

## WEST AND NORTH AREA COMMITTEE

### SUPPLEMENTARY INFORMATION

#### PLANNING APPLICATIONS

1. **Application Number: 12/01946/FUL**

**Address: Former Hesley Wood Tip, Smithy Wood Road**

Additional Representations

A letter was received yesterday from Rebecca Taylor MEP (Yorkshire and the Humber) who has written to object to the development. She wishes in particular to draw attention to the negative impact on air quality that she considers this proposal is likely to cause. Rebecca Taylor MEP notes that air quality is regulated through the EU Air Quality Directive and this has relevance for the planning process and for the Council's performance as a whole and she notes that Sheffield City Council has implemented this legislation through the current Air Quality Action Plan 2015 (AQAP). This document identifies NO<sub>2</sub> and PM<sub>10</sub> as two substances that need to be reduced in order to comply with the legislation.

Ms Taylor states that the use of heavy diesel vehicles and industrial machinery is likely to have a negative impact on the levels of NO<sub>2</sub> and PM<sub>10</sub> and there are also a number of likely negative impacts due to the possibility of air borne dust. She notes that many residents live within 150 metres of the site, well within what most local authorities consider a high impact zone and that whilst the application takes note of dust, she believes that there is information missing on the impact of NO<sub>2</sub> and PM<sub>10</sub>, which is of concern. She believes it should be revised to fully account for the impact of NO<sub>2</sub> and PM<sub>10</sub>.

Rebecca Taylor MEP believes that the development as currently proposed would be in violation of the Council's AQAP, which is a flaw in the application itself. She believes that the application does not present sufficient benefits to justify violating air quality standards, which are ultimately designed to protect human health. The few advantages, weighed against the disadvantages make this an unnecessary violation of Sheffield's AQAP.

Finally, Rebecca Taylor notes that the EU Air Quality Directive should be kept in mind due to the likelihood of this application creating a violation and the possibility of action being taken against the Council with her greater concern being the lack of consideration for NO<sub>2</sub> and PM<sub>10</sub> in the planning application.

In response, it is advised that the matter of Air Quality is fully addressed in the report and it is reiterated that current levels of NO<sub>2</sub> and PM<sub>10</sub> respectively, in the local area of the application site are unlikely to breach their national health-based standards. It is also the Council's view that based upon the assessment of the application, the proposed developments' impact is not likely to damage air quality to the extent whereby compliance with EU Law is hindered at that local area by 2015.

A further e-mail response was received this morning from Dr Jeremy Wight, the Director of Public Health following their initial letter received in October 2012.

He firstly notes that in our summary of his representation, we have not included their offer of public health assistance in assessing the potential negative and positive health impacts of the scheme. Members are advised that this is simply because the summary of representation is just that – a summary rather than a wholesale replication of responses.

Dr Wight then notes that the assessment of dust emissions has been taken wholesale from the Environmental Statement, which he assumes was submitted by the applicant and which cannot therefore, in this view, be considered to be impartial. Dr Wight is concerned that the Council's analysis is neither quantified nor referenced and whilst he notes that it may be based on substantive quantitative analysis of the likely levels of dust emission, he has to take that on trust.

In response, it is advised that it is appropriate to reflect the information within the Environmental Statement as that is the submission and the basis for our decision making. This information has been fully assessed by Council Officers and we accept the methodology and the results presented by the applicant within the Environmental Statement and this is summarised in the report.

Finally, Dr Wight is on the opinion that as there is no actual assessment of the potential impact on human health, the Council cannot conclude that there are no unacceptable adverse impacts on human health. He remains of the view that the potential health impacts of the proposed development need to be formally assessed and questions whether the decision can be deferred to allow this work to be undertaken.

In response, it is advised that the letter originally received from the Director of Public Health did not explicitly request that a full Health Impact Assessment be undertaken but rather offers public health assistance if we felt that it was necessary in considering the impact of the proposal on human health. In referring to human health within the application, it is in the context of the National Planning Policy Framework, which also refers to human health in the context of noise, pollution and mineral extraction and Officers are satisfied that the matter has been appropriately assessed in this context. Furthermore, there is no statutory planning requirement to undertake a Health Impact Assessment and Officers do not believe that there are grounds to defer the application. Members are also advised that the Director of Public Health will be consulted on the Environmental Permit application, which the applicant will need to make to the Environment Agency in due course and he has the opportunity to comment on these matters further at that time.

