Planning Inspectorate

Appeal Decision

Inquiry held on 11-13 November 2025

Site visit made on 11 November 2025

by R Catchpole BSc (hons) PhD CEcol MCIEEM IHBC

an Inspector appointed by the Secretary of State

Decision date: 22nd January 2026

Appeal Ref: APP/EPR/684
Green Lane, Wardle, Nantwich CW5 6DB

- The appeal is made under Regulation 31(1)(f) of the Environmental Permitting (England & Wales) Regulations 2016 (as amended) (the EPR) against an enforcement notice that was served under Regulation 36 of the EPR.
- The appeal is made by Mr Nick Brookes (Nick Brookes Demolition and Waste Disposal) against the decision of the Environment Agency.
- The permit reference is EPR/EP3798CS (the Permit).
- The alleged breach concerns condition 1.1.1(a) which states that: "*The operator shall manage and operate the activities: a) in accordance with a written management system that identifies and minimises risks of pollution, including those arising from operations, maintenance, accidents, incidents, non-conformances, closure and those drawn to the attention of the operator as a result of complaints.*"

Decision

1. The appeal is dismissed.

Applications for Costs

2. An application for a full award of costs was made by Mr Brookes against the Environment Agency (the Agency) and an application for a partial award of costs was made by the Agency against Mr Brookes. These applications are the subject of separate decisions that will be issued after this decision.

Preliminary Matters

3. The Inquiry sat for three days between 11 and 13 November 2025. An accompanied site visit was carried out on the 11 November 2025.

4. Although a proof of evidence was submitted by Mr James Pearson, the appellant chose not to cross examine it at the Inquiry. This evidence consequently went unchallenged and I simply put a number of clarificatory questions to the witness.

5. The appellant relied upon the doctrine of estoppel and maintained that it prevented enforcement action with regard to the processing of trommel fines in its Statement of Case (SoC). The appellant resiled from this position just over a week before the Inquiry opened and I have determined the appeal accordingly.

6. Whilst the reasons given in the Enforcement Notice (the Notice) specified alleged deficiencies in the Environmental Management System (EMS), the Agency conceded that the wording of the Notice should have specified a Written

Management System (WMS) and acknowledges that this comprises the EMS[1], Secondary Aggregate Production Protocol (SAPP)[2] and the Waste Sampling Plan (WSP)[3]. This is the basis on which I have determined this appeal.

Main Issue(s)

7. Taking into account the evidence before me the main issues are:

- whether the enforcement notice meets all the requirements of Regulation 36(2) of the EPR;
- whether the written management system adequately identifies and minimises the risks of pollution arising from waste acceptance, storage and treatment; and
- whether the scope of the Environmental Permit (EP) permits trommel fines to be processed within the A2 soil processing facility, having regard to the purposes of the EPR.

Reasons

Background

8. The appellant operates a waste transfer facility which processes skip waste from household, commercial and industrial sites. The site is located in an industrial area with the nearest residential properties located approximately 500 m to the east. The appellant predominantly accepts wastes that are transported by its own vehicles. A series of visual checks are used to control the type of wastes that are accepted, which start when the load is first collected. The site can only accept wastes conforming to the European Waste Catalogue (EWC) codes that are set out in Table S2.1 of the Permit. The appellant estimates that around 95% of the mixed waste received originates from general construction and demolition activities falling within EWC codes 17 09 04 and 20 03 01.

9. This mixed construction and demolition (C&D) waste is tipped within a covered transfer building where it is subject to a further visual inspection and quarantined if it appears to contain hazardous items. Two mechanical grabs then sort the larger waste items into two separate piles, one for landfill and the other for trommel screening. The trommel breaks down and separates the waste by size using a rotating drum with perforated holes. Larger fractions of waste leave the trommel and pass through a manual picking line where recyclables such as plastics, metals, wood and cardboard are removed. The remaining waste, which cannot be recycled, is then sent for incineration or to landfill.

10. Smaller fractions of waste, that are less than 40 mm, pass through the holes in the trommel screen. These are known as trommel fines. The trommel fines are deposited on an uncovered area at the rear of the transfer building where they are blended with other permitted construction and demolition wastes that have been directly tipped in this area and crushed. The area is adjacent to a soil processing facility specified in Table S1.1 under Activity A2 of the Permit (the Wash Plant). Various water-based mechanical processes remove contaminants and the finished

[1] CD 4.7, Version 10, 11 March 2022
[2] CD 4.1, Version 2.0, 12 September 2008
[3] CD 7.1, Version 2.0, 12 January 2022

aggregate is then subject to manual picking before being screened into four different particle sizes. Further visual inspection occurs before the material is transferred into loading bays for use in the construction industry. The silt that is derived from the washing process goes to a press for dewatering and the resulting filter cake is then sent to landfill for disposal.

