

**MINUTES** of a meeting of the **REGULATORY – PLANNING COMMITTEE**  
held at County Hall, Matlock on 14 July 2014

**PRESENT**

Councillor J Innes (in the Chair)

Councillors M Ford, Julie Hill, R L Hosker, R Mihaly, R A Parkinson, P Smith, T Southerd, J Twigg and B Wright.

No Declarations of Interest were received.

No Significant Lobbying had been received.

**50/14** **MINUTES RESOLVED** that the Minutes of the meeting of the Committee held on 9 June 2014 be confirmed as a correct record and signed by the Chair.

**51/14** **APPLICATION FOR A CERTIFICATE OF LAWFULNESS OF EXISTING USE OR DEVELOPMENT, IN RESPECT OF USE FOR THE STORAGE OF METALS, SCRAP AND WASTE METALS, AND WASTE MATERIALS AND WASTE RECYCLING ON LAND AT GRIFFON ROAD, ILKESTON APPLICANT: DONALD WARD LIMITED (CODE NO: CL8/0114/153)** An application had been received for a Certificate of Lawfulness of an Existing Use or Development (CLEUD) relating to land for the storage of metals, scrap and waste metals and waste materials, and waste recycling. The Committee was reminded that, unlike a conventional planning application each application for a CLEUD was assessed entirely on its available factual evidence about planning history of the land to which it related, and whether or not it was considered 'on the balance of probability' to be an existing use or development which has become lawful over time.

The above application contended that the land had been in continuous use for the storage of metals, scrap and waste metals and waste materials and waste recycling for a period of over 10 years prior to the date of the application. The report contained details of supporting information, including aerial photographs, and comments received following consultation with the Environment Agency, Erewash Borough Council and businesses located next to the land.

The case analysis suggested that the key element to consider was the nature and continuity or otherwise use of the site during the 10 year period and witness statements were examined in the report.

It was concluded that the statements provided with the application did provide substantial evidence that Saint Gobain (a previous occupier of the land) had stored materials on various parts of the land, including scrap and other materials and that such materials were collected and transported to an adjacent site. However, it was not considered that this amounted to evidence of a change of use of the application land to a use primarily for storage and recycling of waste and it seemed unlikely that whatever scrap metal/waste storage had taken place at the land could amount to any continuous use of the land over a 10 year period. It was also felt that the Statutory Declarations and witness statements were lacking in any information regarding frequency or scale of any use.

Reference was made in the report about a planning permission which had been issued by the County Council on 4 May 2007 relating to the construction of a building and use of land for waste recycling operations, including the use of a new access. The Strategic Director considered that this permission had not been implemented and had lapsed. Furthermore, there was a condition in the permission which required the submission of several schemes for approval by the Council prior to commencement; these schemes had never been submitted.

Mr Piatt addressed the Committee on behalf of the applicant and suggested that evidence provided by witness statements in support of the application was compelling and weighted the balance of probability firmly in favour of lawfulness of the full use claimed under the application. He commented that there were no contrary witness statements presented and suggested that the evidence from the 2004 aerial photograph was the only item discovered by the Council which provided evidence relating to the relevant 10 year period and that it was of relatively limited weight. He expressed confidence that the 2007 planning permission referred to in the report had been implemented since it permitted the use of the existing means of access.

The Committee was reminded that the Certificate of Lawfulness related to the use of a particular area of land and not general activity on the site and that the relevant period of continual use was 10 years. The representative for the Head of Legal Services suggested the officer's report had addressed fairly the evidence submitted by the applicant and that its conclusion that the lawfulness of the use was not proven at the balance of probability over the full extent of the land subject of the application was sound. With respect to the 2007 planning permission, it was reported that the Strategic Director and the

Head of Legal Services remained of the view that this had not been implemented since it was considered that the consent for the access under the permission had been dependent on other aspects of that consented development taking place, and furthermore there were some pre-commencement requirements under the conditions to the permission which were never satisfied.

**RESOLVED** to approve the issue of a refusal under section 191 of the Town and Country Planning Act 1990 in response to the application regarding use of land at Griffon Road, Ilkeston, for the storage of metals, scrap and waste metals, and waste materials and waste recycling which is the subject of the report of the Strategic Director for Economy, Transport and Environment.

**52/14                      APPLICATION FOR A CERTIFICATE OF LAWFULNESS OF EXISTING USE OR DEVELOPMENT, IN RESPECT OF USE FOR THE PROCESSING, RECYCLING MATERIALS INCLUDING VEHICLE DISMANTLING, OF LAND AT GRIFFON ROAD, ILKESTON APPLICANT: DONALD WARD LIMITED (CODE NO: CL8/0114/154)** An application had been received for a Certificate of Lawfulness of an Existing Use or Development (CLEUD) relating to another area of land at Griffon Road, in respect of use for the processing, recycling and land for the storage of metals, scrap and waste metals and waste materials, including vehicle dismantling. The Committee was reminded that, unlike a conventional planning application each application for a CLEUD was assessed entirely on its available factual evidence about planning history of the land to which it related, and whether or not it was considered 'on the balance of probability' to be an existing use or development which has become lawful over time.

