

30th June 09

Dear Mr Findlay

Thank you for your email with details of the screening decision made by your department. However, it has raised a number of significant and substantive questions which we feel have not been included in the screening and I would be grateful for further urgent assistance in answering these questions.

Our response to your points made in blue are in red underneath, however we feel that a lot of original comments have not been addressed and would be grateful if you could revisit this document and give us a full explanation as requested.

1/ Why is the address and postcode information incorrect at the beginning of the screening?
This is the address we have on our systems, and as written by the appellants on appeal. However, the screening was undertaken on the basis of the site's location - the postcode has no relevance.

This information was discussed at length between 'the parties'. A document was drawn up and agreed on the address of the site which should be available in the documents you state have been referred to as part of the screening. This document was drawn up by the appellants and signed by all parties and agreed with the inspector. Quite frankly, the group finds this 'mistake' very worrying and a demonstration of a slipshod approach. To state that 'the postcode has no relevance' somewhat misses the point – we are dealing with very serious issues here and if the documentation held by PINS is inaccurate to this degree - despite having formed part of the Inquiry it substantiates our belief that due care has not been applied to the Screening Decision process.

As previously stated, the postcode of a site has no bearing whatsoever on whether or not a development requires an Environmental Statement (ES) (and see next answer).

2/ Why have Sections 3 and 4 not been addressed in this document.

This form is for internal use and is to help identify for our case officers where screening needs to take place. Once that has been determined there is no need to continue - the case is then passed for screening to be undertaken (this is not done by the individual completing Part 1 of the form). There is therefore no relevance to Sections 3 and 4 not being completed.

3/ What position does Paul Bennett hold (the person who appears to have made the screening decision)? What qualifications does he have to be in a position to screen this application and decide that no EIA is required?

The named individual has several years experience of screening appeals for the need or otherwise for an Environmental Statement under the EIA Regulations.

Could you answer this question as asked please or confirm that you do not wish to provide Mr Bennetts' qualifications - if that is the case. You mention that Mr Bennett looks at Environmental Statements; however we are looking at an Environmental Impact Assessment.

How many years is 'several' – can you quantify in months please.

Educational qualifications of the Officer concerned are private. However he has been screening appeals under the EIA Regulations since they were introduced in 1999. "EIA" is a colloquial way of referring to the process that is undertaken, either by Councils or, on appeal the Secretary of State (and see below on the Planning Inspectorate's role in this) to determine whether a development requires an ES. It is

the ES that is the formal document required if a development is judged to be "EIA development".

4/ Whilst the site itself is not within a sensitive area are you and your colleagues who undertook the screening aware that it is surrounded by AONB, in one place 300 yards from the proposed site and it is also situated between a conservation area and an AONB? If not - why not?

The decision was taken in the full knowledge of the site's location.

This we would dispute and would like clarification as to whether Paul Bennett looked at the Planning Application solely or the Public Inquiry expert witness submissions before reaching his decision

The Officer considered the site's location and took into account the advice in paragraphs 32-47, and Annex A of Circular 02/99 (hyperlink provided in my earlier response). He did not look at the witness submissions.

5/ Section 5 (1) – Characteristics indicates the scale to be 2.5 megawatts. This is a figure claimed as electrical output by the appellant; however the thermal input is 13 megawatts, which indicates the scale of the thermal process and therefore potential for pollution. No significant issues re natural resources – the supply of fuel is clearly controversial with fuel sources changing during the period of the inquiry. The range of fuels being dependent upon any decision on conditions made by the Inspector.

We can see no indication that this matter has been addressed, let alone understood by the screening officer. We await your explanation.

All details on the case file at the time the screening was completed were taken into account.

We would appreciate a better understanding of the documents used to screen this decision as the information produced by PINS seems to bear little resemblance to the site and the information which was presented at the public inquiry. Please clarify the extent and scope of 'all details on the case file at the time the screening was completed'

The Officer took into account the planning application documents and plans.

