

EAST NORTANTS RESOURCE MANAGEMENT FACILITY WESTERN EXTENSION

AUGEAN SOUTH LIMITED (Applicant)

WRITTEN SUBMISSIONS ON BEHALF OF THE CECIL ESTATE FAMILY TRUST

JWB/CEC0001.0002

1. INTRODUCTION

- i. These representations are submitted on behalf of the Cecil Estate Family Trust ('the Trust') in relation to the application to extend the hazardous waste facilities at the East Northants Resource Management Facility.
- ii. The Trust owns land adjacent to the existing Resource Management Facility and also land adjacent to the proposed western extension. The Trust is also the owner of part of the swallow hole that forms part of the application site for the extended facility and water discharging into the swallow hole runs across the land owned by the Trust.
- iii. Appendix 1 comprises a plan of the Trust's ownership edged in red and a further plan identifying the location of the swallow hole.
- iv. These submissions respond to the Initial Assessment of Principal Issues prepared by the Examining Authority.

2. Air quality and emissions

The Trust is able to confirm that the existing waste site emits odours from time to time that are detectable on the Trust's land. The odours will affect those who will in future be occupying the commercial unit known as A47 storage depot, immediately to the north. This depot is currently vacant but the Trust has planning permission to convert it to a storage/commercial use and intends to do so shortly. Accordingly, a more effective odour control system is required in respect of the proposed extension area.

3. Biodiversity

Immediately to the east of the proposed extension lies Collyweston Great Wood, which is owned by the Trust. This is part of the historic Rockingham Forest and comprises a unique ancient lime woodland. The area is rich in wildlife and the Wood is a SSSI, with the area of the SSSI being shown on the plan at Appendix 2. Also at Appendix 2 is the SSSI citation. Some of the more unusual woodland plants found here are toothwort, wood spurge, lily-of-the-valley, heath speedwell, wild service tree, mountain melick and great wood-rush. Resident birds include lesser and great spotted woodpeckers, and treecreeper. Kites and buzzard are also regularly seen in the woods.

This biodiverse area will be susceptible to any pollution from the operations at the site. The Trust also has concerns as to how the bund that is proposed around the site will affect the habitat of the woodland edge of the land adjoining the proposed extension.

Whilst the Environmental Statement in support of the application suggests a high level of biodiversity net gain, those gains will not be provided until each phase of the development is filled and completed, which will be many years away. It is considered that more immediate biodiversity gains should be provided by the Applicant to compensate for the early negative effects of the development.

4. Draft Development Consent Order

The Trust considers that the Draft Development Consent Order is deficient because it is based upon the incorrect premise that the Applicant has the right to discharge a significant amount of the surface water from the facility as extended into the swallow hole on the Trust's land and then under the Trust's land. This is not the case and the Draft Development Consent Order seeks no powers to allow such discharges to happen. The following paragraphs set out the legal situation regarding the rights the site has to discharge surface water:

Whilst no discharge rights have been proven to exist, it is clear that even if the Applicant has any existing rights to discharge surface water from the Site to the swallow hole and from there through the Trust's land that the proposals contained in the Application go far beyond those existing rights.

At present the existing facility has a discharge point in the south eastern corner of the site, which has the benefit of an environmental permit. At present none of the existing facility should be discharging surface water into the swallow hole.

Additionally, it has not been shown that surface water from the western extension site flows into the swallow hole in the manner described in the environmental statement nor in respect of the various catchments shown in the proposed surface water drainage strategy. Indeed, the Environment Agency Catchment Data Explorer website shows a very different situation.

It appears that all surface water which currently percolates through the site of the proposed extension will cease to do so once it is operational and instead of percolating through the site this surface water will all be collected in basins before being discharged via the swallow hole.

Whatever rights, if any, the Applicant has to discharge surface water from the extension site into the swallow hole and through the Trust's land relates to the existing agricultural use of the extension site and would not, in any event, permit the significantly increased usage which will arise as a result of the development proposals, if permitted. Whilst the Applicant claims that the future discharges will be no greater than existing that cannot be case in view of the additional areas of the extension site that will discharge to the swallow hole, the lack of percolation in the future and the additional discharges that are proposed from the current operational site.

