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Eich cyf / Your Ref:BJG/92/AA06390

Ein cyf / Our Ref:A--PP117-07-020

5 March 2002

Dear Sir

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 77

APPLICATION BY CASTLE CEMENT LIMITED FOR THE CONSTRUCTION OF NEW KILN LINE AND ASSOCIATED PLANT, LIMESTONE STORE, FUEL STORAGE BUILDINGS, RE-PROFILING OF FORMER LICENCED WASTE SITE, AND ANCILLARY WORKS AT PADESWOOD CEMENT WORKS, PADESWOOD, MOLD, FLINTSHIRE

Consideration has been given to the report of the Inspector Anthony H Vaughan BSc CEng MICE MRTPI who held a local inquiry into your client's application for the proposed construction of a new kiln line and associated plant, limestone store, fuel storage buildings, re-profiling of former licensed waste site, and ancillary works at Padeswood Cement Works, Padeswood, Mold Flintshire. David Tester CChem MRSC FCIWEM was appointed as the Assessor to advise the Inspector on matters concerning pollution.

2. On 14 February 2000 the National Assembly for Wales directed under Section 77 of the Town and Country Planning Act 1990 (the 1990 Act) that the application be referred to it rather than be determined by the local planning authority. On 12 February 2002 the Assembly resolved that a committee, to be known as Planning Decision Committee 2002/3 be established, in accordance with Standing Order 35 to discharge the functions of the Assembly under Section 77 of the 1990 Act, in respect of the application by Castle Cement Limited described above. Accordingly the Planning Decision committee has considered the application and resolved under Standing order 35.16 to adopt this letter.

3. The Inspector's conclusions are set out at paragraphs 34.1 – 36.5 of his report, a copy of which is enclosed, together with that of the Assessor, and those paragraphs are at an Annex A to this letter. The Inspector recommended that planning permission be granted for the construction of a new kiln line and associated plant, limestone store, fuel storage buildings, re-profiling of former licensed waste site and ancillary works at Castle Cement Works, Padeswood, Mold, subject to conditions.

4. During the course of the inquiry your client produced further environmental information to complete the environmental statement submitted with the application. The information originally included in the environmental statement was also updated and additional information provided in response to a request from the National Assembly. To ensure full compliance with the relevant Environmental Assessment Regulations, particularly with regard to public participation in the Environmental Impact Assessment process, your client was asked to submit a comprehensive non-technical summary of the information comprising the Environmental Statement. The non-technical summary provided by your client in response to that request was distributed to those organisations who received a copy of the original Environmental Statement with an invitation to comment on any matters in the summary which were not fully debated during the course of the inquiry.

5. The responses to that consultation have been considered and the Planning Decision Committee are satisfied that there is nothing in those in the representations made which could lead them to conclude that the environmental information comprising the Environmental Statement is inadequate, or not in compliance with the requirements of the relevant Environmental Assessment Regulations.

6. The Planning Decision Committee have taken the environmental information, as defined for the purposes of the relevant Environmental Assessment Regulations, into consideration in reaching their decision on this application. The Committee consider that as an environmental impact assessment has been carried out which, in their view, is in compliance with the relevant Environmental Impact Directives there should be no obstacle to a decision to grant planning Permission.

7. The Planning Decision Committee agree with the Inspector's conclusions and accept his recommendation. They agree with him that the main issues in this case are the effects on public health, the environment, the character and appearance of the area, employment, highway use, and the issues raised concerning the European Convention on Human Rights.

8. The Planning Decision Committee note the conclusions of the Inspector and the Assessor that the development would have no materially harmful effect on public health or the environment and further note that the conclusion relating to public health is in accordance with the advice of the North Wales Health Authority.

They also note that the Assessor, whose conclusions the Inspector accepted, gave detailed consideration to the risk that emissions might exceed permitted levels and to public concern relating to the risk of harmful effects, even if not objectively justified. The Planning Decision Committee regard the issues relating to public health as being of very great importance and are reassured by the full and careful consideration given by the Assessor and the Inspector to the extensive evidence relating to these issues which was put before the Inquiry. The Planning Decision Committee can find no grounds to disagree with their conclusions on these matters.

9 The Planning Decision Committee also accept the Inspector's conclusion that the surrounding highway network could support the traffic likely to be generated. In these circumstances the Committee consider that the decision on the application rests on the balance to be struck between, on the one hand, the employment benefits of the project and, on the other, the impact of the proposed development on the character and appearance of the area.

