

**Bridgend, Gannochy & Kinnoull Community Council**  
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**Chairman – Graham Fleming, Secretary – Deirdre Beaton**  
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Scott Mackenzie  
Directorate of Planning and Environmental Appeals  
The Scottish Government  
4 The Courtyard  
Callendar Business Park  
Falkirk FK1 1XR

16 September 2012

Dear Mr. Mackenzie,

**Planning Permission Appeal DPEA Ref: PPA-340-2068**

Relocation of existing recycling centre and formation of a waste to energy facility (  
Approval of Matters in Conditions); Doug Holden Scrap Merchants, Shore Road,  
Perth, PH2 8BH

**Procedure Notice 2            FURTHER WRITTEN SUBMISSIONS**

**Matter 2            Further views on whether alternative site selection should be  
required as part of the Environmental Statement.**

We do not believe that the Reporter needs to seek opinions on whether alternative site analysis and selection *should* take place. The *requirement* has already been made clear by the LPA in compliance with their powers under the regulations. In his letter to the Reporter on 3<sup>rd</sup> June Mr. Fulton highlighted the failure of the applicants to carry out this analysis as required by the LPA.

We call upon the Reporter to exercise his right to REFUSE the application in accordance with the EIA 2011 Regulations and Circular 3-2011 where it unambiguously states that you must refuse this application on the following grounds:-

*Circular 3-2011 “A planning application **is not invalid purely** because an inadequate ES has been supplied nor because the applicant has failed to provide further information when required to do so under regulation 23. **However, if the applicant fails to provide enough information to complete the ES the application can be determined only by refusal (regulation 3).”***

This latest submission for Approval of Matters in Conditions introduced fundamentally new information that was not, and could not have been present at the time of the original approval. By the applicant's own admission in the Environmental Statement this is a cracking process to extract flammable gases from mixed hydrocarbons. This is a chemical processing plant and introduces new factors in terms of safety, risk, inadequacy of buffer zones and proximity to sensitive receptors. Such changes permit the Local Planning Authority to seek additional information, including alternative site analysis and selection in order to determine the application.

In accordance with the ruling of Lord Hope<sup>(1)</sup> the Local Planning Authority and the Scottish Ministers have the right to demand such additional information that they deem necessary to determine the application when presented with new material information. The question you raise in Matters 2 is “whether alternative site selection should be required as part of the Environmental Statement”. This question effectively overrules Lord Hope, who enshrined this right in his judgement. We do not believe that anyone has the right to question this right except in the Courts. Regulations 3 and 4 of EIA 2011 are reproduced below.

**3.** *The planning authority or the Scottish Ministers must not grant planning permission pursuant to an EIA application unless they have first taken the environmental information into consideration and they must state in their decision that they have done so.*

**4.—(1)** *The planning authority or the Scottish Ministers must not grant an application for multistage consent in respect of EIA development unless they have first taken the environmental information into account and they must state in their decision that they have done so.*

We believe that the applicant has failed, on at least 2 occasions to provide this information and has thereby rendered the Environmental Statement incomplete. Such non compliance means that you are now required to REFUSE this application.

**In summary,**

- The applicant was required by the LPA<sup>(2)</sup> to carry out the site analysis and selection under Regulation 23
- The applicant refused to do as requested<sup>(3)</sup> thereby rendering the Environmental Statement incomplete
- The LPA and/or the Scottish Ministers have the right, and the duty, under the EIA 2011 regulations and Circular 3-2011 to refuse this application.

The change to a chemical processing plant is a fundamental and a material planning consideration. The LPA and the Scottish Ministers have the same powers available.

We would urge that the Reporter exercise the right to refuse the application under Regulations 3 and 4 above. We further assert that failure to do may potentially lay the process open to judicial challenge due to this fundamental “error in law”

Yours faithfully,

Graham Fleming

Copies to:

Grundon Waste Management Limited (c/o RPS Planning & Development)  
Perth & Kinross Council  
Scottish Environmental Protection Agency  
Scottish Prison Service

## References

1. In the HOUSE OF LORDS SESSION 2006–07 [2006] UKHL 52 OPINIONS OF THE LORDS OF APPEAL FOR JUDGMENT IN THE CAUSE

**Regina v. London Borough of Bromley (Respondents) ex parte Barker (FC)  
Lord Hope of Craighead**

2. **Letter from LPA request - Alternative Site Selection**

Our ref                      11/00788/AMM  
Your ref  
Date                        September 23 2011

Please regard the request for evidence of alternative site selection as a formal request under Regulation 23 of the Town and Country Planning (Environmental Impact Assessment)(Scotland) Regulations 2011.

3. **Response to Reference 2 by Ewan MacLeod**  
For and on behalf of Shepherd and Wedderburn LLP

OUR REF G2804.1/EXM  
YOUR REF 11/00788/AMM  
4 October 2011

### **Notes on the contents of the correspondence, references 2 & 3 above**

In their request for an examination of alternative sites the LPA said:

*“I note that the Reporter in his decision letter on the previous scheme identified that had he concluded the unacceptability of aspects of the submitted proposal to be borderline, an examination of alternative sites would have been of value in informing a planning decision.”*

The LPA continued their request as follows:

#### *“Requests for further Information*

*Those significant environmental effects set out above are an indicator that, for a development of the size and nature now proposed a wider examination of alternative sites would have been worthwhile in this instance. Accordingly I would now invite from you an investigation of alternative sites.*

*This is an application for a multi-stage consent and because the ES has been submitted at the later ‘reserved matters’ stage this important environmental consideration was not investigated in full at the initial principal decision stage. Accordingly a full assessment through the ES (rather than in the narrow and limited terms you have presented) can only be undertaken now, for the first time, at this RM stage. The importance of this was indicated to you in the initial scoping opinion to the*

*incinerator proposal and in the pre-application discussions ahead of submission of this current plasma arc application.”*

We believe that this was a valid request under regulation 23. The Appellant’s lawyers responded with the statement:

*“As I believe has been made clear to you on a number of occasions my clients have not studied alternative sites and there is therefore no further information which can be provided to the Council under Regulation 23(2).”*

The Appellant emphatically states that since they have not done this there is therefore nothing to report. Their failure to carry out this work neither respects nor recognises the authority of the LPA to require this to be done. They then state:

*“This application seeks Approval of Matters specified in Condition. The assessment of any alternative site is utterly irrelevant to the Council's duty to consider the information submitted with the approval of matters application and to assess the acceptability of this proposal in its own right. An outline permission exists which establishes the principle of an Energy from Waste Plant on the application site and the Council's duties and powers in processing the current application are limited to the proposals on this site and their effect.”*

How can the evaluation and choice of site a new chemical processing plant be “utterly irrelevant”? The Appellant's assertion that they have no need to justify the site selection because they have an existing outline consent is fundamentally flawed.

## **Conclusion**

The Appellant has refused to comply with the requirements of the LPA under Regulation 23 and in so doing has rendered the Environmental Assessment incomplete. As stated above, the LPA and the Scottish Ministers have no alternative but to refuse the application and dismiss the appeal under circular 3-2011 paragraph 129 and regulations 3 and 4 of the EIA 2011 Regulations.

We trust that the Reporter will agree with this position and dismiss the appeal.