

*Blackrod and Horwich
Environmental Action Group
Two Communities - One Cause*

**HORWICH MOOR
RESIDENTS ASSOCIATION**

**Bolton Council
Victoria Square
Bolton
BL1 1RU**

27 October 2009

Fao Mr. Howard Barritt - Head of Planning Control

**CC Mr. Sean Harriss - Chief Executive
Mr. Alan Eastwood - Director of Legal and Democratic Services
Cllr Anthony Connelly - Chair Planning Committee**

Planning application 80931/08

Dear Sirs,

The Blackrod and Horwich Environmental Action Group has a track record of supporting the local communities during planning applications, as such we have been approached by many residents and local groups in respect of this application.

Due to the nature of our resultant findings and thus our objection we have found it necessary to seek legal advice. This has been done with the full support of the Horwich Moor Residents Association and the tacit approval of other groups and individuals who have made objections both in writing and at the Horwich Council Public Planning Meeting to discuss this application.

We enclose a copy of this legal advice, which forms the basis of our objection.

Yours faithfully



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Environmental Action Group**

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Residents Association**

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Pilkington Quarry, Horwich, Bolton ("the Quarry") – Planning Application 1.80931/08

1. This letter is written on behalf of the Residents Associations which object to the above application. We understand the application will go to the Planning Control Committee ("**the Committee**") for consideration on 29 October 2009 with a recommendation from the Group Planning Officer that the application be approved subject to conditions.
2. The purpose of this letter is to put you on notice that:-
 - 2.1 The mineral extraction and other operations currently being carried out on site are a breach of planning control;
 - 2.2 The Committee report is factually inaccurate and misleading;
 - 2.3 The environmental information submitted to your Council does not constitute an environmental statement for the purpose of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 ("**EIA Regulations**"), alternatively, is inadequate for the purpose of determining the application; and
 - 2.4 The Committee report gives no consideration to the requirements of Directive 2008/98/EC, in particular, whether landfill at the Quarry is the best overall environmental option.

Accordingly, the Council can not lawfully grant planning permission for the proposed development.

Our reasons for reaching this conclusion are set out in detail below.

The existing planning permissions

3. Permission for stone extraction at the Quarry was granted on 26th June 1950 under reference 12/5/103. A further permission for stone extraction from 4 acres of land within the 1950 permission area was granted in 1968 under reference number 12/5/1642. The effect of Section 7(5) of the Town and Country Planning (Minerals) Act 1981 was to impose a mandatory time limit of 60 years from 1982 on the permissions so that they expired in 2042.
4. On the 7th October 1999 the Council under reference number 50252/97 determined conditions in respect of the extant permissions ("**the ROMP Conditions**") in response to an application made under the provisions for the review of mineral permissions contained in Schedule 13 of the Environment Act 1995 ("**the 1995 Act**").
5. Condition 1 of the ROMP Conditions requires the extractive operations to cease no later than 8 years from the date of the planning permission, that is, by 7th October 2007. The applicant (apparently) contends that this condition is invalid relying upon the decision of the Court of Appeal in *Earthline Ltd v. Secretary of State for Transport, Local Government and the Regions* [2002] EWCA Civ 1599. However, the Council's determination of the ROMP Conditions was not appealed and no application has been made to vary this condition.
6. However, an application under Section 73 of the Town and Country Planning Act 1990 was subsequently made to the Council under reference number 61530/02 for a variation of condition 23 of the ROMP Conditions to permit the importation of inert materials to stabilise the north face of the Quarry. This application was granted by the Council in November 2002 ("**the 2002 Permission**").

7. Condition 20 of the 2002 Permission imposes a condition in similar terms to Condition 1 of the ROMP Conditions, limiting the extraction of minerals to 7th October 2007. The 2002 Permission was not appealed. The statement in the Committee report that the 2002 Permission has lapsed is misleading. The development for which the 2002 Permission was given may have been completed but the 2002 Permission is extant and governs operations in the Quarry. The 2002 Permission is not governed by the provisions of the 1995 Act.
8. It is important that the Council's members are aware that this application is, in effect, an application to re-open a closed quarry and to extend its workings. The applicant states in section 4.8.2 of the Planning Application and Environmental Statement ("**the Statement**") that the existing quarrying operations at the Quarry have planning permission until 2042. The impression is conveyed that the Quarry will operate until that date irrespective of whether or not this application is granted. This is factually incorrect and is misleading. Insofar as the Quarry remains an "*active sandstone quarry*", as stated in Box 15 of the Application Form, it operates solely by reason of the Council's failure to enforce a breach of planning control.
9. In section 3.11.1 of the Statement the applicant states that the proposed restoration scheme "*is, effectively, a combination of the submitted scheme for 61530/02 ... upgraded to take account of the proposed extension*". The importation of inert waste was permitted under permission 61530/02 for the limited purpose of buttressing the north face. So far as we are aware, there is no restoration scheme approved under either the ROMP Conditions or the 2002 Permission which permits the remainder of the existing void space to be infilled with inert or other waste.
10. Accordingly, the statement on page 1 (para. 5) of the Committee report that a restoration scheme has already been approved for the existing permission would appear to be inaccurate. The Council members are effectively being precluded from considering whether some other form of

