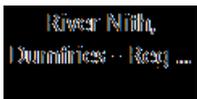

From: Redpath C (Carol-Anne)
Sent: 09 September 2010 17:45
To: Cabinet Secretary for Education and Lifelong Learning
Subject: Emailing: River Nith, Dumfries - Reg 46_a_ - Decision letter - DPEA - 6 September 2010

Follow Up Flag: Follow up
Flag Status: Flagged

Good Afternoon

Please find attached a copy of an environmental appeal decision relating to the River Nith which the Directorate for Planning and Environmental Appeals(DPEA) issued on 6 September.

DPEA has now taken over responsibility for environmental appeals and I understand that Mr Russell wished to be informed of the final outcome of this case.



Regards

Carol-Anne

Carol-Anne Redpath
Section Manager - Development Plans & Case Work South
The Scottish Government
Directorate for Planning and Environmental Appeals
4 The Courtyard
Callendar Business Park
Falkirk
FK1 1XR

Tel
Fa
E-mail:

www.scotland.gov.uk/Topics/Built-Environment/planning/decisions-appeals/Appeals/dpea

Appeal Decision Notice

T: 01324 696 400
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E: dpea@scotland.gsi.gov.uk



Decision by James McCulloch, a Reporter appointed by the Scottish Ministers

- The Water Environment (Controlled Activities) (Scotland) Regulations 2005 (the Regulations)
- Appeal reference: CAR/L/1033622
- Site address: River Nith, Dumfries
- Appeal by Dumfries and Galloway Council under Regulation 46(a) against the refusal by the Scottish Environment Protection Agency (SEPA) of a complex water use licence for an engineering operation, the management of sediment

Date of appeal decision: 6 September 2010

Decision

1. I dismiss the appeal and refuse to direct SEPA to licence a controlled activity within the River Nith.

Reasoning

2. Regulation 15(1)(c) and Parts 1 and 2 of Schedule 4 apply the Water Framework Directive (Council Directive 2000/60/EC) and the Water Environment and Water Services (Scotland) Act 2003. Taken together these require protection of the water environment, including enhancement and the prevention of any further deterioration of the status of water bodies and aquatic ecosystems. Regulation 15(1)(b) requires an assessment of the steps that may be taken to ensure efficient and sustainable water use. In addition, EC Directive 92/43/EEC on the Conservation of Natural Habitats and of Wild Flora and Fauna (the Habitats Directive) and the Conservation (Natural Habitats &c) Regulations 1994 apply. Regulation 48 requires that where an authority concludes that a project unconnected with the nature conservation management of a Natura 2000 site is likely to have a significant effect on that site the competent authority must consider the implications for the conservation interests for which the area has been designated. That need for appropriate assessment extends to a project outwith the Special Area of Conservation (SAC) in order to determine the implications for the interest that is protected within it. The main issue in this appeal thus concerns the appropriate management of the risk to the water and natural environment from the proposed operation.

3. The Council refer to public perception and disquiet having reached the point where the (then) Minister for the Environment formally requested, as constituency MSP, that the Council take action to remove unsightly vegetation and the gravel banks on which that vegetation had established within the centre of Dumfries. The area is a prominent tourist attraction. Weed growth on these banks traps litter and debris including bottles, food wrappers and waste and also discarded syringes and needles, posing a risk to health and safety. The council's preferred means of achieving the environmental improvement that they seek is controversial. Elected representatives and some members of the community favour the proposal with the latter – supported by video and photographic evidence - referring to the absence of these gravel banks as recently as 1967, to the potential to reduce the loading on the structure of the Old Bridge and to alleviate the devastating flooding and consequent disruption that is endured by residents and businesses in the town centre. Other residents are opposed to the proposal.

4. The River Nith is subject to several important environmental designations. Almost half the freshwater and migratory fish species present in Scotland are recorded in the Nith catchment. Of these 4 are listed in Annex II of the Habitats Directive, with British populations thus internationally important – sea lamprey (*Petromyzon marinus*); river lamprey (*Lampetra fluviatillis*); brook lamprey (*Lampetra planeri*); and Atlantic salmon (*Salmo salar*). Salmon is also a priority species in the UK Biodiversity Action Plan; the Nith is the seventh most productive salmon river in Scotland. The site is 5km upstream of the Solway Firth SAC designated for its coastal, estuarine and marine habitats, associated plant communities and river and sea lamprey. It is known also that otter frequent the area of the proposed works and otter are a European Protected Species.

5. The removal of 1000 m³ of gravel along 195 m of the bank and bed of the river with a tracked excavator amounts to a substantial engineering operation, passing under 2 Listed bridges, one of which is also a Scheduled Monument. Besides removing surface vegetation, which includes a dozen mature and semi-mature bankside trees, that operation would remove any habitats contained in the gravel displacing plants, aquatic invertebrates and other animals as well as leading, temporarily, to the release to the water course of finer sediments. In respect of that last consideration, based on the advice of the Nith District Salmon Fishery Board and SNH, there is the possibility that the adverse effects of sediment release on migratory salmon may be accommodated provided the works are undertaken before numbers of fish are in transit upstream. This could be achieved by a restriction on the timing of the works and careful control on, and monitoring of, working methods.

6. The potential effect on habitats may be more significant. Juvenile lamprey are known to live in silty sediment throughout their development of 5 years or more. Given their conservation status and the possible functional relationship with the SAC, SNH advised that a survey was necessary to establish their use of this part of the river. This would inform the need for, and nature of any mitigation that would ensure that the SACs conservation objectives for the species are maintained so as to avoid any adverse effect on its integrity.

7. The council observe that natural processes are inhibited in this location, but that the works proposed would mimic the result of such processes and return the freshwater habitat to its optimum state to support salmon in line with the aims of the Scottish LIFE Salmon

Project. However, that observation is of no assistance in reaching an assessment of the likely effects because that study is stated to be directed at conserving threatened habitats and there is no suggestion that this habitat is otherwise under threat. I accept the council's reasoning that only a very small proportion of the Nith's 112 km overall length would be affected and that there is no proposal for works downstream where an important contribution to habitats and biodiversity is also made. I find no evidence to justify their related suggestion that the present proposal would lead to the enhancement of habitats. As the gravel banks are the result of natural processes the works could not, as the council claim, remove man-made obstacles to migration.

8. When considered against Regulation 48 of the Habitats Regulations I find that the sediment management that is proposed is neither directly concerned with nor necessary for site management for conservation connected with the interests of the SAC. Additionally, as pointed out by SNH, there is no survey information presently available concerning this important consideration that could inform the decision-making process including any necessary appropriate assessment of the likely environmental effects. Thus, the information needed to establish the likelihood, or otherwise, of any adverse effect on the integrity of the SAC is unavailable. The same is true also of otter where information concerning the likely effects is necessary to allow consideration of those effects together with the need for mitigation, if appropriate. In this context the partnership document on which the council found, the River Nith Catchment Management Plan, does not assist.

9. The council's application to SEPA does not refer to their assessment of these important considerations. Whilst not initially objecting, SNH made their position clear on the need for survey and, potentially, appropriate assessment when the application was before SEPA; but these considerations do not feature in specific terms in their decision to refuse the licence. Had this proposal been acceptable on other grounds, a conditional authorization requiring survey followed, if necessary, by appropriate assessment would not have been lawful because these steps must have been taken, and the evidence assessed, before reaching a decision to grant approval.

