

COUNTY COUNCIL PLANNING DECISION

Lead Officer: John Groves – Head of Nuclear Energy and Planning

To inform Members of a recent decision by the Secretary of State that the appeal be dismissed and planning permission be refused for the creation of a waste management centre for the disposal of low and very low level radioactive waste at the former opencast site at Keekle Head near Pica.

Recommendation: That the decision be noted.

Resource Implications: Nil

1.0 BACKGROUND INFORMATION

- 1.1 Copeland Borough Council was consulted on a planning application for the development of a waste management facility for the disposal of low and very low level radioactive waste including site restoration and ancillary development at the Former Keekle Head Opencast Coal Site, Pica, Whitehaven in 2010. At the Planning Panel meeting on the 08 December 2010 Members resolved to support the Officers recommendation to object to the proposal.
- 1.2 In May 2012 Cumbria County Council refused the planning application on the grounds of 'need' and advocating a non-dispersal position with regards to radioactive waste.

The applicant, Endecom UK Ltd submitted an appeal against the County Councils decision which was heard at a public inquiry which was held in Kendal between 25 June and 5 July 2013.

2.0 APPEAL DECISION JUSTIFICATION

- 2.1 The appeal decision was issued on the 12th December 2013. In his letter the Secretary of State agreed with the Inspectors recommendation that the appeal should be dismissed.
- 2.2 The main considerations taken into account by the Secretary of State included:

- 2.2.1 That the total number of vehicle movements over its life would be very substantial, with consequential impacts
 - 2.2.2 That the development would offer few sustainability benefits
 - 2.2.3 That the wider restoration scheme is not required to provide any mitigation or compensation with regard to the harm to the County Wildlife Site (CWS).
 - 2.2.4 The proposal would harm the landscape character of the area owing mainly to the scale of the development, its long duration, the incongruity of its appearance during the operational phase and the incompatibility of the final restored landform with its landscape setting.
 - 2.2.5 That the decommissioning of the facilities at Sellafield, which is predicted to give rise to the single largest LLW stream in the UK in the foreseeable future, is not planned to commence until 2030 and should be completed by 2070.
 - 2.2.6 That the recent permission granted to receive low and very low level radioactive waste at the ENRMF site in Northamptonshire would provide sufficient capacity to accommodate the predicted UK LLW arising's, thereby meeting the identified need up to 2028.
 - 2.2.7 That if the Keekle Head site were to be developed now, it could militate against the development of a more sustainable alternative.
- 2.3 A copy of the Secretary of States letter is attached.

3.0 Wider Planning Implications

- 3.1 County Council are currently determining an application to vary planning conditions at Lillyhall Landfill site. The application proposes to extend the period of tipping and confirm accepted waste types.
- 3.2 In 2011 the Environment Agency issued an environmental permit to allow the disposal of high volume very low level waste (HV VLLW) at Lillyhall. The maximum typical concentrations of radioactivity that can be disposed at Lillyhall are at least a thousand times lower (except in the case of tritium) than the highest concentrations that could be disposed to the Low Level Waste Repository at Drigg.

- 3.3 The applicant is now seeking to vary the permit to widen the range of radioactive wastes to be disposed at Lillyhall by including Lower Activity Low level Waste (LALLW) in addition to HV LLW.
- 3.4 What the County Council must take into consideration when determining the Lillyhall application is that, the justification for refusing Keekle Head was the 'need' for a new facility as the 3 existing facilities, one of which is Lillyhall, had sufficient capacity.
- 3.5 The Low level Waste Repository Ltd. Strategy is to optimise the use of the site by diverting lower end LLW to municipal sites such as Lillyhall. Therefore in order for them to achieve this strategy and to push waste higher up the waste hierarchy there must be available waste sites to receive these LALLW waste streams.
- 3.6 LALLW comprises low end activity waste which can be generated by other industries outside the energy nuclear process for example hospitals, universities or the Military Of Defence. Therefore the relationship for disposal facility sites for LALLW is less geographically dependent than with other sites previously allocated within Cumbria which have a more direct link to the decommissioning of nuclear sites.