restoration is more appropriate; for example, a lower level restoration as preferred by the Council's own wildlife liaison officer.

11. There are other factual inaccuracies to which attention is drawn below. If the Council determines the application upon the basis of a factually inaccurate Committee report its decision will be open to challenge on Wednesbury principles (*R (on the application of Cathco Properties Holdings Limited) v Cygnor County Council & Finneys Limited* [2008] EWHC 1462).

Waste disposal at the Quarry

12. The 2002 Permission contemplated that the then owners of the Quarry, Santime Limited, would apply for a waste management licence to carry out the works permitted by the 2002 Permission. The works were initially carried out pursuant to an exemption under Schedule 3 of the Waste Management Licensing Regulations 1994 ("**Waste Regulations**") which was registered with the Environment Agency ("**EA**") in 2004. In or about October 2005 that exemption lapsed by virtue of an amendment to the Waste Regulations. Santime continued tipping waste in the Quarry even though it had no site licence or registered exemption from the Waste Regulations. The EA took no enforcement action pending the determination of an application by Santime for a waste management licence. This application was never determined due to Santime's failure to supply the necessary information, and the EA formally directed Santime to stop tipping at the Quarry on or about 1 May 2006.
13. It is understood that in excess of 1 million tonnes of waste were used in the construction of the buttress. As the EA has made clear (see their letter of 24 November 2008) the deposit of waste at the site was not regulated or supervised in any way by the EA. The EA has borehole data which confirms that the waste in the buttress is contaminated. Not only is the waste contaminated, but as the EA notes in its letter, the buttress slipped into the bottom of the Quarry. This suggests that the

geotechnical properties of the waste were unsuitable for the use to which it was being put. The buttress has been rebuilt using the same waste materials as were the subject of the slip.

14. Further, the applicant has currently disposed of a large quantity of wood waste in the Quarry for which it has neither planning permission nor an environmental permit, site licence or exemption.

The Environmental Statement

15. The applicant does not appear to have sought a screening direction from the Council before submitting its planning application. The applicant maintains in paragraph 1.5 of Section 1 that the proposed development is not EIA development. The applicant has, however, submitted what purports to be an environmental statement for the purpose of the EIA Regulations. The proposed development is clearly Schedule 2 development for the purpose of the EIA Regulations. The only issue, therefore, is whether or not the proposed development is likely to have significant effects on the environment by virtue of factors such as its nature, size or location. Given that the proposed development extends to 19.9 hectares and involves mineral extraction and landfill in the Green Belt, we anticipate that the Council will have little difficulty in concluding that an environmental statement is required.
16. To fall within the definition of an "environmental statement" for the purpose of the EIA Regulations, the Statement must include, as a minimum, the information referred to in Part 2 of Schedule 4 of the EIA Regulations and, such of the information referred to in Part 1 of Schedule 4 as is reasonably required to assess the environmental effects, and which the applicant can reasonably be required to compile, in the light of current knowledge and methods of assessment.

17. Both Part 1 and Part 2 require a "description of the development". By a description of the development is meant an "accurate description of the development". As GMGU, one of the consultees, pertinently observes in its letter of 14 January 2009:-

"An environmental statement should be comprehensive and include all relevant environmental information to inform the decision maker, consultees and the public and thereby enable scrutiny, comment and informed decision making".

18. Section 1.4 of the Statement sets out what is said to be the 5 main aims of the proposed development, none of which make any reference to the principal purpose of the development, namely, the landfill of waste. Reference to the landfill of waste appears obliquely with expressions such as "inert restoration infilling" (section 6.7.4 of the Statement). Indeed, the word "waste" is only used in conjunction with the working of the mineral and the recycling of secondary aggregate. This is at best disingenuous and at worst positively misleading.