6/ Section 5 (2) Location – The site is a designated business park and within this description it does not mention all the critical 'receptors' and, whilst there is a small sewage treatment works located to the East more importantly the site lies adjacent to the local Community College with 500+ pupils and sports and playing fields closer, along with a recently developed housing estate and also sensitive business developments such as a Veterinary Practice, food hamper company and building supplies company.

The location was clear at screening, and taken into account.

The Group cannot understand how Mr Bennett was aware of the site as the only 'receptor' mentioned was the sewage treatment works. We would like an explanation as to why all other 'receptors' on the site have not been mentioned. If you choose to use the terminology 'adjacent to' then you should choose all boundaries that are 'adjacent to' the 'industrial/business estate location' i.e. housing estate, school playing field. The selection of the sewage treatment works is selective and arbitrary and would suggest a lack of objectivity whether by design or otherwise which requires further review.

Not listing all "receptors", including those set out below, does not imply their proximity to the site was not considered in the screening process.

Other 'receptors' not mentioned and adjacent to the proposed development are the town's Allotments, Recycling centre, Oakeley Farm with planning permission for development of accommodation and a also a Bike track for use by youngsters in the town.

Within a few hundred yards there is also a dairy farm, Rugby and Football Pitches, Tennis courts, and footpaths.

It is also important to note that the site is part of a nitrate vulnerable zone.

We await your explanation on these points.

An important factor which has also been omitted is that the development would be built upon the aquifer which supplies the water for the town and local area. This was a point raised in a large number of letters of objection sent by people to the local council and the Planning Inspectorate which, we assume, have been studied as part of the screening decision.

All points were noted. As part of the screening, every point is not listed as to whether it would or would not have any impact on the need for EIA. The Inquiry process is designed to ensure that all such issues are dealt with.

As part of the EIR 2004 regulation request we believe that we have a right to see where these 'points were noted' and documented. The Group feels that the paperwork on the screening decision patently does not reflect this.

No record was made of the specific documents that were studied. It was the site's location, scale of development and likely environmental impacts that were determinative over the need for an ES, taking into account the advice in the Circular.

We await your explanation on these points.

7/ Are you aware that the reference plant at Eccleshall has major problems with pollution control and has had its permit revoked for exceedences of the permit by some 50% following monitoring over an 8 month period by Stafford Borough Council. It has been reported that they are now spending a further 1 million pounds on pollution control. If not then why not?

The jurisdiction of the planning inspectorate is to determine the merits of the case as appealed. It has no influence or powers over existing operations elsewhere.

Whilst we accept this statement in principle the operations at Eccleshall, the reference (and only) plant highlighted formed a large part of the inquiry. The appellant's expert witnesses also used readings from Eccleshall to form parts of their evidence. We are not asking you to involve yourself in operations elsewhere, only to use this reference plant and its inherent failings whilst looking at the impact on the Bishop's Castle area should this proposal be successful. Indeed the Inspector accepted submissions from our Group regarding this plant despite the protestations of the Appellants Solicitor precisely because of this point. Indeed the Inspector made clear at the Inquiry that he would visit the reference site at Eccleshall - again despite the appellant's protestations that it was not relevant, and we understand that this visit has been undertaken.

It is for the Inspector to decide for himself whether to view other sites at the request of parties at the inquiry. However, it is not appropriate to consider other sites under the EIA screening process other than for the possibility of cumulative impact. Eccleshall is about 40 miles away

from Bishop's Castle, and a plant there would not give rise to issues of cumulative impact.

This formed a large part of the inquiry and it seemed to be accepted that Eccleshall was the reference plant. During the inquiry the appellant was unable to identify any other plant within the United Kingdom which was of similar design and was not subject to WID compliance and therefore the Eccleshall plant, where the same consulting engineer was involved is clearly and manifestly the only comparable technology we have within the UK.

Points that the Inspector will take into consideration when coming to a decision.

You appear to be contradicting your previous point.

Not at all - the Inspector will judge for himself whether operations at Eccleshall weigh for or against the appeal scheme, or have no bearing.

