TETRA TECH

Environmental Permitting (England and Wales) Regulations 2016, Reg. 31

Appeal by: Nelson Plant Hire Limited (the "Appellant")

Site at: Whitehouse Field, Winchester Road, Andover, Hampshire, SP11 7HW

Response to EA Statement of Case

PP/EPR/630

July 2023

784-B048315

Prepared on Behalf of Tetra Tech Environment Planning Transport Limited.

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Document control

Document:	**Response to EA Statement of Case**
Project:	Whitehouse Field
Client:	Nelson Plant Hire Limited
Job Number:	784-B048315
File Origin:	*\\lds-dc-vm-101\Data\Projects\784-B048315_Nelson_Hearing_2023\60 Project Output*

Revision:	1	**Status:**	Draft
Date:	July 2023		
Prepared by: Michael Jones	**Checked by** Andrew Bowker	**Approved By:** Michael Jones	
Description of revision:			

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1.0 RESPONSE TO EA STATEMENT OF CASE

Please see below the Appellant's responses to the Agency's statement of Case. For ease we have used the same paragraph numbers as the Agency.

Paragraph 3

How can the appellant be deemed to be in breach of a permit that has not even been issued ? This is in complete contrast to the 3 x permits/ exemptions which have been issued to previous operators all of whom used the permitting regulations to complete exactly the same planning permission which remains unfinished and incomplete.

Paragraph 10

The applicant does possess the required level of knowledge to operate a standard rules permit. We also have the correctly qualified personnel in order to ensure that all criteria are met and works are carried out correctly as the Agency know.

Paragraph 13

The Agency has no grounds to refuse the permit other than, in their opinion, the facility would not be operated properly. This is not an appropriate reason for refusal.

Surely if a facility is not operated in accordance with a permit then it must be subject to scrutiny by the Agency, CAR forms issued, warnings issued and if the operator fails to conform to the requests from the Agency, appropriate actions taken. To simply decide that an operator cannot have a permit because the Agency does not like them and would not operate the facility in line with the permit issued is not justifiable in the applicant's opinion.

Paragraph 14

In fact this application was preceded by three previous permits / exemptions being granted for separate operators, none of whom owned the freehold as the applicant does and all of whom were carrying out works to the exact same planning permission which remains incomplete.

This seems to have been forgotten by the Agency. The Agency issued all of these permits / exemptions, so why is the appellant being treated so differently for such a small volume of material? Particularly when the works to complete the permission remain the same and the site is incomplete.

Paragraph 15

For the benefit of the inspectorate, it is important to note that the LPA actually commenced enforcement action against the appellant not based on what they were doing on site but based on what the LPA thought that the appellant was hoping to undertake. Any ground level raising in the areas where the LPA claimed the levels were high had been carried out by previous operators on site under Agency approved permits/ exemptions and not the appellant. Throughout the previous

appeal it was established that the only importation by the appellant was of a certified material to construct the compound and site set up.

Paragraph 16

There seemed to be collusion between the Agency & LPA during this process was unearthed, demonstrated and evidenced by the appellant.

Paragraph 17

How can this operation not be a recovery operation when at least one of the three previous operators qualified for the threshold of recovery and was issued with a permit to undertake the same works within the same planning permission which is incomplete?

Paragraph 18

This is an easy way out for the Agency to avoid the question above in Paragraph 17.

Paragraph 19

The inspectorate will need to bear in mind that despite the Agency continually telling the appellant "you aren't getting a permit," we have the decision of the last Inspector, who answers to the Secretary of State. His decision notes are clear and based on law, legislation and policy. The last hearing was undertaken and recorded and cannot be re-written as the Agency seem to be trying to do.

Paragraph 21

The Agency now confirm that we have agreed plans with the LPA. Please refer to the last Inspector's decision notice.

Paragraph 22

There has been no work on site which affected the volumes required to import as we clarified repeatedly.

The volume of material has been clarified and agreed within the plans is the minimum to be used within the planning approval as confirmed repeatedly.

This is no concern of the LPA or the Agency. Our discussions with the golf course are confidential and commercially sensitive. Further as confirmed by the LPA this does not preclude the construction of the golf course.

Paragraph 23

This is disingenuous, the appellant's response to the Agency's Schedule 5 notice answered fully all of the questions which were posed. We were led to believe that the engagement between the Agency and the LPA was as part of their statutory consultation process and not as a consequence of our failure to answer their questions, this is because their questions were fully answered but completely ignored by the Agency.

Paragraph 24
We are completely and legitimately able to ensure that the timescales afforded to the Agency for the determination process are followed and that if they are not then we can seek recourse from the inspectorate as we have done. It seems to the appellant that the Agency has turned this around and states that they acted legitimately and that all the delays were the appellant's fault. This is not the case as ALL the correspondence proves unequivocally.

Paragraph 25
The visit by the Agency proved that the site had hardly changed as the Agency officer had visited previously over 12 months previously. My conversation with the officer was pleasant and normal and raised no issues.

Paragraph 26

Bullet Point 1
The appellant's conversations with the golf club are confidential and commercially sensitive, further there does not need to be an agreement in place.

