

Enforcement Report into Alleged Breach of Control
at
95 Baird Road
Ratho
Edinburgh
EH28 8QX

Development Quality Sub-Committee
of the Planning Committee

Owner/s Brewsters
Occupier Robert Purvis Plant Hire Ltd
Reference No: 06/00098/E39

1. Purpose of Report

Breach of Control:

The unauthorised use of land for recycling of construction and demolition materials with associated plant and ancillary facilities, including storage pens.

Recommendation:

It is therefore recommended that the Sub-Committee resolves to continue this matter until further investigations and monitoring, including further contact with Robert Purvis, are carried out.

The Site

Site Description

The site comprises a former cement batching plant located to the west of Baird Road, approximately 300m to the north of Ratho Village. The majority of the site is relatively flat and hard surfaced with the exception of a rectangular section of the site located to the west which rises in level. A number of structures remain on the main part of the site which were formerly used in association with the pre-cast concrete manufacturing and batching plant. The structures include a large corrugated iron shed with a ramp link sited within the eastern boundary. A dispatch office is sited near the entrance to the site, and a walled enclosure is sited within the western boundary.

Vegetation has become established along the perimeter of the site. A brick wall forms part of the roadside boundary treatment adjacent to the entry of the site. Earth bunding,

approximately three metres high, is positioned along the south boundary of the site and 71 Baird Road.

Semi-detached cottages are sited adjacent to the south boundary along the roadside. A two storey disabled people's centre and a play area is located on the opposite side of the road. To the north and west is open countryside. The M8 extension is sited to the northwest. Hillwood quarry lies to the north. Footpaths lie to the north and west.

Site History:

The former use of the site for the purposes of a pre-cast concrete works came into existence sometime between 1955 and 1965 when the site formed part of the Midlothian County Council area.

June 1989 - Proposals for a concrete batching plant are considered to represent permitted development where it is considered that the existing 330 vehicle movements per week being increased by 125 would be acceptable and not result in an intensification of use requiring planning permission.

March 1990 - Planning permission was granted in retrospect for the creation of a storage area (2440/89) subject to landscape conditions.

June 1999 - Planning permission refused against the recommendation of the Director of City Development for the installation of a construction and demolition materials recycling plant together with ancillary facilities (A 02674 98). Planning permission refused for the following reasons: (a) proposals having an unacceptable impact on amenity and traffic generation contrary to policy ED5 of the Lothian Structure Plan, (b) result in levels of traffic generation detrimental to road safety and residential amenity contrary to policy TRA2 and M9 of the Rural West Local Plan and (c) detrimental impact on local residential amenity, contrary to Policy ED3 of the Rural West Edinburgh Local Plan.

June 2002 - Planning permission refused for change of use of former cement batching plant to form an airport park and ride facility and associated engineering works (01/04329/FUL).

February 2003 - Appeal to Scottish Ministers in respect of the park and ride facility dismissed. Reporter concludes that proposals would do nothing to remedy the local eyesore of the derelict large shed and raised loading area, which are the most substantial and objectionable features of the site, proposal not appropriate in scale and character to its rural surroundings, could not favour proposal in a predominantly rural, but vulnerable part of the Countryside Policy Area and AGLV while landscape mitigation would not make development other than an intrusion. The Reporter also recognised concerns in relation to vehicle movements and the nature of the surrounding road network.

February 2006 - Enforcement investigation logged regarding the Industrial (Class 5) activities of a construction and demolition materials recycling plant.

February 2006 - Planning Contravention Notice Served.

March 2006 - Response to Planning Contravention Notice received. Site operators Robert Purvis Plant Hire Ltd confirm leasing of site from August 2005 and advise their

understanding is that site has planning consent which would adequately cover their processing and storage operations. An exemption to carry out the operations required was obtained from the Scottish Environment Protection Agency (SEPA). The former concrete manufacture facility had similar operations and traffic movements to their use of the site. The main reason for requiring a facility in the Edinburgh area is to service a contract with Edinburgh Roads for a comprehensive road and pavement upgrading programme in and around Edinburgh. The site is located in close proximity to local quarries with many vehicles using the facility visiting the quarry for reloading thereby reducing traffic movements and associated road wear and pollution. The remoteness of the site means that inconvenience to third parties is kept to a minimum.