11. A waste management licence was issued on 10 December 2001 that allowed the appellant to accept household, commercial and industrial wastes. This became an environmental permit on 6 April 2008. The processes on the site, at that time, were set out in the SAPP which subsequently formed part of the WMS for the consolidated permit that was issued on 17 August 2011. This indicated that trommel fines from mixed C&D waste were processed in the Wash Plant and used to produce aggregate.

12. Although the appellant observes that no concerns were subsequently raised about the suitability of this feedstock, until a site inspection on the 28 June 2021[4], one of the reasons for the consolidated permit was to control the potential contamination of these fines. The appellant was advised on the 21 December 2010 to cease passing fines through the Wash Plant until WAC testing was carried out to ensure conformity with Appendix C of the WRAP Protocol[5]. The Protocol lists all the input materials and relevant EWC codes which can be considered inert and therefore acceptable for the production of recycled aggregate.

Regulation 36(2)

13. Regulation 36(2) of the EPR states that a notice relating to the contravention or likely contravention of an environmental permit condition must:

    a) state the regulator's view under paragraph (1);

    b) specify the matters constituting the contravention or making a contravention likely;

    c) specify the steps that must be taken to remedy the contravention or to ensure that the likely contravention does not occur; and

    d) specify the period within which those steps must be taken.

14. The Agency maintains that the Notice must be read as a whole when considering compliance with 36(2) and that the different parts are mutually reinforcing. It points out that it clearly identifies the central issue regarding the processing of trommel fines derived from mixed C&D waste in the Wash Plant. The Agency suggests that the steps are equally clear in that they require an updated EMS that ensures only authorised activities are undertaken, that trommel fines are excluded from the Wash Plant and that processed waste is appropriately classified and meets the necessary end of waste criteria. The Agency observes that it is clear from the evidence presented by the appellant that it understands the alleged contraventions.

15. The appellant suggests that the Notice "*misfires*" and draws my attention to a judgement concerning a planning enforcement notice[6]. This highlights an earlier case where a planning notice had been brought under an inapplicable planning

[4] CD 5.5
[5] CD 8.4
[6] Miller-Mead v Minister of Housing and Local Government [1963] 2 QB 196, CD 10.1

provision[7]. In that case, the wrong section of the Town and Country Planning Act had been applied which led Upjohn LJ to observe that it had "*completely misfired*". This was purely a matter of construction and both Lord Cohen and Lord Evershed agreed with that view in the original judgement. Lord Simonds went on to express the view that even if he was wrong, the Notice was not sufficiently clear. This leads Upjohn LJ to conclude that a valid notice must be clear and not ambiguous and that it must not completely misfire. He subsequently adds that a notice should tell a person fairly what has been done wrong and what must be done to remedy it.

16. The appellant highlights ambiguity, particularly in relation to the first two reasons in the Notice where the use of the word "*adequate*" is enough, in its view, to detract from the degree of clarity required by such a notice. Whilst these two reasons are explicitly linked to compliance with relevant guidance documents, in the steps to be taken, the appellant draws my attention to the fact that no specific provisions were identified which means that uncertainty is present. The appellant maintains that an operator should not have to read beyond a regulatory notice in order to understand its contents and that a recipient should not be put in jeopardy of a criminal prosecution when there is uncertainty concerning a regulator's position.

17. The appellant also maintains that the processing of trommel fines in the Wash Plant is a straightforward contravention of condition 2.1.1 which states that the operator is only authorised to carry out the activities specified in Schedule 1, Table S1.1. This limits the wastes that can be treated to those specified in Table S2.2. This was identified by the Agency's own permitting witness in her proof with reference to a site inspection that was undertaken on 14 September 2023[8]. A Compliance Assessment Report (CAR) was subsequently issued which identified a breach of condition 2.1.1 due to the processing of trommel fines in the Wash Plant[9].