8/ Is there any further information on the 'reasoned conclusion' as required both by your own form and as per the decision of the European Court in the Mellor case? It would be impossible, on the basis of this information for us to make a reasoned decision as to whether to challenge, in the courts, the basis of the screening opinion.

There is no further information.

We find this unacceptable, and quite frankly cannot understand how a decision was reached that no EIA is required. If you study Mellor v SofS in EU Court (Second Chamber) ruling of 30th April 2009 you will see why we believe we have grounds to challenge your response on this point and indeed would believe that your stance in this matter alone would warrant judicial review and would form part of our submission to the Ombudsman.

The decision that the appeal scheme was not EIA development was taken in the light of the site's location, the scale of development and by following the advice in the Circular. Should you wish to seek a Judicial Review, in light of the judgement on Christopher Mellor v SofS (C-75/08), you are of course free to do so.

8.1/ It is a requirement and it would be expected that there would be a list of documents upon which the screening decision was based. Therefore we must ask: What documents were provided to Paul Bennett in order that he makes his decision with regards to the EIA as it appears that there is no supporting documentation for this decision? Indeed, there is no mention of circulars, regulation or case law – just a blanket statement 'no eia required'.

The entirety of the case file was available when conducting the screening.

If the whole case file was available to the person making the decision with regards to the EIA, why have so many important points been left out of the screening. As previously please state the nature and contents of the 'entirety of the case file' specifically, were all the documents produced at the inquiry also given to the Screening Decision maker.

The case file, containing all the documents needed to provide a screening direction was returned to the office by the Inspector. The file did not contain "...all documents produced at the inquiry..." as these had no bearing over whether the development required an Environment Statement to be submitted before the appeal could be determined.

In conversation last week with Michael Dawes, our Vice Chairman, he was given to understand that there would be a list of documentation provided and a reasoned argument given as is required by the case law. This has not been supplied.

I did have a conversation with Michael Dawes. The reasoned explanation was given in the response to your MP, and was taken directly from the EIA screening form copied to you. As explained in the letter to your MP, and the references that I made to Mr Dawes, we undertake this in accordance with guidelines published:

<http://www.opsi.gov.uk/si/si1999/19990293.htm>

<http://www.communities.gov.uk/documents/planningandbuilding/pdf/155958.pdf>

9/ Having been informed that the matter was to be referred to the Secretary of State it would **now** appear that the screening operation was carried out at a low level, with little accurate supporting information. We await the response of PINS Chief Executive regarding this sequence of events which we understand is being sent to MP Philip Dunne.

As explained in our letter to your MP, PINS conducts everything it does on behalf of the Secretary of State. It was specifically set up as an agency organisation in which to do so. All of PINS staff work in this capacity. I am sorry that you have been confused by that reference. This is an action that is regularly undertaken by PINS on behalf of the Secretary of State.

We are still awaiting a response from the Chief Executive with regards to this matter and as have copied her into this letter. However we still wait to have an explanation why during all our exchanges there was no attempt made by you to correct our assumptions that when you said the matter had gone to The Secretary of State and 'she has' that you did not choose to clarify our 'confusion' to that 'reference'. The open and transparent statement would be to have said in your first and subsequent communications that the matter had been referred internally within PINS which would act under delegated powers from the Secretary of State to make a Screening Decision. The reason for you not doing so remains open to interpretation.

I wholly refute the implication that there has somehow been an attempt at subterfuge or obfuscation.

In light of the above I would be grateful for your answers to my Group's questions detailed above and your assistance in this matter at your earliest convenience.

Again, we look forward to your response prior to asking our MP and County Councillor to raise this matter with the Government Ombudsman and Local government Ombudsman respectively.

You are, of course, quite within your rights to raise the matter of the Screening Direction with whoever you wish.

Yours sincerely

Karen Bavastock
Chairman
Bishop's Castle Group

Cc Ms K Sporle - PINS Chief Exec,
Mr P Dunne MP,
Mr P Phillips, Shropshire Council County Councillor,
Ms S Healy, Interim Chief Executive – Shropshire Council