10. I note that the council's officers had reached a management agreement with representatives of SEPA and SNH on a programme of litter removal and monthly strimming. However Councillors decided, despite the cost, to seek approval for this project which they considered to be a better option. Even so, the council's submissions acknowledge that this would not be a permanent solution, recognising that sediment removal now would lead to deposition in future. Those who support the proposal refer to its potential effect in alleviating flooding. I accept that the flood capacity of this part of the river would be increased, but that effect would be likely to be minimal where the channel is some 70 m wide and the gravel bank only a few metres in width. Of greater significance is the fact that the works are located above the Caul where the river overflows meaning that there could be no flood management benefit. The need to repeat the works suggests that their effect, whether in respect of flooding or amenity, would be short-lived. There is consequently the likelihood that litter and debris could again be trapped.

Conclusion

11. I conclude that the scheme devised by officers and agreed with the regulatory agencies would be consistent with the objectives of the River Nith Catchment Management Plan. That scheme also involves the minimum of intervention to remove vegetation and debris and thus its adverse effect on the amenity of the town centre contributing to the objective of promoting tourism. Both of these considerations are at the root of the council's concern. In contrast, the engineering solution that is proposed, involving complete removal of this part of the riverside bank, would be neither efficient nor sustainable and these considerations lead me to conclude that the operation would be an unsustainable intervention in the natural morphology of the river. In addition, and for the reasons given in paragraphs 8 and 9, the information presently available is inadequate to allow an informed judgment to be reached concerning the likely effects of the proposal on habitats and species. That is an important matter because it is not possible to license this controlled activity within the River Nith without first considering the likely effects on the Solway Firth Special Area of Conservation.

This is a true and certified copy as issued to parties on 6 September 2010

JAMES McCULLOCH

Reporter



Your ref: SW/090910
Our ref: Case 137216/7

5 November 2009

Dear Ms Watson

WATER ENVIRONMENT (CONTROLLED ACTIVITIES) (SCOTLAND) REGULATIONS 2005 – APPEAL UNDER REGULATION 46(a) – RIVER NITH, DUMFRIES (DUMFRIES AND GALLOWAY COUNCIL) (CAR/L/1033622)

We refer to previous correspondence on the above appeal. We have received a letter from Dumfries and Galloway Council (copy enclosed) dated 27 October in response to SEPA's letter of 29 September 2009.

We would be grateful if you could let us have by 3 December 2009 (a) confirmation that you have no new substantive issues to raise on this matter, or (b) any final comments you may have on the issue.

This letter has been copied to Dumfries and Galloway Council and I enclose for information a copy of my letter of today's date to them.

Yours sincerely


Eleanor Vance
Determinations Team

Climate Change and Water Industry Directorate
Climate Change Division

T: 0131-244 0853 F: 0131-244 0211
E: Environmental.appeals@scotland.gsi.gov.uk



Mr W R Barker
Operations Manager Infrastructure & Commissioning
Planning and Environment Services
Dumfries and Galloway Council
Militia House
English Street
Dumfries, DG1 2HR



Your ref: NMG/H/11 WRB/DL
Our ref: Case 137216/7

5 November 2009

Dear Mr Barker

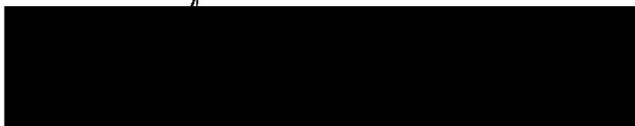
**WATER ENVIRONMENT (CONTROLLED ACTIVITIES) (SCOTLAND) REGULATIONS
2005 – APPEAL UNDER REGULATION 46(a) – RIVER NITH, DUMFRIES (DUMFRIES
AND GALLOWAY COUNCIL) (CAR/L/1033622)**

Thank you for your letter of 27 October 2009 in relation to the above appeal. We have sent a copy your letter to SEPA for its information.

We have today written to SEPA seeking its final comments on your letter and we will contact you again once we receive a response.

We are sending a copy of this letter to SEPA and enclose for information a copy of my letter of today's date to it.

Yours sincerely



Eleanor Vance
Determinations Team



Scottish Government
 Climate Change and Water Industry Directorate
 Climate Change Division
 Victoria Quay
 Edinburgh
 EH6 6QQ

If telephoning ask for:
 Susan Cochrane

14 October 2009

Dear ~~Ms~~ Vance *16/10/09 CD*

**WATER ENVIRONMENT (CONTROLLED ACTIVITIES) (SCOTLAND) REGULATIONS 2005
 APPEAL UNDER REGULATION 46
 DUMFRIES & GALLOWAY COUNCIL – RIVER NITH, DUMFRIES**

I refer to the above and your letter of 1 October 2009 enclosing a copy of Mr Slater's letter of 30 September 2009 in respect of SEPA's decision to refuse Dumfries and Galloway Council's application for gravel removal.

I would respond as follow to the points raised by Mr Slater;

1. 1st paragraph: Mr Slater talks about SEPA's refusal to Dumfries and Galloway Council regarding the removal of silt, trees and various quantities of debris. The refusal was with regard to the removal of 195m of gravel bank on the north east bank of the River Nith at the Whitesands, Dumfries. SEPA did not refuse the Council the right to remove trees and debris. Prior to the application being made SEPA, the Council and other organisations established a management agreement in 2008 for the river bank which would entail the Council cutting the vegetation and effectively converting what has been a 'wild' bank into an 'amenity' bank which could be used by anglers etc. Maintaining the vegetation would have also facilitated the removal of litter as access to collect it would be simplified;
2. 2nd paragraph line 2: Mr Slater states that RSPB does not support SEPA when in fact SEPA received a letter from RSPB dated 23 July 2009 (Producion 7 of SEPA's productions in relation to the appeal) to express their support. RSPB have suggested that the Council take this opportunity to promote the wildlife and natural features of the River Nith in Dumfries town centre thereby encouraging more people to visit and enjoy the wildlife spectacle;
3. 2nd paragraph line 5: The formation of gravel banks is a natural process and there are other archive photographs reflecting various periods over the last 120 years suggest that these banks have persisted since at least the Victorian era;
4. 2nd paragraph line 10: This gravel bank which is upstream of the Caul does not influence flooding at the Whitesands. The River Nith floods from a point below the caul. In the CAR application no case was made by the applicant to remove the bank for the purpose of flood prevention presumably because the applicant is aware from a report completed for them by consultants some years ago that this bank has no influence on flooding at the Whitesands. SEPA understands that there would be absolutely no benefit insofar as the issue of flooding



Chairman
 David Sigsworth

Chief Executive
 Dr Campbell Gemmell

East Kilbride Office
 Redwood Crescent, Peel Park, East Kilbride G74 5PP
 tel 01355 574200 fax 01355 574688
 www.sepa.org.uk

is concerned by removing the bank because this feature is above the Caul and thus above the point where the river overflows;

