Jeanette

Thanks for your email following your discussions with our client, Simon Nelson.

We know that the permit application that WYG submitted to the EA in 2018 was necessarily put into abeyance while the planning appeal was heard and we know that Simon has now received the Appeal 3220542 and 3220546 decision notification, dated 13th January 2020 and would now like to enter into discussions with the EA regarding the future of the original permit application.

We understand from the appeal decision while the inspector did not agree with our client's interpretation of the datum levels at the site, he did make it absolutely clear that there was voidspace (or headroom) that was still available to be filled on site. This is clear from Paragraph 38 of the appeal decision notice. I have reproduced the relevant part of this paragraph for your convenience below:-

"...Mr Thunhurst in giving his evidence confirmed that there was still some headroom with respect to material and levels to be created. The process of complying with the planning permission and also the reinstatement of the land where the bund and hardstanding are, which will form part of margins and fairway for the fifth hole, will require further ground-works. Notwithstanding the breach of planning control in relation to Appeal A therefore, the development has not been substantially completed."

We believe that this clearly shows that the inspector believes there is voidspace available on site that needs to be filled to complete the planning permission. This gives a clear indication of a planning imperative to complete the filling works on site and therefore the EA's original agreement that filling on site should be carried out under a recovery permit was correct.

I would be grateful if you could let us know that you concur with our interpretation and whether you are now willing to resurrect our old recovery permit application which was made in good faith back in 2018 when we had been told that a recovery permit was the correct path.

We understand you may need additional information regarding the correct final levels according to the datum approved by the inspector which we are happy to provide you as soon as we can.

Regards

Michael Jones
Associate

WYG

Geneva Building, Lake View Drive, Sherwood Business Park, Annesley, Nottingham, NG15 0ED

Tel: +44 1623 684 628

Mob: +44 7500 072 812

www.wyg.com

WYG Group Limited. Registered in England number: 6595608.
Registered Office: 3 Sovereign Square, Sovereign Street, Leeds LS1 4ER VAT No: 431-0326-08.

Appendix H – Ms. Stockton’s email to Nelson / WYG (now Tetra Tech)

michael.jones

From: Stockton, Jeanette <jeanette.stockton@environment-agency.gov.uk>
Sent: 10 March 2020 08:47
To: michael.jones
Cc: info@nelsonplanthire.co.uk; 'Julie Goulbourne'; andrew.bowker
Subject: RE: Appeal ref APP/EPR/548

⚠ CAUTION: This email originated from an external sender. Verify the source before opening links or attachments.



Dear Michael,

Thank you for your email.

We have reviewed your suggestions in relation to taking this appeal forward and have the following comments to make:

1. With regards to resurrecting your application unfortunately this is not an option. An appeal for non-determination removes the decision making process from the Environment Agency to the Planning Inspector. Should it be your intention to make a request to the Environment Agency to consider your application for a permit, you must withdraw your appeal to the Planning Inspectorate and re-submit a new permit application to us. Before submitting a new application, we recommend that you prepare and send a new Waste Recovery Plan to us for assessment.
2. Prior to commenting on your point as to whether we concur with your interpretation of the Planning Inspectors comments, we must first consider a new application with evidence supporting your point that the correct planning permission levels cannot be obtained by redistributing the waste materials currently on the site.

I must also remind you that during the determination of your original application we reconsidered our original decision and determined that this was a 'disposal activity'.

I hope this information is of assistance.

Kind regards

Jeanette

Jeanette Stockton

Permitting Technical Specialist – Appeals
National Permitting Service

Environment Agency | Richard Fairclough House, Knutsford Road, Warrington, WA4 1HT

jeanette.stockton@environment-agency.gov.uk

External: 020 302 50662 | Jabber: 50662

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Simple, fair, effective charges.

From 1 April 2018 our regulatory charges are changing.
Find out how our plans could affect you.



Appendix I – TVBC Enforcement Officer’s Correspondence to Nelson’s Planning Agent

From: "Hobson, Darren" <DHobson@testvalley.gov.uk>

Date: 2 March 2020 at 16:25:26 GMT

To: Steve Hearn <sph@concepttownplanning.com>

Subject: Planning Inspectorate APP/C1760/C/19/3220542: The land at Whitehouse Field

Dear Mr Hearn

It has been 7 weeks since the Inspectorate issued the decision regarding the appeal against the enforcement notices. As we are now aware Appeal A was dismissed and the enforcement notice was upheld.