15 June 2006 - Planning Committee instructs the Head of Planning and Strategy to prepare a planning brief in respect of the site which would identify a less unacceptable use for the site. The Director of Health and Social Care to be consulted with regard to the requirement for a residential care home/day care centre in the west of the city.

Representations

Two letters of complaint have been received by members of the public. Primary concerns relate to the late night/weekend operation, noise from mobile crushers, installation of storage pens and associated facilities, road safety implications and perceived lack of planning permission. Additional correspondence has been received from the local councillor and the community council.

Consultations

Road Services – Road Services advise that the Council, as Roads Authority, was unaware of materials being transferred from Braehead to Ratho. Only Robert Purvis would have details of any materials transferred between the two locations. In March 2006, dry/inert materials were no longer accepted at Braehead and subsequent Council loads were taken to the recycling facility at Ratho. No “tendering” arrangements exist for Road Services use of the site at Ratho. Robert Purvis offered to accept materials from Road Services and specified the rates that would be charged for them accepting materials at their recycling facility. As of the beginning of June 2006, approximately £2,364.20 worth of materials had been taken to Ratho.

Services for Communities (formerly Environmental & Consumer Services) advise that three complaints have been received. The first complaint on 21 October 2005 related to a rave event. The complainant was advised to contact the police. This complaint did not relate to the current use of the site. A further two complaints from local residents were received on 13 and 17 April 2006. These complaints related to noise from the reversing of vehicles and bleeping noises and noise from the operation of the concrete crusher. Both complaints were referred to Planning Enforcement to investigate.

Corporate Services – The Council Solicitor was consulted with respect to issues concerning lawful planning use and abandonment. The advice of the Council Solicitor is that the current circumstances are indicative of abandonment and that further investigation by the department of City Development including contact with Robert Purvis should now be undertaken to ensure that officers have full information.

The Council Solicitor advised that had an application been made for a Certificate of Lawful use under section 150 of the Town and Country Planning (Scotland) Act 1997,

any Certificate granted should describe the use, operation or activity and should identify the Use Class within which it falls because by virtue of Section 26(2)(f) of that Act it is not development to use buildings or other land for any other purpose of the same use class. It would seem therefore not to be relevant that the actual use has changed from cement works to construction materials recycling plant if the use is essentially the same in character and characteristics. Whether or not a material change of use has taken place, is a matter of fact and degree. It is necessary to compare the planning impact of the existing use with the previous use as a cement works, including noise and dust emission, traffic movements and times of operation to which the complainers refer.

If, following investigations, it can be concluded that there is no different planning impact in terms of traffic movements, noise and dust emission from the operations on site, visual amenity and times of operation the current use might be considered lawful, assuming that the current use of the land and buildings in question does not involve development and that the class 5 industrial use is not considered to have been abandoned.

The fact that the recycling business is not being operated within the existing buildings and storage facilities on site but requires dedicated new plant and storage pens and hoppers is indicative of a change of use/ development requiring planning permission. If a Class 5 use is lawful, development consisting of the installation of additional or replacement plant or machinery would be permitted development (Class 24 of the General Permitted Development (Scotland) Order 1992) unless (a) it materially affects the external appearance of the premises of the undertaking concerned, or (b) it exceeds the height of anything being replaced.

On the matter of abandonment, four factors should be considered (a) the physical condition of the building, (b) the period of non-use (c) whether there had been any other use and (d) evidence of the owner's intentions; once a use has been considered abandoned it cannot be resumed without a grant of planning permission.

