

REPORT TO: Planning Committee

MEETING DATE: Tuesday 6 March 2018

BY: Depute Chief Executive
(Partnerships and Community Services)

SUBJECT: Application for Planning Permission for Consideration

Application No. **15/00192/PM**

Proposal Variation of condition 8 (VI) and (VII) and condition 12 of planning permission 09/00617/FUL to allow the movement of vehicles and the undertaking of site operations over longer periods of time and to allow the operation over a wider site area

Location **Smeaton Bing
Carberry
East Lothian**

Applicant Hamilton Waste and Recycling

Per Wardell Armstrong LLP

RECOMMENDATION Consent Granted

PLANNING ASSESSMENT

As the area of the application site is greater than 2 hectares, what is proposed in this application is, under the provisions of The Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009, defined as a major development type proposal and thus it cannot be decided through the Council's Scheme of Delegation. The application is therefore brought before the Planning Committee for a decision.

In March 2010, through a decision of the Planning Committee, planning permission (Ref: 09/00617/FUL) was granted for the use of the former shale and coal waste heap of Smeaton Bing and former agricultural land within the Edinburgh Green Belt, all at Crossgatehall to the southeast of Whitecraig as a waste recycling facility and, to enable that use, the reformation and reshaping of the existing bing to form bunds to contain an internal working area, the erection in it of buildings, the formation of an access road and a sustainable urban drainage system (SUDS) pond, and for associated planting. Planning permission 09/00617/FUL has been implemented and the waste recycling facility is operational, and is known as Smeaton Recycling Centre.

Planning permission 09/00617/FUL was granted subject to 15 Conditions.

Condition 8(vi) of planning permission 09/00617/FUL states:

'During the period of time of 0630 to 0700 Monday to Friday inclusive the only activity on site for the operation of the waste recycling facility shall be the movement from the site of skip lorries with a skip having already been attached to them during a previous working day's permitted hours of operation of the waste recycling facility. There shall be no loading or unloading of such lorries with skips during the period of time of 0630 to 0700 Monday to Friday inclusive.'

Condition 8(vii) of planning permission 09/00617/FUL states:

Other than for (vi) above no operational working of the waste recycling facility, including vehicle movements shall take place within the site outwith the hours of 0700 to 1800 Monday to Friday inclusive and 0700 to 1300 on Saturdays. There shall be no working whatsoever on Sundays.

Condition 12 of planning permission 09/00617/FUL states:

'The development hereby approved shall be used solely for the purposes of waste recycling in accordance with the approved plans docketed to this planning permission, including the ancillary office, parking and temporary storage facilities. No part of the site other than as set out in the Operational Site Plan drawing no. PA4 docketed to this planning permission shall be used for the purposes of storage, separation, processing or recycling of waste or any other materials, nor for parking or storage of vehicles.'

Reason:

To ensure that none of the operations of the waste recycling facility or use of the site is harmful to the rural character of this part of the East Lothian countryside or the Edinburgh Green Belt.'

The purpose behind the planning control embodied in Conditions 8(vi) and (vii) and 12 are in the interests of protecting the amenity of residential properties within the area and to ensure that none of the operations of the waste recycling facility or use of the site is harmful to the rural character of this part of the East Lothian countryside or the Edinburgh Green Belt.

In November 2012, through a decision of the Planning Committee, planning permission (Ref: 12/00346/PM) was granted for changes to the bunds, buildings, structures, landscaping and for the storage of inert materials and variations of Conditions 6, 7, 8 and 12 as changes to the scheme of development the subject of planning permission 09/00617/FUL.

By the grant of planning permission 12/00346/PM Condition 12 of previous planning permission 09/00617/FUL was varied such that it now reads:

Condition 12

The development hereby approved shall be used solely for the purposes of waste recycling, including the ancillary office, parking and temporary overflow storage bays.