Accordingly, the application for the Draft Development Consent Order is based upon a flawed premise and fails to include all of the necessary rights that the Applicant requires in order to operate the facility and provide for the discharge of surface water. As a result, the Requirements lack the powers needed to deliver the some of the mitigation measures required by the Environmental Statement, namely the surface water drainage strategy.

5. Environmental Impact Assessment

As the Environment Agency states in its “Approach to groundwater protection” (February 2018 Version 1.2)

Groundwater can be at serious risk of pollution unless landfills are located in the right place and subject to the right operational controls. The nature of the hazard to groundwater from landfill will depend on the types and quantities of pollutants in the waste disposed. Unless the whole of the waste mass is inert, landfills represent a store of pollutants, some of which will inevitably find their way into the environment.

It is impossible to assess the effectiveness and delivery of the operational controls, namely the proposed surface water mitigation measures, as what is proposed is based upon the Applicant discharging surface water onto the Trust’s land without the necessary rights to do so and therefore this will either amount to a trespass or nuisance. In either case if the Trust is forced to take legal action to prevent this trespass or nuisance the Applicant will have to adopt an alternative strategy for the disposal of surface water, which is not currently provided for in the Environmental Statement. Accordingly, the Environmental Statement as currently drafted fails to deal adequately with the mitigation of surface water arising on the site.

6. Legislation and policy

The Trust has concerns regarding the fitness of the Applicant to manage the Resource Management Facility, following a common nuisance incident in Spring 2020 when the surface water catchment system at the existing Facility flooded and as a result contaminated water flowed on to the Trust’s land at Collyweston Great Wood, causing pollution. The concern is heightened by the presence of a SSSI on the Trust’s land immediately to the east of the extension area, which could be susceptible to future pollution incidents. The extent of the SSSI is shown on the plan at Appendix 2.

In Spring 2020 a pollution incident arose as a result of the flooding of the existing surface water catchment system in respect of the currently consented waste facility. Contaminated water flowed onto the Trust’s land affecting the area shown edged in pink on the first plan at Appendix 3. The contaminated water was high in chloride levels and has resulted in the denuding of vegetation in the affected area. Also at Appendix 3 is the Applicant’s own sampling results

taken in August 2021 showing at Table 3.1 amongst other things the chloride levels in both February 2021 and August 2021. As can be seen these levels had increased in the period. Appendix 3 also contains photographs taken in September 2020 showing the effect that the pollution had on the vegetation in the area.

Since the incident in Spring 2020 the Applicant has not sought to clean up or remediate the pollution caused by the incident and instead they simply have proposed leaving the area to recover over time. Given the inaction of the Applicant since the incident and the proximity of the SSSI on the Trust's land the Trust has significant concerns about the suitability of the Applicant to operate an extended hazardous waste facility.

On a separate point, it is noted that a section 106 agreement is proposed that requires the payment of £5 per tonne of waste to a community fund that can be applied towards a range of community projects. Whilst this may be in line with an existing section 106 agreement that relates to the site the Supreme Court has since ruled that such contributions are not "proposed as a means of pursuing any proper planning purpose". In the light of the Supreme Court's decision in *R (on the application of Wright) (Respondent) v Resilient Energy Severndale Ltd and Forest of Dean District Council* the local planning authority is not entitled to treat such contributions as a 'material consideration' when granting planning permission. The same must apply to a DCO.

7. Noise and vibration

The Trust has planning permission for and is seeking to convert a former military bomb store on its land to commercial storage use. This is the area edged in blue and coloured white in the centre of the wood on the plan at Appendix 1. The Trust has a revised planning application pending a decision at the moment to remove some of the buildings. Once this is granted the Trust will look to secure a tenant and start using the site for storage. The alarm noises from reversing vehicles as well as vibrations on the Resource Management Facility could cause a disturbance both to those working in the converted bomb store and the fauna of the woodland, so appropriate noise mitigation measures need to be put in place.