It would appear that there has been no attempt on the part of the current occupier to restore the vandalised/ruinous buildings on site but rather mobile crushing plants have been introduced and new concrete storage pens and hoppers have been installed. There is therefore no resumption of use of the original buildings on site which remain derelict. The cement works use was not operated for a period of at least 6 years. There has been within that period the short term use of the site for the storage of scaffolding material and planning applications, which were refused, for use as a park and ride facility and use as a construction and demolition materials recycling plant were made. These circumstances are indicative of abandonment.

Description of Development

The determining issue is whether the activities are authorised at this location.

The recycling plants are mobile, with approximately an overall length of 17 metres, a height of 4.6 metres and a width of 2.5 metres.

Construction and demolition materials from redevelopment/site clearance work are stored on site. Material is in a mixture of sizes. Storage pens have been constructed.

Material comprising broken concrete, brick, stone etc is delivered to the site by contractors engaged in construction and demolition operations. The material is

crushed/reduced to approximately 75-100mm in diameter or less and then graded and arranged into stock piles to await collection.

Access to and from the site is gained via the existing access onto Baird Road.

3. Officer's Assessment and Recommendations

Determining issues include the existing lawful use of the site, whether current activities represent a change in character of use as to involve a material change of use, whether existing use rights have been abandoned and whether current activities represent an intensification of use resulting in a material change of use.

Lawful Use

Provisions contained in section 150(5) (b) of the 1997 Act require that any certificate of lawfulness describe the use and operations (in the case of any use falling within one of the classes specified in an order under section 26(2) (f) identifying it by reference to class). Section 26(2) (f) specifies that the use of buildings or other land for another purpose of the same class shall not be taken to involve development.

Guidance contained in Scottish Office Development Department Circular 4/1999 *Planning Enforcement* indicates that where a development or activity is immune from enforcement action, it is lawful for planning purposes. This applies whether or not a certificate has been issued, while there is no compulsion to apply for a certificate.

The use of the site for the construction of pre-cast concrete blocks and as a concrete batching plant would represent a general industrial use in terms of Class 5 of the Town and Country Planning (Use Classes) (Scotland) Order 1997. The primary uses of the site involved the manufacture of pre-cast concrete blocks and concrete batching processes with storage forming an ancillary or secondary use. Neither of the uses was subject to planning conditions limiting the use or hours/days of operation. This point is recognised in the report by the Director of City Development in relation to the 1998 application.

Abandonment

In considering whether or not the use of the site has been abandoned, four tests have been established by the courts (see consultation response from the Council Solicitor). The Council Solicitor is of the view that further investigation is necessary before a definitive view can be reached whether the use was abandoned.

Material Change of Use

Not every change of use involves development. Only when a change of use is material does development occur. Determining materiality of any change is a matter of fact and degree where it is the primary or predominant use against which any change of use needs to be compared. It is firstly necessary to establish the "planning unit". A useful starting point involves considering the unit of occupation as being the planning unit, unless any smaller or separate planning units can be identified. In this particular case, the activity associated with the production of pre-cast concrete products and the concrete batching process was not limited to the buildings currently on site. It would

therefore be wrong to conclude that the buildings form the planning unit when the correct identification of the planning unit includes a larger area of land to the south of these buildings. This area of land is physically distinct from surrounding land and boundaries are identified by geographical features. It is therefore submitted that the planning unit remains broadly the same between the current use and the previous use of the site and includes the building along with ancillary storage, yard and turning facilities.

Turning to the question of the primary or predominant activity against which the change of use must be compared, it is submitted that the primary activities associated with the former use of the site related to the manufacture of pre-cast concrete products and cement batching processes. The storage of materials on site was ancillary to this predominant activity. It is against this primary/predominant activity that the current use for the recycling of demolition and building materials needs to be considered.