The Cowley Residents' Action Group (CRAG) has also submitted a further representation to submit to the Planning Committee and this letter has been circulated to all Members. The letter does not contain any significantly new objections to the development but reaffirms the issues that CRAG has previously highlighted. These include the following:

- The contribution made by this recovered volume of coal is less than 0.4% of the annual requirement for power generation and as such cannot be described as an essential and significant contributor to the UK demand for coal. Thus a planning

application for the extraction of coal should not be seen as supporting the transition to a low carbon future;

- There is a forecast reduction in demand by power stations for coal from 30% in 2012 to 20% by 2015 as the proposed subsidy for co-fuelled power generation comes into effect;

- The price of coal internationally has collapsed. This does give rise to potential concerns for the economic viability of the site should RecyCoal be granted planning permission and whether the profit margin available would allow RecyCoal to successfully restore the site to a level acceptable to the community.

- Chapeltown, Ecclesfield and surrounding areas are part of the Sheffield Air Quality Action Zone set up in 2003 to improve air quality in Sheffield. The European Air Quality Directive requires air quality objectives of 40ug/m<sup>3</sup> for NO<sub>2</sub> to be achieved by 2015. The Council should not be giving planning permission which increases the NO<sub>2</sub> levels in their area for the next 4 years.

- It is well publicised that breathing in PM 2.5 particles can cause many illnesses. This is also quoted in SCC Air Quality Action Plan;

- This plan has no proper assessment of particulate matter including NO<sub>2</sub>.

- Should the proposal be accepted, it will have adverse effects on human health;

- Parts of the area are classified as Medium probability for flood risk and following the floods in 2007 the area has become sensitised to the risk of flooding. The outflow water from the tip is culverted under properties on Woodburn Drive and the increased water flow after the removal of trees from the site and the disturbance to the current site surface will increase the risk of flooding of Blackburn brook which is the discharge point for the culvert

- It is already a pleasant area for walking except for the summit which needs some remediation, but not extraction with all its health, flood and air pollution problems for local people.

These issues are fully addressed in the report above although with regard to the latter point about the site being a pleasant area for walking, it should be noted that the application site is in private ownership and not legally publicly accessible.

In addition, CRAG have submitted a report by Dr Dick Van Steenis that relates to Coal Open Casting and Health, a copy of which has been sent to Members and is also addressed in the Committee Report and a further letter about contamination. The representation relating to contamination raises the following concerns:

On the spoil tip, the results only indicate Asbestos detected and do not quantify the amount. CRAG consider that the chemical analysis of samples taken from the Spoil Tip show high levels of Arsenic, from 25 samples analysed the safe recommended level is exceeded 10 times.

In the woodland area, CRAG highlight that trial pits dug in this area (45 metres to Chapeltown Park) also produced samples where Asbestos was detected in 9

samples out of 20. CRAG considers that chemical analyses from samples taken from this zone give even more threatening results;

Finally, CRAG notes that the stockpiled contaminated spoil will be landscaped over the woodland zone to give it a 'safe' cover and question that this is now said to be ready for a high grade country park?

In response, the matter of contamination is fully covered in the report above. However, Officer would advise as follows:

In respect of the concentrations of laboratory analysis results, the fact that some of the concentrations are higher than the guideline values that have been used does not necessarily mean that such are "unsafe" or "dangerous". Current guidance states that individual analysis results should not be directly compared to guideline values, and that statistical analysis should be undertaken. Wardell Armstrong has complied with current guidance, acknowledged the elevated concentrations and completed the statistical analysis. The Environmental Protection Service (EPS) is satisfied with the conclusions drawn by Wardell Armstrong and their recommendations for remediation;

As the proposal is to leave the existing soils within the woodland area undisturbed, and to cap the area with chemically suitable soils, the concentrations of arsenic within samples collected are not considered to pose a risk.