18. However, the CAR also identified a breach of condition 1.1.1(a) because the EMS did not reflect permitted activities on the site and failed to identify and minimise the risks posed by the processing of trommel fines in the Wash Plant[10]. This condition requires the operator to manage and operate activities in accordance with a WMS that identifies and minimises risks of pollution. The Agency characterises this as the "*root cause*" of the contravention of condition 2.1.1. It suggests that improvements to the WMS would avoid further breaches and that this was why only condition 1.1.1(a) was enforced against[11].

19. The approach relies upon legal advice, that was not before the Inquiry, which identifies the need to include "*positive steps*". The Agency characterises this as normal practice which is consistent with published guidance[12]. This guidance sets out six principles which are used to evaluate permit compliance[13]. The fourth principle requires the identification of the root cause of the original non-compliance which in most cases is associated with deficiencies in the WMS. As a result, I find this approach to be well founded.

20. The round table discussion established that the matters raised by the Notice were well understood by the appellant, as is clearly evident from the reasoning in its

[7] East Riding County Council v Park Estate (Bridlington) Ltd [1955] 2 Q.B. 623
[8] Paragraph 11, CD 2.2
[9] CD 5.8
[10] CD 4.7
[11] Paragraph 21, CD 2.2
[12] Paragraph 11, ID10
[13] CD 6.10

SoC[14]. Although the appellant characterised the Notice as "*imprecise and vague*", when questioned, no indication of why this was the case was forthcoming[15]. The appellant simply stated that trommel fines had been processed in the same way since 2007, that the site inspections had not raised any issues until more recently and that the enforcement action had come as a surprise. When pressed, neither the appellant nor the appellant's technical witness could point to any issues with the Notice beyond that they simply didn't agree with it and that compliance was difficult because it targeted the EMS rather than the more specific breach of condition 2.1.1.

21. I accept that there was some uncertainty concerning the specific steps required by the Notice. The first two reasons are broadly drawn and could have been more prescriptive, if taken at face value. However, the Notice does not exist in isolation and the potential contamination of trommel fines was well known, even prior to the issue of the Permit. Moreover, a CAR that was the product of a site inspection in 2021 clearly states that the processing of trommel fines in the Wash Plant should cease until such time that an operator-initiated permit variation is secured[16]. Three subsequent CARs from site inspections carried out in 2023 and 2024 highlight this issue, as well as breaches of conditions 1.1.1(a) and 2.1.1[17]. Consequently, the enforcement action cannot have come as a surprise to the appellant.

22. Given this context, I do not find that the Notice needs to be self-contained as the appellant fairly knew what had been done wrong and what must be done to remedy the situation. Furthermore, the correct part of the associated legislation was applied, unlike the case that the Courts considered. I therefore conclude that the Notice does not "*completely misfire*" and I am satisfied that an appropriate WMS would resolve the issue concerning the breach of condition 2.1.1.

Written Management System

23. Most environmental permits require operators to have a WMS. This is a set of procedures describing what will be done to minimise the risk of pollution from the activities covered by a permit. They typically comprise a series of identifiable, written documents, which includes the EMS. Guidance requires operators to break down all the operations that will be carried out on a site from start up to shut down[18]. It also requires a list of all the wastes that will be produced by each activity or process and specification of the steps taken to prevent or minimise risks to the environment from each activity, process and waste type.

24. The Agency finds the WMS to be deficient because it does not identify or minimise the risk of pollution. More specifically, this is because it does not prevent unauthorised activities, contains no detail of testing or other processes that would minimise environmental risks on the site and does not specify procedures to ensure that the aggregates meet the end of waste criteria. This applies to Version 10 of the EMS as well as Version 11 that was submitted after the Notice was served[19].

25. Turning to the first point, the Agency maintains that trommel fines from the mechanical treatment of mixed waste should be classified as EWC 19 12 11*/

[14] CD 1.2
[15] Paragraph 29, CD 2.9
[16] CD 5.6
[17] CD 5.8, 5.9 and 5.10
[18] CD 6.6
[19] CD 4.7 and 4.8

19 12 12, in accordance with the relevant guidance (WM3)[20]. Whilst the EMS identifies how this would be done, it only applies to mechanically treated waste moved offsite and not to waste that is transferred within the site, between different processes.

26. The Agency maintains that there is no way to determine if the hazardous mirror code applies to the trommel fines before they enter the Wash Plant. It also points out that trommel fines from mixed C&D waste do not meet the waste definition in Table S2.2 and cannot consequently be processed through the Wash Plant. This is because EWC 19 12 12 can only be processed in this way when it comprises "*treated bottom ash including IBA and slag other than that containing dangerous substances only*".