In comparing activities it is useful to refer to the definition of “industrial process” as contained in the Town and Country Planning (General Permitted Development) (Scotland) Order 1992. An industrial process is defined to include “...a process for or incidental to the making of any article or part of an article, the altering, repairing, maintaining, ornamenting, finishing, cleaning, washing, packing, canning, adapting for sale, breaking up or demolition of any article...”.

There are similarities in the activities associated with the former and current uses of the site. Both uses involve the transportation of materials on to site, their alteration and processing to form another product and their transportation off site. The principal activity associated with the recycling process is the crushing of building and demolition materials by feeding through mobile crushing plant to form aggregate. The principal activity involves an industrial process. Both the use of the site for the manufacture and batching of cement products and the recycling of demolition and building materials would constitute industrial processes which would fall within Class 5 General Industrial purposes of the Town and Country Planning (Use Classes) (Scotland) Order 1997. The Council Solicitor accepts that the current use is within Class 5.

There are similarities between the existing and previous use of the site and Committee needs to consider whether the current use has consequences in planning terms. Primary evidence of activities occurring on site was gained by conducting two-four hour monitoring exercises on Thursday 25 May 2006. The monitoring exercises covered the hours 0735hrs to 1135hrs (morning session) and 1235hrs to 1635hrs (afternoon session). During these periods it was witnessed that vehicles delivered demolition and building material to the site. These materials were offloaded. A mechanical shovel was utilised to break-up larger materials before items were processed through a mechanical crusher. On average, the period for turnaround for vehicles visiting the site was approximately 15 minutes. Noise associated with the use of the mobile crushing plant was audible at the boundary of the site, but was not excessive. The crusher was operational for one and a half hours during the morning session and one hour and five minutes during the afternoon session. When mobile units were not in use, background noise from traffic on the M8 extension was clearly perceptible. Noise from the breaking of larger items was intermittent while noise associated with vehicle alarm beeping during manoeuvres was sporadic and negligible. Weather conditions during the monitoring exercise were fine and sunny and there was no evidence of dust emanating from the site. An element of dust on the road at the access to the site was witnessed, but this was of a minor nature.

It was not possible to obtain primary evidence of noise and dust from the use of the site as a cement works but it is submitted that there is unlikely to be any significant differences in environmental impacts associated between the two uses.

The consideration of the application in 1998 for the same activity to that being investigated at present is not determinative of whether there has been a material change of use requiring planning permission. This application was not invited by the Council, as planning authority, and was determined as submitted by the applicant.

Operational Development

Under Part 8, Class 24 of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992, the installation of additional or replacement plant or machinery constitutes permitted development (where the development is carried out on industrial land for the purposes of an industrial process). It is arguable as to whether the crushers constitute development given that they are mobile. Nevertheless, the mobile crushers, storage pens and ancillary facilities would not materially affect the external appearance of the premises or exceed a height of 15 metres. The site is well screened from Baird Road and the topography of the site, sitting in a natural valley, limits its visual impact on the surrounding area.

Intensification

Intensification of use can only amount to a material change of use where it is in some way significant from a planning viewpoint. Some evidence of vehicle movements associated with the former use of the site exists on planning files.

A letter from the Director of Planning to Peter P C Allan, dated 9 June 1989, in connection with the proposed concrete batching plant use recognises the existing 330 vehicle movements per week being increased by 125 as being acceptable and not amounting to an increase which would involve a material change of use.

Evidence from the late 1980s, when John Fyfe Ltd operated the site, indicates approximate daily movement of 68 vehicle trips, amounting to 408 trips per six-day week.

Primary evidence of vehicle trips from the current use of the site was gained by conducting two-four hour monitoring exercises on Thursday 25 May 2006. The monitoring exercises covered the hours 0735hrs to 1135hrs (morning session) and 1235hrs to 1635hrs (afternoon session).

During the morning session there were a total of 19 vehicle trips from the site. During this period there were a total of 572 vehicle movements along Baird Road, with 218 vehicle movements in a northerly direction and 354 vehicle movements in a southerly direction. During this period a total of 15 LRT bus movements were recorded.