5. 2nd paragraph line 13: The survey undertaken by the Nith Society in 2009 (production 13 of SEPA's productions in relation to the appeal) to determine public opinion of issues of concern with the Nith at the Whitesands noted that less than 10% of people interviewed thought that the removal of the banks was appropriate;
6. 2nd paragraph line 15: The activity in the Cree was a licensed activity under CAR to allow a new sewer outfall pipe to be constructed. The river bed and banks were fully restored to their previous natural state on completion of the sewer;
7. 2nd paragraph line 19: Without these banks swans would not be able to nest in this area. However, swans have stopped nesting as a result of disturbance and vandalism by the public hence the requirement for the cage provided by the council to offer some protection during nesting;
8. 2nd paragraph line 24: A management regime was set up to control vegetation and litter. Last year the Council, SEPA and SNH established a management agreement for the river bank which would entail the Council cutting the vegetation and effectively converting what has been a 'wild' bank into an 'amenity' bank which could be used by anglers, the public, etc. Maintaining the vegetation has facilitated the removal of litter by the council as access to collect it and remove it has been much improved;
9. 2nd paragraph line 29: A wildlife survey commissioned by Dumfries and Galloway Council Local Biodiversity Action Plan officer in 2001 identified over 180 species of plants growing on the riverbanks in the Dumfries area. These results confirm that this area is very rich in plant species and no doubt a factor that helps sustain the bird life described by the RSPB. The RSPB believe it is one of the best urban settings anywhere in Scotland to observe wildlife. (see production 7 of SEPA's productions in relation to the appeal) Moreover, bank side plants will encourage invertebrates such as insects which are a food source for the salmonids found in the Nith at the Whitesands and beyond. The bank is therefore a very important habitat with regards to sustaining plants and animals thereby contributing positively to the Nith's ecological status; the bank should be conserved and not removed in line with the objective of the local biodiversity action plan (LBAP) as well as to meet the requirements of the Water Framework Directive. The applicant and SEPA are key players in the LBAP along with many other partners including SNH and the RSPB by way of examples;
10. A final point is that the physical removal of the bank will most certainly not solve litter nuisance as advocated by some parties. In contrast, if the bank was not present, litter would fall directly into the river as it does both upstream and downstream. In the river, the presence of litter is every bit aesthetically unpleasing as when it lies on the bank whilst its removal is much more difficult due to issues such as access as well as health and safety. Currently, since the council began removing litter from the bank it is generally free of litter whereas in areas both upstream and downstream of the bank where litter is in the river, it has not been removed and creates a most unsightly appearance. Dumfries Civic Pride do periodically undertake in-river clean-ups and were the recipient of a grant with money made available by the Scottish Government but released via SEPA to carry out such an operation in the spring of 2009. However, the ideal scenario would be for members of the public to refrain from disposing of litter inappropriately and use the receptacles provided by the Council for such.

I confirm that a copy of this letter has been sent to the appellant.

Yours sincerely



Susan Cochrane
Regional Solicitor

MINUTE OF APPOINTMENT OF
Mr James M McCulloch BA(Hons) MRTPI

The Scottish Ministers, in exercise of the powers conferred by section 114(1)(a) and (2)(a)(ix) of the Environment Act 1995 hereby appoint Mr James M McCulloch BA(Hons) MRTPI to determine the appeal dated 13 August 2009 lodged under regulation 46(a) of the Water Environment (Controlled Activities)(Scotland) Regulations 2005 by Dumfries and Galloway Council against the decision of SEPA dated 18 May 2009 to refuse the application (reference number CAR/L/1033622) for authorisation to carry on controlled activities in relation to the River Nith, Dumfries.



Claire Dodd
Environmental Quality Division

The Scottish Government
1-J (North)
Victoria Quay
Edinburgh

18 June 2010

Your Ref: Case 137216/7

Our Ref: NMG/H/11 WRB/DL

27 October 2009

Determinations Team
Climate Change Division
Climate Change and Water Industry
Directorate
Scottish Government
Victoria Quay
EDINBURGH, EH6 6QQ

Planning and Environment Services

Infrastructure and Commissioning

Militia House

English Street

Dumfries DG1 2HR

Any enquiries please contact

W R Barker

Direct Dial 01387 260103

Fax 01387 260111

Dear Sirs

**WATER ENVIRONMENT (CONTROLLED ACTIVITIES) (SCOTLAND) REGULATIONS
2005 – APPEAL UNDER REGULATION 46(A) – RIVER NITH, DUMFRIES (DUMFRIES
AND GALLOWAY COUNCIL) CAR/L/1033622**

I refer to your letter dated 2 October 2009 concerning the letter dated 28 September 2009 from SEPA on the above appeal.

I do not consider that SEPA's response adds anything to the original refusal.

The Council is very supportive of biodiversity (demonstrated by the award winning quality of our Local Biodiversity Action Plan) – however SEPA's response does not address the issue of the significance of the loss of habitat over some 195m out of the River Nith's 112km overall length.

The Council has indicated (repeatedly) that extraction proposals would be prepared to meet the required standards to minimise adverse effects on the River and would be delighted to work with SEPA on that issue.

SEPA's position does appear to be slightly contradictory, in that their position is that the Council can, routinely, undertake maintenance on the area of ground in question which would undoubtedly affect the biodiversity, but that the Council should not affect that biodiversity by removing material...

Given that neither the Council, nor SEPA appear to be adding to our original arguments, I believe that the Scottish Ministers should now move to make a determination.

Yours sincerely

William R Barker
Operations Manager - Infrastructure and Commissioning

Climate Change and Water Industry Directorate
Climate Change Division

T: 0131-244 0853 F: 0131-244 0211
E: Environmental.appeals@scotland.gsi.gov.uk



Mr W R Barker
Operations Manager Infrastructure & Commissioning
Planning and Environment Services
Dumfries and Galloway Council
Militia House
English Street
Dumfries, DG1 2HR



Your ref: NMG/H/11
Our ref: Case 137216/7

2 October 2009

Dear Mr Barker

**WATER ENVIRONMENT (CONTROLLED ACTIVITIES) (SCOTLAND) REGULATIONS
2005 – APPEAL UNDER REGULATION 46(a) – RIVER NITH, DUMFRIES (DUMFRIES
AND GALLOWAY COUNCIL) (CAR/L/1033622)**

We refer to previous correspondence on the above appeal. We have received a letter and enclosures from SEPA dated 28 September 2009 and we note that it has sent Dumfries and Galloway Council a copy for information.

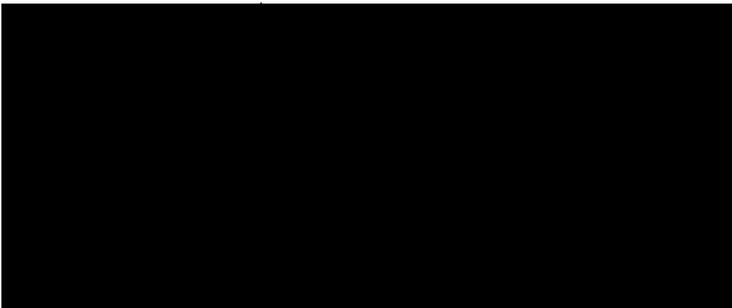
We would be grateful to receive any comments you may have on SEPA's response by 30 October 2009.

We are sending a copy of this letter to SEPA and enclose for information a copy of my letter of today's date to it.

Yours sincerely



Eleanor Vance
Determinations Team



Your ref: SW/090910
Our ref: Case 137216/7

2 October 2009

Dear Ms Watson

**WATER ENVIRONMENT (CONTROLLED ACTIVITIES) (SCOTLAND) REGULATIONS
2005 – APPEAL UNDER REGULATION 46(a) – RIVER NITH, DUMFRIES (DUMFRIES
AND GALLOWAY COUNCIL) (CAR/L/1033622)**

Thank you for your letter and enclosures of 28 September 2009 in relation to the above appeal. We note that you have sent Dumfries and Galloway Council a copy of your response for information.

