

Phil Norrey  
Chief Executive  
Devon County Council  
(by email)

9th January 2012

Dear Dr Norrey,

**RE: Whitecleave Quarry, Buckfastleigh**

I am writing to you directly as head of Devon County Council as I feel this is nearly the final option the community of Buckfastleigh have in obtaining justice in relation to activity at Whitecleave Quarry.

I know both yourself and other senior personnel at Devon County Council have received communications in the last several months both from councillors and our MPs Mel Stride and Dr Sarah Wollaston. Our representatives have endeavoured to get to the bottom of this matter for us but, unfortunately, the matter is continually delegated to the department that is central to the concern we have - i.e. Planning, Transportation and Environment.

**On behalf of Buckfastleigh Community Forum I would like to register a formal complaint against the planning authority and request an investigation into their activities.**

In summary, the issue is an apparent misfeasance in relation to the existing ROMP (Review of Old Mineral Permissions) at Whitecleave Quarry in Buckfastleigh and the activity being undertaken on site. This has prejudicial implications for the current planning application, for a waste processing site, which has caused considerable public discontent.

I have previously made it clear to our representatives that the *current* planning application (with one or two caveats) is being handled very diligently and comprehensively by the case officer Sue Penaluna. We are happy that the planning authority have helped the community have a Health Impact Assessment undertaken as well as a safety audit of the road system despite an intransigent developer and an apparently disinterested highways authority. However, this level of diligence does not apply to the historical handling of the ROMP permissions and monitoring of Gilpin Demolition's activities on site since 2008.

**Background information and Summary Timeline:**

Whitecleave Quarry ceased major quarrying activity in 1997. Under the Environment Act 1995 a Review of Old Mineral Permissions (ROMP) was activated at the site in order to manage the restoration of the site at the cessation of workings. This became the effective planning permission (which is still extant) and carried numerous conditions and restrictions in order to maintain the

environmental integrity of the site and protect the amenity and wellbeing of the community of Buckfastleigh.

For the best part of ten years, Devon County Council quite correctly pursued Hanson Aggregates to take action in order to meet the conditions of the ROMP. The council acquiesced to delays continually requested by Hanson for the submission of a restoration and aftercare schemes. Hanson walked away in 2007 when their lease expired. There were disagreements between the owner, Mrs Truman, and Hanson about whose responsibility the restoration and aftercare conditions were. Hanson left a liability with the owner to undertake the majority of the work to satisfy the requirements.

Well before Hanson left the site it was generally regarded that the quarry was essentially “*worked out*” in terms of the economic and practical viability of the remaining permitted mineral reserves (a large portion of which are deeper down in the existing void, and the removal of which would not only be costly and difficult for a mineral with declining value that failed to meet new regulatory requirements, but would likely threaten the hydrology of the SSSI at the adjacent Potter’s Wood Caves and hence be in contravention of new environmental legislation).

The Adopted Devon Minerals Plan (June 2004) states that “*There is no potential for an extension to the working at Whitecleaves Quarry. The site’s proximity to Buckfastleigh and the A38 makes it an extremely intrusive element in the local landscape when viewed from the road.*”

As early as 1997, discussions between the owner and the operator had suggested that the site was better suited for inert landfill after quarrying had ceased. In 2006 the owner lobbied Devon County Council to have the site considered as part of the Waste Local Plan for the siting of an inert landfill site. The council responded that the site was not required for the Local Plan as enough suitable sites had already been identified.

Meetings were had in early 2007 between the Mineral Planning Authority (DCC) and agents for the owner, suggesting that small-scale quarrying could continue for the limited reserves, or the site could be restored either as a nature reserve or as a public amenity site for leisure activities. It was noted that grants were available for the latter use.