During the afternoon session there were a total of 11 vehicle trips from the site. During this period there were a total of 580 vehicle movements along Baird Road, with 270 vehicle movements in a northerly direction and 310 vehicle movements in a southerly direction. During this period a total of 16 LRT bus movements were recorded.

At no time did any vehicles entering or leaving the site do so from a southerly direction (i.e. no vehicles entered the site or left via Ratho Village).

By adding the highest recorded number of vehicle movements to create an “evening session” four hour monitoring slot, the level of vehicle movements associated with the current use of the site falls well short of the daily total during use and occupation by John Fyfe Ltd. It therefore cannot be argued that there has been an intensification of use resulting from increased vehicle movements. A comparison of vehicle trips associated with the site against the total number of vehicle movements along this stretch of road does not demonstrate any significant increase or impact given that the number of vehicle movements is comparable with the local LRT bus service. It could therefore not be argued that there are any significant impacts on highway safety or reduction in the level of amenity.

With respect to the days and hours that the site is operating, a number of site visits were carried out over the period 16 to 19 June 2006.

On Friday 16 June 2006 at 2225hrs the gates were closed and there was no sign of activity.

On Saturday 17 June 2006 between 1052hrs and 1105 hrs, there were two small white vans with Purvis livery parked just inside the gates, which were open. There was one JCB operating as well as one large mechanical shovel. These were moving limited amounts of material about. There were no lorries on site or delivering material at that time and no crusher was in operation. Apart from the vehicle engines, noise levels were limited and sporadic. Noise from the site could be heard outside the site and from the vicinity of 71 Baird Road, the neighbouring cottage, but not from the outskirts of the village at the junction with Freeland Road. Motorway traffic could be clearly heard from locations adjacent to the site and the activity at the site was regularly drowned out by the passage of vehicles along Baird Road. At 2237hrs the gates were closed and no sign of activity.

On Sunday 18 June 2006 the gates were closed and there was no sign of activity from the site. Site visits were conducted at 1100hrs, 1340hrs and 1545hrs.

On Monday 20 June 2006 between 1900hrs and 1943 hrs the gates at the site were open and there was a van on site. The crushers were not operational and there were no vehicles delivering materials to the site.

On the basis of the above, and the previous history of the site which was known to operate over a six-day week, it could not be argued that there has been an intensification of use resulting in a material change of use requiring planning permission. While the complainants allege that the site has operated up until midnight and on Sundays, the frequency of such occurrences could not be considered significant enough to merit an intensification of use.

Conclusions

Consideration of this case was continued at the meeting of the Development Quality Sub-Committee on 5 July 2006 at the request of the Head of Planning and Strategy in order that advice by the Council Solicitor might be fully considered and investigated.

The Council Solicitor has from the outset indicated that whilst there is evidence which

is indicative of intensification of use and abandonment, further information is required before a definitive view can be taken. Such information is required to establish whether there is intensification of use and the nature of use of the site and to clarify the legal position relating to the issue of abandonment and the implications of relevant details of the site's planning history.

It is therefore recommended that the Sub-Committee resolves to continue this matter until further investigations and monitoring, including further contact with Robert Purvis, are carried out.

Alan Henderson

Alan Henderson
Head of Planning and Strategy

Contact/tel	Cameron Rush on 529 3908
Ward affected	Ward 03 - Dalmeny/Kirkliston
Local Plan	Rural West Edinburgh
Statutory Development Plan Provision	Countryside Policy Area Area of Great Landscape Value
File	1621
Date Complaint Received	7 February 2006

Planning Policy

National Planning Policy Guideline NPPG4 Land for Mineral Working

National Planning Policy Guideline NPPG10 Planning and Waste Management

Lothian Structure Plan

The site is located within a Countryside Policy Area and is designated as an Area of Great Landscape Quality in the finalised Rural West Edinburgh Local Plan.

