

Fairlawn  
McFarlands Down  
St. Mary's  
Isles of Scilly  
TR21 ONS

9<sup>th</sup> November 2015

Mr Craig Dryden, Infrastructure & Planning  
Council of the Isles of Scilly  
St. Mary's  
Isles of Scilly

Dear Mr Dryden

Re Planning Application No.P/15/088/CLE

We understand that Mulciber Ltd has applied for 'Lawful Use' at the Pendrathen quarry based on the claim that operations have been undertaken on a continuous basis for the past 10 years (i.e. since Q4 of 2005):

**Furthermore, if the Local Planning Authority (LPA) has evidence, or reasonable grounds to believe, that the applicant's claim is not correct, it may refuse a certificate.**

With reference to Mulciber's Planning Application Form, Q.10 "Activity began 1940's. Has there been any interruption? No" and "Has there been any material change of use of land since the start of the use for which a certificate is sought? No", we give below our submission which disputes the continuation of consistent activities in the quarry for the past 10 years and considerable evidence that there was a significant unlawful 'Material Change of Use' from the beginning of 2012.

Regarding the ten-year rule, Mulciber's application for lawful use refers on numerous occasions to activities in the quarry prior to 2005. Statements by previous operators at the quarry are also included to support the application but these individuals were working at the quarry before 2005. Therefore all references to operations in the quarry prior to 2005 must be discounted as part of the decision process because the only years in contention are from Q4-2005 to Q4-2015.

Mulciber did not obtain a lease from the Duchy of Cornwall until 2011 and as residents of McFarlands Down (since 1983) we maintain that during the years 2005 to 2011 there were considerable periods during which the quarry was totally dormant and became overgrown. At other times the quarry was used only occasionally, presumably for the purpose of removing small amounts of inert rubble from **within the site** for local residents, pot hole repairs etc. Like other residents we had no reason to monitor the traffic going past our house and realistically this would have been an impossible task with so little or no activity so any request for residents to give specific dates when the quarry was dormant is unreasonable.

### **Material Change of Use from February 2012**

The significant increase in activity in February 2012 corresponds to Mulciber obtaining a lease from the Duchy in 2011. As residents of McFarlands Down we can confirm that there was a significant increase in quarry traffic in McFarlands Down and operations at the Quarry during 2012. In February, residents of McFarlands Down were subjected to unacceptable levels of disruption, noise, vibration and dust from the uncovered, heavily laden vehicles transporting waste from the Porthcressa renovation. These operations continued throughout the summer months with intense activity throughout August.

According to 'Detailed history of the quarry since 2003, Reference 1' submitted by Mulciber, on 23 Feb. 2012 in correspondence with the CIOs it was agreed that Mulciber would receive 1000 cu.m. of waste from Porthcressa for processing in the quarry. This was carried out around 27 Feb. In the same correspondence of 23 Feb. it was stated that **"the use of the premises was a 'lawful and established Use of the quarry". This is totally untrue. The contract signalled a major departure in the use of the quarry and must be considered a 'material change of use'. Therefore the applicant cannot legitimately claim a Cert. of Lawful Use.**

Another instruction was sent by the CIOs to Mulciber on 27 March to receive a minimum of 700 cu.m. specified arisings from Porthcressa.

Furthermore, 'Reference 1' does not mention that a large quantity of the material deposited in the quarry during August 2012 originated from the Council's Moorwell Waste Disposal site. It was quite obvious to ourselves and other residents at the time that this was not 'inert' because we could see various types of domestic waste, including sanitary ware and black plastic, protruding from the large piles that had been dumped alongside the quarry boundary fence. Because of our concerns we and other residents of McFarlands Down entered into lengthy correspondence in September with Mr Pilcher of the Environment Agency in Bodmin.

No attempt was made to test the material prior to dumping in the quarry by either the Council, the Environment Agency or Mulciber, despite the fact that there is a legal obligation on the Council and the receiver of the Council's waste to ascertain the exact nature of the waste. This was a complete abdication of their 'Duty of Care'.

Despite the representations by ourselves and others from August onwards to the Environment Agency and the Chairman and Vice-Chairman of the Council, no action was taken to determine the nature of the waste. Therefore in Spring 2013 residents obtained scientific evidence from Environmental Assessment Services Ltd., West Sussex that samples taken from the large volume of municipal waste transported from Moorwell to the quarry in August 2012, comprising domestic and commercial waste, contained asbestos. The report by EAS Ltd. dated 24 April, 2013 states:

**"The initial inspection showed the (soil) sample to comprise dark sandy soil mixed with pieces of slate, other roofing material, glass, steel, other metal items, timber, cloth, plastic sheeting, plastic waste and other items of domestic, commercial or demolition waste origin..... From the investigation and analysis, it may be concluded that the sample taken for analysis comprised domestic and commercial waste, including asbestos containing material..... The material supplied is clearly dumped waste."**

This statement by EAS is conclusive evidence the material was not innocuous waste from Porthcressa and the new school project as we were told by the Council in a phone conversation at the time and as the entries in 'Reference 1' for August infer but contaminated domestic and commercial waste from the Council's Moorwell waste disposal site. In respect of the claim by the EA and the Council that the level of contamination in the waste deposited in Pendrathen is not a significant threat to health, scientists will tell you there is no safe level of asbestos contamination and that waste is therefore hazardous and must be sent to the mainland.

Three years later the contaminated material remains in the quarry despite residents' objections and the fact that it was dumped illegally. After contacting Mr Chris James, Team Leader, Environment Agency, Exeter, on the 17/9/13 we received an e-mail, which included the following statement:

**"...The need to resolve the status of the current waste deposits remains a priority for us. We have reminded the quarry operator and the Council that the imported waste deposits from Porthcressa and Moorwell residing in Pendrathen Quarry remain illegal. They are not authorised by either waste exemption or permit under the Environmental Permitting Regulations."**

This statement by Mr James is further indisputable evidence that the quarry had undergone an unlawful material change of use to a waste disposal site.