19. Para. 1(b) of Part 1 of Schedule 4 of the EIA Regulations requires a description of the main characteristics of the production processes, including the nature and quantity of the materials to be used. This information is reasonably required to assess the environmental effects of the proposed development and is straightforward to compile. Nowhere in the environmental statement is there any information about the volume of the existing void space in the Quarry or the void space which will be created by the proposed extraction of minerals or the tonnes of waste which will be required to be imported to infill the void created by mineral extraction. In short, there is no balance of minerals calculation sufficient to verify the quantity of waste which will be imported onto the Quarry for the purpose of infilling.

20. The only reference to the volume of void space is in Box 23 of the Application Form which refers to inert landfill of 1.2 million cubic metres. In a subsequent letter to the Council (undated) the

applicant's agent states that the total volume of void space for infilling with inert waste is 2.05 million cubic metres, that is, 70% more than the figure in the Application Form. There is no information as to how this figure has been calculated and the figure is not related to the quantity of material which will need to be imported on to the Quarry to infill the void. This information is fundamental to the description of the development. Without this information, it is impossible to assess the likely significant effects of the development on the environment in accordance with the succeeding provisions of Part 1 of Schedule 4. The applicant has been afforded an adequate opportunity to make good these deficiencies by providing further information but to date it has not done so.

21. Further, insofar as the applicant has purported in the Statement to assess the impacts of the proposed development, the assessment in the Statement was predicated upon the infilling of 1.2 million cubic metres of void space. Since the volume has, on the applicant's own figures, significantly increased, the basis of the assessments in the Statement must be thrown into doubt. These are fundamental defects which no planning authority, properly directing itself, can reasonably ignore.

The adequacy of the environmental statement

22. In addition to these fundamental defects, the Statement is inadequate in the following respects:-
 - 22.1 No or insufficient account is taken of the presence of contamination in the waste supporting the buttress;
 - 22.2 No adequate response has been received to the criticisms of the hydrology and hydrogeology assessments by the EA in their letter of 10 September 2009 and the GMGU in their letter of 14 January 2009;

- 22.3 No consideration is given to the effects associated with the landfilling (on the applicant's most recent figures) of 2.05 million cubic metres (approximately 3.075 million tonnes) of imported inert waste;
- 22.4 No balance of minerals calculation has been made reconciling the volume of void in the quarry, the volume of void to be created by mineral extraction and the volume to be infilled by waste mineral and inert waste;
- 22.5 No consideration is given to the effects of landfilling on the existing buttress;
- 22.6 No adequate analysis is made of vehicle movements, in particular, in relation to the quarrying and landfilling operations on site, nor to peaks and troughs in traffic flow.

Contamination from the buttress

23. In Box 15 of the Application Form the applicant has stated that none or no part of the Quarry is suspected of being contaminated. The Statement contains no assessment of the risk of any onsite contamination. There is present in the Quarry a substantial amount of waste which is known or believed to be contaminated (see EA letter of 24 November 2008). The applicant's statement in the Application Form is inaccurate and misleading.
24. The applicant has responded through his agent by letter of 19 December 2008 to the effect that "*it is presumed that the materials used by Santime to construct the buttress were approved by both Bolton Council and the Environment Agency*". This was not the case as the EA's letter of 24 November 2008 made clear. The applicant has had sufficient opportunity to investigate the waste used in the buttress but has not done so. The potential risk to groundwater of the leaching of contamination from the waste forming the buttress has not been assessed. Likewise no

assessment has been provided of the potential risk of landfill gas migrating from the waste comprising the buttress.

Balance of minerals calculation

25. The Statement contains no assessment of the risk from leachate or landfill gas of importing large quantities of construction and demolition waste for landfill. The applicant's agent in his letter of 25 October 2008 dismisses the possibility of leachate occurring as the materials imported would be "inert". No mention is made of the potential for the generation of landfill gas. The applicant has not addressed these risks either in the Statement or subsequent correspondence. The applicant has taken no account of the fact that even waste defined in the Landfill Directive as acceptable for deposit in landfills classified as "inert landfills" will generate a leachate and landfill gas.
26. The potential impact of leachate and landfill gas will be greater the more waste is deposited in the Quarry. On the applicant's own figures the volume of void space to be infilled with non-mineral waste will be 2.05 million cubic metres. At a conversion factor of 1.5 tonnes per cubic metre, this equates to 3.075 million tonnes of imported waste, the potential impacts of which have been ignored.
27. As noted above, there is a substantial discrepancy between the volume of void space to be infilled as set out in Box 23 of the Application Form and the figure now put forward in correspondence by the applicant's agent. This has not been challenged by the Council and the applicant has not produced any reconciliation of his figures. The reliability of the figures is questionable having regard to the inconsistencies in the Statement.
28. By way of illustration, in section 3.7 of the Statement the calculation of the quantities of Minerals is predicated on the "*assumptions that working would take place below the water table*". In contrast

section 5.4.3 envisages that the faces would be worked above the groundwater table. There is no explanation of this discrepancy.