10. The Inspector accepted your client's statement at the inquiry that, without modernisation, the plant would be run down and closed with the loss of all the current 218 jobs and, having had regard to the evidence presented to the inquiry, the Planning Decision Committee see no reason to doubt that statement. The Committee accept the Inspector's assessment that while the economic prospects in Flintshire are currently good the position is fluid and that it would be wrong to brush aside the prospect of securing 200 jobs. They agree with him that the cement works is an important part of the employment profile of Flintshire and that its loss would be seriously harmful to the local economy. With regard to the Inspector's appraisal of the effect of the proposed development on the character and appearance of the area, the Committee accept the Inspector's assessment that the development, and in particular the pre-heater tower and stack, would have an obvious presence and visual impact but the Committee agree with the Inspector that overall the balance is in favour of granting planning permission. The Committee do not consider that any objections to the proposal raised in the subsidiary issues dealt with in paragraphs 34.1 - 34.60 of the Inspector's report are sufficient in themselves, or jointly with others, to justify its refusal.

11. The Planning Decision Committee having found no grounds to disagree with the conclusions of the Inspector and Assessor that there would be no material harm to public health and the environment as a result of the proposed development agree with their conclusion that there would be no violation of Article 8 of the European Convention on Human Rights, nor, because the Environment Agency Wales would be able to ensure that the health risk remained tolerable, any violation of Article 2.

12. As regards Article 6 of the Convention on Human Rights the Planning Decision Committee consider that the procedures of the National Assembly for Wales for determining planning appeals are designed to comply with the Convention. The House of Lords has determined (in the case of *R v Secretary of State for the Environment, Transport and the Regions ex parte Alconbury Development Limited and Others* – judgement delivered on 9 May 2001) that the Secretary of State is not an impartial or independent tribunal but that the availability of judicial review is sufficient to ensure that the current appeal process is compatible with the requirements of Article 6 of the Convention. The principle applies to decisions on called in applications taken by the National Assembly.

13. Allegations were made in submissions to the inquiry that evidence had been suppressed and agreements made not to hear particular evidence. The Inspector indicated in his report that he was not aware of any evidence being suppressed or agreements being made not to hear particular evidence. The Planning Decision Committee have seen no evidence to suggest that there were any such agreements or suppression of evidence and endorse the Inspector's finding. They also accept that the Inspector was correct, for the reasons he gave, to refuse to hear at length evidence concerning the burning or recovery of hazardous waste.

14. The Planning Decision Committee have reached their decision taking account of all correspondence received after the inquiry had closed including the representations submitted in respect of the non-technical summary of the information now comprising the Environmental Statement. They are satisfied that the correspondence raised no new evidence or new matter of fact which would materially affect their decision.

15. The Planning Decision Committee have considered the two planning obligations submitted by your client and are satisfied that, whilst they provide laudable benefits, neither of them were material in coming to this decision. In the Committee's opinion neither the ecological nor the environmental benefits offered are necessary in order for the development to be permitted.

16. The Planning Decision Committee have carefully considered the question of the conditions to be attached to the planning permission having regard to the schedule of conditions prepared by Flintshire County Council, the comments of the Inspector and Assessor, those of the CANK objector group, Cheshire County Council and other parties and interested persons, and the advice of Welsh Office Circular 35/95. They accept the Inspector's conclusion that the draft conditions presented to the inquiry have the potential to provide an effective control mechanism under the Town and Country Planning Act. The Committee have accepted those conditions which they consider suitable and modified or adapted others where this has been necessary.

17. Conditions C36 and C37 suggested by the Inspector at paragraph 33.6 of his report have not been adopted by the Committee as they consider them to be respectively unenforceable and unnecessary. As regards suggested condition C36, which seeks to control the parking or queuing of vehicles on the highway, the Committee do not consider that there is sufficient evidence for them to conclude that the absence of such control should preclude the granting of planning permission. The condition suggested by the Assessor at paragraph 31.9 of his report has not been adopted as the Committee do not consider it to be justified by the evidence referred to in paragraph 30.78 of his report.

