

Bath & North East Somerset Council

MEETING: **Development Control Committee**

MEETING DATE: **30th March 2012**

AGENDA
ITEM
NUMBER

REPORT OF **David Trigwell, Divisional Director of Planning and Transport Development**
Maggie Horrill, Planning and Environmental Law Manager (01225 395174)

REPORT ORIGINATOR **Ms Lisa Bartlett, Development Manager (01225 477281)**

TITLE: **UPDATE REPORT – LAND AT FORMER FULLERS EARTH WORKS, FOSSEWAY, COMBE HAY, BATH**

WARD: **Bathavon West**

AN OPEN PUBLIC ITEM

BACKGROUND PAPERS:

- (I) Application for planning permission 00/02417/FUL
- (II) Supporting evidence submitted with the Certificate of Lawful Existing Use Application in 2006 (06/03301)
- (III) Development Control Committee Reports of 29 October 2008; 26 February 2009; 18 May 2011
- (IV) Documentation related to enforcement notice appeals dated 20 April 2009
- (V) West of England Joint Waste Core Strategy, adopted March 2011 (JWCS)
- (VI) High Court Judgment of Mr. Justice Lindblom dated 3 December 2010
- (VII) Other historic applications and correspondence
- (VIII) Statement of Common Ground from call-in Inquiry 2003 in respect of application 00/0241/FUL
- (IX) Enforcement Notices dated 25 February 2009
- (X) Environmental Impact Assessment – Screening Opinion
- (XI) Aerial photographs and 2003 photographs

ANNEXES

- Annex A – Development Control Committee Report of 5 January 2012
- Annex B – Letter dated 12 January 2012 from Harrison Grant
- Annex C – Map in Joint Waste Core Strategy showing boundary of allocation
- Annex D - Proposed site plan – Residual Waste Facility

1.0 PURPOSE OF REPORT

1.1 This Report arises from the Resolution of this Committee at its Meeting on 5 January 2012 and its purpose is to update the Committee on the progress of negotiations to bring forward a Residual Waste Facility on the site and to address the further points of the Resolution. A copy of the January report is attached to this Report (Annex A), for ease of reference, but without the annexes.

1.2. This Committee unanimously resolved at its Meeting on 5 January 2012:-

- (1) to continue to work positively with the owner of the site to achieve delivery of a residual waste facility on the site;
- (2) that the Committee Members make a Site Visit;
- (3) that a further report detailing progress with negotiations towards achieving a residual waste facility on the site be submitted to this Committee on or before 30th March 2012 and that the Strategic Director for Service Delivery if possible attend that meeting to give appropriate advice;
- (4) that it was not considered expedient to take enforcement action before the matter is considered further by this Committee on or before 30th March 2012 where the contents of a further report will be considered including further consideration of the expediency of whether or not enforcement action should be taken against what appears to be breaches of planning control as identified in the Report; and
- (5) that the report address the matters raised within the bullet points of the statement provided by the Bath Preservation Trust

UPDATE

2. THIRD PARTY REPRESENTATIONS

2.1. Representations have been received from Harrison Grant, acting on behalf of Protect Bath Limited – Victims of Fullers Earth (Annex B). Harrison Grant were advised of the Committee's resolution and that Officers have been engaged in gathering information so as to ascertain the position regarding unauthorised development on the site and invited to forward any evidence or information that may assist Officers further in their analysis. No evidence or information has been received from Harrison Grant.

2.2. Several letters and other correspondence have been received from a concerned local resident raising the following concerns:

- Administrative concerns about the negotiations with the landowner and lack of information available publicly;
- Concerns about whether or not officers have been acting in accordance with instructions from the Committee;
- A call for a publicly available 'development brief' directing the negotiations;
- Concerns about whether sufficient safeguards are being ensured to minimise harm to the green belt;
- Comment that The unauthorised activities and the potential Residual Waste Facility (RWF) are separate and the latter should not be an excuse for inactivity;
- Concerns that the land owner has not confirmed agreement with the view expressed by officers at the meeting in January that there would be no immunity before 1 March 2013.
- Concerns about agreements of details pursuant to conditions for the agricultural land improvements (10/01774/FUL) on adjoining land, potentially prejudicing the taking of enforcement action. This mainly relates to the stockpiles of material; and
- The RWF should not extend beyond the area marked 'A' (and coloured yellow) on the report to the January meeting and that no favourable consideration should be given to RWF beyond that area;

2.3. It is necessary to comment upon these points in turn. The administrative concerns and other concerns have been addressed by specific replies from both the Divisional Director and the Strategic Director. The discussions about the potential Residual Waste Facility are commercially sensitive and so not fully available to members of the public. The proposals are for the potential operators to suggest rather than a brief from the Council albeit that the policy background (see below) sets constraints for the development. Any proposals are expected to be designed to minimise harm to the green belt amongst other constraints.