Contact Officer: Denice Gallen – Nuclear and Energy Officer

Background Papers: Planning application file ref 4/10/9001

Appendix one – Letter from Secretary of State



Department for
Communities and
Local Government

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Our Ref: APP/H0900/A/12/2187327

Your Ref:

12 December 2013

Dear Madam,

TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL BY ENDECOM UK LIMITED
LAND AT KEELE HEAD OPEN CAST, SOUTH OF C4006, NR PICA, WORKINGTON,
(APPLICATION REF: 4/10/9001)

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Jonathan G King BA(Hons) DipTP MRTPI, who held a public local inquiry between 25 June and 5 July 2013 into your company's appeal against the refusal of Cumbria County Council ("the Council") to grant planning permission for the development of a waste management facility for Low and Very Low Level Radioactive Waste (LLW & VLLW) comprising: enabling restoration, propose-built disposal area, waste reception building, surface water attenuation lagoons, weighbridge and gate house, access roads and ancillary development (application reference 4/10/9001, dated 18 December 2009) at land at Keekle Head Open Cast, South of C4006, Nr Pica, Workington, CA14 4QF.
2. On 19 February 2013 the appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990, because the appeal involves proposals for development of major importance having more than local significance.

Inspector's recommendation and summary of the decision

3. The Inspector, whose report is enclosed with this letter, recommended that the appeal be dismissed and planning permission refused. For the reasons given in this letter, the Secretary of State agrees with the Inspector's recommendations. All paragraph numbers, unless otherwise stated, refer to the Inspector's report (IR).

Procedural matters

4. The Secretary of State notes that the Council issued in August 2008 an Enforcement Notice (EN) that seeks to restore the site of the previous mining permission on the appeal site, as detailed in the Reinstatement and Aftercare Management Plan (RAMP);

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and that the Council have withheld taking action against the non-compliance with the EN pending the outcome of this planning appeal (IR1.34). He also notes (IR6.16-6.20 and IR6.83) that both parties agree that the baseline for comparing environmental effects (principally the effects on the landscape and on habitat) is the restoration scheme required under the terms of the EN; but that there are doubts regarding what could be achieved under those terms and the extent to which the EN would require full compliance with all the requirements of the RAMP. However, the Secretary of State agrees with the Inspector (IR6.20) these issues do not affect the baseline, which he has used in the determination of this appeal.

5. The Secretary of State has also had regard to the permission granted on 16 July 2013 (after the closure of the Inquiry) for the alteration of existing, and the construction of new, facilities for the recovery and disposal of hazardous waste and the disposal of LLW at the East Northamptonshire Resource Management Facility (ENRMF) (IR6.234). He notes that the Inspector afforded the parties the opportunity to make written representations about the implications of that decision for this appeal and that these representations have been incorporated into his report (IR6.234).
6. In reaching his decision the Secretary of State has taken into account the Environmental Statement (ES) which was submitted under the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 (IR1.58). The Secretary of State is satisfied that the ES complies with the above regulations and that sufficient information has been provided for him to assess the environmental impact of the application.
7. The Secretary of State has carefully considered the Inspector's comments at IR1.60-1.63 regarding the Habitats Regulations Appraisals that have been carried out on behalf of the Council and is satisfied that there would be no adverse effect on the integrity of any European Site or protected species as a result of implementing the appeal proposals. Notwithstanding the fact that, at the time of the Inquiry, an Environmental Permit had not been sought (IR1.64), the Secretary of State is also satisfied that the freshwater pearl mussels would be protected by the Environmental Permitting Regulations 2010 (IR1.63).

Matters arising after the close of the inquiry

8. Following the close of the inquiry, the Secretary of State received representations from those listed at Annex A. He has given careful consideration to this correspondence, but is satisfied that it does not raise any new issues not covered at the inquiry and upon which he requires further information. Copies of this correspondence may be obtained, on written request, from the address at the bottom of the first page of this letter.