27. The appellant maintains that the trommel fines are an intermediary product and do not need to be classified or tested. This is because the identification of waste under the List of Wastes (England) Regulations 2005 is done on a "*waste source basis*". A recipient of waste is obliged to identify the source of waste and to work through the list to ascertain the source of the waste in question according to WM3. The appellant notes that this is primarily a means to comply with the statutory duty of care when transferring waste from one site to another and that this does not generally arise for the operator of a waste management facility who transfers waste from one part of a site to another, under the same permit.

28. Be that as it may, the fact remains that there are risks posed by trommel fines when derived from mixed C&D waste. The parties agree that mixed C&D waste is unpredictable and that the presence of contaminants cannot be ruled out. This comprises the majority of waste received at the site. The unchallenged evidence of the Agency's hazardous waste witness sets out the potential hazards, as highlighted in a national campaign which sampled trommel fines from multiple waste sites in 2019[21]. This found that they can include a range of hazardous materials including, but not limited to, contaminated soil, asbestos fibres, fuels, paints, solvents, treated wood, contaminated packaging and insulation board[22].

29. The analysis demonstrated that trommel fines have the potential to display carcinogenic and ecotoxic hazardous properties which pose a potential risk to human health and the environment if the waste is not managed appropriately. The witness went on to observe that whilst robust waste acceptance procedures can reduce the risk of non-conforming materials entering a site, chemical analysis is needed to provide assurance that the resultant trommel fines are non-hazardous and are suitable for recovery[23]. The Inquiry established that the appellant relies upon visual inspection and mechanical methods to remove contaminants and that the only material that is subject to comprehensive chemical testing is the filter cake, prior to landfill disposal.

30. The Inquiry also established that the Agency has not undertaken any chemical analysis of the trommel fines nor any of the leachate from the site. Neither has any testing been done of any surface water or ground water around the site. Whilst there is no empirical evidence to demonstrate that chemical contamination is present, neither is there any substantiated evidence to the contrary.

[20] CD 6.5
[21] Guidance on the Classification and Assessment of Waste: Technical Guidance WM3, CD 2.7
[22] Paragraph 17, CD 2.6
[23] Paragraph 18, CD 2.6

31. I accept that the filter cake testing might be able to indicate the presence of some chemical contaminants and that this is specified in the EMS. I also note that the appellant maintains that regular testing has only detected contamination on two separate occasions. However, the results were not before the Inquiry and nor could this be confirmed by the appellant's own technical witness when questioned about this matter. This also relies on the adhesion of pollutants to the silt particles and/or their solubility in water. Larger fractions could still retain contaminants, especially when they are not water soluble.

32. The Agency points out that it does not need empirical evidence to take action but instead relies on risk-based compliance assessment to target those facilities that have inadequate standards of operation and which may be failing to comply with the conditions of their permit[24]. Moreover, the Courts have established that the precautionary principle can be used where there is scientific uncertainty regarding a suspicion of risk to human health or the environment which allows preventive measures to be adopted before that uncertainty is dispelled[25].

33. I also note that the core guidance on this matter unequivocally states that the operator is responsible for ensuring that its regulated facility does not cause pollution to the environment or any harm to human health[26]. Consequently, the onus is on the appellant to prove that chemical contamination is not present whether that be in relation to the trommel fines or the sealed wastewater recycling system. The appellant accepts that the EMS is deficient in relation to wastewater drainage because it currently specifies drainage to surface water or soakaway. The Inquiry established that there is a sealed system and whilst recycled water is filtered, no testing of those filters or the wash water is currently undertaken.

34. Turning to visible contaminants, the Agency has observed both plastics and metals in the washed aggregate. This has included Waste Electrical and Electronic Equipment (WEEE) components, such as cables and batteries, which are classified as hazardous because they contain Persistent Organic Pollutants (POP)[27]. The appellant seeks to characterise this as just a snapshot during the lockdown period when trial tests were being carried out at the site[28]. However, I also observed fragments of cables, metals and plastics in the washed aggregate during the accompanied site visit which suggests a more persistent issue.