8. Safety

We have referred at section 6 (above) to the previous pollution incident which has so far gone unexplained. The Trust is concerned that the poor management shown in the existing site could be repeated in the extension site and therefore there remains the risk of further significant pollution incidents as a result of the proposed development.

9. Water quality and resources

We have already commented in section 4 that the Applicant has not explained the nature of what they believe their rights to be to discharge surface water from the existing site or the extended site into the swallow hole and thereafter under the Trust's land. It is incumbent upon them to show that they have such rights. In the absence of such rights the proposed surface water strategy for the site will not work.

The swallow hole that forms part of the proposed application site sits partly on land belonging to the Trust and water flowing into the swallow hole then travels through the Trust's land.

The proposed surface water management plan for the extended facility is set out at Appendix ES18.2 to the Applicant's environmental statement (PINS document reference 5.4.18.2). The proposed strategy for dealing with surface water in respect of the restored site is described in Section 5 of this document. The Trust considers that the Applicant does not have the rights to deliver that plan.

At paragraph 5.1 of the proposed surface water management plan it explains that there will be seven surface water catchments within the extended site. In respect of catchments 2, 3, 4 and 7 all of the surface water within those catchments is proposed to discharge to the swallow hole and then under the Trust's land. In respect of catchments 3, 4 and 7 this will discharge via a new west to east crossing drainage ditch. The details of the proposed west to east watercourse have yet to be prepared and it is stated require further investigation. The Trust considers that these details should be available now, before any consent is issued.

The Applicant has no expressly granted rights to discharge surface water from either the current or the extended facility into the swallow hole and then under the Trust's land. Whatever rights they have, if any, will have arisen by prescription in respect of the historic discharge of surface water relating to the existing use of the land.

Historically a certain amount of surface water will undoubtedly have percolated directly into the ground water rather than flowing through drains or ditches and thereafter into either the ground water or surface water network. As a result it cannot be said that 100% of the surface water from any part of the application site (as proposed to be extended) has ever gone into the swallow hole. It appears that no water will percolate through the extended site once it is operational. This is explained at paragraph 4.5 of the proposed surface water management plan (Appendix ES18.2) which comments as follows:

A portion of the surface water discharge from the restored landform will be routed to the swallow hole consistent with pre-development conditions at the site. It is assumed that further infiltration based approaches for surface water attenuation in other areas of the site

generally will not be appropriate following restoration due to the significant thickness of low permeability strata above the underlying aquifer.

At paragraph 3.6 of the proposed surface water management plan (Appendix ES18.2) it explains how the Applicant believes surface water currently drains from that part of the site that comprises the western extension site:

Consistent with the existing ENRMF site, the proposed western extension is on a surface water divide. The north eastern half of the northern area of the proposed western extension drains to the east to the drainage ditch which runs along the western and southern boundaries of Collyweston Great Wood eventually joining a tributary of the Wittering Brook. The remainder of the northern section and the central area of the proposed western extension to the landfill drains via field drains and drainage ditches to a swallow hole located approximately 10m to the north of the north western corner of the existing ENRMF site boundary. Surface water entering the swallow hole at the site enters groundwater beneath the site which it is likely feeds tributaries of the Willow Brook and the Willow Brook to the south. The southern section of the proposed western extension area drains to the south and south east to the drainage ditch that runs from west to east approximately 50m south of the site and continues eastwards to the east of Stamford Road and then south eastwards to where it joins a tributary of Willow Brook.