Policy Considerations

9. In deciding this appeal, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. In this case, the development plan comprises the Cumbria Minerals and Waste Development Framework Core Strategy (CS), Cumbria County Council's Generic Development Control Policies Plan (GDCPP) and the saved policies of the Copeland Borough Local Plan 2001-2016 (LP).
10. On 5 December 2013, Copeland Borough Council adopted their *Core Strategy and Development Management Policies Plan*. However, the Secretary of State is satisfied

that this raises no new issues in relation to the appeal scheme on which he needed to refer back to the parties.

11. The Secretary of State has also had regard to the County Council's emerging *Minerals and Waste Local Plan 2013-2028*. However, as that is at an early stage of preparation, he agrees with the Inspector that it should not be accorded significant weight (IR6.13).
12. Other material considerations which the Secretary of State has taken into account include the UK-wide policy and background documents set out by the Inspector at IR1.50-1.56; *the National Planning Policy Framework* (the Framework) and the associated Technical Guidance (March 2012); Planning Policy Statement 10 *Planning for Sustainable Waste Management 2011* (PPS10); Circular 11/95: *Use of Conditions in Planning Permission*; and the *Community Infrastructure Levy (CIL) Regulations 2010* as amended. The Secretary of State has also had regard to the fact that on 28 August 2013 Government opened a new national planning practice guidance web-based resource. However, given that the guidance has not yet been finalised, he has attributed it limited weight.

Main Considerations

13. The Secretary of State agrees with the Inspector that the main issues are those set out at IR1.80.

Sustainable Development

14. The Secretary of State agrees with the Inspector that, having regard to the reasoning at IR6.22-6.29, the fact that, as a disposal facility, the proposed development scores poorly when measured against the waste hierarchy should not count against it as, given that the hierarchy will already have been applied prior to consigning the waste, such a conclusion is unavoidable. He also agrees (IR6.33-6.34) that, notwithstanding the obligations placed on operators under other legislation, the sustainability credentials of the proposed development need to be considered in the context of the planning system. He further agrees that, although the development would not produce a substantial amount of traffic on a daily basis, the total number of vehicle movements over its life would be very substantial, with consequential impacts (IR6.37); and that, although the distance from Sellafield (the main source of waste arisings) to the site, at 29 km, is not great in absolute terms, the fact that there would be no alternative to the use of road lends support to alternative sites closer to Sellafield (IR6.38-6.40).
15. The Secretary of State agrees with the Inspector (IR6.42-6.44) that, while the appeal development would represent a substantial financial interest in an area of slow economic growth and would create some jobs, this needs to be balanced against the harm, or perception of harm, which a completely new, stand-alone disposal facility may cause, particularly with regard to the area's valuable tourist industry. For the reasons given at IR6.44, he agrees with the Inspector that there would be little of no social benefit and, overall (IR6.50-6.51), he agrees with the Inspector that the development offers few sustainability benefits.

Ecology & Nature Conservation - comparison of the alternative restoration schemes

16. Having regard to the issues set out by the Inspector at IR6.52-6.85, including identifying the principal area of disagreement between the main parties as being the effect of the proposed development on the *Sandbach Meadows County Wildlife Site* ("the CWS") (IR6.59), the Secretary of State agrees with him (IR6.85) that the main issue is whether the appeal restoration proposals would lead to significant harm to the CWS, when compared to what could be reasonably achieved under the baseline.