Policy ENV16 States that there is a presumption against isolated new development in the countryside except where development is essential to the operation of an activity which is itself appropriate to the countryside. Exceptions must satisfy certain criteria.

Policy ENV21 States that Council will review the range of landscape types for consistency taking into account existing designated areas requiring protections.

Rural West Edinburgh Local Plan

The site is located within a Countryside Policy Area and is an Area of Great Landscape Value.

Relevant Policies

Policy E5 restricts development in Green belt and Countryside policy areas to protect their landscape qualities, their rural character and amenity.

Policy E6 states that where acceptable in principle, development proposals in the Green Belt or Countryside must meet high standards of design and landscaping and meet criteria to minimise impact.

Policy E9 protects Areas of Great Landscape Value from development which would detract from landscape quality.

Appendix A

•EDINBURGH•
THE CITY OF EDINBURGH COUNCIL

Address:

95 Baird Road
Ratho
Edinburgh
EH28 8QX

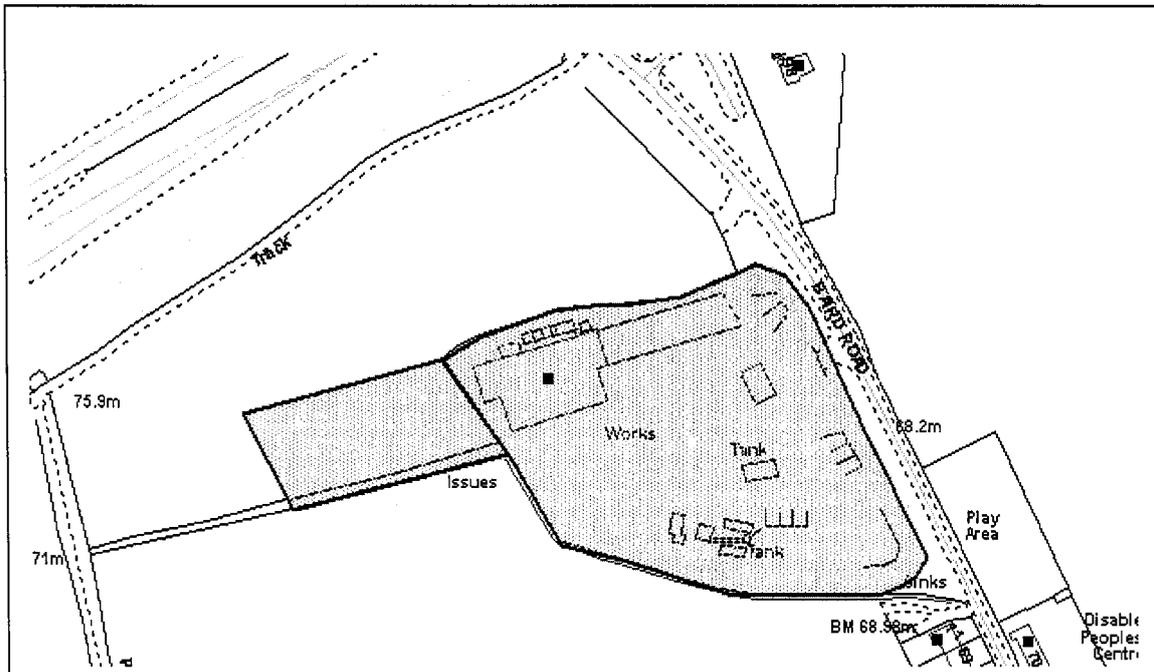
Breach of Control:

The unauthorised use of land for recycling of construction and demolition materials with associated plant and ancillary facilities, including storage pens.

Reference No:

06/00098/E39

Location Plan



Reproduction from the Ordnance Survey mapping with permission of the Controller of Her Majesty's Stationary Office © Crown Copyright.

Unauthorised reproduction infringes Crown copyright and may lead to prosecution or civil proceedings. Licence Number 100023420 The City of Edinburgh Council 2004.