Furthermore, the fact that 'Reference 1' does not mention the huge importation of contaminated waste from the Moorwell waste disposal site into Pendrathen Quarry during August 2012 seriously calls into question the reliability of all entries. It is possible the omission was deliberate as its inclusion would undermine the credibility and safety of Mulciber's commercial activities.

In fact, the entry for 'August' 2012 in Reference 1 infers that only a limited quantity of waste from the new school project was taken to Pendrathan Quarry:

"Trial crushing and screening of construction and demolition waste from school project, at Moorwell waste management facility.....with intention of product removal for storage at Pendrathen Quarry and resale to local market. Environment Agency inspection of aggregate products". This suggests only inert material from the school project ended up in the quarry, not historic contaminated domestic and commercial waste from the Moorwell waste disposal site. We suspect that the waste from the school project was mixed with historic waste at Moorwell, shredded and transported to Pendrathen. **However, there is no mention in 'Reference 1' of this contract between the Council and Mulciber together with the permission of the EA to dump historic Moorwell waste in the quarry.**

### **Conclusion**

In 1997 due to coastal damage the Council's Planning Officer initiated the cessation of sand and stone extraction from Bar Beach resulting in very low levels of activity in the quarry as the main operation had been the crushing of stone and the removal of sand from the beach. From 2003 when the operator of the quarry relinquished his lease from the DoC the quarry remained dormant for a number of years. (The 'clean-up' of the quarry in 2004 requested by the DoC was a short-term operation to remove rusty vehicles etc. which had become an eyesore.)

We understand that approval of 'Lawful Use' can only be given if there have been no material changes to the type and scale of the operation carried out for the past 10 years.

Our evidence demonstrates a significant Material Change of Use (from the former use of the quarry) to a waste disposal site beginning February 2012 due to large-scale CIOS contracts. This evidence, in addition to our own personal observations as local residents, indicates that the quarry has not been used on a continuous consistent basis for the past 10 years. The Permit issued by the EA in May of this year would allow up to 8000 tonnes of material per year to be transported to the quarry for processing and subsequent re-sale which could result in quantities of up to 16,000 tonnes being transported up and down McFarlands Down, a narrow residential lane with no paths, a totally unacceptable situation. Contaminated waste at Pendrathen must not be recycled but shipped to a suitable site on the mainland otherwise it would spread hazardous asbestos contaminated waste all over the islands.

### **Additional comments on 'Lawful Use' v Planning Application**

We contend that Mulciber Ltd. has avoided the rigours of the Planning system by applying for 'Lawful Use' instead of submitting a Planning Application whereby the full implications of an application for waste processing and dumping in an environmentally sensitive area would have to be considered, i.e. Environmental Impact Assessment in an AONB, in Heritage Coastline, a Conservation Area, close to Ancient Monuments of National and International importance.

Also, if the Applicant had submitted a Planning Application, consideration would need to be given to the disruption to residents' lives by continual quarry traffic, the vibrations from heavily-laden vehicles (threatening the structural stability and damaging homes in the lane), health risks from diesel fumes, noise and clouds of dust particularly in summer. Quarry traffic has contributed significantly towards the present bad state of the lane which is now unsafe for all users and a constant source of aggravation to residents of McFarlands Down whose vehicles are being damaged by the uneven surface. Despite the state of the lane it is a main access route for holidaymakers using the coastal path and visiting the Ancient Monuments at Bant's Carn and Innsidgen. It is also used by local residents and their children, walkers, joggers, cyclists, horse riders and buggies. All users are frequently put at risk and have to move out of the way of the very large earth-moving vehicles etc.

Pendrathen Quarry should be closed down and the whole of the Pendrathen operation should be carried out at the proposed Moorwell Recycling Centre which would avoid the problems of transporting large amounts of waste the whole length of the island and back again once it has been 'processed'. The large publicly funded crushing machine could be sited at Moorwell in which case it would not be frequently moved on a large transporter from one end of the island to the other as it is currently.

Furthermore, the development proposed in Planning Ref. P/15/088/CLE also includes 'excavation'. This is similar to the planning application in the Public Inquiry 1987 which failed. The excavation of solid rock at the base of the hillside at McFarlands Down could undermine the whole coastal slope and impact upon all the homes in McFarlands Down, especially during periods of torrential rain. Therefore no further excavation should take place at the quarry.

We have read in a number of statements from the DoC, Council and the EA over the past few years that waste deposited in the quarry would be used as part of the 'restoration' and 'landscaping' of the quarry. Contaminated Moorwell waste must not be used for this purpose. We request that the Council ensures that the operations at the quarry are closed down. If Pendrathen Quarry became an open-air theatre this would add significantly to the tourism experience in an AONB, Heritage Coastline and Conservation Area with its fantastic coastal views and spectacular sunsets.

Finally, In the light of previous contracts, pending Council projects and the Council's waste management policy to put out waste services to tender, if 'Lawful Use' is approved it is our opinion that the CIOS would be a main beneficiary of the Permit and would continue to negotiate large contracts with Mulciber to receive waste at Pendrathen. This begs the question as to whether or not there is a Council conflict of interest. **However, we do not believe that under the terms of 'Lawful Use' these large scale operations could legitimately be permitted.**

The application for Lawful Use should be refused.

We insist that no part of the above submission to the LPA is redacted in any way. We believe it is our right to have our opinions read, discussed and considered by Councillors and the public.

Yours sincerely

Linda and Ray Warnes