17. For the reasons given at IR6.86-6.106, the Secretary of State agrees with the Inspector at IR6.107 that the appeal scheme provides no less an opportunity to recreate M23/M23a habitat in the CWS than under the RAMP; the proposals for reinstatement and control through conditions are proportionate to the status of a CWS and in accordance with the aims of the NPPF; although the proposed restoration would take longer to complete, it would include a greater area of semi-natural habitat; and the loss of, or harm to, the ecological interests of the CWS from the proposed restoration, if any, would not be significant or unacceptable.
18. Taking account of the Inspector's analysis of the position with regard to the overall ecological value of the wider restoration scheme for the area beyond the CWS, the Secretary of State agrees with his conclusion that the wider restoration scheme is not required to provide any mitigation or compensation with regard to the harm to the CWS (IR6.108-6.110) and, for the reasons given at IR6.112-6.115, the Secretary of State also agrees that the proposed restoration would embrace more aspects, be more detailed and would be subject to a greater degree of control than the restoration that would result from compliance with the EN (IR6.116).
19. Overall, and taking into account the Inspector's conclusions at IR6.117-6.118, the Secretary of State agrees that the site as proposed to be restored under the appeal scheme, including the CWS, would have a conservation value not significantly different from that which may be achievable under the EN, albeit that it would take longer to complete (IR6.119).

Character and appearance

20. The Secretary of State agrees with the Inspector that, for the reasons at IR6.122-6.123, the local landscape is intermediate or moderate in terms of its visual quality (IR6.123).
21. The Secretary of State has carefully considered the Inspector's evaluation of the Landscape and Visual Assessments submitted by the appellant and the Council; and the Inspector's appraisal of the landscape impact (IR6.127-6.142). Like the Inspector, he considers the main difference between the appeal scheme and the baseline situation to be that under the appeal scheme the adverse effects would continue for a period of 50 years or more (IR6.133). He agrees with the Inspector that the operational area proposed would, in absolute terms, be very substantial and the associated waste reception building, by virtue of its scale and appearance, would be uncharacteristic in the local landscape (IR6.138). He also agrees that there is little likelihood of the artificial, engineered landform created by the waste containment area ever merging seamlessly into its setting (IR6.140). Overall, the Secretary of State agrees with the Inspector that, whilst the land uses and habitats proposed following completion of the appeal scheme would become established and remain sustainable, they would be overlain on a fundamentally incongruous landform (IR6.142).
22. For the reasons given at IR6.143-6.152, the Secretary of State agrees with the Inspector's conclusion at IR6.153 that, whilst the development would have only a limited adverse visual impact, it would nonetheless harm the landscape character of the area owing mainly to the scale of the development, its long duration, the incongruity of its appearance during the operational phase and the incompatibility of the final restored landform with its landscape setting. Overall, therefore, he agrees with the Inspector that the harm to the character and appearance of the area would be unacceptable and contrary to national and local policy (IR6.153). Furthermore, for the reasons given at IR 6.154-6.167, the Secretary of State agrees with the Inspector at IR6.168 that, despite the lack of certainty over what the Council may be able to achieve through enforcement

action and the provisions of the EN, the proposed development offers no advantages sufficient to outweigh the harm to the character and appearance of the area.

Need and consideration of alternative sites

23. On the basis of the Inspector's reasoning at IR6.169-1.179, the Secretary of State agrees with him that both the need for the facility and the availability and merits of alternative sites are material considerations in determining this appeal (IR6.179).
24. Turning first to need, whilst the Secretary of State recognises that there is an acknowledged need to divert wastes from the Low Level Waste Repository (LLWR) near Drigg (IR6.181), he has also taken into account that the decommissioning of the facilities at Sellafield, which is predicted to give rise to the single largest LLW stream in the UK in the foreseeable future, is not planned to commence until 2030 and should be completed by 2070 (IR6.183). The Secretary of State has noted the Inspector's comments about alternative sites at IR6.184-6.188 and, having taken into account the Inspector's assessment of arisings (IR6.189-6.205), he can see no reason to disagree with the Inspector's conclusion at IR6.206 that in the region of 220,000 cu m of LLW will require disposal in the UK in the period up to 2030. In terms of disposal capacity for these arisings, the Secretary of State agrees with the Inspector (IR6.209-6.213) that the existing capacity is unlikely to be available for more than a few years and so new provision will be required either by way of alterations to the planning permissions at existing sites or at completely new sites. However, like the Inspector (IR6.214), the Secretary of State recognises that the appeal scheme would do nothing to overcome the shortfall until it became operational, around 2020.
25. Turning secondly to the consideration of alternative sites (IR6.218-6.231), the Secretary of State agrees with the Inspector's conclusion at IR6.232 that there is insufficient certainty about sites to be confident that a realistic and deliverable alternative to the appeal proposal presently exists. However, for the reasons given at IR6.234-6.235, he agrees with the Inspector that the recent permission granted at the ENRMF would provide sufficient capacity to accommodate the predicted UK LLW arisings, thereby meeting the identified need up to 2028 (IR6.235).
26. The Secretary of State agrees with the Inspector that the ENRMF is not well located to serve the north of the UK (IR.236). However, given that it would be available to accept waste during the period before the appeal scheme could practically do so, taken with the reasons given at IR6.236-IR6.241, he also agrees that the ENRMF could provide breathing space in which the Council could address the uncertainties surrounding the suitability and availability of the alternatives sites. Like the Inspector (IR6.241), the Secretary of State considers that if the Keekle Head site were to be developed now, it could militate against the development of a more sustainable alternative.

