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FAO: David Weller

26<sup>th</sup> June 2025

### **RE: Environment Agency Objection to the Proposed Development at Middlesex Stadium**

Dear David,

Further to your request to review the consultation response from the Environment Agency (EA) to the planning application for the construction of grass football pitches at Middlesex Stadium, Ruislip. I have provided my comments below.

As you are aware I have worked as a waste regulatory consultant for several decades and work closely with operators that use soil in developments, under both the Environmental Permitting regime and under the CL:AIRE DoWCoP. As such, I am conversant in the requirements of both regimes and how this work to authorise the movement and deposit of materials in a variety of developments.

I understand from the recent correspondence that the EA has objected to the planning application on the basis of concerns regarding the regulatory control of material importation and deposition, specifically relating to the use of waste soils. I write to provide a detailed response to the points raised by the EA and to offer assurance to the planning officer that the applicant is fully aware of the regulatory requirements concerning the importation and use of materials and are proactively taking steps to address the EA's concerns in a constructive and transparent manner.

I believe the concerns raised by the EA stem largely from ambiguity in the application wording, not from any fundamental flaw in the proposal. The proposed development could proceed under either the CL:AIRE DoWCoP or an Environmental Permit depending on final material choices, and our client is committed to full compliance. I am confident that with some clarifications, the objection can be lifted without requiring the planning application to be returned or refused.

### **Summary of Position and Response to EA Objection**

The EA has objected on the grounds that the planning application appears to involve the permanent deposit of waste without a clear permitting framework, and that the documents refer to the CL:AIRE Definition of Waste Code of Practice (DoWCoP), which the EA does not regulate.

The EA's response suggests that the application is unclear regarding whether the development will involve the permanent deposit of waste, and they assert that references to the CL:AIRE Definition of Waste Code of Practice (DoWCoP) are inappropriate in this context. I respectfully disagree with a number of these assertions and address them below.

#### **1. Regulatory Route and Material Status**

The applicant is considering both possible regulatory routes for the importation of materials. The planning application does not currently confirm whether the development will use waste or non-waste materials. This flexibility is intentional.

- Use of Non-Waste Materials under DoWCoP:
  - This involves using materials that are demonstrated to be non-waste. This is a recognised and legitimate route for developments involving reuse of clean, appropriate soils.
  - Contrary to the EA's implication, the DoWCoP can be applied provided the project meets the necessary criteria. Having assessed the project I can confirm that no reason has been identified why the DoWCoP could not be used.
  - The development could proceed using only clean, naturally occurring soils / non-waste soils managed in accordance with the CL:AIRE DoWCoP.
  - In this scenario, an Environmental Permit (Permit) would not be required, and the EA would not regulate the activity.

- We note that the EA states a Permit must be obtained for the proposed activity. This is not necessarily the case. A Permit is only required if the material being used is classified as waste. If the soils are demonstrated to be non-waste using the DoWCoP, the activity does not fall within the permitting regime. This distinction is fundamental, and the planning application has been drafted to preserve both regulatory routes pending final material selection and verification.
- In summary, both regulatory pathways are legitimate and available. The current application wording preserves this necessary flexibility while the material sourcing strategy is finalised. Our client has taken expert advice on the matter and will follow the appropriate regulatory route transparently and in full compliance with the law.
- Environmental Permitting:
  - Alternatively, if the soils chosen to be used are classified as waste, the activity would be regulated through an Environmental Permit.
  - We note that depending on volumes and site-specific conditions, either a Standard Rules or Bespoke Permit for the 'use of waste in a recovery operation' may be appropriate.
  - Obtaining a permit for this activity would rely on the approval of a Waste Recovery Plan, which would be precluded if the planning application specifies the use of waste in the development. This is due to the need to prove that the use of waste is a 'substitution' for a non-waste material that would otherwise be used.

## 2. EA Comments on Illegal Waste Activity

- The EA describes the application as "potentially including an illegal waste activity." We believe this to be an overstatement. The ambiguity in the application does not constitute an illegal act. The client is committed to ensuring regulatory compliance via the appropriate route. The statement could be clarified with revised wording in the planning application to distinguish between the regulatory options.

## 3. Clarification of CL:AIRE DoWCoP Use

- I recognise the EA's concern that the original application was ambiguous in its reference to DoWCoP. It is obvious that it was not the intention of the applicant to misrepresent the regulatory framework, and they are prepared to clarify and revise the documents to reflect the intended approach more clearly. Should the DoWCoP route be pursued, all conditions for demonstrating the use of materials as non-waste will be strictly followed.
- The EA asserts that the CL:AIRE protocol is not appropriate for waste activities. I agree. However, the intention of the application is to potentially use the DoWCoP precisely to avoid handling the soils as waste.
- The EA suggests the CL:AIRE protocol must be removed from the documents. The applicant could revise the documents to clarify that DoWCoP will only be pursued if conditions are met and non-waste status can be demonstrated. The EA does not regulate DoWCoP, but it is nonetheless a recognised industry protocol supported by Defra.
- I also note that the EA's objection does not clearly acknowledge that the DoWCoP is a well-established and government-endorsed mechanism for determining when materials are no longer waste. While the EA does not directly regulate DoWCoP, it remains a valid route where the relevant criteria are met. Failure to reference this appropriately risks giving the impression that the protocol is not applicable, when in fact it is entirely suitable for projects like this provided the correct procedures are followed.

