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## Appeal Decision

Inquiry opened on 3 September 2013

Site visit made on 4 October 2013

**by Brian Cook BA(Hons) DipTP MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 25 November 2013**

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**Appeal Ref: APP/F0114/A/13/2195706**

**Stowey Quarry, Stowey Road, Stowey, Bishop Sutton, Somerset**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr Larry Edmunds against the decision of Bath & North East Somerset Council.
  - The application Ref 10/05199/EFUL, dated 9 December 2010, was refused by notice dated 1 October 2012.
  - The development proposed is restoration of Stowey Quarry by landfilling of Stable Non Reactive Hazardous Waste (SNRHW) and inert wastes.
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### Decision

1. The appeal is dismissed.

### Applications for costs

2. At the Inquiry applications for costs were made by both the Council and Stowey Sutton Action Group (SSAG) against the appellant. These applications are the subject of separate Decisions.

### Procedural matters

3. I opened the Inquiry on 3 September. It was adjourned at the end of 4 September because, among other things, Mr Williams had to attend a family funeral on 5 September. The Inquiry resumed on 3 October and sat for a further 2 days.
4. As was clearly indicated in pre-Inquiry correspondence would be the case, the appellant made an application to amend the nature of the appeal proposal. The details are set out in document A1. The Council did not oppose this suggestion but the SSAG did. I adjourned to consider the arguments put and then agreed to accept the amendment. The reasons given are set out in Appendix 1 to my decision. The appeal therefore proceeded on the basis that the development applied for was 'restoration of Stowey Quarry by landfilling of asbestos and inert wastes'.
5. Mr Fraser then made an application for the Inquiry to be adjourned. Three reasons were given which in summary were:
  - (a) Given the evidence that had been put forward by SSAG including the supplementary proof of Dr Boreland (Document SSAG4) which would need to be read, it was prudent to call further expert evidence on,

among other things, slope stability, noise and need. On a related point Mr Fraser had been instructed only on Friday 30 August and had not been able to fully familiarise himself with the papers.

- (b) A suitable adjournment would then allow advertisement in accordance with Regulation 22 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 (the EIA Regs) of the additional information provided and thus respond to the points put by Mr Stookes.
  - (c) Mr Williams had the personal difficulty referred to above.
6. While both Mr Stookes and Mr Forsdick readily accepted that the Inquiry should not sit on Thursday to accommodate Mr Williams, both vehemently argued against any adjournment on the other grounds put. In essence their points were that the Statements of Case had been clear regarding the evidence that would be put against the scheme and thus would need to be addressed by the appellant. Indeed, these were much the same points as those put by SSAG to the Council when it considered the application and had therefore been well known for a long period of time.
  7. I had no difficulty agreeing with the points put against Mr Fraser and refused the application for an adjournment save for that to enable Mr Williams to attend the funeral.
  8. At this point, the Council withdrew from the Inquiry as it had indicated in correspondence would be the case. The amendment arose from an agreement reached between the appellant and the Environment Agency (EA) over the nature of the EA's holding objection. In short, the removal of SNRHW from the waste streams applied for allowed the EA to withdraw its objection. The terms of this withdrawal are set out in Mrs Keenan's addendum proof (Document IP1) to which I shall return later. Given that the Council's objections relied wholly upon the EA's stance Mr Forsdick explained that it now had no reason to maintain those objections.
  9. In his closing submissions he went further and explained that in fact officers had no mandate to do other than ensure that appropriately worded conditions were before me. Officers had no mandate to support SSAG in their objections or to support the appellant in promoting the scheme. This was by way of explanation of his statement on the opening morning that in the light of my acceptance of the amended scheme the Council's position was now neutral.
  10. I have some sympathy with Mr Fraser's view that this position seems a little odd. Once an appeal has been lodged it must proceed to determination unless the appellant decides to withdraw. In this case that has not happened and so what on any measure is a significant and controversial application for development has been determined in the absence of any view from the local planning authority as to what that decision should be. Moreover, the Council's position created certain difficulties for both me and Bristol Water since both it and the EA were to be called as part of the Council's case. In the event, I have listed both as Interested Persons.
  11. The difficulty for me was that there were a number of matters with which the EA could assist the Inquiry. Although Mr Forsdick allowed Mrs Keenan to take the witness stand he did not lead her evidence and made it clear that he would object to any rigorous questioning; a point noted by Mr Stookes in his closing submissions. In that respect Mr Forsdick's assertion in closing that 'anyone