2.4 The discussions presently taking place are without prejudice to the full decision making process. Although the discussions about the RWF and the unauthorised activities are separate matters, the committee has already directed officers to negotiate with the landowners. The negotiations have been taking place as explained in this report, but clearly, the consideration of the expediency of enforcement action needs to be reviewed and the time limits including the potential risk of a legal challenge are very relevant concerns to consider.

2.5 The discharging of conditions relating to the neighbouring agricultural land improvements has not legitimised the stockpiles. It has not affected the Council's ability to consider enforcement action on the Fullers Earth Site. The conditions do not restrict the source of soil used and nor do they affect land outside of that application site.

2.6 On the final point The Committee will be aware that Bath and North East Somerset Council adopted the Joint Waste Core Strategy (JWCS), as did the other unitary authorities making up the former Avon area, on the 25 March 2011. The JWCS' adoption resulted from an examination in public and a binding report published by the Inspector in January 2011. The JWCS sets out the strategic

planning policy for the provision of waste management infrastructure in this area and the Committee are no doubt aware that an area of land within the former Fullers Earth Works has been identified and allocated as a site for delivery of a Residual Waste Facility. The extent of that allocation is delineated red on a Map contained at figure 10 of Appendix 1 – Key Development Criteria and Detailed Maps in the JWCS and extends to 3.36 hectares (ANNEX C). Although the area marked 'A' is considered the "fallback" area which has an historic industrial use, the current 'development plan' defines a broader area for this specific type of development and that is the starting point for decision making.

3. COMMITTEE SITE VISIT - 19 MARCH

3.1. By the time this matter is reported back to Committee Members will have had the benefit of visiting the Site.

4. BATH PRESERVATION TRUST

4.1 The points made by the Bath Preservation Trust are outlined with responses below:

a. The Trust requested it be made clear what the terms of negotiation are and at a minimum note that, if any breakdown in negotiations were to occur, including refusal for reasonable site access in order to plan for future uses, the decision on expediency of enforcement action would be reviewed;

These matters are covered in the main body of this report.

b. The Trust requested it be made clear in what timeframe a planning application for a residual waste facility should be brought forward; and given that the Officer's report had suggested that such a facility may not now be needed at the scale envisaged, this could not be left as the reason to hold fire on the site as a whole; and

A pre-application submission to the development team and a formal request for a scoping opinion for the development - a residual waste facility and the consolidation of existing waste development and concrete batching operations at the former Fullers Earthworks site has been received by the Council. The submitted masterplan for the site comprises of four main elements:

- A household waste recycling centre
- Consolidated skip hire, concrete batching and bulk waste recycling centre
- Offices in the existing Fullers Earth works building

- A new waste facility comprising mechanical biological treatment and refuse derived fuel production and an anaerobic digestion plant

c. That enforcement proceedings may be initiated against all operational developments which do not have planning permission outside Site A.

As explained in the previous committee report in January (section 4.080 of Annex A), if enforcement action were taken, it would be possible to seek the removal of any operational developments that are an integral part of those uses.

4.2 The next available development team meeting is the 17th April and a response to a request for a scoping opinion should be made within 5 weeks of receiving that request. Based on receiving the Council's response by early May the pre-application submission provides an illustrative timetable leading to the submission of a planning application for the proposed development by early November 2012.

5. NEGOTIATIONS

6.1 Discussions to pursue the implementation of the Councils Policies set out in the Joint Waste Core Strategy have continued since the Development Control meeting on the 5th January. These discussions have been with agents acting on behalf of the owners of the site and national waste treatment operators. Meetings have been attended by Glen Chipp and David Trigwell. Matthew Smith has also attended meetings to provide information about the waste stream that the Council manages.

