

**Pre-Inquiry Meeting
1000 Tuesday 9 April 2013**

Buckfastleigh Town Hall

Appeal Ref: APP/J1155/A/12/2185633

Whitecleave Quarry, Plymouth Road/Strode Road, Buckfastleigh, Devon

- 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 MVV Environment Devonport Ltd against the decision of Devon County Council.
 - The application, Devon County Council Ref.DCC/3242/2011, dated 8 July 2011, was refused by notice dated 3 May 2012.
 - The development proposed is construction and operation of materials recovery facility for inert construction and demolition waste and construction and operation of incinerator bottom ash processing facility together with associated site engineering and infrastructure.
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Agenda

1. Introduction

The Inspector, John Woolcock, introduced himself and stated that he had been appointed by the Secretary of State to hold an Inquiry and to determine this appeal.

Appearances at the PIM

For appellant
Mark Westmoreland Smith of Counsel
Instructed by Claire Brook Dickinson Dees LLP

For Devon County Council
Rupert Warren QC
Instructed by the Solicitor, Devon County Council (DCC)

For Rule (6)6 party Buckfastleigh Community Forum (BCF)
Charlie Hopkins non-practising barrister

2. Purpose of the Pre-Inquiry Meeting

The Inspector outlined that the purpose of the PIM was to ensure the smooth running of the Inquiry and to save Inquiry time by dealing with procedural and administrative matters at an early stage. He stressed that he would not consider the merits of the proposal which is for the Inquiry in due course.

He also stated that the inability to attend the PIM, or to be represented at it, would in no way be prejudicial to any right to make representations or appear at the Inquiry itself.

3. Environmental Statement

The application was accompanied by an ES and supplementary information had been submitted. The appellant indicated that a further addendum is being prepared which would be available on 19 April and would be subject to a 21 consultation period with any representations to be submitted to PINS by 10 May [subject to consultation with Case Officer]. The Council was content that this would not affect the programming for the Inquiry and suggested that the further technical work, including revised modelling, currently underway concerning the Council's first reason for refusal might also be usefully included in the proposed addendum. BCF expressed some concern about the timing and content, especially concerning hydrology, but would not be in a position to comment until the new data was available. However, BCF thought it likely that it would be able to confirm its views during the 21 day consultation period.

The Inspector indicated that he is required to take into account the Environmental Information, which is the ES/Supp Info and comments on it, and evidence adduced at the Inquiry. At the end of that process he will come to a conclusion about the adequacy of the environmental information.

The Inspector was advised at the PIM that any concerns about the ES will be addressed in evidence to the Inquiry and that no one is at this stage formally seeking additional information under the Regulations.

4. Statements of Case

The Inspector has received and read statements of case by

- Appellant
- Council
- BCF

If parties are relying on any documents he stressed the need to advise other parties at early stage.

5. Letters of representation

The Inspector has all letters of representation made to the Council about the application – but has not read them all yet and will do so during the course of the Inquiry. He also has representations made at the appeal stage. The Folder containing third party submissions will be available for inspection at the Inquiry and the Inspector will seek confirmation that the parties have seen these.

6. Main issues

The Inspector indicated that he will outline his preliminary views about the main issues in the case in his opening announcements when the Inquiry opens on 25 June, after he has read proofs of evidence. He might refine them on the basis of the evidence before the Inquiry.

7. Statement of Common Ground

The Inspector has seen an unsigned and undated copy of Statement of Common Ground between the Council and appellant. It was confirmed at the PIM that this is agreed. The Inspector requested an update to the SoCG to include a list of plans that were before the Council when it determined the application [is list in Decision Notice correct? Re Drawing No.PA03 Rev B and PA13]. New plans were foreshadowed as a result of the ongoing technical work and the SoCG should include a plans list for any amendments or alterations proposed to be submitted at the appeal stage.

The Inspector would hear submissions about dealing with the appeal on the basis of an amended scheme at the opening of the Inquiry. So as to save time at the Inquiry the Inspector requested that the parties give consideration to this and if possible submit views in writing in advance [concerning the application of the *Wheatcroft* principles in the circumstances which arise in this case].

The Inspector also requested that the SoCG include full wording for suggested conditions so as to save time at the without prejudice discussion about possible conditions at the Inquiry.

The appellant and BCF are also proposing to prepare a SoCG.

An obligation by way of agreement [if possible and unilateral undertaking if not] is proposed. Final drafts of any obligation relied upon must be made available with the proofs of evidence and a signed copy submitted before the close of the Inquiry.

