

THE VALE OF GLAMORGAN COUNCIL

PLANNING COMMITTEE : 12 FEBRUARY 2015

REPORT OF THE DIRECTOR OF DEVELOPMENT SERVICES

**MATTER WHICH THE CHAIRMAN HAS DECIDED IS URGENT
BY REASON OF THE NEED TO MAKE A DECISION PRIOR TO THE NEXT
COMMITTEE**

7. ENFORCEMENT ACTION

LAND AND BUILDINGS AT SITE SERV RECYCLING HANGERS A & B, LLANDOW
TRADING ESTATE, LLANDOW

Background

1. A complaint was received by the Local Planning Authority on 26 January 2015, regarding the construction of an extension and use of the site at Site Serv Hangers A & B, Llandow Trading Estate, Llandow.
2. The site comprises of two former aircraft hangars located to the south end of Llandow Trading, immediately to the south of a race track and to the west of a caravan park.

Details of the Breach

3. Following an initial site inspection it was noted that works have been carried out to clear a larger area of land to the rear of the site for parking of large vehicles, the erection of a weighbridge and office and for the construction of extension to the rear of the building.
4. With regard to the extension, its dimensions and location are such that it would be considered to be permitted development under the new permitted development rights granted under The Town and Country Planning (General Permitted Development) (Amendment) (Wales) Order 2014.
5. In addition, the large hardstanding area was not complete but it could be considered permitted development if constructed of a porous material or provided the run-off water from the hard surface was directed to a porous or permeable area or surface within the curtilage of the site. The owners have been advised that if these requirements are adhered to when completed then it would be permitted, however, if not then it would be considered a breach of planning control.

6. With regard to the use of the original hangars, from an internal inspection it would appear that these are being used for the storage of waste material with some sorting of that material taking place on the site, as follows:
 - Hangar 1- had paper, cardboard being stored, with a two machines and a person sifting through the material. A baler was situated in the corner of the building but was not in use. It was stated by an employee at the site that the baler would be operational by March 2015. It was also stated that the material in the building was being sifted through to remove large items in order for the material to then be transported off site to be incinerated.
 - Hangar 2- had mixed plastics materials and mounds of what would appear to be processed plastic materials. There were no persons or machines inside this hangar.
7. It is understood that the established use of the hangar buildings is for a use falling within Use Class B8 of the Town and Country Planning (Use Classes) Order 1987. The site is not located within an employment site but it is accepted that the hangars have been used for purposes in accordance with the B8 Use class use. This lawful use would permit the storage of certain types of waste material on the site but would not permit the processing of that material in any way. The processing of material, depending on the type of material being processed, would either fall within use Class B2 of the Order or would be considered to be a *sui generis* use (i.e. a use within its own use class). A material change of use of the buildings to either of these uses from a B8 use would require the benefit of planning permission. As the necessary permission for processing the material has not been granted, the use of the buildings would be unauthorised and in breach of planning control; that breach being the material change of use of the land and buildings from a use for the purposes of Storage & distribution falling within use Class B8 of Order, to a mixed use for storage of plastic, glass and wood waste and the processing of plastic, glass and wood waste material, involving crushing, baling and sorting (falling within use Class B2 of the Order).
8. It should be noted that a planning application has been submitted for the change of use of the buildings to a waste transfer station including the storage of municipal waste, ancillary offices, erection of a weighbridge and construction of a weighbridge office. The application is not, however, valid and discussions are taking place with the applicant with regard to the information necessary to validate the application. It is, however, unlikely that the required information will be submitted imminently.

9. In the light of the application it is clear that the occupier of the site intends to operate a waste transfer station and to store municipal waste (household waste) at the site. Taking into account the amount of activity currently underway, it is likely that this use will be fully operational in the near future. Officers were advised that Site Serv staff and the administration offices were currently in the process of being moved to Hangers A & B. Accordingly, it is likely that the processing activity will increase to the levels required for a fully operational waste transfer station in the near future. In view of the stage at which the planning application is currently at, it is not likely that the application will be determined before this use is operational.

Planning History

10. The site benefits from the following planning history:
- 2012/00716/SC1 Proposed material recycling facility- EIA required
 - 2003/00985/FUL: Unit B, Wick Road, Llantwit Major - New access doors to gable. Approved 5 September 2003.
 - 1985/01015/FUL: Wick Road, Llandow Trading Estate, Llandow - Canopy to provide covered loading/unloading area. Approved 26 November 1985.
 - 1983/01004/OBS : Hangars at site 'C', Llandow Airfield, Llandow - For use as residential purposes, light/general/special industrial purposes, warehouse purposes or recreation purposes. P – 15 February 1984.