- who had questions for her on other asbestos (or permitting) issues had a full opportunity to put those questions' is, in my view, a little unfair.
12. In the event, both Mr Stookes and I raised a number of matters with her and I am grateful for her contribution. On the resumption it was indicated that an EA representative was available to assist the Inquiry if necessary although the scope of any assistance was not clarified. Contributions were made to the conditions session and other comments were made via advocates.
  13. The difficulty for Mr Berry was that he had no counsel to lead his case. Nevertheless he gave important evidence both in chief and under cross examination by Mr Fraser.
  14. When Mr Fraser presented the appellant's case it was explained that Mr Harper would no longer be able to give evidence to the Inquiry (Document A2) although his written evidence remained before me. While further witnesses were offered, their areas of expertise were different and following discussion, Mr Fraser did not call them.
  15. The upshot of all this is that no oral evidence was given by the Council (although neither proofs were withdrawn), evidence from the EA was given in the limited circumstances explained and no oral evidence on hydrogeological matters was given for the appellant. All the oral evidence of SSAG was available to be questioned by Mr Fraser as was that of Mr Berry and the other interested persons listed. I therefore give greater weight to this evidence which was tested than to that from the Council, Mr Harper and, to a degree, the EA which was not.
  16. A Statement of Common Ground (SOCG) between the Council and the appellant dated 29 August 2013 was submitted just before the Inquiry opened. The list of application plans at paragraph 2.1 is incomplete and it was confirmed that it should also include drawings 2055/126/01B and 2055/126/09. It also says that a planning agreement is needed to cover a financial contribution towards highways signage and a weight restriction but Mr Forsdick confirmed that, in fact, none was necessary and that no planning agreement would be required.

## **Background**

17. The extensive planning history of the appeal site is set out in section 4 of the SOCG. Of most significance for this appeal is a planning permission (ref: 07/02326/MINW) granted on 8 January 2008 subject to 33 conditions for 'application for the establishment and operation of a materials recycling facility and ancillary development' at the site (the 2008 permission). Condition 3 of the permission quite clearly states that the site shall be operated in accordance with the approved scheme and a number of drawings are referenced including those listed below as Plans A and B.
18. It appears to be common ground that condition 4b (perimeter bunding and interim restoration of the site in accordance with Drawing 873/PL (*as no number is given this may mean both Plan A and Plan B*) by 30 November 2012) (my emphasis) has not been complied with and is the subject of a pending submission. Nevertheless, while SSAG do not consider that any significant activity has ever taken place pursuant to the 2008 permission, Mr Stookes accepted that for the purposes of s56 of the Act it had been implemented and

was therefore extant. Moreover, the appellant confirmed that if this appeal failed that permission would be taken up and, while SSAG was sceptical about that, I have no evidence to disagree with the appellant's contention; indeed, the steps being taken to deal with the failure to comply with condition 4b is evidence to support that contention. The 2008 permission is therefore a fall-back position to which I attach substantial weight.

19. As can be seen from the summary details above, this application was submitted a considerable time ago. At that point, the EA did not object to the proposal although SNRHW was clearly identified as being included among the waste types to be imported to the site to facilitate restoration. In response to other objections the Council required the submission of a Conceptual Site Model (CSM). In summary, having failed to consult properly on this revised environmental information, the planning permission eventually granted was quashed. On re-determination in consideration of what by then was a holding objection from the EA the application was refused thus prompting this appeal.
20. The application was and is supported by an Environmental Statement (ES). The ES was updated following the quashing and that before me is Version 1.5 dated 10 February 2012. This of course just pre-dates the publication of the National Planning Policy Framework (the Framework) and references to replaced planning policy guidance and statements in it must be viewed in that context.
21. Whilst both the Council and I consider the ES meets the minimum requirements of Schedule 4 of the EIA Regs, the coverage of important issues that I refer to later is somewhat superficial. In short, as Mr Williams confirmed in his oral evidence, very little original work has been undertaken in preparing the ES. The baseline conditions for many of the topics assessed are taken from the adopted West of England Joint Waste Core Strategy (JWCS) or are the parameters set by the conditions of the 2008 permission. Other important matters are simply deferred to the later environmental permitting stage. The officers' report to the Council's Committee assessing the effects that the proposed development would have on a range of issues similarly relies on the same assumptions to a considerable extent.
22. In part, this raises the issue of the relationship between planning and regulation with particular emphasis on the environmental permitting regime. This is an important matter in my determination of this appeal and I address the principle now.
23. Planning Policy Statement 10, *Planning for Sustainable Waste Management* (PPS10) remains extant. It sets out in some detail the relationship between the planning and pollution control regimes stating that they are separate but complementary. Framework paragraph 122 summarises similar advice which was previously in Planning Policy Statement 23 *Planning and Pollution Control*. This confirms that local planning authorities should assume that the pollution control regimes will operate effectively. Nevertheless, the boundary between the two control regimes is blurred and both SSAG and the appellant referred me to judgements supporting their conflicting positions.
24. In *Harrison* (Document SSAG6) the court held that it could not be right that what is now said in Framework paragraph 122 simply says that the planning system must assume that no pollution issue will arise because the pollution control regime will govern this matter. Rather, the planning decision maker is