Of the internal working area of the waste recycling facility (i.e. the part of the site enclosed by the bunds but excluding the bunded site access road), the part denoted as 15 on drawing no. ED10822-003 Revision D docketed to planning permission 12/00346/PM shall only be used for the storage of inert materials. Neither that part of the internal working area nor any part of the site outwith the internal working area shall be

used for the separation, processing or recycling of waste or any other materials, nor for parking or storage of vehicles.

Reason:

To ensure that none of the operations of the waste recycling facility or use of the site is harmful to the rural character of this part of the East Lothian countryside or the Edinburgh Green Belt.

Planning permission is now sought through this application for the variation of condition 8(vi) and (vii) and condition 12 of planning permission 09/00617/FUL.

In the applicant's Noise Assessment submitted with the application it is stated that the proposed variations to the conditions are for the following purposes.

It is proposed that waste recycling related operations be permitted in the western part of the site (in which they currently only have permission to store inert materials), which would mainly be associated with the screening and crushing of aggregate. This would be comprised of construction and demolition waste i.e. rubble and soils with a very small percentage of contamination in the form of wood and paper. It is stated that the screening and crushing of the aggregate would only be undertaken during the operational hours of weekdays, i.e. Monday to Friday.

Other use proposed within the western part of the site would include green waste shredding, the location of storage containers and skips, and the parking of vehicles and machines.

In addition the following changes to operational hours and vehicle movements are proposed:

- * Allow one pre-loaded HGV to leave the site between 0400 and 0530 hours;
- * Allow HGVs/skip lorries to leave the waste recycling facility from 0530 hours during weekdays Monday to Friday;
- * Extend the operational hours of the waste recycling facility on weekdays from the currently permitted 0700 hours to 1800 hours to 0700 hours to 2100 hours;
- * Extend the operational hours of the waste recycling facility on Saturdays from the currently permitted 0700 to 1300 hours to a full working day, i.e. 0700 to 1800 hours;
- * Allow 2 HGVs entering and 2 HGVs leaving the site per hour, i.e. 4 vehicle movements per hour on the internal haul road from 0800 – 1700 hours on a Sunday and unloading of the HGVs within the western part of the site.

It is stated in the Noise Assessment that the above variations are necessary to enable the site operator, Hamilton Waste and Recycling, to tender for waste contracts within the surrounding area. The waste contracts have various requirements, both technical and operational. In some instances the operational impact is the need to operate at the site earlier and later than the currently approved hours. If the site is not permitted to operate outwith the currently restricted hours the site operator cannot tender for these contracts. The significant investment made in both the site, state of the art equipment and in local staff would therefore not be optimised and would impact on the speed at which the remaining investment in the site could be made.

Similarly, in order to provide to some clients, there is a requirement for one loaded HGV to leave the site from 0400 hours each day. Currently, this vehicle is leaving from other premises, resulting in additional travel time and distance.

Section 25 of the Town and Country Planning (Scotland) Act 1997 requires that the

application be determined in accordance with the development plan, unless material considerations indicate otherwise.

The development plan is the approved South East Scotland Strategic Development Plan (SESplan) and the adopted East Lothian Local Plan 2008.

There are no policies of the approved South East Scotland Strategic Development Plan (SESplan) or the adopted East Lothian Local Plan 2008 relevant to the determination of this application.

Also material to the determination of the application are the written representations received from the public.

A total of 44 written objections have been received to the application. Of those 43 object to the proposal and 1 is in support of it. The main grounds of objection can be summarised as follows:

- * the site access junction is dangerous and traffic movement is a road safety hazard;
- * an increase in operational hours would mean an increase in noise disturbance from HGV traffic;
- * road kill has increased dramatically;
- * HGV's cause noise, dirt and environmental pollution to the area;
- * the proposal would result in more noise, litter, light and dust pollution and disruption to the local community;
- * the needs of the applicant's business are being prioritised over the quality of life in the locality; and
- * the current restrictions on operations are not being adhered to.

