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By email only:

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23rd April 2024

Dear Mr Griffiths,

**Permitting Appeal Permit Reference: EPR/NP3538MF; Variation Application
Reference: EPR/NP3538MF/V010 - Daneshill Landfill, Daneshill Road DN22 8RB**

Friends of the Earth England, Wales and Northern Ireland (FOEEWNI) wish to submit an objection to the above permitting appeals at Daneshill.

While we have not previously been involved in permitting aspects of the above asbestos waste proposals at Daneshill Landfill, our concerns with the most recent planning application ([App ref: F/4120](#)) led us to seek a formal screening direction from the Secretary of State (Communities) for Environmental Impact Assessment in October 2020. Our planning concerns linked to the potential for likely significant effects of airborne asbestos fibres from its outdoor processing on nearby residents – principally those residing at the established Daneshill travellers' site, roughly 180m south of Daneshill Landfill.

In his wisdom, the Secretary of State screened the application in for EIA in November 2020 (see **Appendix A**). Its effect was to reverse both the previous 'negative' screening opinion as issued by Nottinghamshire County Council (NCC) and suspend NCC's original committee recommendation to grant full planning permission (see **Appendix B**). The Secretary of State's rationale for this related principally to perceived risks of both **airborne** and **groundwater** contamination arising from outdoor asbestos processing at Daneshill:

- ‘...the Secretary of State concludes that the proposal **could have significant adverse effects through the release of pollutants or any hazardous, toxic or noxious substances to air**. Therefore, exercising the precautionary principle, he considers that an EIA is required on this matter.
- ... Having considered all the information, including possible mitigation measures, the Secretary of State concludes that the proposal **could have significant adverse effects on important, high quality or scarce resources in particular groundwaters**. Therefore, exercising the precautionary principle, the Secretary of State considers that an EIA is required on this matter.” [our emphasis]

It should be noted from the start that FOEEWNI is not against the principle of asbestos processing per-se, while also appreciate that remediation and restoration of the wider site with suitable soils will be needed (and in a cost-effective manner). That said, Daneshill’s geographical situation, especially its proximity to multiple residential receptors is, in our view, **too sensitive for the outdoor processing of asbestos** - as is sought by the appellants.

Matter 1: What’s actually changed?

Despite no amended EIA application submitted to try and address the issues raised by the Screening Direction for planning - as requested by Notts CC back in December 2020- leading to refusal of the planning application, our primary concern is that the waste permit process is being used to try and influence requirements for future planning submissions; potentially to even circumvent the EIA process. Theoretically, with a new waste permit (under your direction) allowing the processing of asbestos outside, the need for EIA- in order to demonstrate no likely significant direct, indirect, cumulative effects - could potentially be diminished for planning. The appellants could rely on the permit’s contents; despite that the statutory permit issuer itself (i.e. Environment Agency/EA) does **not** advocate for outdoor processing - and for very good reasons.

The EA’s Proof of Evidence (Senior Permitting Officer: Mr Raynes) as submitted to this Inquiry, highlights almost identical risks we ourselves put to the Secretary of State in pursuing the positive Screening Direction – highlighting:

- **The proximity of the traveller sites:** 169m and 167m south, respectively (pg 4).
- **Strong concerns regarding the proposed outdoor processing methodology:** ‘The Agency’s position is that the storage, handling, and treatment of asbestos wastes in the manner proposed by the Appellant increases the risk of asbestos fibres being released into the environment, either into the air or into the soil matrix’. (pg 18)
- **And clear reasoning for such concern:** ‘The inhalation of asbestos fibres can cause serious illness and significant harm to human health including malignant lung cancer. Any increase and/or agitation of fibres would create a risk to human health as there is no safe lower limit’. (pg 8)

Despite the original partial refusal being issued, the EA, , then decided to U-turn on the asbestos elements, and **instead** require processing to be i) undertaken inside a building; and ii) require the mechanical screener to be ‘fully enclosed’, as well as on an “impermeable membrane”, while incorporating other protocols and stipulations. As is well known, the rationale for this compromise variation was based on the agency’s own perception of there being a “high risk” of its original *partial* refusal (2022) being

overturned at appeal. This led to an Agency Initiated Variation permit being issued in October 2023 (re [EPR/NP3538MF/V010](#)), which is also subject to this appeal.