entitled to reach his own conclusions on the impact of a proposed development and whether the location proposed is therefore appropriate in planning terms. That case was concerned with the effect on the living conditions of local residents from actual emissions, it being an enforcement case.

25. The appellant referred me instead to a previous Court of Appeal judgement<sup>1</sup> although the full transcript was not provided; instead I was referred to the Encyclopedia of Planning Law and Practice at P70.18. There it says that the Secretary of State was found to have been justified in a planning appeal to conclude that it was possible to design and operate a plant of the type proposed to meet the standards that were likely to be required by the (EA) if an authorisation under the relevant regime was granted. Those controls were adequate to deal with emissions from the proposed plant and the risk of harm to human health. However, the court stressed that the judgement should not be regarded as *carte blanche* for applicants for planning permission to ignore the pollution implications of their proposed development and say (quoting) "leave it all to the E.P.A.".
26. In the case before me that is largely what the appellant has done. Having regard to these two judgements I consider that while I must assume that the relevant pollution control regime will be properly applied and enforced, the effect of the emissions on the environment in its widest sense remains a material planning consideration when assessing the suitability in land use planning terms for the development proposed.

### **Main Issues**

27. Given the fallback position, the starting position must be that the quarry will be restored with residual soils from the permitted recycling process; that is what condition 4c of the 2008 permission says. To my mind therefore it is the broadening of the range of wastes to be deposited at the quarry to include asbestos that is fundamental to my determination of this appeal. From the evidence and my inspection of the site and the surrounding area the main issues therefore are:
- (a) The effect the development would have on the character and appearance of the area;
  - (b) Whether the appeal site is an appropriate location for the development having regard to the hydrogeological conditions of the area;
  - (c) The effect of the development on the stability of adjoining land; and
  - (d) The effect that the development would have on the living conditions of the local community having regard to the potential emissions from the development proposed and highway safety.

### **Reasons**

#### ***Character and appearance***

28. The topography in the vicinity of the appeal site is complex and makes an important contribution to the character and appearance of the area. In the wider context, the quarry has been excavated into but at the very edge of an elongated plateau which the extract of the local Ordnance Survey map included as Drawing 2055/126/01 shows enclosed by the 160m contour. Immediately

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<sup>1</sup> *Gateshead MBC v Secretary of State for the Environment* [1996] COA 71 P&CR 350

- to the west of the quarry lies a steep-sided valley which runs northwards and down towards the village of Bishop Sutton with Chew Valley Lake beyond. To the east the plateau containing a number of footpaths extends towards the village of Clutton, narrowing as it does so. To the south, it eventually gives way to a complex of small valleys with their forming watercourses.
29. Drawing 2055/126/04 shows what are stated to be original but which must be more properly described as existing ground levels. At the detailed scale this shows the land within which the quarry sits sloping gently from south to north and from east to west towards the plateau edge. I believe that Drawing 2055/126/01 is an extract from the Landranger Map series which shows contours at 10m intervals. As such, the next highest contour to be shown on the plateau would be 170m. Nevertheless, the maximum spot height shown is 162m which is consistent with the value on Drawing 2055/126/04 near to the south east corner of the appeal site.
  30. While the proposed restoration scheme would respect the generality of the previous landform in that it would still fall broadly south east to north west, it would rise initially to a height of over 165m before falling in a fairly even manner from what would appear to be quite an extensive dome. In this respect the proposed scheme takes as the reference point a previously filled area which is part of the quarry but outside of the application site. The evidence of SSAG, which was not disputed, is that this tipped area is some 5m above the levels approved by the 2008 permission. It seems therefore that the proposed landform has been designed to tie into levels that are higher than those approved and at least some 3m higher than any other recorded point on the plateau.
  31. In evidence Mr Williams agreed that the approved levels shown on Plans A and B were up to 10m lower than those now proposed. While Plan B shows the restored level approved by the 2008 permission as being below the quarry rim in most places, the scheme before me would still be considerably higher than that edge over much of the quarry area. Although not by way of re-examination of his witness, Mr Fraser suggested with reference to condition 4c that Plans A and B were not in fact the finally approved plans. However, they were provided by the Council in response to my specific request for the approved 2008 permission restoration drawings. There is therefore no evidence to support that intervention.
  32. During my inspection of the site and the surrounding area I stood on what Drawing 2055/126/04 shows to be a point some 2m or so below the high point of the dome that would be formed. My eye was therefore roughly at the same height as the proposed finished landform at that point. I had an extensive view of the surrounding land, particularly to the east and north where some of the footpaths run. It follows therefore that the final domed landform would be visible in the reverse view from where it would appear uncharacteristically high and somewhat unnatural in the landscape given the uniformity of the slopes that would be created. In relatively near views the contrast with both the prevailing landscape and the approved fall back position would be quite marked although appreciation of this contrast would lessen with distance.
  33. I therefore consider that the proposal would cause harm to the character and appearance of the area in this regard. The proposal would therefore conflict with JWCS policy 9 (1) and policy NE.1 of the Bath & North East Somerset