18. As regards the omissions referred to by CANK, dealt with at paragraphs 33.8 to 33.8.8 of the Inspector's report, the Planning Decision Committee are satisfied that the matters relating to the landscape proposals and the management and operation of the landfill site for the purposes of restoration are covered by the conditions imposed on this permission. With respect to the proposed Grampian condition they do not consider that the off-site planting is necessary in order for planning permission to be granted. The Committee do not consider that there is a need for conditions to be imposed in respect of uses of land such as construction compounds, and they do not consider that it is possible to control by conditions access to the site via the highway system outside the site. They agree with the Inspector that it would be inappropriate to include a HAZOP study, that planning permission is not dependent on IPPC authorisation and that issues relating to fire detection and protection systems are not planning matters.

19. The Inspector's report includes references to Minerals Planning Guidance 10. Parts of that document have been cancelled by Minerals Planning Policy Wales but the Committee do not consider that this has a material affect on the decision.

FORMAL DECISION

20. Subject to the above comments the Planning Decision Committee agree with the Inspector's conclusions and accept his recommendation. Accordingly, the Planning Decision Committee hereby grant planning permission in respect of planning application M99/0/0024 dated 7 January 1999 (as amended) for the demolition of existing buildings, construction of a new kiln line and associated plant, limestone store, fuel storage buildings, re-profiling of former licensed waste site and ancillary works at the Castle Cement Works at Padeswood, Mold subject to the conditions at Annex B to this letter.

21. This letter, a copy of which has been sent to the Director of Planning Flintshire County Council, does not convey any approval or consent which may be required under any enactment, bye law, order or regulation other than Section 57 of the Town and Country Planning Act 1990.

Yours faithfully

Dr Richard Edwards AM

Chair, Planning Decision Committee 2002/3

Enc: Leaflets "H" and "HC"

PLANNING CONDITIONS ATTACHED TO PLANNING PERMISSION OF MARCH 2002 RELATING TO APPLICATION NO. M99/0/0024

1. The development hereby permitted shall be begun no later than 5 years from the date of permission.
2. The height of any part of the development and the construction plant used on the site shall not exceed 74m until the Hawarden Airport off set Instrument Landing System is fully operational as determined by the Local Planning Authority in consultation with British Aerospace.
3. The existing chimney stack for kiln 3 shall be demolished completely within 12 months of the completion of the commissioning of kiln 4.
4. The existing chimney stacks for kilns 1 and 2 shall be demolished completely within 12 months of the commissioning of kiln 4.
5. Within 14 days of cessation of cement making operations on the site notification of this event shall be given in writing to the Local Planning Authority. Thereafter the proposed kiln, kiln structures, preheater tower, together with all other structures applied for under reference M99/0/0024 shall be dismantled and removed from the site within two years of the cessation of cement making operations. Within 18 months of the removal of all the above structures from the site, the site shall be restored in accordance with a scheme to be submitted to the Local Planning Authority within 6 months of the cessation of the cement making operations and approved by them. For the purpose of this condition cessation shall mean when no cement is made on the site for a continuous period of 6 months or more, this time period not to include periods of industrial dispute or an insurable event for example fire, explosion, plant breakdown.
6. A) The development hereby permitted shall be carried out in complete accordance with the planning application as detailed in the documentation agreed statement and planning submission drawing schedule (excluding reference to 'legal agreements') identified in the List of Documents appended to the Inspector's report as CC16A .

B) Details of the Cemfuel and Profuel fuel store(s) and tyres store shall be submitted to and approved by the Local Planning Authority in writing prior to the development on site.

C) Prior to the commencement of the development hereby permitted, a scheme shall be submitted to and approved in writing by the Local Planning Authority for the management and operation of the former licensed waste site for the purposes of restoration. The scheme shall include a landscape management plan.

7. Unless otherwise agreed in writing by the Local Planning Authority, piling including temporary piling, shall not be carried out other than between the following hours and by a recognised noise reduced system.

Monday - Friday 0900 - 1700 hours.

Saturday 0900 - 1300 hours and no piling work shall take place on Sundays, Bank Holidays and other Public Holidays.

8. Prior to the commencement of the commissioning of the development a scheme for operational noise control shall be agreed in writing with the Local Planning Authority. The scheme shall include:-

8.1 Operational noise control criteria (e.g. in the form of period $dB_{L_{aeq}}$ [1 hour daytime, 5 minute night-time] limits, maximum limits and octave or 1/3 octave frequency band limits) which will seek to achieve:

8.1.1 All noise emissions are minimised

8.1.2 That at worst, no neighbouring noise sensitive properties are subject to increases of more than marginal significance (in accordance with BS4142 criteria) and are therefore also within the levels predicted in the Applicant's environmental statement.