It now seems that despite such compromises from the EA - and while not those we originally sought, but feel **would** likely overcome many of our original concerns - the appellants are still appealing what they see as undue constraints. While their case questioning whether the revised permitting protocols constitute BAT, or are in line with transposed Hazardous Waste (England and Wales) Regulations 2005 (as amended), they also to miss the wider point to why these constraints have been enforced i.e. the need for a precautionary approach.

Despite waste permitting - at least compared to planning - being less concerned with the land-use aspects of such proposals (e.g. direct/indirect risks) to adjoining uses, the fact remains that in seeking to overturn the partial refusal and variation to allow processing of extremely hazardous asbestos waste as they see fit (i.e. outside), the combined ground water and air quality risks to residents remain. Surely the point of the precautionary principle is to limit the potential of such risk, especially where the likelihood of occurring cannot be fully substantiated, as the Secretary of State (Communities) did in justifying the development as EIA.

As is inferred from Planning Practice Guidance, one's left hand (e.g. permitting) should be actioned with some awareness of the implications for the right-hand (e.g. planning). [NPPG](#) is clear that...“the planning and other regulatory regimes are separate but **complementary**” [our emphasis]. While the planning application should address the “effects (including cumulative effects) of pollution on health, the natural environment or general amenity, and the potential sensitivity of the area or proposed development to adverse effects from pollution”, the permitting process also has a major part to play in reducing air and ground quality risks on the site. Our view is that any direction of the EA to issue a weaker permit in this context would potentially weaken overall environmental protections that need to be afforded to residents in this instance and could undermine the effectiveness of the planning (re EIA) process. This first permitting step should set as robustly as possible as a result.

In the context of the above, and with no real compromise provided by the appellants or evidence to justify the risks of undertaking the outdoor methodology they seek to implement, it seems nothing really has changed since the original waste permit variation or planning application were partially/refused.

The request is therefore simple: we urge you to dismiss the appeals, and at the very least not allow - in any way - outdoor processing and sorting of asbestos at this site, based on the precautionary approach.

Matter 2: Aarhus Convention Rights to Participate in Environmental Decision Making

With the UK's signatory to the [Aarhus Convention](#) unaffected by the UK's withdrawal from the EU, government bodies and agencies should continue to ensure unimpeded access to information and encourage public participation in decision-making (while our courts should continue to provide access to justice) in environmental matters. In this context, we would like to question the legitimacy of some of the decisions made in the processing of the permit by the EA, particularly in terms of information access and

participation, especially its decision to U-turn and effectively vary a partially refused waste permit.

Despite the need to consider such compliance, and in the knowledge that reversing its original decision to refuse processing of asbestos at the site could potentially have deleterious health consequences for those living around it (i.e. aforementioned GRT groups and other residential properties), the Environment Agency chose to “use its discretion” and not widely consult on what was actually a monumental decision. In a letter to an unnamed local resident, the EA state that:

*‘In view of the fact that statutory consultations had recently been carried out for the bespoke permits for both the Daneshill and the Maw Green sites and the fact that only two members of the public responded to the consultation for the Daneshill site....**the Agency decided not to use its discretionary powers to hold another general public consultation**’.* [our emphasis]

Notwithstanding the robust nature of the revised permit caveats put in place to steer the appellants towards internal-only processing of asbestos waste, our view is that the EA’s foresight on possible implications such a decision reversal could have on local residents was highly questionable (e.g. trauma and perception of residual risks). In not seeking wider general consultation, despite the nature of the material being processed, but also considering the planning history of the site (and that left/right hand principles apply to statutory consultees. also), the EA’s decision flies in the face of established Aarhus principles, including ensuring public participation in decision-making – which includes significant U-turns on contentious permitting decisions.

While the general public is *arguably* less knowledgeable about the permitting system and how to interact with it, compared to say the planning system - where public participation is enforced by both regulations and democratic convention - the EA should be formally reprimanded by you for not being more aware and sensitive to how its unilateral actions, especially redefining the parameters of hazardous asbestos waste permit might play out with the local communities near the Daneshill site.

While this matter may be outside of your remit as Inquiry Inspector, we would nonetheless press to see the matter acknowledged in some way or form in your decision and/ or an apology made by the Agency to the community.

Conclusion

Overall, we urge you to dismiss the appeal, and - at the very least - not bow to demands of outdoor processing and sorting of hazardous asbestos at this site, based on its sensitive situation and the need for the precautionary approach.

Yours sincerely,



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Senior Town Planner