Local Plan (including minerals and waste policies) adopted in October 2007 (LP).

***Whether the appeal site is an appropriate location for the development having regard to the hydrogeological conditions of the area***

34. The appeal site lies within the buffer area around Chew Valley Lake shown on JWCS Figure 6.2. The Lake is a public water supply reservoir supplying a significant area of Bristol and surrounds with drinking water. It is also a designated Site of Special Scientific Interest (SSSI), a Special Protection Area (SPA) and a Drinking Water Protection Area (DrWPA). The Lias Limestone strata at the appeal site are designated as a Secondary Aquifer and capable of generating small to moderate water supplies and baseflow to rivers. The surface and groundwater environment at the site and in the catchment is, in the EA's evidence, therefore considered to be sensitive.
35. In the ES the appellant has assessed the hydrogeological conditions of the site and surrounding area by reference to historic data. No original survey work has been undertaken and the assessment therefore relies upon inferences drawn from the reported data. A qualitative CSM was produced in the first instance followed later in 2013 by an initial Hydrogeological Risk Assessment (HRA).
36. SSAG, Bristol Water and more latterly the EA have expressed significant concerns about the initial assessment and the implications for the water environment of what they consider to be an inadequate study. These concerns are set out in the evidence and the key points include:
  - (a) The basic structure of the landfill is very poorly described. In particular, no assessment has been made of the on-site materials to determine whether or not they are suitable for lining and capping.
  - (b) On the available data it must be concluded that the landfill base will be below the water table.
  - (c) Given the inconsistent and conflicting data in the ES it must be concluded that the landfill would be within saturated Lias Limestone strata beneath the current quarry floor.
  - (d) The waste types proposed in the submitted application have the potential to produce polluting leachate.
37. On that basis the EA issued a holding objection because the submitted application did not demonstrate acceptability with the EA's Landfill Location Position Statement. Although the appellant subsequently prepared the HRA, this did not satisfy the EA. It was only when the range of waste types proposed was limited to inert and asbestos wastes that the EA withdrew its objection. SSAG and Bristol Water maintained their positions throughout the Inquiry.
38. In the most recent response to the EA leading to that body's current position the appellant has not undertaken any additional work or made any alterations to the application or ES other than varying the range of wastes to be deposited. All of the uncertainties identified by the EA and by SSAG and Bristol Water, which were maintained during their evidence, therefore remain unresolved. The EA's position is predicated on three factors. First, that asbestos is not soluble in water and while asbestos fibres may be transported

by groundwater in suspension, this only poses a risk if there is direct discharge to groundwater which would not occur with an engineered disposal operation from a lined landfill. Second, that any potential to generate poor quality leachate has therefore been removed. Finally, that the landfill can be successfully lined. I deal with these together as they are clearly interlinked.