35. I accept that the WRAP Protocol allows 1%, by mass, of plastics and metal and that the extent of such material appeared limited[29]. However, the Protocol is silent when it comes to WEEE components which pose a risk of bioaccumulation and persistence in the environment. The Agency has also observed dark leachate and "*steam*" rising from the trommel fines pile prior to washing. Whilst suggestive of biological contamination, I find this inconclusive given that peaty soils and potential ambient temperature differences in December could account for these observations. The appellant points out that cable is valuable and subject to manual picking, which includes the finished aggregate piles. However, evidence suggests that it is persistently present, albeit at low levels.

[24] Paragraph 26, CD 1.1
[25] Paragraph AG72, CD 10.8
[26] Paragraph 11.9, CD 6.4
[27] Paragraph 27, CD 2.2
[28] Paragraph 83, CD11
[29] CD 6.2

36. The appellant states that the washed aggregates are primarily used by civil engineering contractors around domestic pipework, drains and deep sewers or for consolidated sub-base works. Additionally, the reclaimed sand fractions are used to make concrete. The appellant accepts that there are no controls over where the aggregates are used. If contamination is present, there is potential for leachate to affect sensitive areas, such as drinking water aquifers. Furthermore, contaminated dust may affect those who handle the material as well as the general public who may be in the vicinity of sites where the aggregates are being used. As such, a clear, uncontrolled pollution pathway is present which could harm both the environment and human health. The Agency classifies this risk as Category 3 which means that it is considered to have the potential to cause a minor impact on the environment, human health or quality of life.

37. Turning to the end of waste criteria, associated guidance indicates that it is appropriate for a WMS to prove compliance which is clearly lacking in this instance[30]. The appellant considers that including end of waste processes in the WMS would bring non-compliance with the WRAP Protocol into the criminal sphere which was never intended. However, the Notice does not require compliance with the WRAP Protocol and this is just one way of achieving the necessary end of waste criteria. Moreover, end of waste is a fundamental concept within the Waste Framework Directive 2008, under Article 6[31]. As such, conformity is legitimately to be expected and the WMS is clearly deficient in this respect. I do not find it disproportionate or a form of regulatory 'overreach' to include appropriate testing within the EMS, as suggested by the appellant[32].

38. The appellant points out that the WRAP Protocol requires regular sampling and testing by the United Kingdom Accreditation Service accredited companies and experienced consultants to ensure that the aggregates meet the necessary output standards[33]. This testing only ensures the grading and suitability of finished aggregate for practical uses. Outgoing material is accompanied by a delivery ticket confirming compliance with the scheme and outputs are also tested to meet customer specifications for products such as building sand and pipe bedding. The appellant maintains that this testing history shows that the outputs are safe.

39. However, this testing does not minimise potential environmental risks because it does not evaluate any carcinogenic or ecotoxic sources of contamination that might be present. Although one of the main purposes of the Protocol is to protect human health and the environment, this is predicated on the use of inert input material, as set out in Appendix C[34]. The appellant's technical witness confirmed, in oral evidence, that WRAP compliance is only considered in the later stages of processing on the site and that the Appendix C input controls are not applied. Given this fact, neither the SAPP nor the EMS demonstrate that the product that leaves the site meets sufficient end of waste criteria.

40. I find that whilst the waste acceptance procedures are thorough, they rely on visual controls which cannot ensure that the trommel fines are free from chemical contamination and therefore suitable for processing in the Wash Plant. The WMS lacks the necessary process controls and testing protocols as a result. Although

[30] CD 6.9
[31] CD 9.7
[32] Paragraph 90, CD ID11
[33] Paragraph 43, CD 2.10
[34] Paragraph 2.3.1, CD 6.2

the filter cake testing is included in the WMS, this is primarily related to ensuring this output is suitable for non-hazardous disposal. The contingency actions in the EMS also only relate to controlling the export of mis-coded waste rather than potentially contaminated aggregate product. Due to the lack of inert inputs and the partial application of the WRAP Protocol, the resulting products do not unequivocally meet the end of waste criteria at the current time. I therefore conclude that the WMS fails to adequately identify and minimise the risks of pollution.

