



Your Ref: DW/LJK  
Our Ref : GLL

By post and by email : Damien.wilson@rotherham.gov.uk

Mr Damien Wilson  
Rotherham Metropolitan Borough Council  
Regeneration & Environment  
Riverside House  
Main Street  
Rotherham  
S60 1AE

14 December 2017

Dear Sir,

**Monitoring Information Request: Grange Landfill Limited, Droppingwell Road, Rotherham ("Watson's Tip")**

We refer to the above matter and to your letter dated 7 December 2017. We would respond as follows:

1. It was our understanding that you (and other representatives of the Council) had previously requested and obtained certain borehole test results from the Environment Agency ("EA"). We presume by the requests that have been made of us directly that you have not obtained such information and documentation but please confirm?
2. As you will no doubt be aware, both this company ("GLL") and the land owner, MHH Contracting Limited ("MHH"), has at all times, attempted to work with and be open with the Council and its officers in an attempt to foster a healthy working relationship. To be frank, these attempts have been stymied and frustrated somewhat by the Council and your actions. It was somewhat surprising therefore that we received the requests under cover of your recent correspondence when we had understood that we were waiting to hear further from the Council following the meeting that took place on 10 June 2017, to which further reference is made below.
3. In principle, GLL do not have any strong objection to certain information being provided or made available to the Council. There is nothing to hide in any of the preparatory work that we have been undertaking. The type of category of documents that you appear to be



Grange Landfill Limited, Registered office: 559 Carlisle Street East, Sheffield, England, S4 8DT

requesting will already form part of the public register that is held by the EA and will be readily available from them.

4. However, the motives behind your requests are unclear, the legal basis upon which those requests are made is not fully set out and the information sought would appear to be confused and misdescribed in parts.
5. It is noted that the reasoning advanced for making the requests for information contained within your above letter is that *"The Council is concerned that the previously tipped waste at Watson's Tip, may present a risk of harm to the environment and/or health and would consequently welcome the above information from your company"*. We would ask whether this apparent concern based is upon any evidence? As you will appreciate, the waste tipped at Watson's Tip was tipped many years previously and irrespective of any actions that may take place on the site in relation to the re-opening of Watson's Tip, this has no relevance to the pre-existing tipped waste. The pre-existing tipped waste is to remain on site undisturbed. Where the new waste is to be placed against the side of the previously tipped waste, a geological barrier, approved by the EA, will be in place to prevent any disturbance of the pre-existing waste on site.
6. In relation to your specific reliance upon sections within the Environment Act 1995 ("the Act"), further clarification is required.
7. It is accepted that the Council comes within the definition of "enforcing authority" for the purposes of section 108(1) of the Act. However, it is noted that the powers specified in subsection (4) of section 108 of the Act may only be exercised for the purposes of determining whether any provision of the pollution control enactments have been complied with or for the purposes of exercising or performing one or more of the pollution control functions of that authority. This limitation is further referred to at subsection (5) of section 108 of the Act. We should therefore be grateful if you could specifically set out, by reference to the five categories of information that are numbered in your above letter, what pollution control enactments and pollution control functions are relied upon by the Council in support of the requests made.
8. In relation to the five numbered requests made in your above letter, these are, as mentioned above, somewhat ambiguous and it is not clear how such requests relate to the concern that has been advanced as the justification for the making of the requests. For example:
  - a. It is not clear what the reference to "Methodologies" relates and how this falls within determining whether pollution control enactments have been complied with in relation to "previously tipped waste at Watson's Tip" or otherwise.
  - b. It is not clear what "plans" are being requested and how this falls within determining whether pollution control enactments have been complied with in relation to "previously tipped waste at Watson's Tip" or otherwise.
  - c. It is not clear why the requests made, as they appear to do, should relate to all sampling results, irrespective of the location of those tests, given the justification advanced for making the requests and how this falls within determining whether pollution control enactments have been complied with in relation to "previously tipped waste at Watson's Tip" or otherwise.