We have today written to Dumfries and Galloway Council seeking their comments on your submission and we will contact you again once we receive a response.

This letter has been copied to Dumfries and Galloway Council and I enclose for information a copy of my letter of today's date to them.

Yours sincerely



Eleanor Vance
Determinations Team



Climate Change and Water Industry Directorate
Climate Change Division

T: 0131-244 7699 F: 0131-244 0211
E: Environmental.appeals@scotland.gsi.gov.uk



The Scottish
Government

Ms Susan Watson
Regional Solicitor
Scottish Environment Protection Agency
5 Redwood Crescent
Peel Park
East Kilbride
G74 5PP



Your ref: SC/121109
Our ref: Case 137216/7

23 November 2009

Dear Ms Watson

**WATER ENVIRONMENT (CONTROLLED ACTIVITIES) (SCOTLAND) REGULATIONS
2005 – APPEAL UNDER REGULATION 46(a) – RIVER NITH, DUMFRIES (DUMFRIES
AND GALLOWAY COUNCIL) (CAR/L/1033622)**

Thank you for your letter of 18 November 2009 on the above appeal.

We note that SEPA concurs with the Council's view that Scottish Ministers should now move to determine the appeal. Therefore, we are now setting in train the arrangements for the consideration of the parties' submissions. We will write again when the Scottish Ministers have made their decision on this matter.

This letter has been copied to Dumfries and Galloway Council and I enclose for information a copy of my letter of today's date to them.

Yours sincerely


Determinations Team



Climate Change and Water Industry Directorate
Climate Change Division

T: 0131-244 7699 F: 0131-244 0211
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Mr W R Barker
Operations Manager Infrastructure & Commissioning
Planning and Environment Services
Dumfries and Galloway Council
Militia House
English Street
Dumfries, DG1 2HR



Your ref: NMG/H/11 WRB/DL
Our ref: Case 137216/7

23 November 2009

Dear Mr Barker

**WATER ENVIRONMENT (CONTROLLED ACTIVITIES) (SCOTLAND) REGULATIONS
2005 – APPEAL UNDER REGULATION 46(a) – RIVER NITH, DUMFRIES (DUMFRIES
AND GALLOWAY COUNCIL) (CAR/L/1033622)**

We refer to previous correspondence on the above appeal. We have received a letter dated 18 November from SEPA which I understand has been copied to the Council.

We note that SEPA concurs with the Council's view that Scottish Ministers should now move to determine the appeal. Therefore, we are now setting in train the arrangements for the consideration of the parties' submissions. We will write again when the Scottish Ministers have made their decision on this matter.

I am sending a copy of this letter to SEPA and enclose for information a copy of my letter of today's date to it.

Yours sincerely

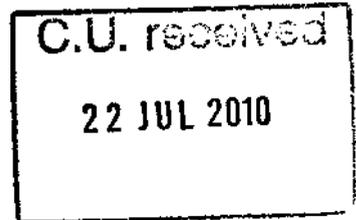
[Redacted Signature]
Determinations Team

Pammenter C (Cameron)

From: Lucas B (Becky) on behalf of Minister for Environment
Sent: 22 July 2010 11:24
To: Ministerial Correspondence Unit
Subject: FW: Appeal against SEPA,s decision for removal of thousands of tons of silt that is clearly blocking the archway's of our towns Devorgilla bridge and our Buccleuch road bridge.

For MCS please. Relates to previous case 2009/0029160.

Kind regards
Becky



Becky Lucas
Private Secretary to Roseanna Cunningham MSP
Minister for Environment

♻ DO YOU NEED TO PRINT THIS EMAIL? - SAVE PAPER ♻

All e-mails and attachments sent by a Ministerial Private Office to another official on behalf of a Minister relating to a decision, request or comment made by a Minister, or a note of a Ministerial meeting, must be filed appropriately by the primary recipient. Private Offices do not keep official records of such e-mails or attachments.

From: DAVID SLATER [mailto: [REDACTED]]
Sent: 19 July 2010 09:50
To: Minister for Environment
Subject: RE: Appeal against SEPA,s decision for removal of thousands of tons of silt that is clearly blocking the archway's of our towns Devorgilla bridge and our Buccleuch road bridge.

Dear Diane

I believe you or one of your colleagues wrote to me recently about the river Nith appeal. I sent a DVD but it would not apparently work. You wanted to know if I still wanted to appeal and if so send a new DVD. I have moved house and I cannot find the paperwork you sent to me, can you please resend as I wish to send the information again..My new address is 1 Lime Grove DUMFRIES DG14SQ. Sorry for any inconvenience.
David

From: **On Behalf Of**
Sent: 22 September 2009 17:01
To: [REDACTED]
Subject: RE: Appeal against SEPA,s decision for removal of thousands of tons of silt that is clearly blocking the archway's of our towns Devorgilla bridge and our Buccleuch road bridge.

Hello Mr Slater

Thank you for your email to Roseanna Cunningham MSP, Minister for Environment. I have passed your email to the Ministerial Correspondence Unit and you will receive a response within 20 working days.

Kind regards

Diane Morrison

*Private Office
Minister for Environment
1N.08
SAH
Tel:*

Part-time : I work Tuesday - Thursday (9.30 - 5.00)

From: Roseanna.Cunningham.msp@scottish.parliament.uk
[mailto:Roseanna.Cunningham.msp@scottish.parliament.uk]
Sent: 22 September 2009 08:29
To: Minister for Environment
Subject: Fw: Appeal against SEPA,s decision for removal of thousands of tons of silt that is clearly blocking the archway's of our towns Devorgilla bridge and our Buccleuch road bridge.

This message has been received from an external party and
has been swept for the presence of computer viruses.

This email has been sent from a Scottish Parliamentary handheld device.

-----Original Message-----

From: david slater <[REDACTED]>
To: Cunningham R (Roseanna), MSP

Sent: Mon Sep 21 22:43:21 2009
Subject: Appeal against SEPA,s decision for removal of thousands of tons of silt that is clearly blocking the archway's of our towns Devorgilla bridge and our Buccleuch road bridge.

Dear Roseanna,

Dumfries and Galloway council have appealed against the decision by SEPA to refuse the removal of thousands of cubic metres, of silt, trees, and debris, from the river Nith within the area of the Whitesands Dumfries. I would also want to appeal against SEPA,s decision. I have film of the area and photos taken at different seasons of the year that quite clearly shows the state of the river, and what it looks like to any tourists that visit Dumfries. I would also like to include the issue of flooding of Dumfries. Can you inform me how I go about appealing about SEPA,s decision to you.

Regards

David R Slater

David R Slater

22/07/2010



2009.01.29

Telephone: 01324 696465 F: 01324 696444
E: dpea@scotland.gsi.gov.uk

Our ref: Case 137216/7

22 May 2018

Dear Mr Slater

**WATER ENVIRONMENT (CONTROLLED ACTIVITIES) (SCOTLAND)
REGULATIONS 2005
APPEAL UNDER REGULATION 46(a) RIVER NITH, DUMFRIES (DUMFRIES AND
GALLOWAY COUNCIL) (CAR/L/1033622)**

I am writing to let you know that responsibility for environmental appeals was transferred to the Scottish Government's Directorate for Planning and Environmental Appeals (DPEA) with effect from 19 April 2010. Please address any further correspondence on the appeal to this office.