The grounds of support are that the recycling happens in a regulated environment, there is regular fly tipping in the locality and that the applicant employs a large number of people from the local area.

The alleged breaches of the current restrictions on operations at the site can be investigated separately under planning legislation. The alleged breaches are not a material consideration in the determination of this planning application.

The determination of this application rests on the planning considerations of the likely additional impacts the proposed change to operations at the recycling centre would have on the amenity of nearby residential properties and whether they would result in a road safety hazard.

The applicant's Noise Assessment concludes that updated background noise levels have been measured in the vicinity of the site at the sensitive receptor locations of Strathmore Cottage, The Old School House, Chalkieside Farm, Smeaton Sawmill, Crossgate Hall and Smeaton Shaw, with on-site measurements taken to determine noise levels of the main operational plant. The assessment finds that whilst noise from the proposed operational changes to the recycling facility may slightly affect the acoustic character of the area, they would not result in a perceived change in the quality of life at any receptor location, with no acoustic features identified, and all World Health

Organisation and British Standard 8233 guideline levels achieved based on the scenarios assessed.

The Council's Service Manager – Protective Services advises that the waste recycling facility is an operational facility that is regulated under the terms of a Waste Management License issued and enforced by the Scottish Environment Protection Agency (SEPA). The terms of the license will include conditions so that matters such as dust, odour, operation noise and litter is controlled by SEPA. Therefore, the Service Manager – Protective Services has no regulatory role over such matters with regard to the operation of the facility.

The Council's Service Manager – Protective Services has carefully considered the applicant's noise assessment and accepts its findings. On the proposed changes to operational hours and vehicle movements at the waste recycling facility the Service Manager – Protective Services advises as follows:

1. Allow one pre-loaded HGV to leave the site at 0400 hours:

He advises that this has been assessed with regard to the World Health Organisation (WHO) Night Noise Guidelines for Europe document which refers to an internal L_{Amax} of 42dB(A) between the hours of 2300-0700. Allowing for attenuation through an open window of 15dB(A) the external L_{Amax} level should not exceed 57 dB(A) at the building facade of noise sensitive receptors. The external noise level at the façade of the closest property, Strathmore Cottage, is predicted to be 43dB (A) L_{Amax} and, as such, is within the WHO Guideline.

2. Allow HGV's to leave and move around the site from 0530 hours rather than 0630 hours Monday–Friday:

He advises that impulsive noise from vehicle movements has been assessed and will not exceed the WHO Night Noise Guidelines for Europe as mentioned in point 1 above. However, noise from vehicle movements will also form part of any assessment of noise arising from the site in terms of BS4142:2014 "Methods for rating & assessing industrial and Commercial sound". The BS4142 assessment concludes that specific noise arising from vehicle movements from 0530 hours until 0700 hours (based upon 4 vehicle movements per hour on the haul road) will have a negligible to low impact. The specific noise level associated with these activities is below the existing background noise level.

3. Extend the operational hours of the facility on Monday-Friday from currently permitted 0700-1800 hours to 0700-2100 hours:

He advises that the BS4142 assessment concludes that specific noise arising from operational activities involving; mixed waste sorting in main shed, skip/wagon unloading, external sorting plant and vehicle movements on the haul road (10 movements per hour) from 1800 hours until 2100 hours will have a minor impact. The specific noise level associated with these activities is either below or slightly above the existing background noise level and will not significantly impact noise levels at sensitive receptors.

4. Extend the operational hours of the facility on Saturdays from currently permitted 0700-1300 hours to 0700-1800 hours:

He advises that the activities assessed for Saturday daytime operation are the same as those proposed for weekday evening working. The BS4142 assessment concludes that specific noise arising from operational activities involving; mixed waste sorting in main shed, skip/wagon unloading, external sorting plant and vehicle movements on the haul

road (10 movements per hour) from 0700 hours until 1800 hours will have a negligible to minor impact. The specific noise level associated with these activities is either below or slightly above the existing background noise level and will not significantly impact noise levels at sensitive receptors.