Policy

11. The Development Plan for the area comprises the Vale of Glamorgan Adopted Unitary Development Plan 1996-2011, which was formally adopted by the Council on 18th April 2005, and within which the following policies are of relevance:
- EMP1 - Land for employment uses.
 - EMP2- New Business And Industrial Development
 - WAST1 - Provision of waste management facilities.
 - WAST2 - Criteria for assessing waste management facilities.
 - ENV27 - Design of New Developments.
 - ENV29- Protection of Environmental Quality
12. In addition to the adopted Unitary Development Plan, the Council has approved Supplementary Planning Guidance (SPG). The Following SPG is of relevance to this appeal:
- Amenity Standards

13. Planning Policy Wales (Edition 6, 2014) advises that where development plan policies are outdated or superseded local planning authorities should give them decreasing weight in favour of other material considerations, such as national planning policy, in the determination of individual applications. It is for the decision-maker to determine whether policies in the adopted Development Plan are out of date or have been superseded by other material considerations and this should be done in light of the presumption in favour of sustainable development.
14. In this case, the relevant material considerations are considered to be as follows:
 - Technical Advice Note 9: Enforcement of Planning Control (1997)
 - Technical Advice Note 11: Noise (1997)
 - Technical Advice Note 12: Design (2009)
 - Technical Advice Note 15: Development and Flood Risk (2004)
 - Technical Advice Note 21: Waste (2014)
 - Technical Advice Note 23: Economic Development (2014)
 - Environmental Strategy for Wales (2006)

Reasons for Serving an Enforcement Notice

15. The main issues to consider in this report are the principle of the use of the site as a waste transfer station, the impact of the unconditional use of the premises as a waste transfer station and the wider issues that could arise from such a use if there are no conditions i.e. impact of the use on noise, odour, operating times, access, parking and highway safety.
16. It is noted that Strategic Policy 13, and Policies WAST1 and WAST2 of the UDP, as well as advice contained within TAN 21 (Waste) 2001, all actively seek to encourage waste transfer operations in appropriate and sustainable locations, to meet both national and European Union targets and objectives on waste recycling and to lessen the increasing demand for further landfill. Policy WAST1 allows for the siting of waste management facilities on employment allocated sites or well established employment sites, subject to the proposal satisfying the criteria of Policy WAST2.
17. Whilst these policies are noted, the criteria of UDP Policy WAST2 include requirements that proposals conform to the principles of the waste hierarchy and the proximity principle, do not unacceptably affect residential amenity or pose a threat to public health, and have regard to the adequacy of the highway network. Furthermore, Policy ENV29 states that development will not be permitted if it would be liable to have an unacceptable effect on either people's health and safety or environment, by releasing pollutants into water, soil or air (on or off site) or from smoke, fumes, gases, dust, smell, noise, vibration or light pollution emissions.

In addition, Policy EMP2 and EMP3 states that proposals for new business and industrial development will be permitted if they do not have an unacceptable effect on residential amenity by virtue of traffic congestion, noise, smell, safety, health impacts and emissions, etc. (amongst other criteria). These policies are supported by the general development criteria set out in Policy ENV27 – Design of New Developments.

18. The site is located to the south of the previously used unit in the Llandow Trading Estate and is not in close proximity to any residential property, but adjoins a caravan holiday park and Llandow car racing track. Notwithstanding this, the Council are in receipt of complaints from the residents with regard to dust, health and safety issues, and waste material on the adjoining highways. In addition to this, the current occupiers of the site have operated from other premises within the Llandow area where complaints were received in respect of odour, flies, litter and rats.
19. Having considered the relevant criteria of the above policies, it is essential that the Council is given the opportunity to properly consider the impact of the development before the site becomes fully operational. To do this it is essential that the Council have the opportunity to consider a full Transport Statement and a waste management plan. It is also essential that the Council have the opportunity to fully consult with its Highways and Environmental Health Department, as well as Natural Resources Wales. It is unreasonable and, it would be suggested, not possible for the proper consideration of the impacts of the development outside of the planning application process as such an assessment would be made without all the necessary information. Accordingly, and without the necessary information to establish that the use of the premises as a waste transfer station and place for the storage of household waste is acceptable, it is considered that the current use of the site is unacceptable, contrary to the policy and guidance mentioned above.
20. Notwithstanding the above, if it is established that the use of the site as a waste transfer station and place for the storage of household waste is acceptable, it will be essential that such a use is subject to controls to mitigate against the potentially harmful effects of noise, dust, odour, waste storage and transportation and the contamination of land in order to protect the amenities, health and safety of the public or neighbouring sites and highway safety. It is not possible to impose such controls via an enforcement notice. Whilst the National Resource Wales have imposed some restrictions via the permit that has been granted for the site, it is not clear whether or not that permit allows for the storage of municipal waste. Accordingly, the uncontrolled nature of the use could result in the use having a harmful impact upon the amenities, health and safety of the public or the safety of highway users.
21. It is accepted that the existing B8 use can give rise to a level of noise and traffic disturbance; the storage of inert waste does result in some vehicles visiting the site and occasional movement of materials. However, there is potential for the currently unauthorised use and the intended fully operational use of the site to generate additional and unacceptable levels of noise and traffic, as well as dust, odour, vermin or other types of pollution.