The requirements of this notice were:

- 5.1 Return the ground levels of the land to those shown on the MJ Rees Drawing marked "The Enforcement Plan Hampshire Golf Club Andover" (No.8918; September 2018) annexed hereto
- 5.2 Remove from the Land all items associated with the releveling thereof, including all mobile homes, shipping containers, portacabins, skips, plant, machinery and construction materials.

The periods for compliance with the requirements are:

Paragraph 5.1 above – six (6) months.

Paragraph 5.2 above – seven (7) months.

The inspector recognised that there were still works required to deliver on the planning permission for the new golf holes. Therefore I am now writing to ask what your clients intentions are in relation to completing the development in accordance with the decision and the timescales the Council can expect for such a completion.

Your sincerely

Darren Hobson

Planning Enforcement Manager

Planning & Building

Test Valley Borough Council

Beech Hurst

Weyhill Road

Andover

SP10 3AJ

This email has been scanned by BullGuard antivirus protection.

For more info visit www.bullguard.com

Appendix J – EA emails from Emma Bellamy

Jones, Michael

From: Bellamy, Emma <emma.bellamy@environment-agency.gov.uk>
Sent: 12 June 2020 07:33
To: michael.jones
Subject: [Pending]RE: Waste Recovery Plan - Nelson Plant Hire Limited - Whitehouse Field - Ref: EPR/JB3307SP/A001

 **CAUTION:** This email originated from an external sender. Verify the source before opening links or attachments.



Hi Michael

Thanks for providing the additional emails yesterday, we have now had time to discuss these.

Based on these emails, it appears that there could be an obligation to do something on the site. From the documents provided so far, the extent of what is required appears to be unclear. It is also unclear as to whether material needs to be imported to complete the work, there might already be enough on the site.

To enable us to provide our advice, we need some clarification on a couple of points.

Please provide evidence of the agreement that has been reached between the council and applicant, in light of the decision made by the planning inspector. This needs to include clarification of;

- Whether any import of non-waste would need to take place, i.e. if the applicant had to fund the import of non-waste would the council require this or would the operator be permitted to complete the scheme using material already on site?
- If import of material is necessary, considering all of the material already on site, what volume is required?

In summary, what is the extent of the obligation that would require the operator to use non-waste if waste were not available and what additional imported material is required to meet that obligation.

Please note that we cannot retrospectively permit the use of waste so any application would be limited to the import of additional material following consideration of any non-permitted waste already placed at the site. In any subsequent application it is also likely that you will need to consider the interaction between the two waste masses and the potential impact any non-permitted waste could have on the environment and sensitive receptors.

Please provide the requested information by 26/06/2020. If you think you may need additional time to provide this information, please contact me as soon as possible to agree an alternative timescale.

If you have any queries regarding this, please contact me.

Many Thanks

Emma Bellamy

Permitting Officer, National Permitting Service

Environment Agency | Trentside Offices, Scarrington Road, West Bridgford, Nottingham NG2 5BR

emma.bellamy@environment-agency.gov.uk

External: 020 302 53747

Mobile: 07867 370 563

Working days: Monday to Friday

Jones, Michael

From: Bellamy, Emma <emma.bellamy@environment-agency.gov.uk>
Sent: 03 July 2020 14:30
To: michael.jones
Subject: [Pending]RE: Waste Recovery Plan - Nelson Plant Hire Limited - Whitehouse Field - Ref: EPR/JB3307SP/A001

⚠ CAUTION: This email originated from an external sender. Verify the source before opening links or attachments.

Dear Michael

We have made a decision regarding the above Waste Recovery Plan and I am still in the process of writing completing the advice form and letter, which I will be able to send across to you on Monday.

Our advice is that we are not yet in a position to agree recovery, this is because discussions between the planning authority and operator regarding the work needed to complete the golf course are still ongoing and therefore, it is unclear as to the level of work required for this purpose. Further information regarding this and the additional information needed in a future Waste Recovery Plan submission will be provided on Monday.

If you have any queries regarding this, please contact me.

Many Thanks

Emma Bellamy

Permitting Officer, National Permitting Service

Environment Agency | Trentside Offices, Scarrington Road, West Bridgford, Nottingham NG2 5BR

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External: 020 302 53747

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Working days: Monday to Friday



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From: michael.jones [mailto:michael.jones@wyg.com]

Sent: 02 July 2020 13:12

To: Bellamy, Emma <emma.bellamy@environment-agency.gov.uk>

Subject: RE: Waste Recovery Plan - Nelson Plant Hire Limited - Whitehouse Field - Ref: EPR/JB3307SP/A001

Appendix K – Appeal Decision March 2021

Appeal Decision

Hearing held on 27 January 2021

by Jonathan Manning BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 March 2021

Appeal Ref: EPR/APP/548

Whitehouse Field, Winchester Road, Andover, Hampshire, SP11 7HW

- The appeal is made under Regulation 31(1)(a) of the Environmental Permitting (England and Wales) Regulations 2016.
 - The appeal is made by Nelson Plant Hire Limited against the non-determination (deemed refusal) by the Environment Agency of environmental permit application ref: EPR/EB3803CU/A001, dated 13 June 2018.
 - The proposal is to use waste in a deposit for a recovery operation.
-

Decision

1. The appeal is dismissed and the application for a standard rules environmental permit is refused.

Costs Applications

2. An application for costs has been made by both main parties against each other. These will be the subject of a separate decision.