However this is not how the Environment Agency's records suggest that the western extension site drains. The Environmental Statement in support of the Application explains this as follows at paragraph 17.3.10:

Information on the surface water catchments at the site on the Environment Agency catchment data explorer website indicates that the majority of the proposed western extension is within the catchment of the Wittering Brook consistent with the majority of the current ENRMF site. The information shows the southern part of the proposed western extension and the southern part of the current ENRMF site only are within the catchment of Willow Brook. However, contrary to what is shown on the Environment Agency catchment data explorer website, it is known from site observations that runoff from the southern part of the northern section of the proposed western extension and the central area of the proposed western extension drains via field drains and drainage ditches to the swallow hole located approximately 10m to the north of the north western corner of the existing ENRMF site boundary. A number of drainage ditches from the west of the proposed western extension drain into the perimeter drainage ditches round the proposed western extension with a drainage ditch from the south culverted under the central part of the proposed western extension towards the swallow hole. A culvert approximately 175m north of the southern culvert is located under the central part of the proposed western

extension draining from the west towards the swallow hole. As it is likely that groundwater at the site feeds tributaries of the Willow Brook and the Willow Brook (see hydrogeology section below), for the purpose of this ES it is considered that the majority of the proposed western extension and the existing ENRMF are within the catchment of the Willow Brook.

We comment on this statement below.

- With regard to the drainage of the current waste management facility this is explained at Paragraph 17.3.6 of the Environmental Statement and at paragraph 4.5 of Appendix ES18.2. Paragraph 17.3.6 of the Environmental Statement states:

The operational surface water management system for the existing ENRMF is designed to retain all potentially contaminated surface water on site where it is stored in ponds and used for dust suppression, in the wheel wash and in place of mains water in the treatment facility. As the completed areas of the site develop, the surface water management system at the existing ENRMF is progressing towards the approved post restoration surface water management plan for the existing ENRMF which allows for the drainage of surface water from the capped phases to a drainage point at the south eastern corner of the existing ENRMF. This discharge point is the subject of consent under the Environmental Permit for the existing ENRMF landfill. Surface water discharge from the site commenced in January 2021. The ditch to which site runoff is discharged flows generally to the south and after joining a stream outfalls to the Willow Brook approximately 2.5km south of the current ENRMF site. The Willow Brook joins the River Nene approximately 9km south east of the site.

- Paragraph 4.5 of Appendix ES18.2 states as follows:

The current outlet for the discharge of water from the surface water management system will be maintained so that water can drain by gravity and in a controlled manner to the permitted discharge point at the southern east corner of the existing ENRMF site. Suitable outlets for the discharge of water from the surface water management system will be created so that water can drain by gravity and in a controlled manner to the swallow hole, to the eastern drainage ditch round Collyweston Great Wood which joins a tributary of the Wittering Brook and to the southern drainage ditch which joins a tributary of the Willow Brook.

- Accordingly, none of the surface water from the existing waste management site drains into the swallow hole and nor is it permitted to do so. Existing surface water is either (a) stored in ponds on site or (b) drains to the south-east. Nothing is discharged through the Trust's land

10. CONCLUSION

The Trust opposes the extension of the hazardous waste management site as the proposal is based upon a surface water disposal strategy that relies upon a significant part of the site discharging surface water into the swallow hole that sits on the boundary and through the Trust's land. For the reasons set out, the Applicant has not demonstrated what legal rights they have to dispose of the surface water in this way:

- They have no express right to do so;
- It is disputed that they have a prescribed right to do this: their own documents demonstrate that surface water does not currently discharge in the manner suggested that it will when the site is developed;
- The Applicant has not sought any compulsory rights to discharge surface water in the DCO;
- The Applicant has not approached the Trust to acquire such rights.

The Environmental Statement and the Surface Water Strategy are therefore both based upon a method of disposal of surface water that cannot happen.

In addition, in the light of the Spring 2020 pollution incident, which has not yet been remediated by the Applicant, the fitness of the Applicant to hold such a consent is questioned, particularly given the proximity of the extension site to a SSSI on the Trust's land.

Lastly the Applicant is proposing an inappropriate financial "sweetener" for the local residents, which the Supreme Court has ruled ought not to be taken into account when considering such applications. Meanwhile the promised biodiversity net gains will not be provided for many years.