

**REPORT TO:** Planning Committee  
**MEETING DATE:** Tuesday 1 September 2020  
**BY:** Head of Development  
**SUBJECT:** Application for Planning Permission for Consideration

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Application No. **20/00627/PM**

Proposal Variation of Condition 5 of planning permission P/0867/91 to change the date of restoration to within 28 years from the first commencement of operations

Location **Oxwell Mains  
Dunbar  
East Lothian**

Applicant Viridor Waste Management Ltd

Per Icen Projects Ltd

**RECOMMENDATION Consent Granted**

#### **REPORT OF HANDLING**

The application relates to Oxwell Mains landfill site. The site is operated by Viridor under the terms of planning permission P/0867/91 granted in June 1993 for 'Restoration of quarry to agriculture by infilling with controlled waste - South Quarry'.

The landfill site has an area of 111.8 hectares and occupies a countryside location 4.5km to the southeast of Dunbar, 2km to the northwest of the village of Innerwick, and 3.5km to the west of Torness Nuclear Power Station. The landfill site is bounded to the north by the main East Coast railway line, to the east by farmland, to the south by the A1 trunk road and to the west by the Lafarge cement works.

As the area of the application site is greater than 2 hectares, the development 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 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.

The closest residential properties to the site are on the farms of Little Pinkerton, Meikle Pinkerton, and Easter Meikle Pinkerton, which are each located approximately 500m to the southwest of the application site, and North Lodge Cottage some 170 meters to the southeast.

The application site itself is not covered by any nature conservation designations. However there are three sites of special scientific interest (SSSI) located within 4km of the site. The closest of these SSSIs, the Barns Ness Coast SSSI forms part of the Firth of Forth Special Protection Area.

An area of woodland to the south of the site is designated within the adopted East Lothian Local Development Plan 2018 as a Local Biodiversity Site.

The site is partially located within the Battlefields Inventory Boundary for the Battle of Dunbar II.

## **PLANNING HISTORY**

Under the terms of planning permission (Ref: P/0867/91) Viridor Waste Management Ltd commenced landfill operations on the site in September 1997. In the years since the original grant of planning permission P/0867/91 a number of planning consents have been granted relating both to specific waste management operations within the site and to the operation of the wider site.

Planning permission (Ref: P/00582/95) was granted in October 1995 for 'Variation of conditions 7, 8 and 12 of planning permission - P/0867/91 for restoration of quarry to agriculture by infilling - South Quarry'. That planning permission has been implemented and varies conditions 7, 8 and 12 of planning permission (Ref: P/0867/91) concerning quantities of waste, roadworks and permitted hours of operation respectively.

In May 2008, through application 08/00467/FUL, planning permission was sought by Viridor Waste Management Ltd for the erection on the application site of an energy from waste with combined heat and power facility (EfW) and for associated works.

In September 2009 the Councils Planning Committee refused to grant planning permission for the energy from waste with combined heat and power facility and associated works. The applicant appealed that decision to the Scottish Ministers. Following a public local inquiry the decision of a Reporter appointed by the Scottish Ministers was to allow the appeal and thus planning permission (ref.08/00467/FUL) was granted in December 2010.

In October 2012 planning permission (Ref: 12/00263/PM) was granted for 'Variation of condition 5 of planning permission 08/00467/FUL to extend the areas from where waste can be transferred to the energy from waste facility'. That planning permission has been implemented and approved operations commenced in 2019 which includes the transportation of road borne waste to the site from outwith East Lothian. As state above the landfill operations commenced at Oxwell Mains in September 1997.

## **PROPOSAL**

Planning permission is now sought for a variation of Condition 5 of planning permission (Ref: P/0867/91) which states;

'The entire site will have been infilled and restored in accordance with the approved restoration plan required under the terms of the foregoing condition no later than 23 years from the date on which landfill operations first commence, which date will be notified in writing to the District Planning Authority, unless any extension to this time is granted in advance by the District Planning Authority.

Reason

To secure the timeous restoration of the site in the interests of the amenity of the area'

It is proposed that Condition 5 be varied to extend the period of time within which the quarry must be restored. The variation of condition would extend that period of time by 5 years to within 28 years from the date on which landfill operations first commenced instead of the 23 years from the date on which landfill operations first commenced. As stated above those landfill operations commenced in September 1997 which. Therefore the restoration would be by September 2025.

The applicant's agent has submitted a Supporting Statement and a Flood Risk Assessment in support of the application.

### **DEVELOPMENT PLAN**

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 Development Plan 2018.

There are no policies of the South East Scotland Strategic Development Plan (SESplan) relevant to the determination of this application. Policies DC1 (Rural Diversification), NH3 (Protection of Local Sites and Area), CH5 (Battlefields) and W1 (Waste Management Safeguards) of the adopted Local Development Plan 2018 are relevant to the determination of the application.

Material to the determination of the application is Scottish Planning Policy: February 2010, Scotland's Zero Waste Plan.

### **REPRESENTATIONS**

No public objection to the application has been received

### **COMMUNITY COUNCIL COMMENTS**

East Lammermuir Community Council have offered no comment on the application.

### **PLANNING ASSESSMENT**

The existing landfill site at Oxwell Mains is a well-established waste management facility that is located in the countryside. It is a use supported by Policy W1: Waste Management Safeguards of the adopted East Lothian Local Development Plan 2018.