The application contended that the land had been in continuous use for the processing, recycling and storage of metals, scrap and waste metals, and waste materials (including vehicle dismantling) for a period of over 10 years up to the date of the application. The report contained details of supporting information, including aerial photographs and reference to permissions/certificates, and comments received following consultation with the Environment Agency, Erewash Borough Council and businesses located next to the land.

The case analysis suggested that the key element to consider was the nature and continuity or otherwise use of the site during the 10 year period. Witness statements and other evidence were examined in the report.

The Strategic Director for Economy, Transport and Environment concluded that on the balance of probability there was a lawful use of land for the processing, recycling and storage of metals, scrap and waste metals and waste materials which related to the land indicated on the plan CL8/0114/154

DCC2, hatched and edged by a dashed/dotted line and cross-hatched. It was considered that the remaining area of the application land shown dashed on plan CL8/0114/154 DCC2 had not been subject to any continuous use described in the application for a sufficient period so as to be capable of forming part of a lawful use.

Mr Piatt addressed the Committee on behalf of the applicant and urged it to grant the Certificate of Lawfulness for the entire site on the basis that the evidence submitted demonstrated a continuous use of the entire area of the site. He also commented that no contrary witness statements had been submitted and that the aerial photograph showed only a snapshot of a particular period of time. He considered that it was illogical for the report to have recommended inclusion in a certificate of the part of the land which was cross-hatched on the report plan yet at the same time to have recommended exclusion from any certificate of another part of the land under the application.

The Strategic Director's representative commented that the officer's interpretation and recommendation in the report was logical. The report placed the witness statements in the context of other information available and necessary evidential considerations. It was not considered to be correct to assume that the witnesses when referring in their statements to plans showing the land were in a position to give precise or accurate accounts of the extent or area of land affected by the use in question.

**RESOLVED** to approve the determination of the application described in the report of the Strategic Director for Economy, Transport and Environment by the issuing of a certificate of lawfulness under section 191 of the Town and Country Planning Act 1990 which shall contain a substitute description to recognise the existing land use as:

the use of those parts of the land subject to the application comprising:

- (a) the part inside the area of planning permission CW8/0602/37
  - (b) the part outside the area of that permission and within the area of the certificate of lawfulness for use for the processing and storage of scrap issued by Erewash Borough Council dated 19 March 1994 and
  - (c) those parts (outside both the area of that permission and the area of that certificate), which are shown by cross-hatching on the Plan CL8/0114/154-DCC-2, attached to the report of the Strategic Director for Economy, Transport and Environment,
- for the storage and recycling of scrap and waste metals and other waste materials in a manner whereby (i) the element relating to the part of the land 'a)' conforms with the use permitted under planning permission CW8/0602/37 and with the conditions therein, (ii) the element relating to the part of the land 'b)' conforms with the provisions of the appendix to the certificate of lawfulness dated 16 March 1994, (iii) except in cases of emergency incoming

materials are not accepted earlier than 07:00 or later than 18:00 on any day, and (iv) except in cases of emergency activities are not undertaken on any Sundays or public holidays, or earlier than 06:00 or later than 20:00 on any other day.

**53/14**                    **CURRENT ENFORCEMENT ACTION** **RESOLVED** to receive the report on Current Enforcement Action.

**54/14**                    **OUTSTANDING APPLICATIONS** **RESOLVED** to receive the list on decisions outstanding on 14 July 2014 relating to EIA applications outstanding for more than sixteen weeks, major applications outstanding for more than thirteen weeks and minor applications outstanding for more than eight weeks.

**55/14**                    **CURRENT APPEALS/CALLED-IN APPLICATIONS** **RESOLVED** to note the report on current appeals/called-in applications relating to County matters.

**56/14**                    **DEVELOPMENT MANAGEMENT PERFORMANCE MONITORING** **RESOLVED** to receive the Planning Services Development Management Monthly Performance Management Statistics for June 2014.

**57/14**                    **MATTERS DETERMINED BY THE STRATEGIC DIRECTOR FOR ECONOMY, TRANSPORT AND ENVIRONMENT UNDER THE DELEGATED POWERS** **RESOLVED** to note that the following applications had been approved by the Strategic Director for Economy, Transport and Environment under the Delegated Powers on:-

**(a) 12 June 2014**

- 1     Section 73 Application not to comply with Previous Planning Conditions of Planning Permission CD3/0712/31 on Land Adjacent to the Whitworth Hospital, Bakewell Road, Matlock  
Applicant: Derbyshire County Council  
Planning Application Code No: CD3/0414/3
- 2     Proposal for a Pedestrian Footpath Link and Retaining Wall at Whitworth Hospital, Bakewell Road, Matlock  
Applicant: Derbyshire County Council  
Planning Application Code No: CD3/0414/9
- 3     Proposal to Install a Free-Standing Canopy at Ironville and Codnor Park Primary School, Victoria Street, Ironville  
Applicant: Derbyshire County Council  
Planning Application Code No: CD6/0514/14