## 4. Suitability of Imported Soils

- The application should be updated to ensure that any imported materials meet the necessary geotechnical and chemical standards suitable for sports pitch construction. The Applicant will engage technical experts to ensure soils are appropriate and that the site is designed to avoid future waterlogging or usability issues.
- The EA states that the import of 60,163m<sup>3</sup> would require a bespoke permit and constitutes a 'significant' operation. I note that this volume could fall within the thresholds of a Standard Rules permit (SR2015 No 39), which allows up to 60,000m<sup>3</sup>. A 163m<sup>3</sup> overage is not inherently significant and could be managed with operational planning or minor design amendments.

## 5. Soil Suitability and Waterlogging Concerns

- The EA raises concerns that imported soils may be unsuitable due to similarity to site soils and potential for waterlogging. However, this risk is manageable. The application can be revised to include geotechnical criteria for imported soils. Recovered soils with appropriate permeability, structure and drainage properties can be sourced under DoWCoP or controlled under permit conditions.
- I also wish to clarify that the assumption that local construction soils are likely to be anthropogenically contaminated is not necessarily valid. Source sites for DoWCoP-compliant materials are subject to strict verification and documentation, and appropriate materials will only be accepted if they meet the required chemical and geotechnical standards. Blanket assumptions about contamination risk from local construction sources do not reflect the rigorous material selection and verification processes embedded within the DoWCoP framework.
- In addition, I recognise that in some areas on site, the existing soils may have beneficial properties that can be retained and enhanced through blending with suitable imported materials. This approach, already widely used in sports pitch construction, enables the engineering characteristics of the final surface to be optimised while minimising the generation of waste. Soil blending will be carried out under the appropriate regulatory mechanism, ensuring both compliance and functional performance."
- Additionally, the Design and Access Statement explicitly refers to the amelioration of site-won topsoil with sand to improve its drainage characteristics. This approach further ensures suitability for pitch use and aligns with established sports pitch engineering standards. Again, the oversight of such specifications lies primarily with Sport England, and I see no technical basis for the EA to override that role in this context.
- The EA suggests that stockpiled topsoil may degrade and become waste. I recognise this risk and the applicant can ensure that any reuse is justified by soil testing and management to prevent anaerobic degradation. If unsuitable, it will be removed under appropriate controls.
- I also highlight that a subsurface drainage pipe network, incorporating gravel and sand trenches, will be installed as part of the pitch construction. This feature addresses the EA's concerns regarding surface water retention and drainage performance. It is worth noting that the specification and design of the sports pitches, including drainage functionality, falls within the remit of Sport England, who have not raised any objection to the proposed design.

## 6. Comments on Haul Roads and Hard Core

- The EA indicates that use of hardcore for haul roads must be regulated. This is already standard practice. If using waste-derived aggregates, this can be managed under a U1 exemption or by ensuring the materials have ceased to be waste. This issue does not present a regulatory barrier.

## 7. Reference to EA Approval of Materials

- I acknowledge that the phrase "Environment Agency approved materials" was incorrectly used. This can be removed from the planning application documents. Materials will either be non-waste (under DoWCoP) or permitted under the EPR framework.

## 8. Addressing other EA Comments

- I believe many of the EA's technical concerns can be addressed through revisions to the Design and Access Statement and supporting documents. For example:
  - Clarifying that materials will be verified as suitable and non-waste (if using DoWCoP) or appropriately controlled under permit.
  - Ensuring that temporary infrastructure, such as haul roads, is either covered by a suitable exemption from the need for a permit, a permit, or uses materials that are not waste.
  - Removing any ambiguous references suggesting EA 'approval' of materials.
- Note on Flood Risk. The site layout was amended during determination to ensure all works are located beyond eight metres of the main river, thereby removing the need for a Flood Risk Activity Permit. These changes are clearly demonstrated in the submitted plans.

## 9. Next Steps and EA Engagement

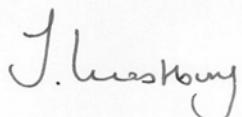
- To support a positive resolution, I will be actively seeking dialogue with the EA and are happy to facilitate a joint discussion with all parties. This will help ensure that the planning process remains aligned with the eventual permitting or DoWCoP approach, avoiding unnecessary duplication or post-permission changes.
- On your instruction, I will directly engage with the EA to clarify the applicant's approach and resolve all misunderstandings regarding the authorisations for the importation and deposit of materials in the development. As a result, I anticipate that the EA will either;
  - provide confirmation of no objection to the proposed development or,
  - they may request changes to be made to the planning application before confirming no objection to the proposed development.
- I anticipate that correspondence with the EA to resolve this issue should take no more than around four weeks.

## 10. Request to Retain the Planning Application

- In light of the above, I advise that you respectfully request that the planning application is not returned or refused at this stage.
- Given the above clarifications and the potential to address the EA's concerns, I consider it would be reasonable to request that you are provided the opportunity to revise the application documents (if necessary from discussion with the EA) to:
  - Clarify the regulatory routes available.
  - Correct inaccurate references.
  - Commit to appropriate soil controls and material specifications.
- I am confident that with some proactive engagement and clarification the EA's objection can be overcome.
- Refusing or returning the application at this stage risks delaying a project that promotes beneficial reuse of materials and delivers community benefits. It may also preclude an otherwise compliant and sustainable development from proceeding. I therefore advise you to ask that the application is kept live to allow the applicant to provide the necessary clarifications and correspond with the EA.
- I am aware that should the planning authority be minded to refuse the application, the applicant would likely withdraw and reassess their approach to reduce risk. However, I am keen to avoid that outcome where unnecessary. The position remains that this is a sound and policy-compliant proposal that simply requires clarification of documentation and alignment with regulatory expectations. A refusal or return would interrupt that process and remove the opportunity to resolve matters collaboratively.

Please do not hesitate to contact me should you require any further information. In the meantime I will proceed to engage with the EA to resolve their objection.

Yours sincerely,



Tracey Westbury BSc (Hons), MCIWM  
Director