The reasoning behind the proposed variation in the condition is set out in the applicant's supporting statement. In 2019 a Scottish Government Waste Markets Study confirmed that targets for the cessation of biodegradable domestic waste being sent to landfill in Scotland, as proposed within a Biodegradable Municipal Waste Landfill Ban, will not be met by the required date of 2021. The Scottish Government have therefore granted a further period of five years to cease domestic waste landfill.

A variation of the date of restoration of the site from 23 years to within 28 years from the first commencement of operations will allow the site to continue landfill operations to August 2025 which will meet with Scottish Government objectives that seek to avoid the need for new facilities by maximising the efficient use of existing facilities.

In 2019 the operation of an Energy Recovery Facility commenced at the site to divert domestic, commercial and industrial waste from landfill towards the generation of renewable energy feeding directly into the National Grid.

This, coupled with a drop-off in rates of landfill waste, has resulted in a reduction in overall levels of landfill at Oxwellmains to those anticipated at the time of the granting of planning permission (Ref: P/0867/91).

A phasing plan approved within planning permission (Ref: P/0867/91) proposed that 12 excavated cells would be infilled as part of landfill operations over the lifetime of the site. Due to reductions in waste deposited within landfill cells that number has been revised to 8 cells being filled or partially filled. As such it will not be possible to infill and restore the entire site within 23 years of the date of operation of the landfill site as set out by condition 5 of planning permission(Ref: P/0867/91).

It is therefore proposed that should planning permission be granted for a variation of condition 5 of planning permission (Ref: P/0867/91)for the infilling and restoring of the site within a period of 28 years from the date on which landfill operations first commenced, then a revised restoration plan should include: the submission for planning authority approval of a scheme detailing the final restorative contours of the site within a period of 3 years from the date of a grant of planning permission; and within 4 years of any planning permission being granted the submission to the planning authority for approval of a detailed restoration scheme and a post-restoration management plan.

The above matters can reasonably be secured through the impositions of conditions to any planning permission granted.

**The Councils Flooding and Structures Manager** has been consulted and, further to a submitted Flood Risk Assessment, has responded that the contents of that Report are acceptable and offers no objection.

**The Scottish Environment Protection Agency** have been consulted and do not object to the application.

**The Councils Environmental Protection Manager** has makes no comment on the application.

**Historic Environment Scotland** were consulted on the application and make no comment.

**Council Roads Services** have no objection to the application.

**Transport Scotland** were consulted on the application and confirm that they do not propose to advise against it or to object.

**Network Rail** were consulted and have no objection on grounds that the proposal will have no impact on railway infrastructure.

The proposed variation of condition 5 would not cause any deviation or change from the existing use of the site as a landfill waste facility. The site would continue to operate within the existing capacity and there are no proposed alterations to its size or scale of operation. Therefore the variation of condition 5 would not impact on the landscape character of the area or have any impact on the Dunbar Historic Battlefield site.

Therefore subject to the aforementioned planning control regarding the submission of a revised restoration plan, the proposed variation of condition 5 (in respect of the restoration of the quarry) of planning permission (Ref: P/0867/91) is consistent with policies DC1, NH3, CH5 and W1 of the adopted East Lothian Local Development Plan 2018.

Annex I of Planning Series Circular 3/2013 (Development Management Procedures) provides 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".

In this instance there are no conditions from planning permission (Ref P/0867/91) or from any other previous consents that would apply to this planning permission to vary condition 5 of planning permission P/0867/91.

## **RECOMMENDATION**

It is recommended that planning permission be granted subject to the undernoted conditions:

- 1 The entire site will have been infilled and restored in accordance with approved restoration and recontouring schemes required under the terms of the following conditions no later than 28 years from the date on which landfill operations first commenced in September 1997 and therefore the works to restore the quarry shall unless any extension to the time is granted in advance by the Planning Authority be completed by September 2025.

### Reason

To secure the timeous restoration of the site in the interests of the amenity of the area

- 2 Within a period of 3 years from the date of this planning permission a scheme detailing the final restorative contours of the site will be submitted for planning authority approval. The details shall include before and after restoration contours (at 1 metre intervals) of the excavated areas. All works to recontour the site will thereafter be carried out in strict accordance with the approved scheme unless otherwise agreed by the Planning Authority.

### Reason:

To ensure that the finished land form is acceptable in the interests of the visual amenity of the area.

- 3 Within a period of 4 years from the date of this planning permission a detailed restoration plan and phasing programme for the entire site will be submitted to the Planning Authority for approval. The restoration plan will provide for a mixed scheme of restoration to include agricultural land, tree planting, the creation of a wide range of natural habitats and a measure of the potential of the site to accommodate other uses such as recreational.

Restoration of the site will be progressively carried out and completed in accordance with the approved phasing programme unless otherwise agreed by the Planning Authority.

The detailed restoration plan will specify the method and standard of soil replacement, finished land surfacing, and the size, species and planting matrix of trees, hedges and other structural planting to be carried out within the site. It will also include proposals for the future post-restoration management and maintenance for the restored site, including all landscape planting undertaken.

### Reason

To ensure a satisfactory restoration of the site in the interests of the amenity of the area