29. In his letter of 26 May 2009, the applicant's agent indicates that the applicant will restrict the mineral extraction of the resource to 1m above the measured maximum water table by planning condition. No such condition appears in the conditions recommended to the Committee (although we assume this is an oversight). There is no attempt to explain the effect of this limitation on the minerals balance calculations. Logically, the effect of this limitation should be to reduce the volume of void space. Instead the volume of void space now put forward has increased by 70% over that originally proposed. This calls into question the reliability of the figures now put forward.

Hydrology and Hydrogeology

30. The EA, as statutory consultee, has drawn attention to the risk to groundwater from the development. The assessment of risk carried out in the Statement is inadequate in that it does not provide a comprehensive survey of water features or an appraisal of how each may be affected by the development. The applicant's attempts thereafter to address this issue are inadequate for the reasons set out in the EA's letter of the 10th September 2009. In particular, as the EA has pointed out, it is inappropriate to characterise the issue as simply a risk of pollution to Heather Hall Cottage and to dismiss that risk solely on the basis that this property is "up hydraulic gradient" from the proposed Quarry extension. The Committee report does not properly reflect the EA's objections which still have not been addressed by the applicant.
31. However, the Committee report does recognise that the information presently available is inadequate. It proposes addressing the inadequacy of the information by imposing Condition 16 in the following terms:-

"16. Within 6 months of the date of this permission a full hydrological assessment of the site shall be carried out and submitted for approval to the Local Planning Authority.

Reason

To prevent pollution and damage to the water environment."

The Committee report states that the imposition of such a condition has been proposed by GMGU. In fact, insofar as hydrology is concerned, GMGU recommend in their letter of 14 January 2009 that an assessment is provided earlier and not (as proposed by the applicants on page 14 of the Statement) later by condition. The issues raised by the EA relate specifically to hydrogeology rather than hydrology and (as an aside) for clarity the condition should refer to both hydrology and hydrogeology. However, as presently framed, the condition would not, in itself, achieve its stated aim of preventing pollution and damage to the water environment since there is no sanction or consequence to the failure of the local planning authority to approve the hydrological assessment.

32. The Council's attempt to deal with the inadequacy of the environmental statement by condition is fundamentally flawed. A permission granted without adequate environmental information will be granted in contravention of Regulation 3(2) of the EIA Regulations and, accordingly, will be invalid. (R v Cornwall County Council Ex Parte Hardy [2001] Env. LR 25). If the Council grants permission before it has the necessary environmental information it invites third party challenge.

The stability of the buttress

33. The applicant's proposals require the infilling of inert material to take place on top of the existing buttress. The Environmental Permitting (England and Wales) Regulations 2007 require the sides and base of an inert landfill to be sealed with a clay or other geological barrier. Not only is the waste in the buttress contaminated, but its geotechnical properties have been demonstrated to be

unsuitable for the purpose to which it has been put. This was evidenced by the landslip which occurred in the buttress which is described in the EA objection letter of 24th November 2008. Without a proper assessment it can not be determined whether or not the buttress capable of supporting the proposed landfill. The planning application should not, as a matter of principle, be determined until there is sufficient evidence that the proposed development is capable of being implemented.

Traffic impact assessment

34. The traffic impact assessment contains no analyses of the vehicle movements associated with the different operations which will be taking place at the Quarry. In particular, it is noted that section 12.3.5 of the Statement states:-

"12.3.5 The applicant has confirmed that the proposed extension will result in an increase of HGV movements of about 75 in and 75 out per day above the existing quarry traffic flow resulting in a total of 125 HGV's in and 125 HGV's out per day equating to 250 movements per day."

This hardly amounts to an independent assessment of the likely traffic movements. The Statement is not supported by any independent evidence or assessment, for example, by reference to a material balance calculation.