39. I accept that detailed proposals for the landfill engineering would be put to the EA for consideration at environmental permitting stage. I also acknowledge that the cell construction schematic (Drawing 2055/126/10) appears to reflect those shown in 'Understanding the Landfill Directive' issued by the EA and included in the Document A2 bundle. However, almost no detail about the landfill engineering is provided in the ES (section 2.6 effectively defers this wholly to permitting). Moreover, it was accepted during the discussion of suggested conditions that the indicative phasing plan (Drawing 2055/126/07) aimed at achieving progressive restoration was not practicable at a ratio of inert waste to asbestos waste of 8:1 because of the need for material separation within cells. In my view, this is all indicative of a landfill engineering approach that has not yet been fully considered.
40. There is no evidence that leachate will not be produced at this landfill. I share the concern of SSAG that the nature of the asbestos waste that would be accepted at the site is not clear. For example, no evidence was adduced to explain how the EA would control the asbestos waste type through the permit. The assumption of the EA appears to be that it will not be contaminated in any way. However, asbestos containing materials will, on the evidence of SSAG, contain other contaminants which would therefore have the potential to generate poor quality leachate.
41. Again, the evidence of SSAG that all landfill liners should be assumed to fail was not challenged. In that scenario there is the very real possibility of the direct discharge to groundwater of asbestos fibres in suspension in poor quality leachate.
42. I accept Mr Fraser's position that since burial is the only method of disposal for asbestos waste some landfills for that purpose must be permitted. However, the evidence shows that the appeal site is located in a sensitive area with respect to the groundwater environment and other locations may not carry the inherent risk associated with the appeal site. The 'in principle' position of the EA that the amended appeal proposal would accord with the Landfill Location Position Statement relies on the resolution of some matters about which it has very limited information. I do however acknowledge the appellant's position that the EA is not bound to issue a permit simply because planning permission has been granted.
43. The conclusion on this issue is finely balanced. The risk to groundwater and thus to Chew Valley Lake of a failure either in the liner or the waste acceptance procedures at the site would be significant. This suggests that a precautionary approach would be prudent now even though these are matters for environmental permitting. Almost all of the detailed work necessary to conclude that the landfill can gain that permit has however been deferred to that stage. In this respect I have had regard to the observation of the court of appeal that matters should not all be left to permitting (paragraph 25) although I am also mindful of the relationship between the planning and pollution control regimes (paragraph 23).

44. Nevertheless, the wording of clause 4 of JWCS policy 8 is quite precise. It states that planning permission will be granted for landfilling provided that '...proposals are not within....the appropriate buffer (as identified in Figure 6.2)...except where it can be demonstrated that the relevant legislative requirements can be met.' The appeal site is within the appropriate buffer shown for Chew Valley Lake and, at the planning stage, it has not been demonstrated that the relevant legislative requirements can be met. It is possible on one reading of JWCS paragraph 6.10.11 that 'legislative requirements' may be only those relating to nature conservation interests although this is not clear. However, even if this is the correct interpretation the information available now cannot show that there would not be an adverse effect on the Chew Valley Lake SPA; this would not be resolved until an environmental permit was issued. On this issue therefore I consider that the proposal would conflict with JWCS policy 8.

***The effect of the development on the stability of adjoining land***

45. I can deal with this issue briefly. I saw during my site inspection the claimed evidence of landslip on the slope below the quarry edge referred to by SSAG. Since this is not a matter that was addressed by the appellant in evidence and is a matter deferred to environmental permitting I have no evidence to disagree with that of SSAG that the potential for land instability is present.
46. However, Mr Thomas agreed that the primary cause of the stability concern he raised was the addition of weight at the top of the slope. He accepted that this weight had already been added as a result of bund construction under the 2008 permission. He further accepted that the EA would consider this issue at environmental permitting stage.
47. This is essentially the position taken by the Council in reporting to the Committee. I do not consider there to be any conflict with LP policy ES.14 in this regard.

***The effect that the development would have on the living conditions of the local community with regard to potential emissions and highway safety***

48. Under this issue I consider, in order, emissions from dust, noise from site operations, lighting and the effect of traffic movements along the lanes. In doing so I have had regard to the fallback position outlined above (paragraph 18) and the fact that in most respects apart from the asbestos waste element the proposed development would be very similar to that permitted by the 2008 permission.

*Dust*

49. Dust emissions arising from the 2008 permission scheme are controlled by condition 23 of that permission. A scheme for dust control could similarly be secured for the appeal proposal.
50. With regard to fugitive asbestos dust this would be controlled by the environmental permit. Appendix 9 of the ES sets out in brief how this will be achieved. In essence, this says that the appellant will comply with the regulations that apply at the time and will abide by the dust monitoring protocol agreed with the EA at environmental permitting. SSAG suggested that this would require misting of the reception area during asbestos waste deliveries and washing of vehicles before they left the site. The appellant's

proposed use of a bowser for this purpose was said to be totally unrealistic. It was further noted that there was no mains water supply to the site.

51. While this is a further example of the detail being deferred to the environmental permitting stage this seems to me to be a case where failure to show the ability to carry out some well defined processes will result in the permit being refused. The only issue at planning stage could be the lack of a water supply to enable misting of the delivery area. However, it was confirmed that in those circumstances a water supply could be requisitioned and I have no evidence that such a request could be denied in principle.