8.1.3 Pure tone emissions are not perceivable at noise sensitive properties.

8.2 Details of noise control measures to be implemented, to demonstrate that minimisation of emissions has been achieved.

8.3 A protocol for monitoring and reporting to the Local Planning Authority the level of operational noise emitted from the site on completion of commissioning, subsequently on a routine basis and in response to complaints.

8.4 The development shall be operated in accordance with the agreed scheme.

9. Prior to the commencement of construction of any part of the development hereby permitted a scheme for the control of noise emissions from construction shall be agreed in writing with the Local Planning Authority and the scheme shall include:

9.1 Criteria for the maximum levels of noise to be emitted (in L_{max} , period L_{aeqs} and with due regard to BS 5228).

9.2 A protocol for the measurement of construction noise to ensure compliance with the agreed criteria both on a routine basis and in response to any complaints received.

9.3 Hours of operation.

9.4 Construction shall be carried out in accordance with the requirements of the agreed scheme.

10. No part of the development hereby permitted shall be commenced until a scheme for the monitoring of environmental impacts has been approved in writing by the Local Planning Authority. The scheme shall be based on the principles set out in the Document entitled "Castle Cement Limited Padeswood Kiln 4 Project "Environment Management Scheme" dated 2nd March, 2000. The scheme of environmental monitoring, as approved, shall be implemented for a period of 12 months prior to commissioning of the kiln, and subsequently in accordance with the time scales approved. The scheme should include baseline surveys of metals and dioxins and other persistent organic compounds (including brominated dioxins) in the Black Brook and its sediments downstream of the Works, groundwater surrounding the existing waste disposal site at Padeswood, and milk produced within 5km of the Works. The frequency of the surveys should be agreed as part of the scheme. More detailed monitoring and investigation of the contaminated soil at Site 7 - Spon Green Farm in the Environment Agency Wales survey should be undertaken as part of the same Scheme. The results of the scheme should be assessed by the Local Planning Authority in consultation with the Environment Agency Wales and the North Wales Health Authority and fed into the the IPPC process.

11. No part of the development hereby permitted shall be commenced until a scheme setting out the method of working and assessment of risk to the water environment during the construction phase and an assessment of risk to the water environment in relation to the method of working has been submitted to and approved in writing by the Local Planning Authority.

12. No part of the development hereby permitted shall be commenced until:-

- a. The application site has been subject to a detailed scheme for the investigation and recording of contamination and a report has been submitted to and approved in writing by the Local Planning Authority;
- b. detailed proposals in line with current best practice for the removal, containment or otherwise rendering harmless such contamination ("The Contamination Proposals") have been submitted to and approved in writing by the Local Planning Authority;
- c. for each part of the development, the Contamination proposals relevant to that part (or any part that would be affected by the development) shall be carried out either before or during such development as appropriate;
- d. if during development works any contamination should be encountered which was not previously identified and is derived from a different source and/or of a different type to those included in the Contamination Proposals then revised Contamination Proposals shall be submitted to and approved in writing by the Local Planning Authority;
- e. if during development work site contaminants are found in areas previously expected to be clean, then the remediation shall be carried out in line with the approved Contamination Proposals.

13. No part of the development hereby permitted shall be commenced until a scheme for the disposal of foul and surface waters together a programme for its implementation has been approved in writing by the Local Planning Authority. The scheme should incorporate a surface water collection and settlement lagoon with oil boom and outlet and inlet control valves to minimise the risk of water pollution from sediment and fuel spillages.

14. Suitable samples of the proposed external facing materials shall be submitted for the prior approval in writing of the Local Planning Authority.

15. Floodlights and other external lights :-

a) shall not be operated between 2200 hours and 0500 on any day, unless otherwise agreed in writing by the Local Planning Authority

b) subject to a) lighting shall be operated and directed in accordance with a scheme to be submitted to and agreed in writing by the Local Planning Authority designed to ensure that lighting during the construction phase and afterwards when the plant is operational reduces glare at surrounding properties and highways to an acceptable level. Such scheme to be agreed in writing by the Local

Planning Authority in consultation with an appropriate body such as the Institute of Lighting Engineers.