Scottish Ministers have formally delegated authority to hear and determine environmental appeals to DPEA reporters. Your case has been allocated to a reporter, Mr James M McCulloch BA(Hons) MRTPI, who has reviewed the case and has asked me to raise the following:

Unfortunately the DVD attached to your letter received on 30 September 2009 has proved to be unreadable and the reporter is therefore unable to view its contents. Could you either send another copy or consider printing the material that it contains to ensure that it may be taken into account?

In the meantime, please do not hesitate to contact me at the number or email address above if you have any questions about the appeal.

Yours sincerely

Carol-Anne Redpath
Processing & Decisions Manager

Telephone: 01324 696465 F: 01324 696444
E: dpea@scotland.gsi.gov.uk

Susan Watson
Regional Solicitor
SEPA
East Kilbride Office
5 Redwood Crescent
Peel Park
East Kilbride
G74 5PP

Your ref: SC/091014
Our ref: Case 137216/7

19 April 2010

Dear Ms Watson

**WATER ENVIRONMENT (CONTROLLED ACTIVITIES) (SCOTLAND)
REGULATIONS 2005
APPEAL UNDER REGULATION 46(a) RIVER NITH, DUMFRIES (DUMFRIES AND
GALLOWAY COUNCIL) (CAR/L/1033622)**

I am writing to let you know that responsibility for environmental appeals was transferred to the Scottish Government's Directorate for Planning and Environmental Appeals (DPEA) with effect from 19 April 2010. Please address any further correspondence on the appeal to this office.

Scottish Ministers have formally delegated authority to hear and determine environmental appeals to DPEA reporters. Your case has been allocated to a reporter, Mr James M McCulloch BA(Hons) MRTPI, who has reviewed the case and has asked me to raise the following:

SEPA's letters of 26 and 28 August 2009 list the names and addresses of 10 parties who have been notified of the appeal in accordance with Regulation 49 and Schedule 9(8) of the 2005 Regulations. The reporter would be grateful to receive copies of relevant correspondence concerning the interest of these parties in the application and appeal.

In the meantime, please do not hesitate to contact me at the number or email address above if you have any questions about the appeal.

Yours sincerely

Carol-Anne Redpath
Processing & Decisions Manager

4 The Courtyard, Callendar Business Park, Falkirk, FK1 1XR
DX 557005 FALKIRK
www.scotland.gov.uk/Topics/Planning/Appeals



From: Carol-Anne Redpath
Directorate for Planning and
Environmental Appeals
6 September 2010

1. Cabinet Secretary for Rural Affairs and the Environment
2. Minister for Environment

ENVIRONMENTAL APPEAL BY DUMFRIES AND GALLOWAY COUNCIL UNDER REGULATION 46(A) OF THE WATER ENVIRONMENT (CONTROLLED ACTIVITIES) (SCOTLAND) REGULATIONS 2005, AGAINST THE REFUSAL BY THE SCOTTISH ENVIRONMENT PROTECTION AGENCY (SEPA) OF A COMPLEX WATER USE LICENCE FOR AN ENGINEERING OPERATION WITHIN THE RIVER NITH, DUMFRIES

Purpose

1. To alert Ministers to the above appeal decision which the Directorate for Planning and Environmental Appeals (DPEA) have issued today. The reporter appointed by Scottish Ministers to determine the appeal has taken the decision to dismiss the appeal and to refuse to direct SEPA to licence controlled activity within the River Nith. The appeal is locally controversial and the outcome may attract significant media interest.

Priority

2. Routine

Background

3. In December 2008 Dumfries and Galloway Council applied to the Scottish Environmental Protection Agency (SEPA) for a licence under the Water Environment (Controlled Activities) (Scotland) Regulations 2005 to allow them to remove vegetation and gravel banks from part of the River Nith. The council sought to make an environmental improvement by removing 1,000m³ of the bank and bed of the River Nith in the centre of Dumfries so as to remove unsightly vegetation and reduce the potential for litter and debris to become trapped. This proposal to manage sediment required the grant of a water use licence by the Scottish Environment Protection Agency (SEPA) under the Water Environment (Controlled Activities) (Scotland) Regulations 2005. That licence was refused by SEPA on 18 May 2009, resulting in the council's appeal to Scottish Ministers which they lodged on 13 August 2009.

4. The main issue in the appeal, which is locally controversial with elected representatives and some members of the community favouring the proposal and other residents opposed, concerned the appropriate management of the risk to the water and natural environment as the consequence of the proposed operation. Although the effect on the natural environment did not specifically feature in the decision by SEPA it was important because of the representations made by Scottish Natural Heritage (SNH). Besides being significant for salmon this part of the River Nith is 5km upstream of the Solway Firth Special Area of Conservation (SAC). The SAC was designated for its coastal, estuarine and marine habitats associated plant communities and river and sea

lamprey. Under the Conservation (Natural Habitats &c) Regulations 1994 the implications for the conservation interests for which that area has been designated must be considered. The need for appropriate assessment extends to a project outwith the SAC in order to determine the implications within it.

5. The substantial engineering operation proposed would remove habitats contained within the gravel banks displacing plants, aquatic invertebrates and other animals and lead to the temporary release of sediments. The last might be accommodated by careful management thus reducing the effect on salmon, but the effect on habitats could be of greater significance principally due to the potential consequences for juvenile lamprey. When considered against the Habitats Regulations the works proposed are neither directly concerned with nor necessary for site management connected with the interests of the SAC. In addition, the information necessary to establish the likelihood, or otherwise, of any adverse effect on the integrity of the SAC is unavailable. Had the proposal been acceptable on other grounds a conditional authorization requiring survey followed, if necessary, by appropriate assessment would not have been lawful. The evidence must be available for consideration before reaching a decision to grant approval.

6. The council's officers reached a management agreement with SEPA and SNH on a programme of litter removal and monthly strimming, but Councillors decided on the engineering solution even though it was acknowledged that this would not be permanent, leading to deposition in the future. Whilst the works would minimally increase flood capacity there could be no flood management benefit as the site is above the Caul, where the river floods. The need to repeat the works means that their effect, whether in respect of flooding or amenity, would be short-lived, with the potential that litter and debris would again be trapped.

7. The reporter found that the scheme devised by officers and agreed with the regulatory agencies involves the minimum of intervention necessary to remove the adverse effect on amenity, contributing to the objective of promoting tourism. In contrast, the complete removal of this part of the river bank would be an inefficient and unsustainable intervention in the natural morphology of the river in circumstances where the likely effects on the Solway Firth Special Area of Conservation are unknown.

Recommendation

8. **That you note the potentially controversial outcome by a DPEA reporter to dismiss the appeal by Dumfries and Galloway Council for engineering works within the River Nith, Dumfries.**

9. A copy of the DPEA's decision letter dated 6 September 2010 is attached behind Annex B for information.

Carol-Anne Redpath
Directorate for Planning and
Environmental Appeals

6 September 2010

Copy List:	For Action	For Comments	For Information		
			Portfolio Interest	Constituent Interest	General Awareness

DG Economy
 DG Rural Affairs and the Environment
 Lindsey Nicoll, DPEA
 Oonagh Gil, DPEA
 David Henderson, DPEA
 Joyce Carr, Environmental Quality Division
 Communications, F&SG
 Communications, Greener

ANNEX A

ENVIRONMENTAL APPEAL BY DUMFRIES AND GALLOWAY COUNCIL UNDER REGULATION 46(A) OF THE WATER ENVIRONMENT (CONTROLLED ACTIVITIES) (SCOTLAND) REGULATIONS 2005, AGAINST THE REFUSAL BY THE SCOTTISH ENVIRONMENT PROTECTION AGENCY (SEPA) OF A COMPLEX WATER USE LICENCE FOR AN ENGINEERING OPERATION WITHIN THE RIVER NITH, DUMFRIES

Relationship to Current Policy/Practice

1. Under Regulation 46(a) of the Water Environment (Controlled Activities) (Scotland) Regulations 2005 persons who have been refused the grant of authorisation in accordance with regulation 15(3) or who have been deemed to have been refused the grant of authorisation in accordance with regulation 16(3), have a right of appeal to Scottish Ministers.