#### *Noise*

52. On each occasion that I have visited the area the quiet and general tranquillity was very evident. Noise limits for the fallback position are set by condition 19 of the 2008 permission. The appellant has not carried out any further assessments to inform the ES. Instead, that for the 2008 permission proposal has been relied upon as the baseline and, in effect, a commitment to comply with the level set by the condition given.
53. I have considerable sympathy with the position of SSAG that this approach misses the chance to revisit this issue. However, the Council's Environmental Health Officer considers the existing limit to be appropriate. Since this is the limit to which the appellant could operate under the fallback position there are no development plan policy reasons for applying a lower limit to the appeal scheme.

#### *Lighting*

54. The principal concern in this regard is the effect that there would be on the dark sky which can now be viewed in this area. Any lighting that was required for safe working would only be erected following the submission of a scheme for approval by the Council. Lighting designs are available that minimise the upward escape of light and, in any event, I am mindful that the suggested hours of working condition would limit the period of darkness when the site would be illuminated.

#### *Highway safety*

55. Condition 8 of the 2008 permission is slightly confusing in the way it is worded but nevertheless limits HGV movements to 100 a day (50 in; 50 out). The ES simply assumes that this level is sufficient to accommodate the likely movements associated with the proposed development. No further assessment has been carried out and the conclusion drawn that there will be no additional impact over and above the fallback position.
56. Again, I have considerable sympathy with the position of SSAG that because there is virtually no traffic now associated with the quarry, any increase will be noticeable and likely to cause tension on what are fairly narrow lanes with certain pinch points between the site and the A37. Nevertheless, the Highway Authority will have taken this into account along with any other changes in circumstances since that permission was granted when coming to its view that there was no objection on highway grounds to the appeal proposal. Given its location relative to the site and the A37 I do not consider that the very recent planning permission referred to by Rosemary Naish changes this position.

### *Conclusion on this issue*

57. I appreciate the concerns of SSAG on each of these matters. This concern is particularly understandable given that so little progress has been made on the 2008 permission development and therefore the environmental effects associated with that have yet to be experienced. However, the appellant has used the permitted limits imposed on that permission as the benchmark for what the Council considers to be acceptable in the area. In considering the appeal proposal the Council saw no reason to change its view and, for the reasons set out above, I have no reason to either given the confirmation by the appellant that the 2008 permission scheme will be implemented should the appeal fail. There would therefore be no conflict with relevant development plan policies on this umbrella issue.

### **Other matters**

58. There are three other matters, need; concern about the effect that the development would have on the health of the local community; and the effect that there would be on the ecology and nature conservation of the area which I shall now address in turn.

59. Turning first to 'need', the appellant relies on what is said in the JWCS. References are made to the report of the Inspector who examined the submitted JWCS by both the Council and the appellant. However, his report is not an Inquiry document and I have therefore taken account only of what the adopted JWCS says.

60. It is difficult to see how the appeal proposal would add to the inert waste landfill capacity. If implemented in full, the 2008 permission would restore the quarry void by using residual soils from the recycling process permitted. As this permission was granted in 2008 the capacity it provides may be included in the 752,000 tonnes current capacity figure given in JWCS Table 6.5. If it is not, then it seems to me that it will have already made a contribution towards the gross requirement over the Plan period of 7,901,000 tonnes shown in the same Table. Either way, given the 2008 permission, any additional capacity provided by the appeal proposal's different final landform would seem to be insignificant.

61. JWCS Table 6.4 shows the indicative requirement over the Plan period for the disposal of hazardous and non-hazardous wastes. It draws no distinction even between these two broad waste streams let alone gives any detail of the asbestos requirement within the hazardous waste element. Some guidance is however given in JWCS paragraph 6.10.10. Here it states that there is no identified strategic need for new hazardous waste landfill capacity within the Plan area. The Council's report to Committee (Document C3) reveals that this is because of the availability of suitable facilities outside the West of England Plan area. There is therefore no quantitative need for new hazardous waste disposal capacity. However, JWCS paragraph 6.10.10 reflects the national waste planning policy objective that communities should take more responsibility for their own waste. There is therefore a policy 'need' for capacity more closely located to the waste generators and JWCS policy 8 provides the framework for consideration of any proposals that come forward.