- d. It is not clear why the requests made, as they appear to do, should relate to all analysis of the sampling results, irrespective of the location of those tests, given the justification advanced for making the requests and how this falls within determining whether pollution control enactments have been complied with in relation to "previously tipped waste at Watson's Tip" or otherwise.
  - e. It is not clear how requesting details of the companies undertaking the sampling work is of relevance and how this falls within determining whether pollution control enactments have been complied with or otherwise.
9. No doubt the nature, substance and justification for the requests can be clarified and we can then review the requests further with a view to providing the relevant and justified information and documentation.
  10. When responding, we would also welcome your comments on our concerns, which have existed since our first contact with you, as regards the manner in which you have dealt with GLL and MHH. As has been recorded previously by MHH in its correspondence, the Council and/or its employees have acted in what can only be described as an extremely unsatisfactory manner and MHH have had cause to write to the Council on numerous occasions set out those concerns. We make no apologies for the length of this letter as this is the first opportunity that either GLL or MHH have had to address these issues directly with you.
  11. As you are aware, our [REDACTED] and [REDACTED] the in-house solicitor of MHH, met with you on 11 August 2016 at the Council's offices at Riverside House ("the Meeting"). Also in attendance at the Meeting was the Council's [REDACTED] and [REDACTED] of the Environment Agency (the "EA").
  12. Prior to the Meeting, an agenda was circulated by the Council's [REDACTED]. That agenda stated that the purpose of the Meeting was "to discuss the proposals for the site, any mitigation proposed which would minimise complaints and how best to provide factual information to the public about the site." At the Meeting there was a discussion as to how MHH/GLL could work together with the Council and the EA so as to inform local residents and businesses about how the new landfill site off Droppingwell Road ("the Site") was going to operate when it reopened.
  13. It was agreed at the Meeting that the Council, the EA and GLL would work together to produce a fact sheet of information (the "Fact Sheet") that could be distributed to local residents and business to inform them of, amongst other things, how the Site would operate, what hours it would operate and how many vehicles would be accessing the access road from Droppingwell Road to the Site (the "Accessway"). It was agreed that the first draft of the Fact Sheet would be produced by the Council and that this would then be completed by MHH/GLL prior to circulation by the Council to all stakeholders.
  14. Further, at the Meeting, there was a discussion, instigated by you, as to how to avoid a situation whereby lorries attending Site would be backed up along the Accessway. You commented during those discussions that there was nothing that the Council could do to prevent such a situation from occurring but he was reassured that measures would be put in place to prevent this.



15. On 15 August 2016, [REDACTED] telephoned the Council's [REDACTED] to enquire as to when the first draft of the Fact Sheet could be expected. [REDACTED] was informed that [REDACTED] was to work on the Fact Sheet that week and then provide a first draft the following week when you had been able to consider the draft. At that stage, [REDACTED] explained that she had not been able to discuss the contents of the Fact Sheet further with you following the Meeting.
16. On 15 September 2016, [REDACTED] again called [REDACTED] to ask whether the Council were now in a position to provide a first draft of the Fact Sheet. [REDACTED] advised that there had been a delay in producing the Fact Sheet as the EA were reluctant to be involved in the production of the same. However, the Fact Sheet was still to be produced and the writer advised that he looked forward to receiving the same.
17. Following the conversation on 15 September 2016, the BBC aired a programme on 19 September 2016 which featured the Site. Prior to the airing of that programme, a director of GLL had been approached by the BBC production team for his comments on the issues to be raised in the programme. It was then represented to the BBC, and (partly) reported in the programme itself, that GLL had recently met with representatives of the Council and agreed to work together with the Council to produce a fact sheet for local residents giving them accurate and detailed information about the operations that would take place at the Site. The BBC were advised that "we are presently waiting for the Council to provide a first draft of this consultation document".
18. On 7 October 2016, having heard nothing further from the Council in relation to the Fact Sheet, [REDACTED] emailed [REDACTED] copied to you. That email asked if [REDACTED] could update the writer on where the Council were at with the fact sheet that was agreed to be produce for the local residents and businesses. The email stated that *"We are presuming that it is still intended that a fact sheet is going to be prepared and we look forward to receiving the first draft as soon as possible. We are very conscious that there has been a significant amount of misleading information generated by local media recently and it is hoped that the fact sheet will go some way to giving the local residents and businesses an accurate description of how the landfill will operate when open"*
19. Neither [REDACTED] or you responded to that email despite [REDACTED] having received "read receipt" notifications from both [REDACTED] and you.
20. As you are no doubt aware, the only written communication that was received from the Council following the Meeting was a dated 10 October 2016 which alleged that the Accessway passes over Council owned land and that MHH, employees and/or contractors do not have any right of way over that Accessway and that in the event that we do not cease using the Accessway then the Council will consider issuing proceeding for an injunction in order to prohibit any further alleged trespass and claim damages in trespass. The said letter of course was also dated the same day that you changed the lock on the gates on the Accessway (the "Gates") so as to prevent MHH, its employees, agents and contractors from accessing the Site via the Accessway as they had done for in excess of twenty years.
21. As you are also aware a temporary comprise was agreed between you and [REDACTED] on 10 October 2016 in the presence of the Police Officer that was in attendance. It was agreed that the Gates would be locked at 6.00 pm and re-opened at 7.00 am for the next few days to allow the contractors and employees that were on Site to leave the Site and to access to the Site along the Accessway. As you were aware from your discussions with [REDACTED] it was necessary to gain access to the Site at this time as drilling contractors were required to



carry out borehole testing on the Site so that an environmental monitoring infrastructure could be installed as required by the terms of the permit issued by the EA.