Permit Scope

41. The Agency maintains that the approach to interpreting the terms of a public document, such as a permit or consent, is well established. It highlights a Supreme Court judgement (Trump) which states that:

> *"When the court is concerned with the interpretation of words in a condition in a public document, such as a section 36 consent, it asks itself what a reasonable reader would understand the words to mean when reading the condition in the context of the other conditions and of the consent as a whole. This is an objective exercise in which the court will have regard to the natural and ordinary meaning of the relevant words, the overall purpose of the consent, any other conditions which cast light on the purpose of the relevant words, and common sense. Whether the court may also look at other documents that are connected with the application for the consent or are referred to in the consent will depend on the circumstances of the case, in particular the wording of the document that it is interpreting. Other documents may be relevant if they are incorporated into the consent by reference … or there is an ambiguity in the consent, which can be resolved, for example, by considering the application for consent."* [35]

42. In the preceding paragraph, the judgement notes that differences in the nature of documents will influence the extent to which the courts may look at the factual background to assist interpretation. It observes that third parties may have an interest in a public document, such as a planning permission or a consent, which contrasts with many contracts. It goes on to state that there is only limited scope for the use of extrinsic material in the interpretation of a public document in this context because the shared knowledge of the applicant for permission and the drafter of the condition does not have the same relevance to the process of interpretation in comparison to the shared knowledge of parties to a contract, in which there may be no third party interest. The courts have established that the same approach should be applied to environmental permits[36].

43. The Agency observes that, on this basis, it is plain from the natural and ordinary meaning of the Permit that it specifies three separate activities comprising a waste transfer station (Activity A1), a soil processing facility (Activity A2) and a composting facility (Activity A3). Condition 2.1.1 makes clear that the operator is only authorised to carry out the activities specified in Schedule 1, Table S1.1 which sets out the limits for each activity. In relation to Activity A2, this is limited to the treatment of wastes listed in Table S2.2 consisting only of washing, sorting, screening, separation, crushing and blending of waste for recovery as a soil substitute or aggregate. Table S2.2 includes a series of EWC codes for wastes

[35] CD 10.6, Trump International Golf Club Scotland Ltd v Scottish Ministers [2015] UKSC 74; [2016] 1 WLR 85, paragraph 34
[36] CD 10.13, R v Atlantic Recycling Ltd [2024] EWCA Crim 325; [2024] Env LR 29

that are suitable for such recovery. This does not include EWC codes 19 12 12 or 19 12 11* which comprises "*other wastes (including mixtures of materials) from mechanical treatment of wastes*" except when comprising treated bottom ash. Therefore, mechanically treated, mixed C&D waste, such as the trommel fines, cannot be processed, according to the Agency.

44. It maintains that the inputs to the Wash Plant are restricted by the Permit and that there is no justification for adding a category of material outside those that are expressly permitted. It disputes that any ambiguity is present or that any other document is needed, or indeed admissible, as an aid to interpretation. It also rejects the assertion that there was an 'understanding' between the appellant and the Agency that allowed the processing of trommel fines, bearing in mind the reason for the permit variation application in the first instance. It observes that there is no evidence that this activity was expressly endorsed. It also maintains that the WMS cannot be used to extend the scope of the Permit[37].

45. The appellant takes a different view of the interpretive approach to be taken to public documents and private contracts, as set out in Trump. It relies on the further refinement of these principles in two subsequent judgements[38] and makes the following points:

- Ascertaining the objective meaning is not a literalist exercise "*focused solely on a parsing of the wording of the particular clause*", but "*depending on the nature, formality and quality of drafting, more or less weight should be given to elements of the wider context …*";
- Where there are rival meanings, that one should be preferred which is more likely to give effect to business common sense;
- The correct interpretation of some documents may require a greater emphasis on the factual matrix, for instance because of their informality or brevity;
- It may be necessary to consider whether the relevant factual matrix may give guidance as to the meaning of the words used in order to consider the implications of rival interpretations; and
- An 'iterative' approach is appropriate where there are rival meanings.

46. The appellant maintains that the Agency is wrong to assume that environmental permits are not subject to the same modern interpretative approach as contracts. It draws my attention to the approval given to the judgment of Lord Denning in Fawcett Properties Ltd of Trump: "*Lord Denning was not enunciating some principle special to planning conditions, as compared to other forms of legal document – rather the contrary. In the previous paragraph he had been considering suggested comparisons with documents such as contracts or wills.*" [39]

47. The appellant points out that whilst an environmental permit is a public document, it has a personal element which is not akin to a planning consent. This is because it is particular to an operator and the same issues of wider public amenity relevant to

[37] Paragraph 54, CD 2.2
[38] CD 10.7, Wood v Capita Insurance Services Ltd, [2017] A.C. 1173 (2017) and CD 10.11, Sara & Hossein Asset Holdings Ltd v Blacks Outdoor Retail Ltd, [2023] 1 W.L.R. 575
[39] Paragraph 58

planning consents do not apply. The appellant suggests that caution is needed with any remarks from judges in authorities, which are earlier in time, that do ostensibly draw a distinction between planning and other documents on the basis that they may have a significance to the wider public which may make it more unlikely that additional material should be considered for the purpose of their interpretation.

