

**Enforcement Report into Alleged Breach of Control
at
Kaimes Quarry, Kirknewton**

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

Owner/s Earl of Morton
Occupier Waste Recycling Group
Reference No:

1. Purpose of Report

To update Committee on the outcome of continued discussions between Waste Regeneration Group (Scotland) Ltd and Kirknewton Community Council and seek authorisation for withdrawal of the Enforcement Notices upon confirmation of agreement.

Breach of Control:

Non - compliance with Enforcement Notices, dated 29 December 1999, in terms of failure to remove overburden mound.

Recommendation:

That Committee notes the content of this report and resolves to authorise the withdrawal and removal from the Enforcement Register of the two Enforcement Notices served on 29 December 1999, in terms of section 7(2) of the Enforcement of Control (No.2) (Scotland) Regulations, upon written receipt of confirmation of conclusion of an Agreement between Waste Recycling Group (Scotland) Ltd and Kirknewton Community Council.

Background

The history of the site is complex. This report focuses on the outcome of continued discussions between Waste Regeneration Group (Scotland) Ltd and Kirknewton Community Council with respect to the issue of the overburden mound.

In summary, the site was the subject of two enforcement notices which were served on

29 December 1999 requiring complete rehabilitation work at the quarry within a period of 18 months. A subsequent appeal to the Scottish Ministers was dismissed and the Reporter resolved to uphold the Notice but vary its terms. The amended notice reads:

“by 30 November 2002 complete the restoration of the landform at Kaimes Quarry, Kirknewton to achieve the levels shown in Final Landform Drawing K1/7A (and, for the avoidance of doubt, overfill to the extent of not more than 20% of the respective depths of the fill material up to the said levels shown in Drawing K1/7A is permitted over the whole site to allow for settlement in accordance with the guidance contained in waste Management Paper 26B), which shall include top soil and subsoil to a depth of not less than one metre and thereafter plant with grasses as specified in Drawing K1/7A and a mixture of typical moorland shrub species such as common gorse (*ulex europacus*) and cowberry (*vaccinium vitis-idea*) which mixture of typical moorland shrub species shall have the prior written approval of the planning authority”.

In paragraph 80 of the appeal decision, the Reporter had concluded that: “... to achieve the final landform levels shown on the drawing it will be necessary for your client to remove the overburden mound, which will not settle over time”.

Reports from McBride Habitats and Scottish Natural Heritage concluded that re-profiling of the site as originally proposed has the least satisfactory option. The destruction of badger setts and well-established wildlife scrub habitat is not outweighed by the marginal long-term benefits. Partial re-profiling of the site is less destructive but has limited environmental merits.

9 July 2003 – Committee agree the recommendations of the report by McBride Habitats, as endorsed by Scottish Natural Heritage and allow Waste Recycling Group one month to complete all measures proposed therein and in the event that the recommended measures are fully implemented by Waste Management Group timeously and to the satisfaction of the Head of Planning and Strategy, that the Enforcement Notice be formally amended accordingly and so deemed to have been complied with fully.

3 March 2004 – The Director of City Development reports that the Waste Recycling Group, Scottish Natural Heritage and the Kirknewton Community Council had failed to reach an agreement and detailed their positions and the options available to the Council, which were:

- 1) To take no further action;
- 2) To report the matter to the Procurator Fiscal; or
- 3) To take direct action.

Details of the aftercare agreement were provided. The Sub-Committee decided to report the matter to the Procurator Fiscal as the Waste Recycling Group had failed to comply with the terms of the enforcement notice as upheld by the Scottish Ministers on appeal or to take other reasonable action, resulting in an unacceptable effect on public amenity.

29 March 2004 – the Head of Planning and Strategy writes to the Procurator Fiscal’s Office providing a copy of the committee report expanding on the background of the case and providing relevant information.

1 April 2004 – The Procurator Fiscal Depute requests a full report in order for consideration.

9 February 2006 – solicitors acting on behalf of Waste Recycling Group (Scotland) Ltd contact the Council to advise that an Agreement between the site operators and the Community Council has been drafted and approved by the Community Council. In essence the Agreement requires the site operators to pay an agreed sum of money for environmental projects but is conditional upon withdrawal of the Enforcement Notices and their deletion from the Enforcement Register. In addition, the Agreement includes an undertaking for the Community Council to write to the Head of Planning and Strategy confirming formally and irrevocably an agreement that no further action needs to be taken in furtherance of two Enforcement Notices dated 29 December 1999 and a formal request that the Council withdraw these Enforcement Notices and delete all references to the same from the Enforcement Register.

26 April 2006 – Kirknewton Community Council email the Council to advise that “it would give us considerable comfort if Committee were to agree to withdraw the Enforcement Notices subject to our agreement with Waste Regeneration Group, such “pre-approval” would help us sign up to this Agreement with confidence and I trust I am correct in understanding that once “pre-approved” our letter as per the draft would finalise the process”.

3. Conclusions

Since Committee last considered this item the site operator has changed and there has been fruitful dialogue between parties resulting in a draft agreement being reached. The principle that the overburden mound is not re-profiled has previously been accepted. Given that there is agreement between parties which results in a satisfactory outcome for the Community Council, where no further action needs to be taken by the Council in the furtherance of the enforcement notices, it is acceptable to agree to withdraw the Enforcement Notices and remove reference to them in the Enforcement Register.

This does not prejudice the Council in determining to take enforcement action against any future breaches of planning control.

It is recommended that the Committee resolves to note the contents of this report and accepts the recommendation above.



Alan Henderson
Head of Planning and Strategy

Contact/tel	Callum Aitchison on 529 3946
Ward affected	Ward 03 - Dalmeny/Kirkliston
Local Plan	Rural West Edinburgh Local Plan
Statutory Development Plan Provision	
File	1621
Date Complaint Received	