In a letter of 18th October 2007, the owner’s agents stated that “*Mrs Truman requests that the quarry is to be considered as non operational and as such there is no need to worry about further operations within the quarry void.*”<sup>i</sup>

Monitoring Officer Dave Pressley had a meeting with the owner’s agents on 1st November 2007 to discuss future of the site. It was confirmed that “*there is no intention to work the site as previously proposed.*” Apparently this was followed a week later on 9th November 2007 by a phone call from the agent to say that “*Mrs Truman has found an operator and that the site will therefore be worked.*”

The new operator was Gilpin Demolition. Within a few months Gilpin had submitted a comprehensive planning application with the aim of turning Whitecleave Quarry into a waste processing facility and landfill for their demolition business. A use that had previously been lobbied for and rejected by the Waste Planning Authority. Gilpin’s lease contained a clause for royalty payment streams for imported waste that would normally be found in a lease for a landfill site.

Numerous conditions of the ROMP were still being breached. Gilpin moved onto site during the planning process.

Gilpin withdrew their planning application late in 2008 before it went to determination. Despite the public outcry, this appears to have very much been a strategic withdrawal and represented a Pyrrhic victory for the town of Buckfastleigh. It is not clear on whose advice the application was withdrawn although it is believed the application was likely to be rejected. **The planning department subsequently undertook private meetings with Gilpin and privately gave permission for Gilpin to process waste at the site. This is despite this activity being specifically precluded in the ROMP conditions in order to protect the amenity of the town. There are no records of these meetings.**

The fact that permission was given to process waste at the site only came to light publicly in recent weeks after months of investigation by the Buckfastleigh Community Forum, and has aroused much anger in town.

Since they withdrew their application in 2008, Gilpin Demolition have essentially gone ahead and largely undertaken the activity that the planning application was intended to give them permission to do - i.e. process waste and begin to infill a worked-out quarry. In July 2011 MVV (Gilpin's partner) submitted a new planning application. The missing pieces of Gilpin's required permissions are now included in this planning application now the site has been suitably groomed to their ongoing requirements. The new application now includes the processing and storage of Incinerator Bottom Ash from the Devonport Energy-from-Waste incinerator.

It should be noted that the description of the current planning application in the Planning Supporting Statement was rewritten for the applicant by the planning authority in July 2011 *"to make it absolutely clear that there is a quarrying element to the proposals."*<sup>ii</sup> This was specifically before it went into public domain.

In this context it should also be noted that Devon's Minerals and Waste policy officer Andy Hill has latterly objected to the current application on the basis that it would sterilise the quarry's limited mineral reserves, stating that *"the proposal will not make efficient use of the permitted reserves at Whitecleave Quarry and is contrary to Policies MN1 of the Devon Structure Plan and MP13 of the Minerals Local Plan"* and noting that *"construction and demolition recycling operation...facilities are more 'footloose' and an adequate network of such facilities already exists."*<sup>iii</sup>

As a community we are greatly concerned that after the planning application was withdrawn in 2008 with Gilpin publicly vowing to return, **the planning department, sometime between late 2008 and early 2010, effectively by-passed the Development Management Committee and instigated a *de facto* change of use on the site, without any scrutiny or accountability, and without clear evidence of following any kind of due process.**

We believe there is evidence that the department has actively tried to withhold some crucial information from the public and elected representative. This does not appear to be simply a matter of neglect or nonfeasance on the planning authority's part, as there appears to be indications of deliberate intent.

It is impossible to give a much more detailed picture than this because it appears that some of the documents required do not exist at all, in specific contravention of due process. Without this clear,

written evidence, it can be argued that activity on site is unlawful as it is specifically against restrictions contained in the ROMP. The planning authority do not wish to hear our arguments.

### **No evidence of due process and no accountability**

Unfortunately, the normally acceptable practice of asking the department concerned to address these concerns via our elected representatives has failed because the responses given to us (either directly or via our representatives) whilst giving an appearance of being informative and useful, are actually cloaked in the same language of obfuscation and distraction that is at the root cause of the problem.

As Chairman of Buckfastleigh Community Forum I have spent hundreds of hours researching and understanding this complex issue. After going through all the available documentation **there is no evidence to indicate that due process has been followed.**

This could simply be the result of lack of resources. However, the glaring distinction between the comprehensiveness of both the pre-2008 regulation of the site and the thoroughness of the current planning application, against an apparent void of information between 2008-2010 (combined with subsequent attempts to apparently distract us or confuse this issue) indicate it is likely not as simple as a lack of resources.