The day to day running of a waste transfer station and storage of municipal waste would result in continuous activity and noise that would, without conditions on the operating hours, levels of waste, odour controls etc., undoubtedly produce issues at the site that would impact upon the adjoining holiday accommodation and wider area to an unacceptable degree.

22. In light of the findings above, it is recommended that authorisation is granted to serve an Enforcement Notice and, if necessary, a Stop Notice to require the cessation of any possible and future unauthorised use of the site. In view of the current level of activity at the site, your officers do not intend to serve the notices as soon as authorised. The occupier of the site will be advised of the authorisation and the site will be monitored, and should any evidence be found of the intensity of the unauthorised use incurring a formal Notice served.

Resource Implications (Financial and Employment)

23. Any costs involved in drafting and issuing Notices, attending enquiries and undertaking monitoring work can be met within the departmental budget. There are no employment issues.

Legal Implications (to include Human Rights Implications)

24. If an Enforcement Notice is served, the recipient has a right of appeal under Section 174 of the Town and Country Planning Act 1990 (as amended).
25. It should be noted that the issuing of a Stop Notice must be preceded by an Enforcement Notice, although they may be served concurrently. As mentioned above, the enforcement notice has already been issued. In serving a Stop Notice, the Council must ensure all details contained therein are precise, clear and enforceable. Compensation may be payable only where the notice is flawed in some respect, subsequently altered, varied or withdrawn. Compensation is not payable if a subsequent appeal under ground (a) is allowed to the benefit of the appellant. In view of the serious nature of the above unauthorised activities and the possible implications for the amenity of nearby residents, highway safety and the countryside, it is considered that the Stop Notice is warranted.
26. I would confirm my officers have undertaken a risk assessment in respect of the service of such a Notice. It has been concluded that the operator has no legitimate reason to be undertaking the activities specified above and that accordingly the possibility for compensation would be extremely low.
27. It is considered that the only grounds on which any appeal may successful would be in respect of ground (a), that planning permission should be granted, and in this respect no compensation would be payable by the Authority.

28. The Action is founded in law and would not be considered to breach any of the rights referred to in the Human Rights Act.

Equal Opportunities Implications (to include Welsh Language Issues)

29. None.

RECOMMENDATIONS

- (1) That the Head of Legal Services be authorised to serve an Enforcement Notice under Section 172 and a Stop Notice under section 183 of the Town and Country Planning Act 1990 (as amended) to require:
- (i) The cessation of the use of the site as a waste transfer station and the cessation of the use of the site for the storage and processing of municipal (household) and general waste.
- (2) In the event of non-compliance with the Notices, authorisation is also sought to take such legal proceedings as may be required.

Reason for Recommendations

- (1) The use of the site as a waste transfer station and for the storage and processing of municipal waste is considered to have a harmful impact upon the amenities, health and safety of the public and neighbouring land and on the safety of highway users contrary to the Policies EMP2- New Business And Industrial Development, WAST1 - Provision of waste management facilities, WAST2 - Criteria for assessing waste management facilities, ENV27 - Design of New Developments and ENV29- Protection of Environmental Quality of the Vale of Glamorgan Adopted Unitary Development Plan 1996-2011, as well as guidance provided in Planning Policy Wales and Technical Advice Note 21: Waste (2014).

Background Papers

Enforcement File Ref: ENF/2015/0010/PC

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Officers Consulted:

All relevant Chief Officers have been consulted on the contents of this report.

ROB THOMAS
DIRECTOR OF DEVELOPMENT SERVICES