8. Participants at the Inquiry

Appellant

Advocate Mark Westmoreland Smith of Counsel

Witnesses Ms Georgi Gilpin (Company)

Mr Neil Rugg (Transport)

Mr Alf Maneylaws (Noise)

Dr Garry Gray (Air quality)

[there are on going discussions with the Council about transport, noise and air quality]

Mr Ryan Mellor (Ecology)

Mr Jon Robinson (Hydrology/hydrogeology)

[depending on BCF submissions]

Mr Roger Miles (Planning and alternative sites)

Council

Advocate Rupert Warren QC

Witnesses Mr Ted Keegan (Planning policy)

Mr Leyton Davies (Noise)

Mr Darran Kitchener (Traffic and transportation)

Mr Richard Hill (Dust/air quality)

[Council advised that it may not be necessary to call all witnesses depending on outcome of ongoing technical work]

BCF

Advocate : Charlie Hopkins

Witnesses Professor John Altringham (Bats and SAC)
John Day (other ecology)
Professor (retired) Tim Drey (Chemistry of IBA)
Dr Mike Rodger (Health impacts and HIA)
Denise Rudgley Mayor of Buckfastleigh Town Council or other representative from the Town Council (Town Council issues)
BCF representative to be confirmed (Community concerns)
Hydrology/hydrogeology to be confirmed

Others

Email from Cllr. Philip Vogel, Executive Member Housing and Planning Portfolio, Teignbridge District Council
Email from Daniel and Susan Murphy, local residents

BCF is aware of some local businesses and employers, and local residents who wish to give evidence to the Inquiry. BCF offered to assist in coordinating details about those who wish to make a statement to the Inquiry. The Inspector is grateful for the assistance and suggested that the attached form might assist in compiling names, contact details etc. This would save time during the opening announcements at the Inquiry.

9. Structure of the Inquiry

After opening announcements the Inspector will hear brief opening statements from the appellant, the Council, and BCF. These should be no longer than 15 minutes and should be presented to an open session of the Inquiry, but should also be available in writing.

It was agreed at the PIM that the Inquiry would hear witnesses for the Council, then for the appellant, those of BCF, before finally hearing any interested persons. This was agreed subject to the possibility of the appellant recalling Mr Miles if necessary. An agreed likely programme for the Inquiry should be submitted for the Inspector to consider no later than 11 June. This should include the names of witnesses, the order that they would be called, the subject to be covered in their evidence, and a time estimate for evidence-in-chief. Time likely to be required for cross-examination should also be indicated if possible. A timetabling session will be included as part of the Inspector's opening announcements on 25 June.

There will be a discussion about possible conditions which will be without prejudice to the case argued by those who take part in the discussion. This will not undermine their case and any questions the Inspector might have about possible conditions will be for clarification and will not be prejudicial to his determination of the appeal on its planning merits. The

Inspector will, again on a without-prejudice basis, comment on the wording of suggested conditions and circulate these in advance of the Inquiry so as to save Inquiry time. He would like the views in writing of all parties about the need for conditions and their wording. Where possible these should be agreed, and if not, state clearly any disagreements or suggested alternative wording.

After the discussion about conditions and any planning obligations the Inspector will invite closing submissions from BCF, the Council and finally the appellant. These should be presented to an open session of the Inquiry, but should also be available in writing.

The Inspector will then make arrangements for an accompanied site visit. The parties should give some advance thought to an itinerary for the site visit and whether it would be possible for him to see some aspects unaccompanied.¹ If parties wish the Inquiry to visit particular sites in addition to the appeal site and surrounds then an early indication would assist programming. The Inspector will not be able to hear representations or evidence on the site visit itself. Those attending will only be allowed to point out physical features. If it is necessary to visit other sites there might be advantages in doing so early in the proceedings so that any questions by any party or the Inspector can be dealt with in an open session of the Inquiry.

The Inquiry is not the appropriate forum for challenging the merits of current and emerging Government policy or for debate on the direction of future policy. These are matters for consultation and discussion outside the scope of the present appeal. On the other hand, the Inspector will welcome views on how the proposal squares with relevant policies.

10. Programming and efficient use of Inquiry time

Although there will be no formal appointment of a programme officer, Mr Lloyd Orriel, who is a Graduate Trainee from DCC, will provide administrative assistance to the Inquiry as Admin Officer. His contact details are

Lloyd.Orriel@devon.gov.uk

phone number – 01392 383365

His main responsibilities, under the Inspector's direction, will include:

- Keeping records of attendance at the Inquiry;
- Co-ordinating the submission of evidence;
- Maintaining the Inquiry library; and
- Acting as the point of contact between Inquiry participants and the Inspector outside the formal proceedings.

However, his involvement in the Inquiry will be confined to such procedural matters, and the Admin Officer will play no part in the Inspector's decision on the appeal.

¹http://www.planningportal.gov.uk/uploads/pins/gpa_13.pdf

For the time being the Case Officer will continue to be the main point of contact. After the start of the Inquiry all queries should be made to the Admin Officer.

PINS case officer is Leanne Palmer, Room 3/20,
telephone 0303 444 5471.
Email Leanne.Palmer@pins.gsi.gov.uk

11. Inquiry venue and accommodation requirements

Buckfastleigh Town Hall

It was considered at the PIM that this would be convenient for all participants. A public address system will be provided.