In early December Sue Penaluna helped to arrange a meeting room at County Hall for myself and two other residents of Buckfastleigh to spend a whole day working through thousands of pages of documents related to the site and its history of planning and development. Despite the large amount of paperwork, there is a glaring lack of key written records of how the current status of the site was allowed to occur. **There is no paper trail of correspondence, meetings undertaken, decisions made, or permissions granted in writing (in relation to the processing of waste).**

Where evidence of correct procedure is lacking, people will observe the reality on the ground and fill in the blanks themselves. Planning Officers and the Development Management Committee witnessed the level of anger in Buckfastleigh directed specifically at the council when they attended a site visit and town hall meeting in September. Development is often controversial but the planning authority has an obligation to maintain the planning system's reputation through a clear and accountable process. It has systematically failed to do this with respect to Whitecleave Quarry and exploitation of the ROMP permission.

### **Legal interpretation of ROMP**

I recently asked in an email<sup>iv</sup> to Sue Penaluna (copied to the County Solicitor) to see a copy of the legal opinion taken by the department with respect to the arcane and controversial interpretation of the ROMP conditions.<sup>v</sup> I had expected this legal opinion to be on file. **It should be noted that the legally binding ROMP conditions require “the winning and working of minerals” to be the “principal purpose of the development” in order to allow any activity on site.** The legal opinion taken apparently allowed an interpretation of the ROMP which has allowed a demolition contractor

with a publicly stated intention of using the site to process waste to operate at the quarry. If it is accepted that Gilpin Demolition's plans for the quarry are not *"the winning and working of minerals"* as *"the principal purpose of the development"*, their mere presence on site is in breach of the ROMP planning permission.

Sue Penaluna responded to my email seven days later stating that *"it is 'permitted development' as previously explained and therefore there was no legal opinion or correspondence that I am aware of."* Something is amiss here because I had earlier been told that specific legal advice was taken on this matter. I had a meeting in August with Dave Black, Stuart Redding and Sue Penaluna (a meeting precipitated by a letter from Mel Stride) where I was accompanied by another resident of Buckfastleigh specifically in order to take notes of the meeting and act as a witness to what was said. At this meeting I asked a direct question of Dave Black: *"Have you consulted the County Solicitor and obtained a legal opinion on this matter?"* To which the answer was yes. We then briefly discussed this issue. I even asked if Gilpin had ever been asked to sign an affidavit to confirm in writing that they intended quarrying to be the *"principal purpose of the development"* as required by law if they were to operate at site. Dave Black said they had been told by the County Solicitor that they could not force Gilpin to do this. I did suggest that they may merely request Gilpin to sign an affidavit, if only to protect the council against a legal challenge. My advice apparently was not required.

In a subsequent letter to Mel Stride<sup>vi</sup>, Dave Black responded that we had discussed the matter, noting that it was decided that it was not *"expedient"* to take enforcement action against Gilpin Demolition for their activity on site. This is despite ongoing and persistent complaints from residents about activity on site. Residents who have complained have been ignored, distracted, bamboozled and patronised in various measures.

On the numerous occasions I have questioned the department about activity on site and its questionable legality (either directly or through councillors or MPs) the department has repeatedly responded with the empty mantra that *"it is permitted development"*. They completely ignore our comprehensively argued points that there is no clear evidence that the activity is permissible, and that in fact it appears to directly contravene the law. We have essentially been told to go away and stop asking awkward questions.

**Dave black has specifically refused to allow further scrutiny of the issue, despite the lack of due process, the lack of accountability and the lack of any internal or external scrutiny of contentious decisions which have had a profound negative impact on the wellbeing of the community of Buckfastleigh and the amenity of the town.**

### **Environmental breaches and monitoring**

**In addition** to the dubious handling of the ROMP, there is also no clear evidence that both UK and European environmental designations have been properly respected or monitored. Something that I have continually queried to no avail.

