

**Enforcement Report into Alleged Breach of Control**  
**at**  
**26 Bath Road**  
**Edinburgh**  
**EH6 7JU**

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**Development Quality Sub-Committee**  
**of the Planning Committee**

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**Owner/s**

**Occupier**

**Reference No:** 06/00329/E29

## **1. Purpose of Report**

### **Breach of Control:**

The unauthorised use of the site for the purposes of a waste transfer/re-cycling station.

### **Recommendation:**

That the Development Quality Sub-Committee resolves to take no further action in relation to the present operations.

## **The Site**

### **Site Description**

The site is the former Leith South railway station and associated land, located on the east side of Bath Road, and to the south of the docks complex.

The site has one large, former terminal building, with a weighbridge and office located at the entrance. There are rail tracks which access the site from the line to the east, with a single track on the north and south of the main terminal.

The surrounding area is largely industrial or commercial in nature, although there is a tenement building on the corner of Bath Road and Salamander Street and new residential development on land to the south-west of the site, on the south side of Salamander Street.

## **Site History:**

1989 to 2004 - site used for warehousing and distribution, incorporating a rail freight terminal.

October 2004 - planning application for the introduction of a waste transfer facility which incorporated 26 Bath Road and the adjacent site, 65 Salamander Street, was withdrawn.

June 2005 - Regenerate Scotland Ltd granted a waste management licence by SEPA.

## **Representations**

Although no direct representations have been received, the Department is aware of local and press interest in the operations.

## **Description of Development**

The change of use of the site from warehousing and distribution to a re-cycling/waste transfer station.

## **3. Officer's Assessment and Recommendations**

The determining issues in this case are whether the use of the site and associated buildings constitute permitted development under Class 34 of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992, and if not, what action, if any, should be taken in respect of the operations.

The site occupier, Regenerate Scotland Ltd, and its agents have stated that the use is 'permitted development', benefiting from permission granted to Railway or light railway undertakings by virtue of Class 34(1) of the above mentioned Order, which allows 'Development by railway undertakers or their lessees on their operational land, required in connection with the movement of traffic by rail'.

The on site operations involve the deposition of waste materials, which are sorted, both manually and by machinery, and removed from site by haulage. The sorting operations are carried out almost entirely within the large shed, although bricks are crushed to the rear of the shed by a mobile crushing unit.

Regenerate Scotland Ltd maintain that as the site is owned by Network Rail, with a lease to English, Welsh and Scottish Railways, and retains rail sidings, the present use of the land falls within the criteria set out in Class 34. At the time of the recent visit by Council officers, the site operator confirmed that the removal of materials from the site by rail was very infrequent, with perhaps one train entering the site per year. The remainder, which makes up the vast majority of the total tonnage treated by the plant, is transferred into and out of the site by road.

The current use is a distinct and wholly independent use, and by the admission of the site operator, does not rely on the site's rail network to transfer materials. Class 34 of the aforementioned Order stipulates that to benefit from permitted development rights, the development must be required in connection with the movement of traffic by rail. There does not appear to be any material link between the use of the site and the provisions of the Order, and in these circumstances, it is held that the use is a use that requires the

benefit of formal planning permission. Regenerate Scotland Ltd and its agents have been advised of this Department's opinion in relation to the status of the site.

SEPA has granted a waste management site licence, enabling Regenerate Scotland Ltd to hold 1000 tonnes of waste at any one time. An application to modify this licence was submitted in January 2006 to increase this figure to 24,000 tonnes; SEPA has now confirmed that due to concerns raised by this Department in relation to the site operations, it will not be granting the modification.

There is a conflict between the aspirations of the adopted local plan and the draft local plan and related non-statutory guidance such as the Leith Docks Development Framework (LDDF) -

The adopted North-East Edinburgh Local Plan identifies the site as 'Industry/Business', to be retained primarily in industrial, office and warehouse uses;

The site falls within an area identified in the draft Edinburgh City Local Plan as an 'Area of Major Change', where business and industrial uses are to be consolidated around the safeguarded 'Waste Management and Rail Freight' complex to the east of the present site. The draft local plan reinforces the objectives already set out in the LDDF, which identifies this land as suitable for new educational and community facilities. It is unlikely that a waste transfer use would be compatible with the aims of these documents.

Whilst the North-East Edinburgh Local Plan, as the adopted local plan, takes precedence over the draft local plan, the draft is a material consideration in assessing and determining the merits of a case.

The character of the surrounding area is industrial, and whilst residential developments have been introduced in nearby locations, remains the predominant land use in Bath Road. There are a number of waste management stations and other class 5, (General Industrial) uses, as set out in the Town and Country Planning (Use Classes) (Scotland) Order 1997, in close proximity to the site; concrete works are located on the opposite side of the road from the Regenerate Scotland operation.

Despite the strategic objectives of the draft local plan and the LDDF, the site continues to be located in the midst of other industrial sites and activities which potentially have a greater, adverse impact on existing and future residential and community uses.

The use of the site is unauthorised, and as such, is not subject to any controls that the planning authority may wish to exercise by condition or legal agreement. However, the operations have been on-going for more than 18 months, and have not resulted in a direct complaint being made to the Department in relation to on-site operations or related activities, such as vehicle movements. The use at its current intensity is compatible with the characteristics of the surrounding area and the aspirations of the adopted local plan. The licence issued by SEPA provides control over the amount of material that can be held on-site at any one time; this effectively controls the impact of any ancillary activities, in particular the number of vehicle movements, which could have an adverse affect on residential amenity within the surrounding area.