Bullet Point 2
It has been confirmed that this was a misinterpretation of what was stated and the appellant has made that clear in emails that he sent following on from this.

Bullet Point 4
We are at risk of enforcement action due to the failure of the Agency to issue the permit as we cannot discharge the enforcement notice fully until all works are completed.

Buller Point 5
It has been confirmed that this was a misinterpretation of what was stated and the appellant has made that clear in emails that he sent following on from this. There is an extant permission on site and this is the one that the appellant intends to complete.

Buller Point 6
No material has been removed from the site. Material has been moved from one side of the site to the other in order to form a small safety feature bund as requested by our H&S representative. An exemption was put in place should we not have enough material as we did not want to completely remove the bank on the northern boundary as it is easier for thieves to gain access to the site.

Paragraph 27
After many extensions to the Agency deadlines, the Agency purposely waited until the last day of the deadline the appellant had sent them and then issued a refusal notice. This will be clear to the inspectorate when studying the evidence.

Paragraph 28

It was established in the last Inspector's recorded hearing that the appellant had established an obligation to complete the works and that if the appellant agreed a plan with the LPA and applied for a recovery permit again then they would more than likely be issued with a permit. This is what has been done. It is not for the Agency to decide whether an LPA will follow through on an enforcement notice this is completely outside their remit.

The EA statement appears to contain some serious inaccuracies. It is a fact that no material has been removed from the site or imported. Material has been moved from the northern boundary across the freehold to form a small bund alongside the internal road in order to protect HGV vehicles from departing the road once the works start, this is a safety feature and a requirement from our H&S representative.

In the past . the appellant has been subject to break ins and thefts and the perpetrators normally gain access via the northern boundary, the movement of this material has now naturally created a sheer drop in the northern boundary as opposed to a sloped bank making it more difficult for thieves to gain entry, the exemption was put in place in case we did not have enough material as it is important that we don't take so much from the northern boundary as to leave gaps so that the thieves can simply walk through. Should any material have been imported under the exemption then it would be removed before the opening of the golf course. There is very little point in creating a golf course to then leave a bund across the middle of it, that makes no sense whatsoever.

There has been no waste material brought to site therefore we do not need to alter the volume, which is accurate and as agreed with the LPA and detailed on the plans which is within our application as we have told the Agency repeatedly.

Paragraph 29

The Agency know that they have acted incorrectly and this is why the appellant will claim costs for this appeal.

Paragraph 31

We invite the inspector to read the last planning Inspector's decision notice and request a copy of the video of the hearing which was recorded. How can the Agency refute this ?

Paragraph 34

As above, we invite the inspector to read the last planning Inspector's decision notice and request a copy of the video of the hearing which was recorded. How can the Agency refute this ?

Paragraph 35

As above, the Inspector's decision document clearly states that there is an obligation.

Paragraph 36

Refer to the last public inquiry and the Agency admitting and accepting after being asked three times that they accept there is an obligation on the appellant to undertake the works. This is a fact and cannot be re-written.

Paragraph 37

We refer to the Inspector's decision document. The LPA did not commence enforcement action over the failure to discharge a condition and/or potential use of the land contrary to what was agreed. Enforcement notices were issued based on what we planned to do not on what we did. The fact that the inquiry determined datum led to a position whereby certain areas had been overfilled by others and not the appellant's. These areas and high spots were under-enforced by either regulator which means that these levels now prevail and have become finished levels. The acceptance is that all these areas need to be re graded and made to look like a golf course.

Paragraph 38

The enforcement notice has been outstanding for a significant period as mentioned. However it is not for the EA to decide for the LPA whether it will be acted upon. The Agency mentions that this was discussed with the LPA but it does not state that the LPA would not be enacting the enforcement notice.

Paragraph 40

This shows that it is for the LPA to decide to enact the enforcement notice not the Agency's.

Paragraph 41

The LPA was clearly involved in the approval of the scheme initially as this is their role. The appellant is not obligated to seek an alternative planning permission when there is a valid permission in place.

Paragraph 42

The appellant has moved material on site to create a bund for H&S reasons, which will be removed after site works have finished. This has been detailed to the Agency repeatedly. The volumes are accurate and in line with the plans which have been agreed with the LPA, the same plan is included within our application for an environmental permit.

Paragraph 43

There has been no import or export, the volumes are the same.

Paragraph 44

This application and WRP were first submitted on 14th September 2021.

Paragraph 45
Please see above.

Paragraph 47
We have proved an obligation and therefore recovery, the same as at least one of the other permits that were issued previously to complete the same planning permission.

Paragraph 48
The appellant is not asking the Agency to regulate the LPA or vice versa. We are asking the Agency to approve our application for a standard rules permit based on the fact that we established an obligation in the last hearing.

Paragraph 49
The Agency has completely ignored a previous Inspector's decision. We have established and the Agency have accepted (during the previous hearing) obligation. The plans are agreed with the LPA and the volume of material to be imported is clear. There is no more need for discussion other than for the Agency to issue us with a permit so that we can complete the works.

We will seek costs as this is wholly unnecessary and a direct consequence of the Agency pre-meditated stance.