The Environment Agency specified in a letter to the Planning Officer Mike Deaton<sup>vii</sup> in May 2008 that *"importation of a significant volume of material is proposed. In order to prevent adverse environmental impacts the applicant should be required to put in place - an appropriate specification*

*of imported material - a robust testing regime to ensure that all material used for infilling is in line with the above specification...the material testing regime should specify how the quality of imported material is controlled and validated...**prior to occupation of any part of the permitted development, a verification report demonstrating completion of the works set out in the approved material specification plan shall be submitted to and approved, in writing, by the local planning authority.***

According to records provided by Gilpin to the planning authority, Gilpin (who continued to occupy the site before and throughout the original planning application and still do to this day) processed over 6,000 tonnes of waste at Whitecleave Quarry in 2010 (see pictures). At least some of this waste processed was procured from the highways authority<sup>viii</sup>.



The planning authority continually claim that this is “*permitted development*”, as they build track ways on the site. The timing of my letter was in part precipitated by the latest announcement that 10 tonnes of road planings from the highways authority were being deposited at site in order “*to harden up the existing turning area*”.<sup>ix</sup> This was despite the fact that the planning authority’s own monitoring document had previously concluded that enough material was available on site for any necessary work. Yet again, opportunistic waste processing appeared to be the driving factor, although my specific complaint was again ignored by the planning authority.

Although these activities are questionably legal, in practice it means that the permissions sought in the previously withdrawn planning application were not even required. This is because of their apparent ability to ‘game’ the ROMP conditions with the apparent consent of the planning authority. **There is no evidence that any of the Environment Agency’s conditions were actioned either in practice or in writing.**

Despite the quarry lagoon being drained and infilled in this time, the Environment Agency evidently believed the quarry lagoon was still there in March 2011 when they responded<sup>x</sup> to Devon County Council’s environmental scoping request with the statement that “*The scoping report may need to include an assessment of aquatic (as well as terrestrial) ecology if it is proposed to infill a quarry lagoon.*” The lagoon had long gone and was already infilled with waste. They processed the majority of this waste before any Environment Agency exemptions were in place in November 2010 - exemptions which were only made public after a recent specifically worded complaint to the Environment Agency from the Community Forum.

Although a Habitat Regulation Assessment (HRA) was undertaken as part of the 2008 planning application, it remains unclear how seriously this was taken. Despite ongoing protestations by Gilpin and by the planning authority that Natural England have been fully consulted throughout, there is no evidence to back these claims. Indeed, in direct contradiction of these claims, Natural England stated

in their April 2011 response<sup>xi</sup> to Devon County Council's environmental scoping request that *"Natural England has not seen the final results of the 2008/9 HRA report and in detail what was asked for in terms of any mitigation for this HRA."*

Subsequently in Natural England's formal consultation response to the current planning application on September 13th 2011<sup>xii</sup>, they stated that: *"We are concerned that vegetation clearance between 2008 and 2009 (Environment Statement Volume 1, Ecology 7.4.46, Scott Wilson June 2011) has likely resulted in an impact upon greater horseshoe bat commuting opportunities. **We seek clarification on how this situation has been allowed to take place without mitigation.**"*

**Given that this implies a council liability under European Law, I presume this matter would be taken very seriously by the council.** The planning authority appear loathe to investigate this matter further, and it is not apparent that they should investigate their own activity in this instance.

It is very clear to the people of Buckfastleigh that Gilpin Demolition have worked the planning system to the detriment of the community and its wellbeing. It is **not** clear whether the planning authority have been played for fools, if they have been complicit in this process, or merely embarrassed into feeling powerless against a determined developer. Ultimately an investigation could possibly conclude that they have done nothing wrong, but from their perspective I can understand why they have indicated to me on numerous occasions that they insist on essentially burying this issue with no further debate or scrutiny. Lack of scrutiny is clearly not acceptable.

