

email from Adrian Stanfield, T&MBC's Solicitor 13/6/2014

Suspect phrases in the Opinion and *My Observations Added*

Dear Mike

Isles Quarry West

I am aware that particular concern has been raised by you, both in your capacity as Ward Member for Borough Green and Long Mill and as Chairman of the Parish Council, that the specific arrangements set out in the planning permission for development at Isles Quarry West, issued under reference TM/11/01191/FL, relating to the investigation and decontamination of the site have not been complied with. You have also suggested that there has been inadequate monitoring undertaken by officers to ensure that Crest Nicholson meets the requirements of the relevant conditions. In this regard I note you have suggested that the **monitoring by officers should be continuous** and the Borough Council should not simply rely upon the Crest's validation reports. *We don't want continuous monitoring, we want investigation when non-compliance is reported, and T&M insist they have nothing to do until the FINAL Validation Report.*

In view of the serious nature of these concerns and allegations, we have taken the step of seeking the advice of Counsel. The purpose of this email is to share this advice with you, your ward colleagues and the Parish Council. I shall separately be writing to all members of the Borough Council, which you will of course be copied in to.

I have set out below a summary of the key points of Counsel's advice.

- (1) Counsel is satisfied that the conditions on the planning consent relating to contamination are comprehensive in the way in which they seek to control the remediation plan for the land. **In the absence of any breach** of those conditions being identified there is no need for continuous monitoring other than the monitoring which is set out in the planning conditions themselves. *There is strong evidence of several breaches*
- (2) Counsel is further satisfied that the **actions of officers in investigating and determining whether there is a breach** is commensurate and in accordance with the Borough Council's powers and duties as a planning authority. *In (1) above they infer there have been no breaches*
- (3) Counsel concludes that the advised regime implemented through the appropriate use of planning conditions, does not require continuous monitoring of the site which would potentially be **wasteful of Borough Council resources**. *The resources aren't wasted investigating possible breaches*
- (4) Counsel is concerned that as a public authority the Borough Council must act reasonably, rationally and proportionally. He observes that a valid planning permission has been secured and as the national guidance points out, **monitoring is principally the responsibility of the developer**. That is made clear by through the imposition of the appropriate planning condition. Constant and continuous on site monitoring in the circumstances can be oppressive. *The key word is "principally", that means T&M still have a duty to monitor*

Thank you for sending to me and others the letter you have received from Mr Bernard Barry at the Department for Communities and Local Government (DCLG). I have considered the

contents of this letter and, whilst it is not the role of the DCLG to provide legal advice, the view expressed by **Mr Barry is consistent with the advice we have received from Counsel**. *Mr Barry contradicts T&M's Counsel's opinion that T&M have no duty to monitor, they clearly do*

I am surprised however that Mr Barry did not mention paragraph 120 of the National Planning Policy Framework, which states

*“To prevent unacceptable risks from pollution and land instability, planning policies and decisions should ensure that new development is appropriate for its location. The effects (including cumulative effects) of pollution on health, the natural environment or general amenity, and the potential sensitivity of the area or proposed development to adverse effects from pollution should be taken into account. **Where a site is affected by contamination or land stability issues, responsibility for securing a safe development rests with the developer and/or landowner.**”* *But there is still a duty to monitor on T&M, not just the developer*

I am aware that you are shortly to meet with Crest Nicholson, together with one of your colleagues from the Parish Council. As I understand it, Crest wish to explain the works carried out thus far and the site strategy going forward. I trust this meeting will provide the opportunity for you to raise your concerns directly with Crest and for Crest in turn to provide you with confirmation that remediation of the site is proceeding in accordance with the requirements of the relevant planning conditions. *We have discovered that documents released to T&M by Crest in March, do actually answer some of our concerns, but were only released on 13th June*

Regards

Adrian Stanfield Solicitor
Director of Central Services
Tonbridge & Malling Borough Council



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