

Responses to representations from interested parties. 5 pages

2. Statutory Consultees – Environmental Health Consultee Statement from Anthony Carson

“Background”

Paragraph 1 – “both the garage building and land, which constitute the site, have been part of a vehicle repair business for decades”

Refer to Mr Carson’s Appendix 1 Sales Particulars for Andrews Garage states the “two commercial units” have been operated by the current owner “predominantly as a break down and recovery business” and 5 photos showing only one photo of the smaller of the two units (now demolished) on our site at top right of page with a motorbike on one of his recovery trailers. Photos of the larger, curved roof unit shows a vehicle being repaired up on a hoist and another beside it with the bonnet open.

Para 2 – is conditional upon para 1 being true.

Para 3 – we do recognise what is said here of course. However, for land to be classed as “contaminated land” there must be three elements of a pollutant linkage present – a contaminant, a pathway and a receptor. Our two consultants’ reports do not support that all of those three elements are present on our site. Mr Carson still has questions, with lengthy delays between raising his queries, but fundamentally the test for “contaminated land” fails.

Para 4 - as Steven Gove knows we sent in photos of the site with puddling all over it just after the smaller unit had been demolished which showed no evidence of hydrocarbon pollutants on the water surface. One of our consultants commented on this too. There was no paint spraying on the premises recognised in the publication quoted as a major contaminant and the majority of the remaining potential contaminants mentioned are hydrocarbon based.

Para 5 – we are unable to comment on anything put down drains – there are no drains from our proposed house site only one from the larger garage downhill in toilet and sink. There was no evidence of “waste oils” or other hydrocarbon based “fluids” on surface puddling on our site as mentioned above. There were no tyres or any parts for disposal on the site when we purchased the property nor did we see any untidiness around the site having been acquaint with it for years.

Para 6 – that goes without saying for a professional consultant

Para 7 – that would be correct as the site had consent for vehicle storage and parking of Mr Sim’s recovery vehicles. Photos are not of sufficient resolution to establish materials. It has been agreed that was the location for the bunded kerosene tank for the heating of the larger garage – the small garage was not heated.

Outline of Consultation and Review process

We cannot really comment on this section but it seems to us we have two professionals here who have horns locked. One an eminent and much experienced expert in his field who advises on very large contaminated sites nationwide and is regularly called on in legal cases as an expert witness who is failing to understand Mr Carson as his queries have constantly changed focus. We are stuck in the middle without resolution but what we have seen is Mr Carson altering the parameters of questions for Mr Whittle to answer.

We have referenced the three prerequisites for a pollutant linkage to exist above. Mr Whittle has stated his position on this and has referenced all the regulatory instruments that Mr Carson had suggested he had not paid credence to in his correspondence.

We repeatedly asked Mr Carson to substantiate his claim that he had “clear evidence” that the garage on our proposed site had “been used as a vehicle repair workshop”.

When we submitted our Request for Review he told us it was not appropriate for him to correspond with us in that regard.

He asked us to provide the email where he said that.

We did, on 21 Feb 24, giving him the following from an email sent to us by Steven Gove in which Steven had copied Mr Carson’s direct quote to us “*internal details (supported by photographic evidence), show conditions consistent with commercial vehicle repair activities. ... There is clear evidence that the building has been used as a vehicle repair workshop.*” was sent by you to Steven Gove on 15 September 2022.”

However, we still see no such “clear evidence” and the sales particulars state that the “two commercial units” have been operated by the current owner “predominantly as a break down and recovery business” and goes on to list contracts with the AA, RAC, LV, Britannia Rescue and Call Assist “to name a few”. The only vehicles we have seen in photographs, sales particulars or via streetview in the smaller garage is a motorbike on a recovery trailer and one of the recovery business Land Rovers with Mr Sims Scottish Vehicle Recovery Association, SVRA, sticker on it.

The pictures in the sales particulars show on the front page the relevant right hand smaller shed on our site empty and 5 interior shots – 4 of the larger garage downhill and only one of the relevant smaller garage in the page’s top right corner with a recovered motorbike sitting on one of the garage’s recovery trailers.

Mr Carson still has not produced the irrefutable evidence he told us he had that the garage on our site had been used as a vehicle repair garage and we wonder why he would have made such a claim.

Also included in Mr Carson's Appendix is our consultant, Mr Whittle's email response on 17 July 2023 where he states "we were surprised to (recently) receive such a long list of comments [there were over 40] from Environmental Health regarding the above property and our Phase 1 & 2 Environmental Assessment Report (Jan 2023) particularly as we thought we had addressed the main issues in our email issued on 5 April 2023 (and sent on to the Council shortly after)." - there had been only 5 issues requiring answers from Mr Carson then.

Mr Whittle goes on to say in this email –

It appears that most of the items raised relate to presentational issues and/or a misunderstanding of the scale of the proposed development/very small size of site which comprises the following:

- Only one small dwelling is proposed
- The proposed house is directly underlain by very low permeability intact rock strata
- ...
- The site has not been associated with bulk petrol storage or significant use of paints etc
- The site is not located in an environmentally sensitive location (ie does not adjoin a watercourse and is not underlain by a significant aquifer)

He then goes on to state he has answered each point in Mr Carson's table "(in blue text in appended column)" and "we trust that these (extensive) clarifications will assist and permit the development to proceed"

That was not to be the case and Mr Carson responded in September 2023 to Steven Gove's email of July 2023 passing on Mr Whittle's response detailed above. Mr Carson then appears to take another tack raising procedural issues in respect of legislation that he was alleging Mr Whittle had not followed. Mr Whittle answered that too.

Mr Whittle produced his Phase 1 & 2 Environmental Assessment Report in January 2023 for us and has commented that he has never experienced issues such as this with any of the other Scottish local authorities he deals with regularly.

It would help if Mr Carson would explain fully what he wants if not the 81 page report from an industry professional consultant and 26 page report from a structural engineer.

“Notes on specific comments in the Raeburn Supporting Document”

1. Paragraph 2 – the quote has the end missing it should be added as it ends “at the rear of the large nissen type shed” i.e. not on our proposed house site.
2. As can be seen in our document No 3 the business did expand in 1983. The larger shed became the heated vehicle workshop and the expansion of the business into vehicle recovery necessitated the smaller shed becoming as detailed on the stamped plans “vehicle parking and storage”.
3. i) From WAT-PS-10-01 diagrams which show a contaminant pathway to a receptor it appears clear that there is no pathway to groundwater when both consultants’ reports analyse the geology underlying our site as impermeable and without the presence of a significant underlying aquifer.

4. ii) Contrary to this we are actually waiting on Mr Carson’s response -

From: karen raeburn <ksraeburn@yahoo.co.uk>

Sent: 09 November 2023 14:37

To: Gove, Steven <steven.gove@argyll-bute.gov.uk>

Subject: Erection of Dwellinghouse, Andrews Garage Site, Tighnabruaich (ref: 22/00221/PP)

Afternoon Steven

I hope you are well.

Is there any feedback yet from Anthony Carson?

Nor have we received his “clear evidence” that the small garage on our site had been a vehicle repair workshop. We made the point that this was not how the premises were sold to us.