5.2 An initial pre-application meeting was held on the 3rd February with the Owner's Agent. Details of the proposed development were outlined, which included the provision of an anaerobic digestion plant, household waste recycling centre and retention of the existing materials recycling facility. It was considered likely that EIA would be required and that this would need to cover: transport, landscape, noise, air quality, ecology, land quality, flood risk/surface water management, cultural heritage and socio-economic issues. A copy of proposed lay-out for the Residual Waste Facility is attached to this report (Annex D).

5.3 It was agreed at that meeting that submission of further pre-application information for consideration by the Development Team would take place before 14 March 2012. The additional information was actually submitted by email on 9 March 2012 and included both a pre-application submission report and a formal Scoping Opinion request.

5.4 The operators are clear at this stage they want their involvement to be kept confidential and this position has recently been restated. This is understandable given the commercial sensitivities involved. Agents acting on behalf the site owners have set out a programme for the submission of an application and have, as outline above, now formally engaged in the pre-application process. They are prepared to make some of this public.

5.5 Details of the proposed development have been outlined including the major elements of the scheme and the Environmental Impact Assessment process falls within the public domain. Normally the rest of the pre application process would not be in the public domain unless the applicant was prepared for it to be made public. In this case the agent has confirmed that additional information which includes details of the nature of proposed waste treatment plant will be available. This is shown to be an anaerobic digestion plant, household waste recycling centre and retention of the existing materials recycling facility with a total site capacity of an estimated 127/8,000 tpa, which is within the indicative requirements for residual waste treatment given in the Joint Waste Core Strategy. However discussions and assessments to determine the acceptability of this site delivering this capacity still have to be undertaken. These details are available to view on the Public Website – scoping request number 12/01148/CONSLT. The pre-application advice will be dealt with via the Councils Development Team. This is appropriate given the nature of the development proposed.

5.6 Officers are using the 9 Key Development Criteria set out for this site in the JWCS to help the agent bring forward a proposal. It has been agreed that the application can be submitted in outline form but officers have advised that this is subject to sufficient information being submitted to enable potential impacts of the proposed development to be properly assessed.

5.7 The continued engagement with the Council at this pre-application stage demonstrates that the owners of the site and the waste industry are clearly interested in actively investigating the prospect of a proposal. The potential operators have confirmed that they consider that the Fullers Earth site is the most viable site for strategic scale waste resource recovery and recycling development within the whole of B&NES.

6. EXPEDIENCY OF TAKING ENFORCEMENT ACTION

6.1 The intended submission would be an outline proposal and so if approved, would also require a further set of details to be submitted and approved before development could commence which of course takes time and provide no guarantee that the proposal will come forward.

6.2 The expediency of taking enforcement action was thoroughly assessed in the report to your meeting on 5th January. At that time it was not considered expedient by Officers to enforce against the development if progress could be made towards achieving the objectives of the JWCS, and given that there was an expressed intention by the landowner to move forward with the preferable use of the site as set out in the JWCS. Reference should be made to that report which is included as 'Annex A'.

6.3 Paragraphs 4.076 – 4.081 of that report considered the overall balancing of the numerous issues that were considered. At that time, the material considerations were finely balanced but it was considered necessary to allow more time for active negotiations to proceed. Negotiations have progressed and a pre-application

submission has now been formally made following on from the negotiations. This is currently being considered and the forward progress made on negotiations will have to be weighed against the harm caused by the development and issues of immunity to conclude whether or not enforcement action at this stage is expedient.

7. Conclusion

7.1 Following the resolution of the Committee in January 2012, progress has been made in relation to negotiations aimed at bringing forward a RWF in line with the Council's policy framework. The submission of a pre-application submission and a request for a Scoping Opinion is considered to be material progress. A timetable has been set out leading to the submission of an outline planning application in November 2012.

7.2 This is encouraging and officers will continue to work with the site owner and their agent through the pre-application process.

7.3 This needs to be weighed against the timetable set out by Officers in relation to the likely timeframe for immunity set out in the previous report. This timeframe is based upon available evidence.

8. Recommendation

8.1 That the Committee note that material progress has been made in relation to its resolution of 5 January 2012 and that Officers are making progress in negotiations with the site owner's Agent with a view to bringing forward a RWF on this site;

8.2 In these circumstances, if the Members agree with the Officer recommendation that the Committee Resolve:-

- (a) That Officers continue to negotiate with the site owner's Agent to secure the delivery of a Residual Waste Facility on the land;
- (b) That in light of progress on the negotiations it is not currently considered to be expedient to take enforcement action against the breaches of planning control currently identified at the site as set out in the previous report.