Lancashire County Council

The Planning Inspectorate
National Infrastructure Directorate
Temple Quay House
Temple Quay
BRISTOL
BS1 6PN

Phone: (01772) 534130
Fax:
Email: devcon@lancashire.gov.uk
Your ref:
Our ref: JH/SB
Date: 21 March 2013

For the attention of Jeff Penfold

Dear Sir

PROPOSED EXTENSION OF WHITEMOSS HAZARDOUS WASTE LANDFILL SITE, SKELMERSDALE

I refer to our meeting on 1 March 2013 where we discussed the proposed extension to the above site and the planning procedures for nationally significant infrastructure projects under the Planning Act 2008.

At the meeting both the County Council and West Lancashire Borough Council raised an issue as to whether the application is of a type and scale where it falls within the procedures in the Planning Act 2008 or if any application for the project should be made under the Town and Country Planning Act 1990.

From my knowledge of the project based upon the submitted scoping report, the proposed development is comprised of two main parts. Firstly the working of minerals involving the extraction of shale and other minerals, some of which would be exported from the site and secondly the infilling of the engineered void with hazardous wastes.

The extraction of minerals does not fall within any of the project descriptions within Part 3 of the Planning Act 2008. Whilst section 30 of Part 3 of the legislation does make provision for facilities for the disposal of hazardous waste being nationally significant infrastructure projects, this only applies for landfill sites where the facility would dispose of more than 100,000 tonnes per year. Whilst it is acknowledged that the environmental permit for the Whitemoss site allows waste to be imported at rates of 100,000 tonnes per year, it is the County Council's understanding that rates of input to the site have normally been in the region of 30,000 tonnes per annum therefore significantly below the threshold in the legislation. It is also the County Council's understanding that the total capacity of the new site would be around 1 million cubic metres which, according to the applicant's scoping report, would be in filled over a period of 20 years which would also

appear to indicate input rates below the thresholds in section 30. It is therefore questionable whether this project should be determined under the Planning Act 2008 procedures.

At our meeting, you indicated that such issues could be raised as part of any relevant representations the County Council may wish to make alongside the local impact report. However, this does seem to be a rather late stage in the process to make such an important decision and both the County Council and West Lancashire Borough Council consider that this issue should be addressed at an earlier stage to ensure that the project is advanced through the planning process as efficiently as possible without unnecessary delays at a later stage or abortive work in advance.

Your views on this would be appreciated.

Yours faithfully

[redacted]

Jonathan Haine
Principle Planning Officer

The Planning Inspectorate

3/18 Eagle Wing
Temple Quay House
2 The Square
Bristol, BS1 6PN

Customer Services: 0303 444 5000
e-mail: enquiries@infrastructure.gsi.gov.uk

Mr Jonathan Haine
Principle Planning Officer
Lancashire County Council
PO Box 100
County Hall
Preston
PR1 0LD

Your Ref: WS010003
Our Ref: JH/SB
Date: 17 April 2013

Dear Jonathan,

RE: PROPOSED EXTENSION OF WHITEMOSS HAZARDOUS WASTE LANDFILL SITE, SKELMERSDALE.

Thank you for your letter dated 21 March, in which you write with regard to the above project. I have the following information for you which I trust will be of use.

Under s.30 of the Planning Act 2008 (the 2008 Act), the alteration of a hazardous waste facility is considered a Nationally Significant Infrastructure Project (NSIP) if the criteria under s.30(3) of the 2008 Act is met:

- '(a) the facility is in England;
- (b) the main purpose of the facility is the final disposal or recovery of hazardous waste; and
- (c) the alteration is expected to have the effect specified in subsection (4)'.

Subsection 4 reads: 'The effect is – (a) in the case of the disposal of hazardous waste by landfill or in a deep storage facility, to increase by more than 100,000 tonnes per year the capacity of the facility, (b) in any other case, to increase by more than 30,000 tonnes per year the capacity of the facility'.

It is noted that the 2008 Act refers to the capacity of hazardous waste facilities which fall under s.30 of the 2008 Act. Our understanding is that s.30 of the 2008 Act is not framed in terms of the actual amounts of hazardous waste that might be disposed of or recovered over any given time (for example, per annum), but rather in terms of allowing for a capacity to handle more than 100,000 tonnes of hazardous waste per annum.

However, only the courts can ultimately determine interpretation of legislation and the Planning Inspectorate does not have power to give a legally binding determination on this matter.

Furthermore the Planning Inspectorate is only able to determine whether development consent is required for a project, under s.55 of the 2008 Act, once an application has been formally submitted to us under s.37. It is for the developer to justify within its application documents how the proposal falls within s.30 of the 2008 Act and demonstrate appropriately how the proposal is capable of handling the levels of waste proposed.

With regard to the workings of minerals involving the extraction of shale and other minerals forming part of any potential NSIP application, s.30 of the 2008 Act does not expressly allow such workings and related works to be included within a Development Consent Order (DCO), although it is noted that s.30 does refer to "..the *main purpose*…" of the facility being the final disposal or recovery of hazardous waste. The points below highlight the various provisions under the 2008 Act which might allow such works to be incorporated into a DCO, although it would be for an applicant to justify in each case why they thought it was appropriate and lawful for specific works to be authorised in a particular manner:

- S120(4) of the 2008 Act allows a DCO to make provision relating to any of the matters those set out in Part 1 of Schedule 5 to the 2008 Act, such as that in paragraph 4 of Schedule 5 ("the carrying out of specified excavation, mining, quarrying or boring operations in a specified area") .

- S120(5) of the 2008 Act allows statutory provisions to be applied, modified or excluded within a DCO.

- S.115(2) allows "associated development" to be authorised by a DCO.

We would also draw to your attention the Government's proposals to include certain business and commercial projects within the Planning Act 2008 regime, presently included in clause 24 of the Growth and Infrastructure Bill. Whilst the prescribed descriptions of proposed minerals projects have been consulted on they have not yet been confirmed by the Government. However, it is possible, if enacted, that this provision may enable minerals extraction, meeting certain specified criteria, to be expressly brought within the 2008 Act regime. The earliest such provisions are likely to be come into force is October 2013.

It is ultimately the responsibility of the applicant to identify whether any permit(s) in relation to such works would be necessary or required - in addition to what a DCO would authorise – before an NSIP can be constructed or operated. Applicants are encouraged to 'twin-track' such applications for permits to the relevant body with their DCO application to the Planning Inspectorate to facilitate timely decision-making.

As I recommended at our meeting in early March, the earlier a developer is aware of your views with regard to the matters highlighted within your letter, the greater an opportunity the developer has in considering such issues and, if they consider it appropriate, amending its proposals. If an application is accepted for examination, the

relevant representation stage should be utilised in submitting an outline of the principal views your council may have on the proposal. There would also be an opportunity for your council to submit a Local Impact Report, under s.60 of the 2008 Act, giving details of the likely impact of the proposed development on the authority's area or any part of it.

If you have any further queries in relation to the above or any others matters, please do not hesitate to contact us.

Yours sincerely,

Jeffrey Penfold

Case Officer

Major Applications & Plans
The Planning Inspectorate