In respect of the statement "also, 14 out of 34 trial pits dug tested positive for Asbestos"; this appears to be a misunderstanding of trial pit logs, which merely record that 14 no. of the samples taken were scheduled for asbestos analysis. For clarity, samples from 4 no. locations had a positive identification of asbestos;

In respect of contaminant uptake by trees that may be felled and chipped, the vast majority of the contaminants of concern are essentially insoluble, with plants only able to absorb things that are in solution. Hence it is considered highly unlikely that such contaminants will have been taken up by the trees that are due to be felled.

#### Amended/Additional Conditions

Following the publication of the Committee Report, there has been further discussion between the applicant and Officers in relation to the proposed conditions, which have been the subject of further assessment and consideration by Officers. As a result, a number of amendments are proposed to existing conditions as well as a number of additional conditions as noted below:

#### **Amended Conditions**

##### Condition 6: Vegetation Clearance

It is proposed that the condition be modified to take account of egg laying and fledgling dates such that a more accurate description of the bird breeding season is deemed to be 31<sup>st</sup> March to 31<sup>st</sup> August inclusive rather than 31<sup>st</sup> July as noted within the condition. As such, it is proposed to amend the condition accordingly:

The removal of any vegetation within the site must be cleared outside of the bird breeding season (1st March to 31st August inclusive). If any vegetation removal is undertaken within this period then a suitably qualified ecologist must be present on site to check vegetation prior to clearance.

#### Condition 10: Landscaping

Part (ii) of Condition 10 required the applicant to plant at least 10% of trees at a semi-mature size as part of the restoration strategy. The applicant has responded to advise that this is not a viable proposal as 10% would equate to over 4000 trees at a cost approaching £2 Million. In addition, the applicant does highlight that the Council's Ecology Unit acknowledge that whips (60cm trees) will actually get away better than planting heavy standard trees as they establish more quickly and in a few years, catch up with the standard trees in any event. The applicant has also advised that once they are on site, they may be able to retain more trees than anticipated and would like to review the provision of tree planting prior to the restoration in line with Condition 10 without the specific requirement for semi-mature trees. They are willing to plant feathered whips in discrete locations which would have a stem at circa 150cm rather than the whips at 45-60cm and 60-90cm. Given that there is not specific justification for the provision of 10% of trees at a semi-mature size, the concerns of the applicant in this regard must be acknowledged and are not considered unreasonable particularly as the mature woodland around the site is being retained. It is therefore proposed to amend Condition 10 to omit the specific requirement for the 10% semi-mature trees.

In addition, given the size of the site and the number of pedestrian routes that will eventually be available within and to the site, it is considered that more than one interpretation board may be appropriate to reflect the heritage and natural history of the site.

Accordingly, Condition 10 shall be amended to read as follows:

Notwithstanding the approved plans, prior to the commencement of any new planting (except grass seed) as part of the landscaping and restoration of the site (Phase 3: Restoration Phase) the following further details shall be submitted to and approved in writing:

- (i) Final details of site contours to include site sections of the existing (prior to works commencing) and proposed site contours;
- (ii) Details of all new tree planting to include details for the location of new tree planting, species, size of tree to be planted;
- (iii) Details of all other planting to include plants to enhance the ecological value of the site.
- (iv) Details of 'street furniture' to be placed within the site;
- (v) Details of the provision within the site of a number of interpretation boards to be located in relevant positions to be agreed with the Local Planning Authority to outline the heritage and natural history of the site to be installed prior to the first opening of the site to the general public.

The restoration phase shall then be implemented in accordance with the details hereby approved. Thereafter the landscaped areas shall be retained and they shall be cultivated and maintained for a period of 5 years from the date of implementation and any plant failures within that five year period shall be replaced unless otherwise approved by the Local Planning Authority.

#### Condition 11: Hours of Operation

The applicant has advised that it is unlikely to be practicable to agree emergency works with the Liaison Group or to secure prior agreement with the Local Planning Authority for emergency works as they are only undertaken in an emergency, which is understood. The applicant will, however, inform the LPA of any works undertaken. It is therefore proposed that Condition 11 be amended to omit the requirement for prior notification of emergency works:

*Except in the case of an emergency on site when life, limb or property are in danger or with the prior written agreement of the Local Planning Authority, the Development hereby permitted shall only take place within the following hours:*

