

Jones, Michael

From: Tanner, Matt <Matthew.Tanner@environment-agency.gov.uk>
Sent: 17 September 2022 10:38
To: info@nelsonplanthire.co.uk; Jones, Michael
Cc: Bowker, Andrew
Subject: RE: Whitehouse Field - Additional Information Required
Attachments: Pre Application - RvD Assessment - Additional Information 11411076 (1).msg

Morning Simon,

Thank you for your response. I will address them in parts to make things clearer for any future discussions (either between ourselves or with consultants).

Obligation

In the WRP and your email there are two separate points being used to justify obligation.

Firstly, the correspondence from Test Valley Borough Council showing their concern that the development has not been completed. That is shown in direct letters since 1998 and statements in the appeals. They reiterate that the planning permission requires the work to be completed in line with the agreed plans. After the work had started, they voiced their concern that the work should be completed (for example the letter dated 12/12/2011, from Bob Gregory of TVBC). The appeal decision only states that additional work is needed to complete the scheme and the works can be considered to have started. This does not constitute a specific obligation to import waste to align with agreed plans.

The second indication for obligation you referenced is that the EA said during the appeal for non-determination that there could be an obligation. I don't mean to be pedantic, but reference to this by the EA is phrased as though there **could** be obligation, not that there **is** an obligation. I am not saying there is not an obligation, but I would need to see the evidence used to come to this conclusion. It is very useful to see the appeal documents, but with the information provided so far I can't be confident in making that decision myself. Please can you give detail on what allowed the previous assessor to conclude there was obligation?

Considering the above, please keep in mind the following points to help provide robust evidence of obligation.

1. Planning permission in itself is a permission not an obligation, which allows you to do certain work but does not require you to do it.
2. Our existing guidance (that has not significantly changed since the appeal) states that;

'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*
- *whether the local planning authority would be likely to agree anything significantly different'*

From the attached email, it appears that the council were not directly involved in the design and this was left to the operator, so it is extremely unlikely to be specific obligation.

For recovery, we need you to demonstrate that the volume of material proposed is required and that TVBC would not agree an alternative, for example completing a lower level scheme to bring the works to a conclusion.

Assuming we agree there is a general obligation, we need to understand what is the extent of the obligation that would require you to use non-waste if waste were not available and what additional import of material is required to meet that obligation.

Volume of waste used

Thank you for your summary of works on site. For clarity, please confirm that the work carried out on site do not constitute any part of the work outlined in the Waste Recovery Plan, that will total 16,865m³ or 28,670 tonnes (on the assumption that the obligation indicates this is the minimum volume possible). I ask this because there are numerous references to the work already starting, and as mentioned in previous correspondence (by myself and previous assessors), we cannot retroactively permit waste already deposited. If any material has been imported and deposited to contribute to the uplift, the volume stated in the Waste Recovery Plan would have to be recalculated. As stated in Appendix L of the WRP, the Planning Authority have not confirmed the 'through the gate volume'.

Please let me know if you need any further detail – I will not be in the office on Monday, and will be on site on Tuesday, so will have limited access to emails. I will make sure to review any comments or questions later in the week.

Kind regards,

Matt Tanner BSc (Hons) MSc

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Pronouns: he/him ([why is this here?](#))

Typical hours : Monday – Friday, 7am – 3pm



From: info@nelsonplanthire.co.uk <info@nelsonplanthire.co.uk>

Sent: 15 September 2022 13:12

To: 'Jones, Michael' <Michael.Jones2@tetrattech.com>; Andrew.Bowker@tetrattech.com

Cc: Tanner, Matt <Matthew.Tanner@environment-agency.gov.uk>

Subject: RE: Whitehouse Field - Additional Information Required

Importance: High

Matthew,

Thank you for your email. Michael has forwarded these to me as he is currently on holiday. I have tried to call and left a message.

In order to ensure that you have the information quickly for the 2 key issues you have identified which hopefully will assist the process, I will outline below.

The first issue ref the obligation: For clarity we do not seek to rely on the inspectors comments from the first hearing whereby it was noted that additional material is needed to complete the works. In this regard we would ask that you consider the notes from the second appeal hearing which is contained within the WRP at section 1.1.18 & Appendix K paragraphs 13,15,& 16. The crux being that we are at risk of a completion notice being served on us by the LPA which the EA accept in the last hearing was a clear obligation on ourselves. This is further substantiated by the letters from the LPA at appendix C (pages 30-32) & Appendix D (pages 33-34). It is explicitly clear that the second appeal hearing supersedes the first appeal in so much as the obligation and the evidence which came to light after the first hearing and was agreed in the second hearing with both the LPA and the EA make it clear of the obligation.