2. Until earlier this year these appeals were determined by Scottish Ministers, but following a reorganization of the Climate Change Division and transfer of the appeals to the Directorate for Planning and Environmental Appeals the way in which the appeals were conducted was reviewed. Section 114 of the Environment Act 1995 permits Ministers to delegate their functions in relation to the determination of appeals to an appointed person. All such appeals are now delegated to reporters, although it remains open to Ministers to recall the appointment, enabling them to determine the appeal themselves.

Sensitivity

3. The main issue in the appeal, which is locally controversial with elected representatives and some members of the community favouring the proposal and other residents opposed, concerned the appropriate management of the risk to the water and natural environment as the consequence of the proposed operation. The appeal outcome may attract significant media interest.

4. The main parties in the appeal: Dumfries and Galloway Council and the Scottish Environment Protection Agency (SEPA) had expressed their preference for the case to be decided in the basis of their written submissions. The reporter decided that these, including submissions made by several other parties, dealt adequately with the complexity of the issues raised. There was therefore no need for any form of oral process to resolve the issues in dispute. Substantive third party submissions were received from two other individuals. These were copied to both the council and SEPA and taken into consideration by the reporter in the determination of the appeal.

Other Relevant Considerations

5. **Why are the Habitats Regulations given such weight in the decision?**

Representations made by Scottish Natural Heritage to SEPA had referred to the importance of this issue. The effect on habitats is referred to in the decision made by

SEPA, although their primary concern was with the adverse and unsustainable effect on the morphology of the River Nith. The reporter's decision gives no greater weight than is required by the law. In the absence of survey information and, if necessary, appropriate assessment of the environmental effects on the Solway Firth Special Area of Conservation any consent granted would be unlawful.

6. Why wasn't the effect on flooding given greater prominence?

The council promoted this proposal for environmental reasons; any effect on flooding was a secondary consideration. The reporter recognized the potential contribution in increasing the flood capacity of the river, but noted also that there could be no flood management benefit as the River Nith floods downstream of the proposed works.

Carol-Anne Redpath
Directorate for Planning
and Environmental Appeals
6 September 2010

ANNEX B

ENVIRONMENTAL APPEAL BY DUMFRIES AND GALLOWAY COUNCIL UNDER REGULATION 46(A) OF THE WATER ENVIRONMENT (CONTROLLED ACTIVITIES) (SCOTLAND) REGULATIONS 2005, AGAINST THE REFUSAL BY THE SCOTTISH ENVIRONMENT PROTECTION AGENCY (SEPA) OF A COMPLEX WATER USE LICENCE FOR AN ENGINEERING OPERATION WITHIN THE RIVER NITH, DUMFRIES

Background

1. In December 2008 Dumfries and Galloway Council applied to the Scottish Environmental Protection Agency (SEPA) for a licence under the Water Environment (Controlled Activities) (Scotland) Regulations 2005 to allow them to remove vegetation and gravel banks from part of the River Nith. The council sought to make an environmental improvement by removing 1,000m³ of the bank and bed of the River Nith in the centre of Dumfries so as to remove unsightly vegetation and reduce the potential for litter and debris to become trapped. This proposal to manage sediment required the grant of a water use licence by the Scottish Environment Protection Agency (SEPA) under the Water Environment (Controlled Activities) (Scotland) Regulations 2005. That licence was refused by SEPA on 18 May 2009, resulting in the council's appeal to Scottish Ministers which they lodged on 13 August 2009.

Analysis

2. On 18 June 2010, the Scottish Ministers appointed Mr James M McCulloch BA (Hons) MRPTI under Section 114 of the Environment Act 1995, to determine the appeal.

3. The main parties in the appeal: Dumfries and Galloway Council and the Scottish Environment Protection Agency (SEPA) had expressed their preference for the case to be decided in the basis of their written submissions. The reporter decided that these, including submissions made by several other parties, dealt adequately with the complexity of the issues raised. There was therefore no need for any form of oral process to resolve the issues in dispute. Substantive third party submissions were received from two other individuals. These were copied to both the council and SEPA and taken into consideration by the reporter in the determination of the appeal.

4. The reporters reasoning and conclusions are detailed within the attached decision letter behind Annex B.

Carol-Anne Redpath
Directorate for Planning and Environmental Appeals
6 September 2010

Appeal Decision Notice

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E: dpea@scotland.gsi.gov.uk



Decision by James McCulloch, a Reporter appointed by the Scottish Ministers

- The Water Environment (Controlled Activities) (Scotland) Regulations 2005 (the Regulations)
- Appeal reference: CAR/L/1033622
- Site address: River Nith, Dumfries
- Appeal by Dumfries and Galloway Council under Regulation 46(a) against the refusal by the Scottish Environment Protection Agency (SEPA) of a complex water use licence for an engineering operation, the management of sediment

Date of appeal decision: 6 September 2010

Decision

1. I dismiss the appeal and refuse to direct SEPA to licence a controlled activity within the River Nith.

Reasoning

2. Regulation 15(1)(c) and Parts 1 and 2 of Schedule 4 apply the Water Framework Directive (Council Directive 2000/60/EC) and the Water Environment and Water Services (Scotland) Act 2003. Taken together these require protection of the water environment, including enhancement and the prevention of any further deterioration of the status of water bodies and aquatic ecosystems. Regulation 15(1)(b) requires an assessment of the steps that may be taken to ensure efficient and sustainable water use. In addition, EC Directive 92/43/EEC on the Conservation of Natural Habitats and of Wild Flora and Fauna (the Habitats Directive) and the Conservation (Natural Habitats &c) Regulations 1994 apply. Regulation 48 requires that where an authority concludes that a project unconnected with the nature conservation management of a Natura 2000 site is likely to have a significant effect on that site the competent authority must consider the implications for the conservation interests for which the area has been designated. That need for appropriate assessment extends to a project outwith the Special Area of Conservation (SAC) in order to determine the implications for the interest that is protected within it. The main issue in this appeal thus concerns the appropriate management of the risk to the water and natural environment from the proposed operation.

3. The Council refer to public perception and disquiet having reached the point where the (then) Minister for the Environment formally requested, as constituency

MSP, that the Council take action to remove unsightly vegetation and the gravel banks on which that vegetation had established within the centre of Dumfries. The area is a prominent tourist attraction. Weed growth on these banks traps litter and debris including bottles, food wrappers and waste and also discarded syringes and needles, posing a risk to health and safety. The council's preferred means of achieving the environmental improvement that they seek is controversial. Elected representatives and some members of the community favour the proposal with the latter – supported by video and photographic evidence - referring to the absence of these gravel banks as recently as 1967, to the potential to reduce the loading on the structure of the Old Bridge and to alleviate the devastating flooding and consequent disruption that is endured by residents and businesses in the town centre. Other residents are opposed to the proposal.