16. Vibration from all plant comprised in the development hereby permitted shall be controlled so as not to exceed limits to be established in a scheme to protect the amenity of any neighbouring residential properties, to be submitted to and agreed in writing by the Local Planning Authority.
17. Methods of piling shall be in accordance with a scheme to be submitted to and agreed in writing by the Local Planning Authority before the commencement of the development.
18. All vehicles leaving the site shall pass through and use wheel cleaning/washing equipment to ensure that mud and debris are not deposited on the highway.
19. Surface water drainage from parking areas, hard standings, wheel washing facilities and roof water shall not be discharged into any watercourse, surface water sewer or soakaway unless it has first passed through a detritus trap, and an oil/ petrol interceptor system, both designed and constructed to have a capacity and details compatible with the site being drained.
20. Any facilities hereby permitted for the storage of oils, fuels or chemicals shall be sited on an impervious base and surrounded impervious bund walls. The volume of the bunded compound shall be at least equivalent to the capacity of the tank plus 10% and if there is multiple tankage, the compound shall be at least equivalent to the capacity of the largest tank or combined capacity of interconnected tanks plus 10%. All filling points, vents, gauges and sight glasses shall be located within the bund and the drainage system of the bund shall be sealed with no discharge to any watercourse, land or underground storage. Associated pipework shall be located above ground and protected from accidental damage. All filling points and tank overflow pipe outlets shall be designed to discharge into the bund.
21. During the first available planting season following the implementation of the development hereby permitted, on site landscaping planting shall be undertaken in accordance with a scheme to be submitted and agreed in writing with the Local Planning Authority before the commencement of the development. All landscape planting shall be maintained for a period of 5 years following planting and any plants which within 5 years of planting die, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species, unless otherwise agreed in writing with the Local Planning Authority.
22. The stripping and handling of topsoil and subsoil shall not take place other than in fine, dry weather and when the soil is in a dry and friable condition. No plant or vehicles other than dump trucks and back-actors shall be used to strip soils. Vehicles transporting soils shall only travel along defined routes already stripped of topsoil and subsoil.
23. At least 7 days notice shall be given in writing to the Local Planning Authority before each sub-phase of clay spreading is to commence. No clay shall be replaced until the tipped areas have been inspected by the Local Planning Authority who shall approve the need for any regrading of the tipped material.
- 24 All stripped soils, subsoils and overburden shall be stored separately in position to be agreed in writing by the Local Planning Authority or used in the restoration of the phase as indicated on the approved plans. Soil mounds shall be sown with grass seed within three months of their construction and shall be so maintained until the soils are required for use in the restoration of the site. Weeds shall be controlled by cutting or by the use of herbicides. The soil mounds shall be fenced off from the extraction and tipping phases. No subsoil or overburden shall be stored in any stockpile unless the topsoil has first been stripped from the storage area. No overburden shall be stored in any stockpile unless the subsoil has been stripped from the storage area.
25. Topsoil shall not be stored to a height greater than 3m and subsoil shall not be stored to a height greater than 5m. Overburden shall not be stored to a height greater than 5m.
26. Except for the excavators and dump trucks engaged in soil stripping operations no other plant, machinery and

vehicles shall traverse the land prior to the stripping of topsoil and subsoil.

27. A protocol for the monitoring and control of dust generated by construction activity shall be submitted to and agreed in writing with the Local Planning Authority prior to commencement of construction. The construction works shall be implemented in accordance with the agreed protocol.

28. The existing trees, shrubs and hedgerows within the site shall be retained and shall not be damaged, destroyed, uprooted, felled, lopped, topped or removed without prior written approval of the Local Planning Authority. Any such vegetation removed without approval, dying, being severely damaged, or becoming seriously diseased as a result of operations permitted by the permission, shall be replaced with trees or shrubs of such size and species as may be agreed with the Local Planning Authority in the planting season immediately following any such occurrences.

29. All planting work shall be carried out in accordance with the recommendations of BS 4428, 1989: "Recommendations of General Landscape Operations".

30. The new kiln shall only be fired for the purpose of:

- a. the manufacture of cement clinker
- b. testing
- c. maintenance and repair

31. Before commencement of the development hereby permitted, a scheme for the management of vehicles within the site shall be submitted to the local planning authority showing the proposed vehicle queuing areas within the site. These areas shall be provided and be brought into use in accordance with the approved scheme before any part of the development hereby permitted becomes operational.