22. It was therefore somewhat of a surprise to be advised that the Council were not prepared to allow access to the Site over the Accessway on the afternoon of 10 October 2016 or on 11 October 2016 as agreed with you. As a result, it was necessary to install a manned guard on Site overnight on 10 October 2016 in order to ensure that the equipment of the contractor was protected as the same had to remain on Site. It was not clear why, within a few hours of a compromise being agreed as regards the use of the Accessway, the Council deemed it appropriate to revoke such an agreement. It was alleged the letter of 10 October 2016 that this was a reasonable approach to take in the absence of any evidence that MHH had any right of way over the Accessway. However, it was clearly the Council's position, prior to the agreement being reached between you and [REDACTED] that no right of way existed. Therefore, it was not accepted that it was reasonable to revoke the temporary compromise that had been reached. It is our opinion that the intention was to cause MHH, its employees, its agents, GLL and its sub-contractors as much disruption as possible when the Council were aware that drilling contractors had been engaged to attend Site and that it was necessary for that Contractor to be present on Site for the next two weeks or so. The Council were aware of this fact as a result of the EA issuing a briefing note to all stakeholders on 7 October 2016 telling it that work would commence on 10 October 2016 and this was also referred to in the email to [REDACTED] dated 7 October 2016 as referred to above.
23. GLL had been led to believe that MHH and GLL were working together with the Council to produce the Fact Sheet, which would include details of how frequently the Accessway would be used.
24. It appeared That the Council had no intention whatsoever (or if it did as at 11 August 2016 that intention subsequently changed) of producing the Fact Sheet in conjunction with MHH, GLL and the EA and that if that position was correct then we would have at least expected the courtesy of being informed that the Council no longer wished to produce the joint Fact Sheet and that the Council's revised (it would appear) position was that no right of way exists along the Accessway. Instead, the Council sought to threaten MHH with serious and expensive litigation and to unilaterally prevent egress along the Accessway on 10, 11 and 12 October 2016.
25. In an email dated 30 November 2016, it was recorded that on 4 November 2016, MHH had been advised that papers had been sent to your counsel (on 2 November 2016) and that your counsel's clerk had stated that she would confirm shortly when it was expected that counsel would be able to settle his advice. On 8 November 2016, we are aware the [REDACTED] sent a further email to your [REDACTED] to seek confirmation as to the position.
26. On 11 November 2016 [REDACTED] emailed [REDACTED] to advise that he and [REDACTED] had arranged a meeting with you to take place on the afternoon of 14 November 2016 and that following which, [REDACTED] hoped that he "would be able to state a clear approach to get this matter resolved". This did not happen.
27. We are aware that on 18 November 2016, having heard nothing from [REDACTED], [REDACTED] emailed [REDACTED] to advise that the Council had been in receipt of our letter of 20 October 2016 for some four weeks and that MHH expected to hear substantively from the Council by 4.00 pm on 21 November 2016. [REDACTED] we understand [REDACTED] on 22 November 2016, having heard nothing and was advised that you, [REDACTED] and [REDACTED] and [REDACTED] were due to attend a meeting with local councillors on 24 November 2016. [REDACTED]



advised that the Council had received its counsel's advice and that this had been provided to the councillors.