62. The appellant does not quantify the need for asbestos waste disposal capacity at all. The ES considers very briefly the need for SNRHW capacity but relies

- wholly on what is said in the JWCS. That is not now the waste stream proposed by the application before me. The appellant did not dispute the evidence of SSAG on asbestos waste arisings within the West of England area and concluded that the appeal proposal would provide sufficient capacity to accommodate the entire annual tonnage generated.
63. In view of the national waste planning policy objectives the potential of the appeal proposal to meet the needs of the area for asbestos waste disposal is a material consideration to which I give considerable weight in favour of the proposal.
64. I turn now to the concern about the effect that the development would have on the health of the local community. The courts have held that this is capable of being a material planning consideration with the weight given to it being for the decision taker; both points accepted by Mr Fraser in his closing submissions.
65. Several witnesses gave evidence about the nature of this concern. In essence it amounts to a fear that asbestos fibres will escape into the air and the water and be inhaled by the local community. The particular health effects of asbestos inhalation do not present for many years but, when they do, there is no effective treatment for what Dr Hammond characterised as a 'devastating disease'. The evidence was that individuals will assess the risk of exposure and take appropriate action. Some of these actions, such as no longer walking the local footpaths on windy days or even at all, keeping children indoors on windy days, asking grandchildren not to visit or even moving from the village relate to issues such as the living conditions of the local community that I have already considered and equally clearly would have land use consequences.
66. The risk of asbestos fibre escape would be minimised through the measures that would be put in place by an environmental permit. As stated above (paragraph 26), I must assume that the relevant pollution control regime will be properly applied and enforced. However, SSAG has been disappointed by what it says has been the failure of the appellant to engage with the community. That and what it considers to be the superficial manner in which the application has been presented and the ES prepared leads to a lack of confidence that the site will be properly run. SSAG also has a lack of confidence in the Council's future regulation of the appeal site given what it perceives as failures to do so in the past. Furthermore evidence from both SSAG and Bristol Water is that action by the EA to enforce its regulatory controls tends to be after the event and in the form of prosecutions for breaches of the permit. Their point being that in the particular circumstances of the waste types proposed this would be too late. Asbestos would have escaped leading to the health and water quality issues that were identified in the evidence.
67. The courts have held that whether these concerns are well founded or not is not the point; that they are held at all is. In the particular circumstances of the appeal site (the waste type involved, the health effects of any fibre escape, the location of the site relative to sensitive receptors such as the village and Chew Valley Lake with clear pathways to both and what is perceived to be poor regulation in the past) those concerns, held by the local community representatives and the public water supply company, are not in my view irrational.

68. I have acknowledged that asbestos must be disposed of at landfill (paragraph 42). It does not follow that every site put forward for such use would be subject to similar public and/or corporate concerns. That would depend on their location. To give weight to this consideration in this case would not therefore mean such weight should always be applied. As with any material consideration it would be fact specific. In this case and on the particular evidence before me this is a material consideration to which I give considerable weight against the proposal.
69. Finally, any effects that there would be on the ecology and nature conservation interests of the area, including any on the white clawed crayfish, are related to the effect that there would be on the water courses of the area. This has been addressed under my second main issue.

### **Conclusions**

70. For the reasons set out above I have found that the appeal proposal now before me would conflict with the relevant development plan policies with regard to both my first and second main issues. In respect of my second main issue that conclusion is finely balanced but drawn having regard to the precise wording of the JWCS policy. The term 'legislative requirements' is all embracing. If it was intended to exclude the legislation under which the EA issues environmental permits, it would have said so. As I am required to do I have also considered whether there are any material considerations which should lead to a determination other than in accordance with the development plan. In this case I consider there are two, one of which weighs in favour of the appeal proposal while the other weighs against it. In my view these are of equal weight and therefore, in effect, cancel each other out.
71. For the reasons given above I therefore conclude that the appeal should be dismissed.

*Brian Cook*

Inspector

## **APPEARANCES**

### FOR THE LOCAL PLANNING AUTHORITY:

David Forsdick of Counsel                      Instructed by the solicitor for the Council  
He called no witnesses

### FOR THE APPELLANT:

Vincent Fraser QC                                      Instructed by Bowden Jones Solicitors 22 Park  
Place, Cardiff CF10 3DQ  
He called  
John Williams DipEM                      Principal Planner Oaktree Environmental Limited  
MSc MA MRTPI

### FOR THE STOWEY SUTTON ACTION GROUP:

Paul Stookes Solicitor Advocate      Instructed by the Stowey Sutton Action Group  
He called  
Dr David Dickerson PhD      Director of Environmental Pollution Management  
MSc BSc Dip MCIEH MIA      Ltd  
MIEMA  
Gareth Thomas BSc MSc      Managing Director Integrale Limited  
FGS MIG  
Dr Kay Boreland PhD              Technical Director and Contaminated Land  
Principal Integrale Limited  
Heather Clewett                      Member of Stowey Sutton Action Group  
Dr Phil Hammond                      Doctor and local resident  
David Beacham                      Stowey Sutton Action Group and nearby resident  
Cllr Vic Pritchard                      Ward councillor  
Cllr Keith Betton                      Chair of Stowey Sutton Parish Council