- 4 Delegation Decisions on Schemes Required by Planning Conditions:
- SD2589
  - SD2416
  - SD2510

**(b) 19 June 2014**

- 1 Proposal to Improve the Archaeological Way Multi-User Route at Poulter County Park, Langwith  
Applicant: Derbyshire County Council  
Planning Application Code No: CD5/0514/20
- 2 Proposal to Demolish the Existing School Classroom Block and Re-develop a Three-Storey Classroom Block at Aldercar Community Language College, Daltons Close, Langley Mill  
Applicant: Derbyshire County Council  
Planning Application Code No: CD6/0414/2
- 3 Proposal to Install a Storage Shed at Willington Primary School, Trent Avenue, Willington  
Applicant: Derbyshire County Council  
Planning Application Code No: CD9/0514/21
- 4 Delegation Decisions on Schemes Required by Planning Conditions:
- SW2582
  - SW2583
  - SW2584
  - SW2585
  - SW2586
  - SW2587
  - SW2590
  - SW2591

**(c) 26 June 2014**

- 1 Proposed Installation of Two Temporary Modular Classrooms at Gamesley Community Primary School, Grindleford Grove, Glossop  
Applicant: Derbyshire County Council  
Planning Application Code No: CD1/0514/22
- 2 Proposed Installation of a Kiosk at the Existing Sewage Treatment Works, Moss Lane, Hulland Ward  
Applicant: Severn Trent Water Limited  
Planning Application Code No: CW3/0214/168
- 3 Proposed Single-Storey Extension at Dronfield Henry Fanshaw School, Chesterfield Road, Dronfield

Applicant: Derbyshire County Council  
Planning Application Code No: CD4/0514/19

- 4 Proposed Development: (1) Application under Section 73 of the Town and Country Planning Act 1990 to not comply with Condition 6 of Planning Permission CW4/0710/63 to enable Variation of Condition to Extend the Time for the Completion of Remediation Works to 28 February 2016 to enable the Implementation of the Tree Planting Scheme and (2) Application for Planning Permission for Works to enable Two Additional Small Areas to be Included in the Remediation Site at the Former Avenue Coking Works, Derby Road, Wingerworth

Applicant: Homes and Communities Agency

Planning Application Code Nos: CW4/0514/12 and CW4/0514/13

- 5 Proposed Installation of a Canopy at Scarcliffe Primary School, Fox Hill, Scarcliffe

Applicant: Derbyshire County Council

Planning Application Code No: CD5/0514/18

6. Application for Non-Material Amendment at Elvaston Landfill Site, Bellington Hill, Elvaston, Derby

Applicant: Biffa Waste Services

Planning Application Code No: NMA/0414/26

- 7 Delegation Decisions on Schemes Required by Planning Conditions:

- SW2450
- SW2451

**(d) 3 July 2014**

- 1 Proposed Replacement of Existing Canopy and Landscaping Works at New Mills Nursery School, Sett Close, New Mills

Applicant: Derbyshire County Council

Planning Application Code No: CD1/0514/15

- 2 Proposed Extraction of Sand and Gravel with Restoration to Open Water, Nature Conservation and Agricultural Uses at Willington Quarry, Castleway Lane, Egginton

Applicant: CEMEX UK Ltd

Planning Application Code No: CM9/0305/235

**(e) 10 July 2014**

- 1 Proposed Small Scale, on Farm Composting Operation at Hall Plant Hire, The Birches, Old Brampton, Chesterfield

Applicant: Hall Plant Hire Limited

Planning Application Code No: CW4/0414/8

- 2 Proposed Retention and Continued Use of a Demountable Office Building at the Veolia ES Site, Norwood Industrial Estate, Ellisons Road, Killamarsh  
Applicant: Veolia ES (UK) PLC  
Planning Application Code No: CW4/0514/31
- 3 Proposed Replacement of Two Windows with Two Fire Exit Doors and Installation of an Access Ramp at Westhouses Primary School, Bolden Terrace, Westhouses  
Applicant: Derbyshire County Council  
Planning Application Code No: CD5/0514/24
- 4 Proposed Installation of a Temporary Modular Building at Glebe Junior School, Hamlet Lane, South Normanton  
Applicant: Derbyshire County Council  
Planning Application Code No: CD5/0514/25
- 5 Proposed Installation of a Canopy at Creswell Infants and Nursery School, Gypsy Lane, Creswell  
Applicant: Derbyshire County Council  
Planning Application Code No: CD5/0514/28
- 6 Section73 Application to Not Comply with Condition 2 of Planning Permission CD8/0713/63 at the Great Northern Greenway, between Brookside Road, Breadsall and Lime Lane, Morley  
Applicant: Derbyshire County Council  
Planning Application Code No: CD8/0514/27
- 7 Delegation Decisions on Schemes Required by Planning Conditions:
  - SD2544
  - SD2593
  - SD2569
  - SD2596
  - SD2597
  - SD2598
  - SD2549
  - SM2530