In summary:

**Specific points of complaint:**

- The extant ROMP permission is being exploited with a very dubious legal interpretation that allows Gilpin Demolition to process waste at the site despite both being explicitly precluded in the ROMP restrictions and a huge public outcry against it.
- This has allowed the site to be groomed for the current planning application and prejudices the process.
- It is not clear that due process has been followed.
- Any process followed that allowed this to happen appears not to have been documented.
- Private, unaccountable decisions have been taken by planning officers that have circumvented due process and the Development Management Committee and allowed a *de facto* change of use of Whitecleave Quarry which has had a significant detrimental impact on community wellbeing.
- Attempts by the community and its representatives to clarify the process have been continually stymied by the department with indications of misfeasance.
- Open scrutiny and accountability have been denied to the public and elected representatives on a matter of high public interest and concern.
- In addition, European environmental legislation, for which the council would appear to have a liability, has possibly been breached with no external investigation into how this occurred.

The planning system is held in disrepute in this town. The questionable but unscrutinised interpretation of the ROMP overhangs the whole matter of the current planning application as it has created an unwanted precedent. The latest highly controversial planning application, however diligently and comprehensively it is handled, cannot be determined without this matter prejudicing the outcome.

**Specific point of action:**

- To instigate a public investigation and/or scrutiny committee, directly accountable to elected representatives, into how the planning authority have allowed the described situation to develop.

Regardless of the specific determination of the current planning application, the community of Buckfastleigh cannot receive any justice unless a formal external investigation of the process is undertaken. The anger in relation to the issue of the current planning application is as much about local democracy and accountability as it is about poor development. In a time when policy is to empower communities, and specifically community organisations such as the Buckfastleigh Community Forum (who are now delighted to be working with the Town Council on the Town Plan for the future of Buckfastleigh), it would be a travesty if maladministration is allowed to derail the town's aspirations.

It would be difficult to overestimate the anger and resentment that this matter has generated in town. Although the Community Forum would not endorse such action, people have used our town hall meetings in the past to suggest direct action in terms of blockading the entrance to the quarry and the road system or even a mass refusal to pay council tax - all greeted with loud applause in the hall.

On a positive note, this is a wonderful opportunity for Devon County Council to embrace the idea of serving its goals. As the county's *Strategic Plan 2011-2015* makes clear, Devon County Council sees one of its primary roles as *"continuing to work as the champion for the people and the county of Devon."*

Although I am sure you are sensibly entitled to delegate responsibility for this matter, can I please request that you note the serious concerns about delegating the issue to the department our complaint is against. I look forward to the council's response, on which I would request that our MPs, who have indicated a specific preference to be kept informed, are included. We have another town hall meeting this Thursday 12th January, and I would be delighted to inform residents that the County Council is taking appropriate action to seek a resolution to this serious matter in a timely fashion.

Yours sincerely,

*Neil*

Neil Smith  
Chairman, Buckfastleigh Community Forum

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cc:

Mel Stride MP

Dr Sarah Wollaston MP

Councillor John Hart

Councillor James McInnes

Councillor Stuart Barker

Councillor Gordon Hook

Councillor Philip Vogel

Heather Barnes - Strategic Director Place

Jan Shadbolt - County Solicitor

Rob Hooper - Democratic Services and Scrutiny Manager

Buckfastleigh Town Council

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<sup>i</sup> Garian Mineral Consultants to Hanson Aggregates 18th October 2007

<sup>ii</sup> Sue Penaluna to Andrew Smith (MVV), 15th July 2011

<sup>iii</sup> Andy Hill to Sue Penaluna 8th September 2011

<sup>iv</sup> Neil Smith to Sue Penaluna 15th December 2011

<sup>v</sup> The ROMP relates to the Environment Act 1995 and Parts 19-23 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995.

<sup>vi</sup> Dave black to Mel Stride, 5th August 2011

<sup>vii</sup> John Wardle to Mike Deaton, 6th May 2008

<sup>viii</sup> My questions about the conflict of interest this presents have been ignored.

<sup>ix</sup> Sue Penaluna to Neil Smith 15th December 2011

<sup>x</sup> John Wardle to Sue Penaluna, 22nd March 2011

<sup>xi</sup> Dr Simon Dunsford to Sue Penaluna, 5th April 2011

<sup>xii</sup> Julien Sclater to Sue Penaluna, 13th September 2011