

Bath & North East Somerset Council

MEETING:	Development Control Committee
MEETING DATE:	1 st August 2012
REPORT OF: REPORT ORIGINATOR	David Trigwell, Divisional Director of Planning and Transport Development Maggie Horrill, Planning and Environmental Law Manager Lisa Bartlett, Development Manager
TITLE:	LAND AT FORMER FULLERS EARTH WORKS, FOSSEWAY, COMBE HAY, BATH
WARD:	Bathavon West
AN OPEN PUBLIC ITEM	
BACKGROUND PAPERS (i) Development Control Committee Report 5 January 2012 (ii) Development Control Committee Report 30 March 2012 (iii) Development Control Committee Report 9 May 2012 (iv) West of England Joint Waste Core Strategy (JWCS) List of attachments to this report: Annex A – Timetable for Implementation of the Residual Waste Facility.	

1 UPDATE

1.1 Members of the Committee will recall from its Meeting of 9 May 2012 that the reason for the change in the Officers recommendation from that in previous reports was due to the concern that the unlawful development could gain immunity from enforcement allowing a future unregulated and unconditional use throughout the site. It was recognised that negotiations for the delivery of a Residual Waste Facility (RWF) had resulted in pre-application submissions, but there was concern that these were not acceptable, in the form submitted. Given the above the factors weighing in favour of not taking enforcement action had reduced in weight and lead to the change in the Officers recommendation.

1.2 The Committee at its Meeting of 9 May Resolved:

- (i) That the Divisional Director of Planning and Transport Development in consultation with the Planning and Environmental Law Manager, serve the necessary enforcement notice(s) on behalf of the Local Planning Authority before 31 May 2012 in respect of the alleged planning contraventions outlined in the report by exercising the powers and duties (as applicable) under Parts VII and VIII of the Town and Country Planning Act 1990 (including any amendments to or re-enactment of the Act or Regulations or Orders made under the Act) in respect of the above land;
- (ii) To give an 18 month period of compliance with such Enforcement Notices(s).

1.3 Three Enforcement Notices were issued on 30 May 2012

2 APPEALS

2.1 Appeals against the Enforcement Notices have been lodged with the Planning Inspectorate, the effect of which is that the Enforcement Notices are held in abeyance pending the outcome of the appeals.

3 DELIVERY OF RESIDUAL WASTE FACILITY

3.1 Negotiations for the delivery of a Residual Waste Facility (RWF) on the land are continuing and the Owner's Planning Agent has provided the Council with a Time Table for the progression of the application for a RWF through to its implementation. A copy of this Time Table is attached to this Report at Annex A

4 THE PURPOSE OF THIS REPORT

4.1 The Owner, through his Solicitor and Planning Agent have asked that the Council now reviews its stance in respect of the enforcement notices, having now issued and served them. They point out that this, (from the Council's point of view) has 'stopped the clock' running in respect of the immunity period and therefore protected the Council's position.

4.2 They have asked if the Council would agree to make a joint application to the Planning Inspectorate for the appeals, in respect of the Enforcement Notices, to be held in abeyance pending the Council's consideration of the application in accordance with the Timetable (Annex A).

4.3 They submit that if the appeals are held in abeyance this would allow their Client to focus its efforts on securing planning approval through the Council for the re-development of the site in accordance with the Council's Joint Waste Core Strategy (JWCS) instead of spending a considerable amount of time and effort pursuing the various grounds of appeal. It would also save costs of both parties.

4.4 They have advised that their Client's greatest priority now is to see that the planning application is submitted to the Council and in the event that the application is not being progressed in accordance with the Timetable, as a result of any failure on their Client's part, the Council would be at liberty to request that the Inspectorate reinstate the appeals.

- 4.5 The Owner's Planning Agent has advised that that they will continue to work towards the identified timetable, (pending the outcome of the Committee's decision) which includes undertaking extensive landscaping work, which demonstrates their commitment to working positively with the Council to achieve the objectives of the JWCS.
- 4.6 On the Council seeking clarification on site clearance, the Owner's Planning Agent has advised that site clearance will include removing all stockpiles and structures required to facilitate the development of the site for the RWF.
- 4.7 The Timetable for the Implementation of the RWF on the site has been put forward on the premise that the Council agree to make a joint application to the Planning Inspectorate to hold the appeals in abeyance.

5 OFFICER COMMENTS

- 5.1 The issue of the enforcement notices has protected the Council from the unlawful development becoming immune from enforcement.
- 5.2 The lodging of the appeals will have put the enforcement notices in abeyance pending the outcome of the appeals.
- 5.3 It is the Council's policy to deliver a RWF and this site is allocated under the JWCS for such a facility.
- 5.4 It is anticipated that the appeals will be held by way of a Public Inquiry and that the hearing is likely to run for 6 days.
- 5.5 The Timetable in Annex A provides for the submission of an Outline application by 29 October 2012 which is likely to be before a hearing date for the Public Inquiry which, I understand, is not likely to take place before the end of January 2013.
- 5.6 The expediency of taking enforcement action was based on the concern that the unlawful development could gain immunity, together with concern that the pre-application submissions were not acceptable, in the form submitted. The Owner's Agent has confirmed that they will be addressing the Council's comments on their pre-application submissions by 13 August 2012.
- 5.7 Holding the appeals against the enforcements notices in abeyance pending the Council's consideration of the planning application would be cost efficient and in the event of an application being refused would enable all matters to be considered by the Planning Inspectorate together.
- 5.8 However, if an acceptable application is received and the Owner adheres to the Timetable submitted this would:
- (a) deliver a RWF as allocated under the Council's Joint Waste Core Strategy;
and
 - (b) result in the site being cleared of the unlawful development within a shorter time period than if the matter went to appeal.

6 RECOMMENDATION

6.1 That the Committee agree that the Council make a joint application to the Planning Inspectorate that the appeals be held in abeyance pending the Council's consideration of the planning application in accordance with the Timetable with the Council reserving the right to reinstate the appeals if:

- i) There is any failure on the Owner's part to comply with the Timetable for Implementation of the Residual Waste Facility as set out in Annex A of this Report; or
- ii) The Outline Planning Application is refused