35. The traffic assessment should consider the number of vehicle movements relating to the sale of stone and recycled materials from the Quarry and the importation of waste for recycling and landfilling. This should be broken down annually and the overlap between extraction and infilling on a phase by phase basis analysed. No consideration has been given to the seasonal demands for aggregates and landfill and the effects of any large construction and demolition contracts which might lead to high traffic peaks. If the true environmental impact of traffic arising from this development is to be assessed, the traffic generated should not simply be averaged out over the proposed lifetime of the Quarry.

36. Aside from these criticisms, there is a more fundamental flaw in the traffic impact assessment contained in the Statement. The assessment proceeds on the basis that:-

"12.1.3

- *Currently, there are no restrictions on traffic movements into or out of the existing site under the terms of the extant consent (planning permission ref: 50252/97)."*

Whilst it is correct that there are no restrictions on traffic movements in planning permission ref: 50252/97, traffic movements on site are controlled by the conditions attached to the 2002 Permission which governs operations in the Quarry, not just the operations sanctioned by the variation of condition.

37. Condition 29 of the 2002 Permission provides that:-

"29. *No more than 80 HGV movements into the site shall be permitted during a working day Monday to Friday and 50 HGV movements into the site on Saturdays without the prior written consent of the Local Planning Authority. ..."*

Accordingly, the assertion in the Statement that there is no existing restriction on vehicle movements is incorrect and the traffic impact assessment is fundamentally flawed.

38. The proposed Condition 3 of the draft conditions provides for 110 HGV movements to and from the Quarry on any day other than Sundays, Bank or Public Holidays. This amounts to 30 more HGV movements into the Quarry per day during the week and 60 more HGV movements on a Saturday. There is no reasoned basis for arriving at the figure in the draft conditions which take no account of the 2002 Permission.

Directive 2008/98/EC

39. Article 4 of the Directive is part of domestic law. Article 4.1 applies the waste hierarchy in waste prevention and management policy. Article 4.2 requires member states to encourage options that deliver "the best overall environmental outcome". Accordingly, the Council should take into

account the "best overall environmental option" when considering whether or not to grant permission for the disposal of inert waste at the Quarry.

40. No evidence has been adduced by the applicant of the need for a facility to dispose of inert construction and demolition waste in the locality. The only evidence adduced by the applicant is contained in a copy letter (undated) from the applicant's agent (apparently to GMGU) in which he says C&D Waste will be sourced across Greater Manchester and Lancashire and the applicant is *"aware of the large amounts of C&D material currently going to landfill and have been contacted on very many occasions at their sister company (Armstrong's) with enquiries regarding C&D Waste and assure us that they will have no issues sourcing this material"*. This is hardly a factual basis upon which to determine the issue of need.
41. If the Council are satisfied that there is a shortage of landfill then the Council must address the considerations in Article 4, as reflected in local and regional plans, when considering whether or not to grant permission for the proposed development; in particular (a) the waste hierarchy; (b) alternative means of treating or disposing of the waste; (c) the proximity principle; and (d) self-sufficiency in managing waste. These issues have not been addressed either by the applicant in the Statement, and/or its subsequent correspondence, or by the Council in the Committee report.
42. The Committee report acknowledges that landfill is inappropriate in the Green Belt but then asserts *"In this instance there would be a need to restore the mineral working and, therefore, the very special circumstances include the restoration of former mineral workings"*.
43. There are no reasons put forward in support of this conclusion. The evidence of the Council's wildlife liaison officer in his memo of 9 January 2009 is that existing sites in Bolton have achieved good wildlife value with little restoration. Low level restoration would provide varied habitats and a range of recreational facilities. There is no reasonable basis for concluding that there is a "need" for these mineral workings to be restored by infilling on the evidence available.

Conclusions

44. It is clear that, insofar as this Quarry remains an "active quarry", its activities constitute a breach of planning control and the opportunity exists for the Council to determine an activity which is inappropriate development in the Green Belt. The assumption underpinning the officer's recommendation in the Committee report that the Quarry can operate until 2042 is ill founded and the arguments for permitting the applicant to continue and extend its operations until that date require re-consideration. The fact that the local community has endured 50 years of mining at the Quarry is not an argument for subjecting it to over 30 years more.
45. Further, and in any event, the Committee can not lawfully grant planning permission upon the basis of the environmental information provided to date, which is inadequate, and the current Committee report, which is inaccurate. Accordingly, the Committee must either refuse permission or defer the application until the necessary environmental information is received and a proper evaluation undertaken for the benefit of the Committee.

Yours faithfully