5. Allow 2 HGV's entering and 2 HGV's leaving the site per hour, i.e. 4 vehicle movements per hour on the internal haul road from 0800-1700 hours on a Sunday and unloading of the HGV's within the Western portion of the site:

He advises that the BS4142 assessment concludes that specific noise arising from operational activities involving skip/wagon unloading and vehicle movements on the haul road (4 movements per hour) from 0700 hours until 1700 hours will have a negligible to low impact. The specific noise level associated with these activities is below the existing background noise level and will not significantly impact noise levels at sensitive receptors.

The Service Manager – Protective Services also advises that noise associated with the specific sources from activities at the waste recycling facility referred to in his above assessments are below the WHO guidelines for external daytime noise of 50dB(A) and also below the internal daytime and night time internal levels of 35dB(A) and 30dB(A) respectively.

In all of the above assessment the Service Manager – Protective Services advises that the proposed changes to operational hours and vehicle movements at the waste recycling facility would not have a harmful impact on the amenity of any neighbouring or nearby residential property.

SEPA have also appraised the submitted Noise Assessment and raise no objection to the application. They advise that they are in the process of modifying the existing Waste Management Licence for the waste recycling facility which will include further noise controls to reflect the changes proposed in this application. On this point SEPA confirm they are the authority for enforcing operational noise control under their Waste Management Licence regulatory regime. Also, as confirmed by the Service Manager – Protective Services, SEPA also are the authority on the control of dust, odour and litter.

It should be pointed out that Scottish Planning Policy: June 2014 states that the planning system should not duplicate other control regimes such as licences from SEPA and therefore, as noted above, the Service Manager – Protective Services has no regulatory role over such matters with regard to the operation of the facility.

With regard to the proposal to permit waste recycling related operations in the western part of the site, this area of land is wholly visually contained within the bunds around the internal working area and thus the use of it would have no harmful impact on the landscape character and visual amenity of the area. As stated above, SEPA is the licensing authority on matters of noise, odour, dust, litter and air quality for the waste recycling facility and as such there is no locus for the Council, as Planning Authority, to conditionally control the proposed use of the internal working area of the waste recycling facility.

The Council's Road Services confirm that the proposed operational changes would not have a harmful impact on the effective and safe operation of the local road network as the level of traffic increase on the local road network would not be significant. Road Services therefore raise no objection to the application, satisfied the applied for changes would not result in a road or pedestrian safety hazard.

A revised version of Planning Series Circular 3/2013 (Development Management Procedures) was published by the Scottish Government in September 2015. Annex I of the Circular gives guidance on applications for planning permission under section 42 of the Town and Country Planning (Scotland) Act 1997, as amended. The application that is the subject of this report is made under section 42 of the Act. Annex I states that "Planning authorities should attach to the new permission all of those conditions from the previous permission, where it is intended these should apply and ensure (where appropriate) that permission is granted subject to the conclusion of any appropriate planning obligation". Therefore, planning permission should be granted subject to the applied for variation to conditions 8 and 12 and subject to all of those conditions from planning permission 09/00617/FUL (and as varied by planning permission 12/00346/PM), where it is intended these should apply. In this case, the conditions that should continue to apply are 4, 6, 10, 11, 13, 14 and 15.

RECOMMENDATION

That planning permission be granted subject to the following conditions:

- 1 Within two months of the date of the grant of this planning permission a Traffic Management Plan embodying the measures of traffic control set out in Chapter 6 of the Environmental Statement docketed to planning permission 09/00617/FUL, to minimise the impact of construction and operational site traffic on the area and additionally measures to encourage more sustainable methods of travel by employees to and from the site, including the provision of cycle parking and car share schemes shall be submitted to and approved by the Planning Authority. The waste recycling facility shall be operated in accordance with the Traffic Management Plan so approved.

Reason:

In the interests of the amenity of the residents of the area, and in the interests of road safety.