4. The River Nith is subject to several important environmental designations. Almost half the freshwater and migratory fish species present in Scotland are recorded in the Nith catchment. Of these 4 are listed in Annex II of the Habitats Directive, with British populations thus internationally important – sea lamprey (*Petromyzon marinus*); river lamprey (*Lampetra fluviatilis*); brook lamprey (*Lampetra planeri*); and Atlantic salmon (*Salmo salar*). Salmon is also a priority species in the UK Biodiversity Action Plan; the Nith is the seventh most productive salmon river in Scotland. The site is 5km upstream of the Solway Firth SAC designated for its coastal, estuarine and marine habitats, associated plant communities and river and sea lamprey. It is known also that otter frequent the area of the proposed works and otter are a European Protected Species.

5. The removal of 1000 m³ of gravel along 195 m of the bank and bed of the river with a tracked excavator amounts to a substantial engineering operation, passing under 2 Listed bridges, one of which is also a Scheduled Monument. Besides removing surface vegetation, which includes a dozen mature and semi-mature bankside trees, that operation would remove any habitats contained in the gravel displacing plants, aquatic invertebrates and other animals as well as leading, temporarily, to the release to the water course of finer sediments. In respect of that last consideration, based on the advice of the Nith District Salmon Fishery Board and SNH, there is the possibility that the adverse effects of sediment release on migratory salmon may be accommodated provided the works are undertaken before numbers of fish are in transit upstream. This could be achieved by a restriction on the timing of the works and careful control on, and monitoring of, working methods.

6. The potential effect on habitats may be more significant. Juvenile lamprey are known to live in silty sediment throughout their development of 5 years or more. Given their conservation status and the possible functional relationship with the SAC, SNH advised that a survey was necessary to establish their use of this part of the river. This would inform the need for, and nature of any mitigation that would ensure that the SACs conservation objectives for the species are maintained so as to avoid any adverse effect on its integrity.

7. The council observe that natural processes are inhibited in this location, but that the works proposed would mimic the result of such processes and return the freshwater habitat to its optimum state to support salmon in line with the aims of the Scottish LIFE Salmon Project. However, that observation is of no assistance in

reaching an assessment of the likely effects because that study is stated to be directed at conserving threatened habitats and there is no suggestion that this habitat is otherwise under threat. I accept the council's reasoning that only a very small proportion of the Nith's 112 km overall length would be affected and that there is no proposal for works downstream where an important contribution to habitats and biodiversity is also made. I find no evidence to justify their related suggestion that the present proposal would lead to the enhancement of habitats. As the gravel banks are the result of natural processes the works could not, as the council claim, remove man-made obstacles to migration.

8. When considered against Regulation 48 of the Habitats Regulations I find that the sediment management that is proposed is neither directly concerned with nor necessary for site management for conservation connected with the interests of the SAC. Additionally, as pointed out by SNH, there is no survey information presently available concerning this important consideration that could inform the decision-making process including any necessary appropriate assessment of the likely environmental effects. Thus, the information needed to establish the likelihood, or otherwise, of any adverse effect on the integrity of the SAC is unavailable. The same is true also of otter where information concerning the likely effects is necessary to allow consideration of those effects together with the need for mitigation, if appropriate. In this context the partnership document on which the council found, the River Nith Catchment Management Plan, does not assist.

9. The council's application to SEPA does not refer to their assessment of these important considerations. Whilst not initially objecting, SNH made their position clear on the need for survey and, potentially, appropriate assessment when the application was before SEPA; but these considerations do not feature in specific terms in their decision to refuse the licence. Had this proposal been acceptable on other grounds, a conditional authorization requiring survey followed, if necessary, by appropriate assessment would not have been lawful because these steps must have been taken, and the evidence assessed, before reaching a decision to grant approval.

10. I note that the council's officers had reached a management agreement with representatives of SEPA and SNH on a programme of litter removal and monthly strimming. However Councillors decided, despite the cost, to seek approval for this project which they considered to be a better option. Even so, the council's submissions acknowledge that this would not be a permanent solution, recognising that sediment removal now would lead to deposition in future. Those who support the proposal refer to its potential effect in alleviating flooding. I accept that the flood capacity of this part of the river would be increased, but that effect would be likely to be minimal where the channel is some 70 m wide and the gravel bank only a few metres in width. Of greater significance is the fact that the works are located above the Caul where the river overflows meaning that there could be no flood management benefit. The need to repeat the works suggests that their effect, whether in respect of flooding or amenity, would be short-lived. There is consequently the likelihood that litter and debris could again be trapped.

Conclusion

11. I conclude that the scheme devised by officers and agreed with the regulatory agencies would be consistent with the objectives of the River Nith Catchment Management Plan. That scheme also involves the minimum of intervention to remove vegetation and debris and thus its adverse effect on the amenity of the town centre contributing to the objective of promoting tourism. Both of these considerations are at the root of the council's concern. In contrast, the engineering solution that is proposed, involving complete removal of this part of the riverside bank, would be neither efficient nor sustainable and these considerations lead me to conclude that the operation would be an unsustainable intervention in the natural morphology of the river. In addition, and for the reasons given in paragraphs 8 and 9, the information presently available is inadequate to allow an informed judgment to be reached concerning the likely effects of the proposal on habitats and species. That is an important matter because it is not possible to license this controlled activity within the River Nith without first considering the likely effects on the Solway Firth Special Area of Conservation.



JAMES McCULLOCH
Reporter



2008.08.09

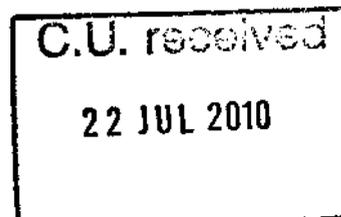
Pammenter C (Cameron)

From: Lucas B (Becky) on behalf of Minister for Environment
Sent: 22 July 2010 11:24
To: Ministerial Correspondence Unit
Subject: FW: Appeal against SEPA,s decision for removal of thousands of tons of silt that is clearly blocking the archway's of our towns Devorgilla bridge and our Buccleuch road bridge.

For MCS please. Relates to previous case 2009/0029160.

Kind regards
Becky

Becky Lucas
Private Secretary to Roseanna Cunningham MSP
Minister for Environment



♻ DO YOU NEED TO PRINT THIS EMAIL? - SAVE PAPER ♻

All e-mails and attachments sent by a Ministerial Private Office to another official on behalf of a Minister relating to a decision, request or comment made by a Minister, or a note of a Ministerial meeting, must be filed appropriately by the primary recipient. Private Offices do not keep official records of such e-mails or attachments.

From: DAVID SLATER
Sent: 19 July 2010 09:50
To: Minister for Environment
Subject: RE: Appeal against SEPA,s decision for removal of thousands of tons of silt that is clearly blocking the archway's of our towns Devorgilla bridge and our Buccleuch road bridge.

Dear Diane

I believe you or one of your colleagues wrote to me recently about the river Nith appeal. I sent a DVD but it would not apparently work. You wanted to know if I still wanted to appeal and if so send a new DVD. I have moved house and I cannot find the paperwork you sent to me, can you please resend as I wish to send the information again..My new address is 1 Lime Grove DUMFRIES DG14SQ. Sorry for any inconvenience.
David

From: MinisterforEnvironment@scotland.gsi.gov.uk
Sent: 22 September 2009 17:01
To: david.r.slater8@btinternet.com
Subject: RE: Appeal against SEPA,s decision for removal of thousands of tons of silt that is clearly blocking the archway's of our towns Devorgilla bridge and our Buccleuch road bridge.