48. It is on this basis that the appellant seeks to introduce background information to support its interpretation of the Permit. In particular, the reported views and intentions of Ms Argyros who was the Environment Officer responsible for regulating the site prior to the issue of the Permit. The appellant maintains that there was a tacit agreement which allowed trommel fines to be processed in the Wash Plant which was witnessed by the parties prior to the permit variation and infers that this was the basis upon which the site was subsequently inspected and audited for the following ten years under different Environment Officers. Added to this is the fact that the SAPP process flowchart shows how the trommel fines were being treated in the Wash Plant. The appellant maintains that so long as the incoming waste meets with its description and so long as the testing of the product outputs shows no adverse results, then the risks of pollution are to be deemed acceptable. It suggests that this "*must have been in the mind of Rachel Argyros*"[40].

49. Even if I were to accept the appellant's legal submission, the intent and understanding of Ms Argyros only carries limited weight because she did not appear as a witness at the Inquiry. Furthermore, the permit variation was deemed necessary on the basis of her own advice because there was a need to ensure that the trommel fines were shown to be "*uncontaminated, inert material*" [41]. No evidence is before the Inquiry to suggest that the trommel fines conform to this definition or that Appendix C of the WRAP protocol applies to the mixed C&D waste that is being received and processed by the trommel. Only visual inspection ensures that the inputs are non-hazardous and further testing capable of detecting any carcinogenic and ecotoxic contamination is limited to just one output, the filter cake.

50. It is troubling that this situation was allowed to continue unabated for 10 years and that the 2008 SAPP was not updated to reflect the permitted processes but as the Agency admits, it does not consider all aspects of site operation during site visits and the trommel campaign specifically led it to focus on this aspect of the operation more latterly. Such regulatory oversight cannot be considered a deemed approval of the trommel fine washing but it is understandable that the appellant assumed this to be the case.

51. The appellant makes various points in relation to the detail of the Permit and its construction. This includes: the length of the introductory note; a syntactical error in relation to condition 2.3.1(a); a mistake in the drafting of condition 2.3.2(a); differences in the wording of the EWC codes between Tables S2.1 and S2.2; and the lack of an exclusive waste acceptance clause explicitly restricting the processing of wastes in each activity to the relevant tables.

52. The first two points are of little relevance to the overall interpretation of the Permit. This is because the introductory note is a non-statutory preamble which does not

[40] Paragraph 69, ID11
[41] CD 8.4, email on 21 December 2010

form part of the Permit and the lack of a properly formed sentence does not undermine its interpretation. The Agency accepts the drafting error and that Tables S2.2 and S2.3 should have been added to the end of the first clause[42]. However, this has no bearing on the relevant parts of the Permit that are concerned with the treatment of waste rather than the acceptance of waste. The Agency's permitting witness observed that the codes vary according to the risk assessment and that the differences between the tables simply reflects this fact.

53. Turning to the more substantive point about exclusive linkage between activities and the different waste types. I accept that the column specifying the limits of activity only considers the secure storage of the different waste types and that it is silent when it comes to the acceptance of wastes. However, the limits of each activity clearly restrict the treatment of particular wastes to the relevant tables.

54. Even if I am wrong, if all waste types could be subject to any process upon entering the site, then this would result in an absurdity because materials containing asbestos could be treated in the Wash Plant and material imported into the A1 Activity could be treated in the composting facility. Such an interpretation would be contrary to the natural meaning of the Permit, when read as a whole.

55. Given the above, I do not find that a factual background is needed in order to assist with the interpretation of the Permit. I find it plain, from the natural and ordinary meaning of the Permit, that it specifies three separate activities and that the inputs to the Wash Plant (Activity A2) are unequivocally identified and do not include trommel fines from mixed C&D waste.