Conditions

27. The Secretary of State agrees with the Inspector's reasoning and conclusions on conditions as set out at IR7.1-7.3, and is satisfied that the conditions recommended by the Inspector and set out in Appendix A to the IR are reasonable and necessary and would meet the tests of Circular 11/95. However, he does not consider that they would overcome his reasons for dismissing the appeal.

The Unilateral Undertaking

28. The Secretary of State has considered the Inspector's reasoning and conclusions on the Unilateral Undertaking at IR7.4-7.11. As Circular 05/05 was replaced by the Framework in March 2012, he considers the Inspector's reference to tests included in paragraph B5

of that Circular (IR 7.5) to be irrelevant to this appeal, but that the tests set out in Regulation 122 of the Community Infrastructure Regulations 2010 as amended apply. Like the Inspector, the Secretary of State considers that the contributions under (2) *Site Entrance Signage* and (3) *Highways Contribution* meet the tests set out in the Framework, and he is also satisfied that these provisions comply with CIL Regulation 122. With regard to provision (1) *Community Fund Contribution* and provision (4) *extended period of aftercare*, the Secretary of State agrees with the Inspector's conclusions at IR7.6-7.7 that these are not necessary to make the development acceptable in planning terms. He also agrees with the Inspector (IR7.8-7.11) that, although a restoration bond might be desirable, its absence is not a reason to dismiss the appeal.

Overall Conclusions

29. The Secretary of State recognises that the proposed development would provide an important strategic regional and national facility for the disposal of LLW at a time when it is acknowledged that there is a need to divert wastes from the LLWR. It would also provide an opportunity to restore a derelict former opencast coal mine in a highly controlled way, potentially more quickly than could otherwise be achieved through enforcement action and at no cost to the public purse. Against this, however, he considers the development to have poor sustainability credentials and to be visually intrusive during the lengthy operational period, causing harm to the quality of landscape contrary to development plan policy. Furthermore, he considers the final landscape would be artificial and incapable of satisfactorily integrating into its setting. He regards the recently granted permission at the ENRMF to be an important material consideration, making adequate provision for the UK in the short to medium term and providing the Council the opportunity to assess the suitability and deliverability of other sites in Cumbria for the longer term through the plan-making process. Given this, and balancing the factors weighing for and against the development, the Secretary of State considers that the appeal should be dismissed.

Formal Decision

30. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendations. He hereby dismisses your company's appeal and refuses planning permission for the development of a waste management facility for LLW & VLLW comprising enabling restoration, propose-built disposal area, waste reception building, surface water attenuation lagoons, weighbridge and gate house, access roads and ancillary development in accordance with application reference 4/10/9001, dated 18 December 2009.

Right to challenge the decision

31. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged by making an application to the High Court within six weeks from the date of this letter.

32. A copy of this letter has been sent to the Council. A notification e-mail / letter has been sent to all other parties who asked to be informed of the decision.

Yours faithfully

JEAN NOWAK

Authorised by Secretary of State to sign in that behalf