*The colliery spoil excavation, on-site transport and off-site export of product will only take place between 0700 hours and 1900 hours Mondays to Fridays and between 0800 and 1400 hours on Saturdays and at no time on Sundays and Bank Holidays. The operations involving the use of the wash plant, press house and one loading shovel will only take place for the hours commencing 0700 hours on Mondays and ceasing 1300 hours on Saturdays.*

#### Condition 18: Noise control

Following further discussion with the Environmental Protection Service, Condition 18 has been amended to include both day and night time operations. As drafted, the condition only refers to day time operations. Accordingly, Condition 18 shall read as follows:

*Noise from site operations (when measured as a free field 1 hour LAeq) shall not exceed background noise levels at noise sensitive properties (as detailed in the Environmental Statement Ref. Wardell Armstrong 2012) by more than 10dB(A) between 0700 and 2200 hours Monday to Friday and 0700 and 1300 hours on Saturdays. Between 2200 and 0700 hours Monday night to Saturday morning noise from site operations shall not exceed background noise levels by more than 5 dB at noise sensitive properties No 1 and 2 (Hesley Wood Cottages and Hesley Lane/ Hesley Bar Properties) and shall not exceed 42dB(A) LAeq,1h (free field) at noise sensitive properties 3, 4, 5 and 6.*

#### Condition 23: Air Quality

Following further discussion between the applicant and the Council, it is proposed that Condition 23 be amended to set clear and reasonable trigger criteria and to relate more specifically to the application site. As such, the revised condition is set out below:

*In the event of monitored excessive dust emissions from the site and or where monitored PM10 concentrations (running 3 monthly average) are greater than 10% of the 3 months background average, and the increase can be clearly linked to the development activities rather than natural variations in PM10 concentrations due to weather conditions or other regional events, then the applicant shall on the request of the LPA submit a further 'Air Quality Management Scheme' for approval that includes additional dust monitoring equipment with real time dust monitoring facilities*

#### Condition 24: Archaeology

The word 'not' is missing from the 3 line of the condition. In addition, South Yorkshire Archaeology have advised that based upon the information submitted, there is no issue with works commencing within the processing plant area before the Written Statement of Investigation is submitted such that the condition should be amended as follows:

*With the exception of works to remove the existing trees on site that are permitted for removal and with the exception of works within the Processing Plant and Office area as defined on Plan SH10565-010, the working phase of coal recovery or any other groundworks shall not take place until the applicant, or their agent or successor in title, has submitted a Written Scheme of Investigation (WSI) that sets out a strategy for archaeological investigation and this has been approved in writing by the Local Planning Authority. The WSI shall include:*

- The programme and method of site investigation and recording.*
- The requirement to seek preservation in situ of identified features of importance.*
- The programme for post-investigation assessment.*
- The provision to be made for analysis and reporting.*
- The provision to be made for publication and dissemination of the results.*
- The provision to be made for deposition of the archive created.*
- Nomination of a competent person/persons or organisation to undertake the works.*
- The timetable for completion of all site investigation and post investigation works.*

*Thereafter the development shall only take place in accordance with the approved WSI and the development shall not be brought into use until the Local Planning Authority have confirmed in writing that the requirements of the WSI have been fulfilled or alternative timescales agreed.*

#### Condition 28: Remediation

As drafted, Condition 28 requires that if any unexpected contamination is encountered, works on the entire site should cease. The applicant maintains that this is impractical and unnecessary as the Remediation Strategy Report will set out a clear framework for dealing with unexpected contamination, which would still allow works to commence on unaffected parts of the site. Officers can confirm that the Remediation Strategy Report required in accordance with Condition 27 shall include detail of measures to deal with both known and unexpected contamination such that the requirement for works to cease as set out in Condition 28 is not necessary. It is therefore proposed that Condition 28 be amended accordingly:

*All development and associated remediation shall proceed in accordance with the recommendations of the approved Remediation Strategy. In the event that remediation is unable to proceed in accordance with the approved Remediation Strategy, the Local Planning Authority and Environmental Protection Service (Tel: 0114 273 4651) should be contacted immediately. Revisions to the Remediation Strategy shall be submitted to and approved in writing by the Local Planning Authority. Works shall thereafter be carried out in accordance with the approved revised Remediation Strategy.*