There will be a retiring room for the Inspector, and meeting rooms for the main parties.

There were no indications at this stage about any requirements for technical equipment – photocopying, projectors etc but if likely to be needed requirements should be discussed directly with the caretaker for the building.

There are no indications at this stage about any specific media interest – such as any request for filming or recording. The Inspector asked to be advised if and when any arise and indicated that he would deal with this as part of the opening for the Inquiry.

12. Inquiry dates and sitting times

The Inquiry will open 1000 Tuesday 25 June 2013. It is scheduled to sit for three weeks, but a fourth week has been set aside if required. There is some doubt about the Inspector's availability on Friday 5 July. It was agreed to see how the Inquiry was progressing at the end of the first week to see whether it should sit on 5 July. The Inspector indicated that time would be made available in the programme for closing submissions to be prepared in writing. Sitting hours generally 1000 – 1700 with break for one hour at lunch, along with mid-morning and mid-afternoon short breaks. Fridays the Inquiry would aim to sit from 0930 to 1330.

13. Outline Inquiry timetable

When opening the Inquiry the Inspector will ask for estimates of the time for evidence, including cross-examination – however, it would be helpful to have some idea as to likely timetable and to be aware of any restricted availability of witnesses. Request for Admin Officer to assist in the coordination of draft programme [see attached form].

A timetabling session would be held as part of opening announcements.

The Inspector stressed that the programme will always remain provisional and be subject to change. Through the Case Officer and Admin Officer the Inspector will endeavour to keep parties informed as to progress, and wherever possible will try to fit in with any constraints. But the Inquiry must be run expeditiously, and it will be up to parties to be available when required. If they are not, then the Inquiry will proceed without them.

14. Proofs of evidence and other statements

No later than 4 weeks before start of Inquiry 28 May 2013 – summary if more than 1500 words – use of metric units – all paragraphs numbered and all pages included appendices numbered – normally not accept any documents after that date

Rebuttal proofs – The Inspector was not inviting any but he is aware that in some cases they can save Inquiry time – only where justified. Rebuttals must be confined to evidence addressing specified evidence submitted by other parties. They must not be used to introduce new matters that could have been covered in main proofs of evidence. Comments on the evidence of other parties may be made in opening or closing submissions.

If any reliance is to be placed on a planning obligation it must be completed, signed and dated before the Inquiry closes – A final draft should be submitted along with proofs of evidence.

Any legal submissions should be in writing before end of Inquiry and include copies of any judgements.

Electronic versions of final draft of suggested conditions and closing submissions to be emailed to Case Officer.

15. Documents

Core Documents prefixed by CD - co-ordinated by the Appellant in conjunction with other parties.

Those presenting evidence should note that the Inspector's decision will be based on the evidence and submissions put to him at the Inquiry. He will not be doing his own research, or looking up references in libraries or online. If parties consider it necessary for him to see material beyond what is set out in their proofs, it is up to them to provide it in hard copy. Simple references to published reports etc or links to web sites are not sufficient, especially as web sites can be changed or deleted at any time.

Number of hard copies to be available at Inquiry – at least 1 for each party, 1 for library, 1 for witness table, 1 for Inspector.

Hard copies of evidence must be sent to arrive not later than the specified dates. It will not suffice to send them electronically on the day with hard copies to follow. The Inspector cannot guarantee to have read prior to the Inquiry any evidence submitted late. Late submission may necessitate

adjournment of the Inquiry, and may give rise to applications for costs against the party responsible.

Each party should produce a list of its documents up to the beginning of the Inquiry with copies for the Inspector and Admin Officer, on paper and in electronic form. Inquiry Documents subsequently submitted will be numbered sequentially.

Normally no evidence or other material will be accepted after the close of the Inquiry.

17. Any other business and questions

The Inspector raised 3 other matters

He asked for an update about position concerning an Environmental Permit (EP) from the Environment Agency (EA). The appellant advised that discussions had taken place with the EA but that no application for an EP has been made pending the outcome of this appeal. The Inspector asked for parties to check correspondence from EA to ensure that sufficient information was available [EA email dated 19 November 2012 states that if an application for an EP was received the EA would regulate dust and odour within the permit area].

The Inspector asked for confirmation about the description of the proposal, which is described differently on the Council's Decision Notice from that which appears on the application form.

The postcode of the appeal site was given as TQ11 0DQ.
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Just to confirm dates/exchange for submission of documents

1700 Tuesday 28 May 2013
Deadline for submission of proofs
Revised SOCG including plans lists and suggested conditions
Final draft of any s106 obligation

1700 Tuesday 11 June 2013
Any rebuttal proofs
Suggestions for site visit/draft itinerary
Draft programme/timetable for Inquiry
Copy of Council's notification letter about the date, time and venue for the Inquiry

John Woolcock
Inspector

10 April 2013