

RICHARD BUXTON SOLICITORS

ENVIRONMENTAL, PLANNING & PUBLIC LAW

Newcastle City Council
Development Management
Civic Centre
Newcastle upon Tyne
NE1 8QH

Office A, Dale's Brewery
Gwydir Street
Cambridge CB1 2LJ

Tel: (01223) 328933

www.richardbuxton.co.uk
law@richardbuxton.co.uk

Attn: Planning Committee Members
cc: Jon Rippon, Team Manager; David Grimshaw, Planning Officer

By email only

Our ref: DEF1/1

Email: mmcfeeley@richardbuxton.co.uk, lhadler@richardbuxton.co.uk

16 December 2020

TIME SENSITIVE - RELEVANT TO PLANNING COMMITTEE MEETING ON 18 DECEMBER 2020

Dear Planning Committee Members,

Re: Application for a surface coal mine and associated works; Dewley Hill; 2019/0300/01/DET

We are instructed by Defend Dewley Hill and write in support of the Officer's recommendation that the above planning permission be refused. However, there are additional reasons why we consider that permission should be refused to those set out by the Planning Officer's Report ("OR") and which, should the committee instead be minded to grant permission, would require careful consideration as, to grant permission on the basis of the current information could, we believe, form the basis of grounds for judicial review.

Yesterday we sent the enclosed letter to the Planning Officer (attached as annex 2) setting out in more detail the following points, which we hope may assist your consideration of the application.

1. **The Fallacy of a Carbon-Neutral Coal Mine**: the OR accepts the Applicant's assumption¹ that there would be no net increase of GHG emissions resulting from the end use of the extracted coal. No reference is made to the expert evidence provided by Professor Paul Ekins OBE, Director of the UCL Institute for Sustainable Resources, in response to this planning application who addresses this "perfect substitution assumption" and calls it "economic nonsense." The reality is that easy access to domestic coal discourages the urgent and necessary move away from the use of coal.

Professor Ekins letter (attached as annex 1) makes clear that additional coal mining will increase the use of coal, leading to additional carbon emissions. Furthermore, even if only a very small proportion of the coal is not substituted, this would overwhelm the applicant's claimed greenhouse gas savings from transport. For example, if 95% of the coal was a substitute for other coal but 5% was 'additional', this would increase the estimate of GHG emissions from the mine by 2.8 times and dwarf the claimed 'savings' due to reduced transportation distances.²

¹ The applicant's consultants do not provide any evidence for the assumption, merely stating that it is "reasonable to assume" that no additional coal will be burnt. Wardell Armstrong, Greenhouse Gas Emissions, October 2019 at 1.1.2.

² See our letter (annex 2) at paras 17-18.

Furthermore, Professor Ekins' expert evidence does not appear to have been taken into account by the Council's consultant, who advised on the Applicant's treatment of GHG emissions. There is therefore no rational basis for the conclusion of the Officer that climate change is to be weighed neutrally in the planning balance and, should permission be granted, there is likely to have been a failure to comply with the EIA Regulations as the Council is required to ensure that there has been an assessment of the greenhouse gas impacts of the proposed development.

2. **Overstated benefits of fireclay extraction:** the extraction of fireclay is afforded great benefit in the planning balance by the Officer. This is based on the Applicant's assertion that the site holds 400,000 tonnes of recoverable, usable fireclay, equating to a 10-year supply for Throckley Brickworks. Given the great weight given to this assertion in the planning balance by the Officer, this figure deserves proper scrutiny. Evidence of the quantity and quality of recoverable fireclay is clearly relevant when assessing the benefits and weight to be attached.

Yet, the Officer's assessment appears to be founded on a figure provided by the Applicant for which evidence is lacking, and which seems to have inflated over time – our client suspects in recognition by the Applicant that the further benefits are needed to justify the proposed development. This point was in fact raised by the Council, who asked the Applicant in August 2019 for a justification for the 400,000 tonne figure, given that the previous Crescent Farm application had indicated only 50,000 tonnes at the site, and the applicant themselves had asserted there were only 150,000 tonnes in the scoping report for Dewley Hill. To our client's knowledge, the Applicant has not provided a response to the Council's request. Should the Committee be considering a grant of permission by reason of benefits related to fireclay extraction, the uncertainty of those benefits must be borne in mind.

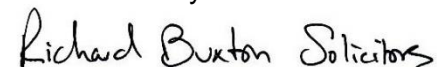
3. **Unspecified conditions to make impacts acceptable:** the Officer's Report repeatedly notes that certain matters could be controlled by condition to prevent unacceptable impacts if planning permission were granted. However, it is not clear whether those impacts would in fact be acceptable, or how this can be determined. One example is noise from blasting and the impacts on residents, who live as close as 68 metres to the extraction boundary. The OR merely states that "the applicant should monitor the impact of blasting at relevant receptors and measures to minimise air overpressure are submitted," concluding that "such conditions have been imposed on other surface coal sites and have been effective in ensuring the effects from blasting are acceptable."

Our clients do not accept that impacts at other coal sites have necessarily been acceptable, but in any event, there is little basis to even consider the conditions that the Officers consider would be necessary. Whilst e.g. noise conditions are relatively common, if the Committee were minded to grant permission, the detail of the conditions required to prevent unacceptable impacts should be considered before any grant of permission in principle. Our clients, furthermore, should be given an opportunity to comment on and consider the detail of these.

Conclusion

Our client respectfully asks that the Committee resolve to refuse permission. However, should the Committee be minded to grant permission, we respectfully suggest that further analysis is needed, and the above issues must be addressed, to avoid legal error and a potential judicial review.

Yours faithfully



Richard Buxton Solicitors

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