

19B Victoria Street  
Cambridge CB1 1JP

Tel: (01223) 328933

Fax: (01223) 301308

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

**R.M. Buxton**

MA (Cantab) MES (Yale)

**Susan Ring**

LLM Env (London)

**Paul Stookes**

PhD MSc LLB Solicitor - Advocate

*Associate:* **Andrew Kelton**

BA (Cantab) MA (UBC Canada)

*Associate:* **Adrienne Copithorne**

BA (Cantab) MA (UC Berkeley)

National Planning Casework Unit  
Department of Communities and Local Government  
5 St. Philip's Place  
Birmingham B3 2PW

Attn: Dave Moseley

Your ref.  
Our ref. PS/THN-4

**Also by e-mail.**

### PRE-ACTION PROTOCOL LETTER

5 December 2011

Dear Sirs

**EIA screening direction, Swann's Road scrap yard, Cambridge**  
**Applicant: Nationwide Recycling Ltd, App. No. C/05010/10/CW**

Thank you for your letter of 9 November 2011.

We have carefully considered your response, the screening direction and all the other relevant documentation in this matter. We remain of the view that the noise impacts that continue to arise from the scrap yard operations may reasonably be regarded as significant effects on the environment. This is particularly so if due regard is had for the frequency, duration and nature of the noise impacts (i.e. that the noise has a disruptive and stressing effect on one's senses, that they occur on a daily basis throughout the week for up to 2.5 hours each day (subject to a maximum 10 hours a week). And, further, if account is taken of the cumulative impacts of other associated activities.

In the circumstances, we are of the view that the decision is unlawful on the basis set out below. We are of the view that the decision should be quashed, preferably by consent. In the circumstances, please regard this letter as a pre-action protocol letter. We would be grateful if you could respond within 14 days of the date of this letter.

#### **Details of proposed claimant**

The proposed claimant is Mrs Pamela Thornhill of Station House, Barnwell Junction, Cambridge CB3 8JJ.

#### **Details of the matter being challenged**

The matter being challenged is the screening direction of 22 September 2011 relating to the retrospective permission for the erection of a 48m high fence and 42m high



stacked shipping containers (painted green) to provide noise attenuation, storage and visual screening: application no. C/05010/10/CW.

### **The order sought**

The order sought is that the screening direction of 22 September 2011 is quashed and that the Secretary of State pays the Applicant's costs.

### **GROUNDS OF CHALLENGE**

The Applicant submits that the Secretary of State has exceeded his discretion in publishing his screening direction of 22 September 2011 and, in particular, in determining the likely significant effects on the environment arising from the proposal.

Any discretion that may be available to the Secretary of State is limited; see e.g. §50 of Case C-75/08 *Mellor v Secretary of State* [2009]. That is, that the threshold for what action may exceed the legitimate decision-making function is not the conventional *Wednesbury* test. This is clear from the emerging case law: see e.g. the judgment of HHJ Thornton QC in *R (Buglife) v Medway Council* [2011] EWHC 746 (Admin) at §87.

In the present case, the Secretary of State has concluded that the proposal is not EIA development. The screening direction concludes that, based on the information provided, the Secretary of State does not consider that the development as modified is likely to result in significant effects on the environment necessitating an environmental statement. Yet the evidence provided by the Applicant confirms that the operations cause noise disturbance such that they are 'likely to cause complaints'. In our view, this constitutes significant environmental effects.

In a letter of 29 September 2011, the Applicant reiterated why the proposal and associated projects were, in fact, having significant effects on the environment and invited the Secretary of State to review his decision. The Secretary of State declined to do so.

Unless the Secretary of State was certain that the operations do not cause likely significant effects then, consistent with the EIA Directive, an inclusive and precautionary approach should be taken to EIA screening. That is, if there is uncertainty as to the nature or extent of any likely significant effects that may arise, an EIA should be carried out to clarify the position. This is clear from the recitals to EIA Directive 85/337/EEC and the EIA Amending Directive 97/11/EEC and also from the judgments in *Waddenzee v Landbouw* and more recently *R (Birch) v Barnsley MBC*.

### **Legal advisers**

The proposed claimant's solicitors are ourselves.

### **Details of any interested parties**

The interested party is Roundwood Restorations Ltd, Unit 9, Martells Quarry, Slough Lane, Ardleigh, Colchester Essex CO7 7RU

### **Information requested from the Secretary of State**

The Secretary of State is asked to provide preferably by return and, in any event, within 14 days; i.e. by 19 December 2011.

1. a copy of all the documentation prepared and used by or on behalf of the Secretary of State, in preparing and published the screening direction including, e.g. any screening checklist; and
2. any other contemporaneous documentation relating to the EIA screening direction.

**Action expected from the Secretary of State**

The Secretary of State is asked to:

- a) consent to judgment and pay the Applicant's costs;
- b) provide the documents requested above, and
- c) respond to this letter within 14 days i.e. by 19 December 2011.

We look forward to hearing from you.

Yours faithfully



Richard Buxton

cc Cambridge County Council (Helen Wass)  
Roundwood Restorations Ltd