- 2 If any of the planting, seeding or turfing carried out in accordance with the details of landscaping approved by the grant of planning permission 12/00346/PM within a period of five years from the date of the grant of this planning permission die, are removed or become seriously damaged or diseased they shall be replaced in the next planting season with others of similar size and species, unless the Planning Authority gives written consent to any variation. The landscaping, tree planting and hedging shall continue to be maintained in accordance with the landscape and woodland management plan for the site approved by the grant of planning permission 12/00346/PM.

Reason:

In order to ensure the implementation and long-term maintenance of a landscaping scheme to enhance the appearance of the development in the interests of the amenity of the area.

- 3 Unless with the prior written approval of the Planning Authority:

(vi) During the time period of 0400 hours to 0530 hours Monday to Friday inclusive the only activity on site for the operation of the waste recycling facility shall be the movement from the site of one pre-loaded HGV. During the period of time of 0530 hours to 0700 hours Monday to Friday inclusive the only activity on site for the operation of the waste recycling facility shall be the movement from the site of HGV's and skip lorries with a skip having already been attached to them during a previous working day's permitted hours of operation of the waste recycling facility. There shall be no loading or unloading of such HGV's or lorries with skips during the period of time of 0530 to 0700 Monday to Friday inclusive. During the time period of 0800 hours to 1700 hours on Sundays the only activity on site for the operation of the waste recycling facility shall be no more than two HGV's entering and two HGV's leaving the site per hour; those HGV's can unload.

(vii) Other than for (vi) above no operational working of the waste recycling facility, including vehicle movements shall take place within the site outwith the hours of 0700 to 2100 Monday to Friday inclusive and 0700 to 1800 on Saturdays. No aggregate crushing shall take place on Saturdays or Sundays.

Reason:

In the interests of protecting the amenity of residential properties within the area.

- 4 The site access with the A6124 public road shall have a visibility splay of 9 metres by 215 metres on each side of it so that no obstruction lies within the splay above a height of 1.05 metres. The gates for that access shall be set back at least 19 metres along the length of the new access road from the western edge of the carriageway of the A6124 public road and shall open inwards to the site.

Reason:

In order to ensure the safe turning and off-road stopping of HGVs accessing the site, in the interests of road safety.

- 5 Details of all external lighting proposed to be used within the site shall be submitted to and approved in writing by the Planning Authority prior to its erection. The lighting shall be positioned and designed to ensure that no light from within the site spills beyond the boundaries of the working area or access road to be formed as part of the development hereby approved.

Reason:

In the interests the amenity of nearby properties and of this part of the East Lothian countryside.

- 6 The development hereby approved shall be used solely for the purposes of waste recycling in accordance with the approved plans docketed to this planning permission and planning permission 09/00617/FUL, including the ancillary office, parking and storage facilities. No part of the site other than as set out in the Operational Site Plan drawing no. ED1149/003 docketed to this planning permission shall be used for the purposes of storage, separation, processing or recycling of waste or any other materials, nor for parking or storage of vehicles.

Reason:

To ensure that none of the operations of the waste recycling facility or use of the site is harmful to the rural character of this part of the East Lothian countryside or the Edinburgh Green Belt.

- 7 Any fuel oil stored on the site shall be bunded or contained such as to avoid any spillage of leaked oil. Details of such measures shall be submitted to and approved in writing in advance by the Planning Authority.

Reason:

To ensure the site does not become contaminated.

- 8 Within two months of the date of the grant of this planning permission a litter control plan for the site shall be submitted to and approved by the Planning Authority. The litter control plan shall detail the measures necessary to prevent windblown litter within the site and from leaving the site. The waste recycling facility shall be operated in strict accordance with the litter control plan so approved.

Reason:

In the interest of the amenity of the area.

- 9 All loaded lorries which enter and leave the application site shall have their loads fully enclosed or fully sheeted.

Reason:

In the interest of the amenity of the area.