Other Matters

56. The appellant maintains that there would be a "*cataclysmic effect on his business if recycled aggregate feedstock cannot go through the wash plant*" [43]. Without it, the appellant suggests that the business would cease to operate and the environmental benefits of recycling over 90% of mixed C&D waste inputs, as aggregate, would be lost. The appellant suggests that this would result in a significant increase in waste to landfill and compromise the region's ability to recycle mixed C&D waste at scale[44]. The appellant also claimed, in oral evidence, that customers have been lost since the Notice was served.

57. I accept that a significant proportion of the aggregate produced at the site relies upon the processing of trommel fines. I also acknowledge the risk that the loss of this might have on the profitability of the business. However, the extent of this loss and its consequences remain unsubstantiated in the absence of any financial information. Moreover, if the trommel fines are free from chemical contamination, as the appellant claims, then it will simply be a matter of changing the WMS to ensure that appropriate testing and remediation protocols are in place to ensure that this is consistently the case. Even if this is not possible, an operator initiated permit variation could secure the necessary controls.

58. The appellant highlights Article 1 of the First Protocol to the European Convention on Human Rights (1953) and Section 6 of the Human Rights Act 1998 (as amended) in its SoC[45]. However, property rights under Article 1 are qualified

[42] Paragraph 23, ID10
[43] Paragraph 63, ID11
[44] Paragraph 33, CD 2.9
[45] Paragraph 48-49, CD 1.2

rights and the Agency is entitled to enforce laws that are deemed necessary to control the use of property in accordance with the general interest. In this case this relates to the protection of the environment and human health.

59. The Agency maintains that the provisions of the Permit and the enforcement approach deliver a fair balance between the public interest in avoiding risks of pollution to the environment and the protection of individual rights. The Notice seeks to enforce permit conditions which are designed to protect the environment. The Agency points out that the decision to issue the Notice and its provisions are proportionate to that aim and there is consequently no unlawful interference with the appellant's rights[46].

60. I am also bound by these obligations in my decision-making. In dismissing this appeal, I accept that there would be interference of the appellant's right to the peaceful enjoyment of possessions. However, as a qualified right, interference in this instance would accord with the law and be in pursuance of a well-established and legitimate aim: the protection of the environment and human health.

61. I find that it is proportionate and necessary to carry out the enforcement action bearing in mind the volume of potentially contaminated aggregate that is produced. I am satisfied that the protection of the public interest cannot be achieved by means that are less interfering with the appellant's rights given the opportunities that have been present to rectify this situation on a voluntary basis.

Conclusion

62. For the above reasons and having regard to all other matters raised, the appeal should be dismissed.

R Catchpole

INSPECTOR

[46] Paragraphs 31-33, CD 1.4

ABBREVIATIONS

C&D	Construction and Demolition
CAR	Compliance Assessment Report
EMS	Environmental Management System
EPR	Environmental Permitting (England & Wales) Regulations 2016 (as amended)
EWC	European Waste Catalogue
POP	Persistent Organic Pollutants
SAPP	Secondary Aggregate Production Protocol
SoC	Statement of Case
The Agency	Environment Agency
The Notice	Environment Agency Enforcement Notice (29 July 2024)
The Permit	Environment Agency Permit EPR/EP3798CS
The Wash Plant	Activity A2 of Permit EPR/EP3798CS
Trump	Trump International Golf Club Scotland Ltd v Scottish Ministers [2015] UKSC 74 & [2016] 1 WLR 85
WEEE	Waste Electrical and Electronic Equipment
WM3	Guidance on the Classification and Assessment of Waste: Technical Guidance
WMS	Written Management System
WSP	Waste Sampling Plan

APPEARANCES

FOR THE APPELLANT:

Mr Gordon Wignall counsel for the appellant

He called:

Mr Brookes

Mr Muia BSc MSc MCIWM

FOR THE ENVIRONMENT AGENCY:

Mr Ned Westaway counsel for the Environment Agency

He called:

Ms Smith BSc

Mr Pearson MCIWM

DOCUMENTS

ID1 – Appellant Opening

ID2 – Environment Agency Opening

ID3 – Draft Permit (EPR/EP3798CS)

ID4 – Email from Hannah Jones (Environment Agency)

ID5 – Email from Jan Edwards (Appellant)

ID6 – Costs Application (Appellant)

ID7 – Costs Application (Environment Agency)

ID8 – Costs Rebuttal (Environment Agency)

ID9 – Costs Rebuttal (Appellant)

ID10 – Environment Agency Closing

ID11 – Appellant Closing