### INTERESTED PERSONS:

Barbara Keenan BSc MSc                      Hydrologist with the Environment Agency  
Martin Berry BSc                                      Water Resources Planning Manager, Bristol Water  
plc  
Sally Monkhouse                                      Local resident  
Sarah Streatfeild-James                      Local resident  
Rosemary Naish                                      Chair of Clutton Parish Council

#### DOCUMENTS FROM THE COUNCIL

- C1 letter of notification of the Inquiry
- C2 Copy of Policy ES.9
- C3 Committee Report on application 10/05199/EFUL
- C4 Revised set of conditions

#### DOCUMENTS FROM THE APPELLANT

- A1 Amendment Note
- A2 Email dated 2 October 2013 and attachments

#### DOCUMENTS FROM STOWEY SUTTON ACTION GROUP

- SSAG1 Bundle of authorities
- SSAG2 Bundle of three annexes to the evidence of witnesses
- SSAG3 Statement of Stanley Brooks
- SSAG4 Supplementary proof of Dr Kay Boreland
- SSAG5 Bundle of documents to aid cross examination
- SSAG6 *Ian Frank Harrison v Secretary of State for Communities and Local Government and Cheshire West and Chester Council (successor to Vale Royal Borough Council)* [2009] EWHC 3382 Admin

#### DOCUMENTS FROM THE INTERESTED PERSONS

- IP1 Addendum proof of evidence for Barbara Keenan
- IP2 Statement by Sally Monkhouse
- IP3 Statement by Sarah Streatfeild-James
- IP4 Statement by Rosemary Naish Chair of Clutton Parish Council

#### PLANS

- A Drawing 837/PL1 19/10/2007 Concept Restoration Plan submitted by the Council
- B Drawing 837/PL2 19/10/2007 Sections submitted by the Council

## Appendix 1: Ruling

The key judgement is *Bernard Wheatcroft Ltd v SSE and another* [JPL 1982, p37]. In this appeal there are some similarities with that case. These are:

- The late notification of the amendment (well after all statements of case had been submitted and also after the Rule 6 party proofs had been written).
- That neither of the appellant's expert witnesses feels able now to support the application scheme.
- That on a fair reading of the Action Group's evidence, they oppose any proposal for restoration of the site that involves deposition of asbestos wastes.

There are also differences however.

- The amendment put before me today is not, as in *Wheatcroft*, put forward as a viable alternative only to be considered in certain circumstances and without prejudice to the original application scheme. Rather, it is the only one that I am being invited to consider.
- As far as I am aware, the *Wheatcroft* scheme was not supported by an ES.

It seems to me that the key test to emerge from *Wheatcroft* is whether or not what is now put forward is substantially different from that applied for. If it is, then there is a clear argument that those who have commented already may be prejudiced by the change while others who chose not to comment may now wish to do so and will thus have also been prejudiced. If however it is not then there can be no prejudice to anyone in considering the scheme as amended.

As I understand the amendment, the material change put forward is to limit the range of wastes that will be deposited to those which will not give rise to any risk to groundwater pollution from the proposed lined landfill. No new waste types whose effect has not been assessed are to be added. The environmental effect would therefore be less than that of the application scheme.

I have considered the points put by Mr Stookes for the Action Group. I do not consider it appropriate for me to rule on those in relation to the EIA Regulations. This may be something for the court in due course should the Action Group or any other party feel that is appropriate. Even if it is a procedural point as Mr Fraser argues, that could derail the process and has before. The appellant may have a risk-assessment based view now and, if so, I shall hear it in a moment. However, on the substantive *Wheatcroft* point I believe that I should accept the amendment and that the Inquiry should proceed on that basis. The reason is this:

While the proposed amendment may have a bearing on certain issues such as the need for the development in accordance with policy 8 of the Joint Waste Core Strategy, it reduces rather than negates the scope of the Action Group's evidence in that the effect on groundwater needs to be considered for a more limited rather than for a different range of wastes. Most of the other issues raised by the Action Group and with which they disagree with the Council's conclusions are unaffected and the evidence that they wish to give is not therefore prejudiced in any way. Indeed, the supplementary proof of Dr Boreland handed to me this morning shows that the effect has been considered and commented upon. I note that Dr Boreland describes the amendment as 'hair splitting' (paragraph 15) which reinforces my conclusion.

I shall therefore accept the proposed amendment and the evidence shall be called on that basis.

One point: It would assist me to hear from the Environment Agency on some of the points raised by the Action Group.