On Behalf Of

Hello Mr Slater

Thank you for your email to Roseanna Cunningham MSP, Minister for Environment. I have passed your email to the Ministerial Correspondence Unit and you will receive a response within 20 working days.

22/07/2010

Kind regards

Diane Morrison

*Private Office
Minister for Environment
1N.08
SAH
Tel:*

Part-time : I work Tuesday - Thursday (9.30 - 5.00)

From: Roseanna.Cunningham.msp@scottish.parliament.uk
[mailto:Roseanna.Cunningham.msp@scottish.parliament.uk]
Sent: 22 September 2009 08:29
To: Minister for Environment
Subject: Fw: Appeal against SEPA,s decision for removal of thousands of tons of silt that is clearly blocking the archway's of our towns Devorgilla bridge and our Buccleuch road bridge.

This message has been received from an external party and
has been swept for the presence of computer viruses.

This email has been sent from a Scottish Parliamentary handheld device.

-----Original Message-----
From: david slater <david.r.slater8@btinternet.com>
To: Cunningham R (Roseanna), MSP

Sent: Mon Sep 21 22:43:21 2009
Subject: Appeal against SEPA,s decision for removal of thousands of tons of silt that is clearly blocking the archway's of our towns Devorgilla bridge and our Buccleuch road bridge.

Dear Roseanna,

Dumfries and Galloway council have appealed against the decision by SEPA to refuse the removal of thousands of cubic metres, of silt, trees, and debris, from the river Nith within the area of the Whitesands Dumfries. I would also want to appeal against SEPA,s decision. I have film of the area and photos taken at different seasons of the year that quite clearly shows the state of the river, and what it looks like to any tourists that visit Dumfries. I would also like to include the issue of flooding of Dumfries. Can you inform me how I go about appealing about SEPA,s decision to you.

Regards

David R Slater

David R Slater

22/07/2010

**Ministear airson na h-Àrainneachd
Minister for Environment**

Roisin Chonaigean BPA
Roseanna Cunningham MSP

F/T: 0845 774 1741

E: scottish.ministers@scotland.gsi.gov.uk

Mr W R Barker
Planning and Environmental services
Operations Manager Infrastructure and Commissioning
Dumfries and Galloway Council
Militia House
English Street
Dumfries
DG1 2HR



Ur faidhle/Your ref: NMG/H/11

August 2009

Thank you for your letter of 13 August 2009 to Scottish Ministers in which, on behalf of Dumfries and Galloway Council, you invited the Minister for Environment to visit Dumfries to view the effect that the sediment and gravel banks are having on the River Nith.

Ms Cunningham was grateful for the invitation but as the issue of the Council's appeal against the refusal by SEPA to permit removal of the gravel banks is currently under consideration by Scottish Ministers she does not think a visit would be appropriate at the present time. However, if during the course of the appeal a site inspection is considered to be desirable then officials will be in touch to discuss the necessary arrangements.

BECKY SMITH
Private Secretary

1/11/09
Eleanor Vance
Determination Team
Climate Change and Water Industry Directorate
The Scottish Government
Victoria Quay
Edinburgh
EH6 6QQ

If telephoning ask for:
Susan Cochrane

18 November 2009

Dear Ms Vance

**WATER ENVIRONMENT (CONTROLLED ACTIVITIES) (SCOTLAND) REGULATIONS 2005 –
APPEAL UNDER REGULATION 46(a) – RIVER NITH, DUMFRIES (DUMFRIES AND
GALLOWAY COUNCIL)(CAR/L/1033622)**

I refer to the above and your letter of 5 November enclosing the appellant's letter dated 27 October 2009 in response to SEPA's letter of 29 September 2009 and would make the following comments in response.

The appellant indicates that SEPA has not addressed the significance of the loss of habitat over 195m out of the River Nith's 112km overall length. It is SEPA's opinion that this length is significant, which is why there is a requirement to apply for a CAR licence for the proposed works. Under the Water Framework Directive there should be no deterioration in ecological status. The removal of 195m of river bank would result in a drop in ecological status, particularly as the removal is unsustainable and does not, in SEPA's opinion, achieve any valid purpose. Moreover, under the Dumfries and Galloway LBAP (Document 8 of SEPA's productions in relation to the appeal) one of the aims is to protect and promote habitats and species in the urban environment. The appellant's CAR application proposal is contrary to LBAP objectives.

The appellant states that SEPA's position appears to be slightly contradictory in that the appellant can undertake maintenance on the ground in question which would affect biodiversity but the appellant should not affect that biodiversity by removing material. It is SEPA's position that there is no such contradiction. SEPA commends the appellant's actions in terms of physically clearing litter from the bank and this public nuisance has now largely been resolved. Clearing the litter would appear to have effectively removed the main reason behind the appellant's desire to take the bank away in the first place. While litter removal causes temporary disruption to wildlife, it is also of a benefit to animals and thus overall does not seriously impact on biodiversity. In addition, it is much more sustainable than removing the bank which, if not present, would allow litter to fall into the river where it would be more difficult to pick up and aesthetically every bit as bad as when contaminating the bank. The other reason for removal of the bank was to control vegetation, as litter that previously accumulated on the bank was found amongst the plants. The management agreement reached in 2008 and discussed in SEPA's main submission, which established the current litter and vegetation management strategy for the bank, was applied during the summer of 2009. At that time SEPA stated that selected cutting of the vegetation, such as at the end of the growing season, would not impact on biodiversity. SEPA pointed out that more regularly trimming



Chairman
David Sigsworth

Chief Executive
Dr Campbell Gemmill

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of vegetation might have some disadvantages in terms of biodiversity but these were not seen as significant and certainly much less ecologically damaging as well as more sustainable than removing the entire bank. Moreover, wildlife such as birds and otters would still visit the bank and providing added amenity value to the area might also help the public appreciate that the bank is not a disposal area for litter. On this understanding, SEPA intimated that it supported the proposed vegetation management aspect of the strategy as well as the ongoing litter removal.

SEPA welcomes the appellant's positive management strategy for the bank and believes that through its actions in 2009, the problems of litter and vegetation, originally given in the CAR application as the reasons for seeking to remove the bank habitat, have been resolved sustainably by the appellant.

SEPA concurs with the appellant's view that Scottish Ministers should now move to determine the appeal.

A copy of this letter has been forwarded to the appellant.

Yours sincerely

A solid black rectangular box used to redact the signature of Susan Cochrane.

Susan Cochrane
Regional Solicitor

Dear Ms Watson

**WATER ENVIRONMENT (CONTROLLED ACTIVITIES) (SCOTLAND)
REGULATIONS 2005
APPEAL UNDER REGULATION 46(a) RIVER NITH, DUMFRIES (DUMFRIES AND
GALLOWAY COUNCIL) (CAR/L/1033622)**

Thank you for your letter of 23 June together with copies of representations received in response to the advertised application in relation to the above case.

Yours sincerely

Carol-Anne Redpath
Processing & Decisions Manager

The Scottish Government
Directorate for Planning and Environmental Appeals
4 The Courtyard
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Falkirk
FK1 1XR

Tel: +

Fax:

E-mail: [REDACTED]

www.scotland.gov.uk/Topics/Built-Environment/planning/decisions-appeals/Appeals/dpea

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