Procedural Matters

3. It was agreed by the main parties at the Hearing that due to the nature of the case, a site visit was not required. I agree with this view and therefore, I have not undertaken a site visit.
4. The appellant has raised strong concerns with regard to the handling of the permit application and the conduct of the Environment Agency (the EA). These matters are considered where relevant in the appellant's costs decision.

Main Issues

5. As a result of the evidence before me and the discussions that took place at the Hearing, I consider that the main issues of the appeal are:
 - whether the Environment Agency's pre-application advice is binding with regard to the determination of a subsequent permit application; and
 - whether the scheme represents a recovery operation.

Reasons

Background

6. In June 2018, the appellant submitted an application for a standard rules environmental permit for the use of waste in a deposit for a recovery
-

operation. This would involve the deposition of waste to construct 5 golf holes associated with planning permission ref: TVN6179/8.

7. The EA failed to determine the permit application within the statutory timescale and on 23 October 2018, the appellant served a notice of deemed refusal on the EA. The appeal was submitted on 1 November 2018.
8. Following the submission of this appeal, the Planning Inspectorate received an appeal by the appellant against an enforcement notice served by Test Valley Borough Council (the LPA). This related to an alleged breach of planning control associated with planning permission ref: TVN6179/8. Given the close links with this appeal it was put into abeyance whilst the enforcement appeals¹ were concluded. The enforcement appeals decision was issued on 13 January 2020. The appellant requested that this appeal be taken out of abeyance on 18 September 2020.

Whether the Environment Agency's pre-application advice is binding?

9. The appellant requested pre-application advice for the proposal in April 2018. On 8 June 2018, the EA wrote to the appellant stating that based on the information provided, including Waste Recovery Plan Version 2 (WRP v2) the proposal was a recovery operation. Following this advice, the appellant submitted the application for the environmental permit.
10. During its consideration of the application, the officers considering the application became aware that waste had been deposited on the site in the past and contacted the LPA for more information. The LPA confirmed that they were concerned about the level of waste that had already been deposited on the site by previous owners. The EA now consider that the operation is not recovery. Such matters will be discussed later in this decision.
11. Notwithstanding this, the appellant is of the view that the pre-application advice is binding on the EA. However, at the Hearing the appellant was unable to refer to any regulations or guidance that set this out. Further, the pre-application letter from the EA clearly states in bold writing: *'Please also note that following submission of an application, additional assessment will take place (for example, further assessment of the proposed waste types based on the sensitivity of the site location) and therefore agreement that an operation is a recovery activity does not guarantee that a permit will be granted or a variation issued'*.
12. The appellant maintains that nothing has changed about the proposal to warrant a change in view from the EA. However, I accept the EA's view that matters associated with the enforcement appeals, particularly that it now appears far less waste is required to complete the works, is a material change in circumstances and is, in my view, sufficient grounds to justify the EA taking a different view. Given all of the above, I do not consider that the pre-application advice is binding on the determination of a subsequent permit application.

A recovery operation?

13. The EA accept that there is an obligation on the appellant to complete the works to fulfil planning permission ref: TVN6179/8, which the LPA are evidently