28. It was not clear why the Council could not set out its position prior to the meeting on 6 December 2016 and it was therefore reasonable to assume that the Council's position in respect of MHH's letter of 20 October 2016 would be confirmed sometime during the course of that week. As stated in the email of 30 November 2016, it was rather "out of blue" that the [REDACTED] received a telephone call from [REDACTED] on 29 November 2016 in which she stated that she had been asked by you to invite a representative of MHH/GLL to a public meeting to take place on 8 December 2016 at Winterhill School. We are aware that [REDACTED] made enquires of [REDACTED] as to what the proposed meeting was for, who would be in attendance and why we had been invited. However, all that [REDACTED] was able to say was that she had been asked to invite us to the meeting.
29. [REDACTED] thereafter spoke with [REDACTED] on 29 November 2016 to seek confirmation as to how the public meeting was to operate. [REDACTED] was unable to provide any confirmation as to what the intention was in respect of the meeting on 8 December 2016 or how this might impact upon the Council being in a position to respond to our letter of 20 October 2016. We are also aware that [REDACTED] did suggest to [REDACTED] that it very much sounded like you were inviting MHH/GLL to attend a meeting to allow members of the public to raise questions as regards the re-opening of the Site. [REDACTED] reminded [REDACTED] that when he and [REDACTED] had met with you and [REDACTED] on 11 August 2016 it was agreed that the Council, the EA and GLL would work together to produce the Fact Sheet that could be distributed to local residents and businesses to inform them of how the Site would operate, what hours it would operate and how many vehicles would be accessing the Accessway.
30. In the email of 30 November 2016 from [REDACTED] to [REDACTED] the Council were advised that we were clearly not in a position to be able to fully consider whether it was appropriate or not to accept the invitation that was received from [REDACTED] until:
- a. MHH were in receipt of the Council's substantive response to its letter of 20 October 2016 and the Council had confirmed that a right of way existed over the Accessway as described in our letter of 20 October 2016;
  - b. It had been confirmed in writing:
    - i. What the agenda was for the meeting on 8 December 2016?
    - ii. Who the Council intended to be present at the meeting on 8 December 2016?
    - iii. What role, if any, the Council envisaged would be played by any representative of this company that did attend? and,
    - iv. Why the Council believed it was necessary for a representative of this company to attend?
31. Further, we are aware that it was stated in the email of 30 November 2016 that it was recognised that the local residents may not be fully aware of the history of the matter and what was agreed with the Council on 11 August 2016. It was stated that no doubt the Council would not be publicising to the local residents that it was originally agreed that the Fact Sheet



would be produced and that the reason why this did not materialise fully fell at the door of the Council.

32. Despite [REDACTED] asking [REDACTED] to reply to the email of 30 November 2016 by 4 pm on 2 December 2016 MHH heard nothing further from the Council.

33. However, we are aware that at the meeting on 8 December 2016:

a. Councillor Ian Jones advised those present that:

*"The main problem that we all have as far as the answers go is that, at the minute as you can see, we have not got full contingency. We have got no representative from MHH Contracting and we have also not got anybody from the Environment Agency"*

The public were not advised or made aware that MHH had emailed the Council on 30 November 2016 to seek clarification as regards the Public Meeting and that the Council had failed to respond to the same. This was misleading and clearly, members of the public attending the meeting would draw inferences from the fact that there was no formal representative of MHH at the meeting. No explanation has been provided of why this was the case.

b. You advised those present that:

*"What I can't say to you today is that there is not a single solution to this because we don't know the volumes of traffic, the size of the vehicles etc. None of that information has been provided so it's difficult to respond"*

The public were not advised that it had been previously agreed by you that the Council would work together with MHH/GLL to produce the Fact Sheet and that had it done so, the information to which you made reference to (as regards volumes of traffic and the size of vehicles attending the Site etc) would have been known to the Council in or around September/October 2016 and that this information would have been available to those attending the meeting. However, you clearly chose not to make this known to those attending the public meeting and this was clearly misleading. We expect a full explanation to be provided of why this was the case.

c. You also made the following comment:

*"So it's a very difficult position but I want to assure you that the Council and elected members will find every move possible to try and prevent this starting again. We have had to explore the planning options but unfortunately, because there is no new application, no major variation in terms of what they propose to do and no new planning application required which we as a Council could then determine/refuse, or indeed insist on petitions, that's created a real difficulty".*

34. It was therefore noted that you made clear to the public at the meeting on 8 December 2016 that the Council had adopted a position that it will do whatever it can to prevent the re-opening of the Site. Neither GLL or MHH were aware that the Council had taken such a policy decision. This has not been communicated to ourselves or to MHH. Please confirm when the Council took such a decision as it is not clear to us when such a decision was made given the events set out above following the Meeting.



35. We are aware that many of the concerns that we and MHH share were raised again with the Council in MHH's letter dated 9 January 2017. [REDACTED] replied to the same we understand on 11 January 2017. It was noted that this was the first time that your version of the events relating to the Meeting and the Fact Sheet were advanced. It was alleged that as details of the proposed operation were not available at the Meeting that this did not give you reassurances regarding those matters. This explanation is not understood and does not fit with what transpired at the Meeting or with the communication that took place following the meeting.
36. As you will be aware, it was agreed that a further meeting would take place between representatives of MHH/GLL and the Council. There was a significant delay in that meeting being arranged and we are aware that on 4 May 2017, [REDACTED] emailed [REDACTED] to say that:

*"To be frank, it does not take nearly two months to provide dates of availability for a meeting. My suspicion is that Mr Wilson is delaying the holding of the meeting until such time as his recent correspondence with the Environment Agency (EA) has run its course. We have recently been contacted by journalists working for the Telegraph and the Yorkshire Post in respect of the proposed re-opening of the site. The first journalist specifically informed me that they were investigating a complaint that they had received from Rotherham MBC. The second journalist stated that he was investigating a complaint made by Rotherham MBC to the EA. As a result of those conversations I was left in no doubt that the journalists were being fed details of the matter by a representative of Rotherham MBC.*

*Copies of the correspondence which I refer to above are attached. These clearly could only have been provided to the journalist from two sources and I would be extremely surprised if they were provided by the EA.*

*It is clear that Mr Wilson is making a concerted effort to put significant time and resources into seeking to discredit this company, Grange Landfill Limited and [REDACTED] with the EA. I do not intend to address the comments and allegations made by Mr Wilson in his correspondence with the EA, much of which is highly speculative and misleading. However, what I would say is that such comments are clearly not conducive or helpful as regards the settlement talks that it was proposed would take place between us as regards the access way.*

*With that in mind and given the agenda under which Mr Wilson appears to be operating, my instructions are to insist that we be provided with dates of availability for the proposed meeting by 4.00 pm on 8 May, failing which, it will be assumed that the council's position is as adopted in the correspondence with the EA and that it wishes to proceed without looking to reach any form of compromise with us as regards the use of the access way. This could have gone some way to addressing some of the concerns expressed by local residents and businesses. If that is the outcome, the company's position will be to simply to seek to use the access way as we believe we are fully entitled to do. In the event that any steps are taken to prevent such use, we will have little alternative but to look to commence immediate proceedings for injunctive relief against the Council. We will also seek to recover the loss and damage that we have already suffered as a result of the actions taken by the Council in October 2016, which are yet to be resolved and in respect of which all our rights and remedies remain fully reserved.*

*What is clear is that the manner in which the Council's representative has conducted matters following the Meeting and the dealings surrounding the public meeting have been far from*





*satisfactory and it is clear that this should be addressed by the Council. This is not how we would have expected the Council's representative to have conducted matters."*

37. [REDACTED] replied we are aware on 4 May 2017. He explained that he had a meeting with you that day at 4.30pm and that he intended to raise matter with you then. A meeting between you, and other Council representative and representatives from GLL and MHH was arranged for 12 June 2017 and [REDACTED] confirmed by email on 5 May that *"this is fixed in Damien's and my diary"*.
38. The meeting took place on 12 June 2017 but we were advised that you were unable to attend.
39. A number of potential operational constraints were discussed at the meeting. It was left that [REDACTED] needed to revert to you to consider with the matters discussed so that he could then set out in writing the matters that were discussed and agreed in principle. This did not happen. We are aware that on 8 August 2017 [REDACTED] had cause to email [REDACTED] concerning the licence over the Accessway. In that email [REDACTED] stated *"We have not heard further from you following our meeting on 12 June 17. Is there still a desire on the part of RMBC to see if we can agree some of the operational issues that we discussed on 12 June? Unless we hear further from you on this matter by close on Friday 11 Aug we will presume not and I will refrain from chasing you on this point"*.
40. [REDACTED] replied this comment by email dated 8 August 2017 to state that *"There is still a desire on the part of RMBC to see if we can agree some of the operational issues that we discussed on 12 June 2017"*.
41. Despite such an assurance, nothing further was heard and so this matter was raised again by [REDACTED] in his email to [REDACTED] on 24 August 2017 when we stated *"Whilst emailing, we have still not heard further from you or [REDACTED] substantively following our meeting at your offices on 10 June. [REDACTED] did comment in his previous email that you remain keen to see if we can agree some operational matters. As you will appreciate and as I have alluded to in my recent emails, at some point in the near future the tip will be operational and therefore the opportunity to agree these issues prior to that period will have been lost."* This issue was not addressed further by the Council's representatives following this email.
42. There does clearly appear to be a correlation between the events that occurred surrounding the Meeting and the meeting that took place on 12 June 2017. It can only be presumed that the very positive discussions that we had with the Council's representatives on 10 June 2017 did not accord with your agenda and with the comments that were made to the public on 6 December 2016.
43. No doubt this will now afford you the opportunity to be somewhat more transparent as regards your intentions and motives and how this relates to the request for information that has been made of us.

We look forward to hearing from you so that we may consider you request for information further and address this accordingly.

Yours faithfully,

[REDACTED]

Grange Landfill Limited



Grange Landfill Limited, Registered office: 559 Carlisle Street East, Sheffield, England, S4 8DT