There may be concerns that if the Council allows the use to continue for a period of ten years, the site will benefit from 'lawful use' rights which would prevent enforcement action being taken. However, case law has held that the intensification of a use can result in a material change of use, even though the type of activities remains the same;

there would be no statutory time bar from re-assessing the issue in these circumstances to determine if statutory enforcement action would be appropriate.

It is recommended that the Committee resolves to take no enforcement action in relation to the current activities. It is also recommended that the site operators are advised that this decision does not constitute a granting of planning permission or alter the Council's position that planning permission is required for the current operations.

#### FURTHER REPORT

On 5th July 2006 the Development Quality Sub-Committee considered the use of the site, and determined the following:

- \* To continue consideration of the matter, and to take no enforcement action in the meantime in relation to the present operations.
- \* To formally invite a planning application for the current use.
- \* To ask the Director of City Development to report to the Planning Committee on the safeguarding within the Local Plan of existing rail access to major industrial sites at Leith Docks.

On 6th July 2006 a letter was sent to Regenerate Scotland Ltd requesting that they submit a retrospective application, no later than 4th August 2006, to regularise the use of the site. To date no application has been received by this Department.

The final point will be assessed in a separate report to the Planning Committee.

It is recommended that the Committee ratifies its original decision of 5th July 2005, and taken no further action meantime in respect of the unauthorised waste transfer/recycling station.

*Alan Henderson*

**Alan Henderson**  
Head of Planning and Strategy

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<b>Contact/tel</b>	Alan Moonie on 0131 529 3909
<b>Ward affected</b>	Ward 22 - Lorne
<b>Local Plan</b>	North East Edinburgh Local Plan
<b>Statutory Development Plan Provision</b>	North East Edinburgh Local Plan – Industry/Business Draft Edinburgh City Local Plan – Area of Major Change
<b>File</b>	Enforcement
<b>Date Complaint Received</b>	17 May 2006

**Planning Policy**

Policy ENV11(Waste Management) of the Edinburgh and Lothians Structure Plan supports proposals meeting Lothians and Borders 'Area Waste Plan' Best Practicable Environmental option.

The site is identified in the North-East Edinburgh Local Plan as an area allocated for Industry/Business; mainly industrial/business areas to be retained primarily in industrial, office and warehouse uses.

Policy ED4 (Development - Defined Areas) establishes a presumption in favour of general industrial development in areas defined as 'Industry/Business.

Policy H7 (Housing Amenity) establishes a presumption against....changes of use likely to introduce increased levels of traffic or activity to the detriment of residential amenity.

Policy T13 (Freight Rail Transport) seeks to safeguard existing rail access to major industrial sites at Portobello and Leith Docks.

The site is identified in the draft Edinburgh City Local Plan as an 'Area of Major Change'.

Policy Inf 1(Waste Management) promotes facilities which will assist the sustainable management of waste in Edinburgh.....which do not cause significant harm to the local environment or the amenity of neighbouring occupiers.

## Appendix A

• EDINBURGH •  
THE CITY OF EDINBURGH COUNCIL

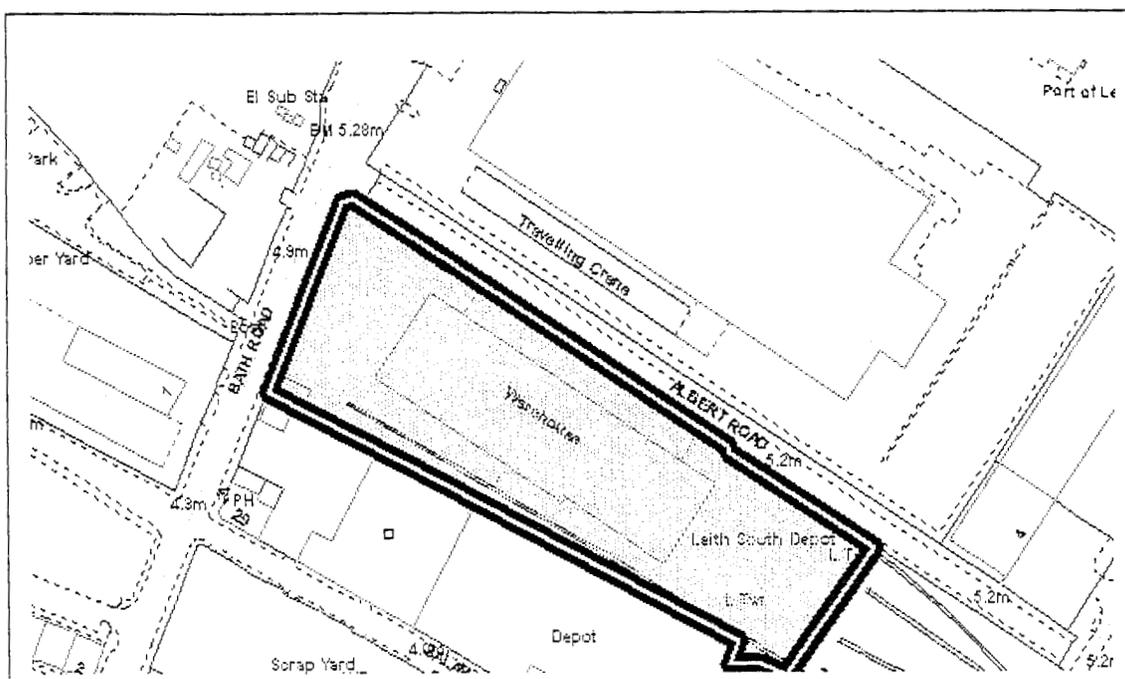
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### Location Plan



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