#### Condition 27: Remediation

In light of the above, it is proposed that Condition 27 be amended to make it clear that measures to deal with both known and unexpected contamination shall be included within the Remediation Strategy Report:

*Any remediation works recommended in the Phase II Intrusive Site Investigation Reports shall be the subject of a Remediation Strategy Report which shall have been submitted to and approved in writing by the Local Planning Authority prior to the commencing of any works on site with the exception of works to remove the existing trees on site that are permitted for removal. The Report shall be prepared in accordance with Contaminated Land Report CLR11 (Environment Agency 2004) and Local Planning Authority policies relating to validation of capping measures and shall include measures to deal with both known and unexpected contamination.*

#### Condition 29: Validation Report

Following further discussion with the applicant, the Council's Contaminated Land Officer has confirmed that gas protection measures are not required for this site and the requirement for such measures are only included within the original draft of conditions as it is a standard condition. However, the Contaminated Land Officer has advised that the condition can be amended to remove the requirement for the validation of gas protection measures. Condition 29 shall therefore be amended as follows:

*Upon completion of any measures identified in the approved Remediation Strategy or any approved revised Remediation Strategy, a Validation Report shall be submitted to the Local Planning Authority. The development or any part thereof shall not be brought into use until the Validation Report has been approved in writing by the Local Planning Authority. The Validation Report shall be prepared in accordance with Contaminated Land Report CLR11 (Environment Agency 2004) and Local Planning Authority policies relating to validation of capping measures.*

#### Condition 31: Wheel Washing

The applicant has advised that they generally require a temporary wheel wash provision before the site has access to electricity generation in the very initial phases of site clearance. As such, they will also require a temporary wheel washing facility and it is proposed that details of this temporary facility should also be provided to the Local Planning Authority. As such, it is recommended that Condition 31 be amended as follows:



*No work on site shall commence unless equipment is provided for the effective cleaning of the wheels and bodies of vehicles leaving the site so as to prevent the depositing of mud and waste on the highway. Full details of the proposed cleaning equipment, to include details of an initial temporary wheel washing facility for the first phase of clearance works and a permanent wheel washing facility that shall be installed prior to the coal recovery phase, shall be approved in writing by the Local Planning Authority before it is installed and shall thereafter be retained for the duration of the works on site.*

### Condition 33: Vehicle Movements

It is considered helpful to clarify that Condition 33 relates to vehicle movements rather than deliveries as it relates to HGV arrivals and departures. As such, it is proposed that Condition 33 be amended as follows:

Heavy Goods Vehicle movements shall be limited to a maximum of 60 per day for the duration project unless otherwise approved in writing by the Local Planning Authority. Details of the commencement of HGV vehicle movements shall be submitted in writing to the Local Planning Authority within one month of such commencement.

### **Additional Conditions**

The following additional conditions are also proposed:

#### Noise Monitoring

*The monitoring of noise and the recording of noise levels for the duration of the works shall be carried out in accordance with the RecyCoal Noise Monitoring Scheme submitted by e-mail dated 19<sup>th</sup> November 2012.*

*Reason: In the interests of adjoining occupiers.*

#### Ecological Management Plan

In addition to Condition 10, which recommends that the landscaped areas shall be cultivated and maintained for 5 years from the date of implementation and any plant failures within the five year period be replaced, it is considered that a longer-term ecological management plan should be required in the long-term interests of biodiversity within the site. As such, the following condition is proposed:

*Within twelve months of the development commencing, a Landscape and Ecological Management Plan, including short, medium and long term aims (up to a minimum of 10 years) and objectives, management responsibilities and maintenance schedules for all distinct areas, shall be submitted to and approved in writing by the Local Planning Authority. The Landscape and Ecological Management Plan shall thereafter be implemented as approved.*

*Reason: In the interests of bio-diversity.*

### **Additional Directive**

The Sheffield Ecology Unit has also proposed that the following directive be noted on the Decision Notice for the applicant's information:

You are advised that the biodiversity information/ecological assessment provided as part of this application will be made available to Sheffield Biological Records Centre. This will assist in a key principle of the National Planning Policy Framework that planning policies and decisions should be based on up-to date information about the natural environment and other characteristics of the area by building up the data base of up-to-date ecological information and this will help in future decision making.