¹ APP/C1760/C/19/3220542 & APP/C1760/C/19/3220546

- 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.
14. WRP v2 sets out that 60,000 cubic metres of waste would be needed to complete the works. At the time of providing the pre-application advice, the EA saw no reason to consider that this was not the required amount. However, during the EA's consideration of the permit application and as set out above, concerns were raised about the levels of waste that had already been deposited on the site. Following the outcome of the subsequent enforcement appeals, it was established that works were not complete, and more material was needed to complete the construction of the golf holes. Although from the evidence before me and as accepted by the appellant at the Hearing, it is likely that much less waste is likely to be needed than the sought 60,000 cubic metres.
 15. The EA guidance on waste recovery, which I afford significant weight, sets out that evidence will be needed to demonstrate that only the amount of waste needed to carry out the function, that would otherwise be provided by non waste, would be used. Further, the introduction to the relevant standard rules permit² states: *'You must submit a waste recovery plan with your application for these standard rules. We will only be able to issue a permit if we approve the plan and compliance with the approved plan will then be a requirement of the permit, if the application is granted. The plan must demonstrate that your proposals will meet the definition of recovery in the Waste Framework Directive 2008 as explained in relevant regulatory guidance'*.
 16. 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. However, the amount of waste required in this case remains somewhat unclear from the evidence before me. The LPA are of the view that it is in the region of 16,000 cubic metres. The appellant's final comments are accompanied by a plan that estimates 24,500 cubic metres, but it appears that the appellant has moved away from this plan following further email exchanges with the LPA that have been provided to me. What is clear is that the evidence suggests that significantly less waste is required to complete the works than the sought 60,000 cubic metres in the permit application.
 17. The appellant, although acknowledging that they are applying for more waste than is likely to be needed, seeks to rely on the fact that only the quantity of waste to reach the required levels in the enforcement plan can be deposited on the site, otherwise it would face further enforcement action from the LPA and this will in effect ensure it is a recovery operation. The proposed approach would remove the ability of the EA to ensure the operation was one of recovery and regulate it as such.
 18. I am not of the view that it is appropriate to rely on the planning system, a separate regime, to ensure that the proposal is one of recovery and remains so. I do not consider that the LPA can be relied upon to take enforcement action if it was necessary, despite their interest in the site to date. For example, as set out by the LPA, it may require agreement by its Councillors, who may choose not to take action. It could be that the LPA's resources are focused on other enforcement matters. I also accept the EA's view that

² Standard rules SR2015 No.39.

enforcement action might not be taken if any breach was minor or had limited environmental harm.

19. The appellant also maintains that there is no evidence to suggest that more waste than is necessary to complete the works would be deposited on the site, as there is no history of past non-compliance. Whilst I accept that the appellant has not been formally cautioned in the past for non-compliance, this does not overcome my fundamental concerns with regard to the reliance on the planning system, as set out above, whether a breach of the permit is considered potentially likely or not. Further, the past compliance record of an operator is not a criterion in the relevant EA guidance to determining whether an operation is one of recovery. In addition, and in my view, a regulatory regime cannot be based on goodwill.
20. Whilst not a determinative factor given my above findings, I am nonetheless mindful of the precedent that such an approach of relying on the planning system to ensure and regulate that operations are one of recovery could set. Should other operators wish to follow a similar route, this could place an inappropriate burden on LPAs and undermine the ability of the EA to effectively enforce the environmental permitting regime.
21. Given all of the above, without robust evidence to set out how much waste is needed to complete the works and a waste recovery plan to reflect this quantity, I simply cannot conclude that the proposals will meet the definition of recovery in the Waste Framework Directive 2008³, as any waste deposited over the required amount to complete the works would be classed as disposal. WRP v2 can therefore not be approved or a standard rules environmental permit issued.

Conclusion

22. For the reasons set out above and having regard to all other matters raised, the appeal is dismissed and the application for a standard rules environmental permit is refused.

Jonathan Manning

INSPECTOR

³ Retained EU Law – Directive 2008/98/EC

APPEARANCES

FOR THE APPELLANT:

David Pojur
Michael Jones
Simon Nelson

of Counsel
White Young Green
Appellant

FOR THE ENVIRONMENT AGENCY:

Jack Smyth
Guy Price
Justyna Krawczynska
Nigel Oliver

of Counsel
Environment Agency
Environment Agency
Environment Agency

INTERESTED PARTIES:

Paul Jackson

Test Valley Borough Council

Appendix L – LPA Agreement August 2021

Jones, Michael

From: Jackson, Paul <PJackson@testvalley.gov.uk>
Sent: 27 August 2021 11:51
To: 'info@nelsonplanthire.co.uk'
Cc: 'Steve Hearn'; Jones, Michael; Ferrier, Andrew; James, Andrew
Subject: RE: Nelson Plant Hire Ltd - Whitehouse Fields Golf Course

Dear Mr Nelson

I refer to your email dated 27th August 2021 with regard to the above and your confirmation that the MJ Rees plans are correct and accurate plans to work to in order to complete the scheme in line with the planning permission, enforcement notice and inspectors decision.

I can confirm that MJRees drawing 9026 shows 16,865 m³ being placed on the site, I am unable to confirm the "through the gate volume" as that will be a matter for the Environment Agency in their consideration of the WRP.

Regards

Paul Jackson MRTPI
Head of Planning and Building
Test Valley Borough Council
Beech Hurst
Weyhill Road
Andover
SP10 3AJ

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