

DERBYSHIRE COUNTY COUNCIL
REGULATORY – PLANNING COMMITTEE

2 December 2013

Report of the Acting Strategic Director – Environmental Services

**2 APPLICATION FOR A CERTIFICATE OF LAWFUL USE FOR
AN EXISTING USE FOR A PLASTIC RECYCLING FACILITY
ON LAND AT WINSTER BUILDINGS, MANNERS AVENUE
INDUSTRIAL ESTATE, ILKESTON
APPLICANT: EUROCELL PROFILES LIMITED
CODE NO: CL8/0713/73**

8.1094.1

Introductory Summary This application is for the grant of a Certificate of Lawful use in respect of an existing use (CLUDE) of a site for plastic recycling which the applicant claims is a lawful use, for the purpose of planning legislation.

Where the evidence submitted does not support the lawful use then it would fall to the Planning Authority to refuse the application. Unlike a conventional planning application, each application for a CLUDE is assessed entirely on its available factual evidence about planning history, the interpretation of any relevant planning law or judicial authority, and is judged on 'the balance of probabilities'. In this case, this application contends that the use of the site for plastic recycling activities, including the importation and processing of plastic has persisted uninterrupted for over ten years and various pieces of evidence have been submitted by the applicant company which substantiates this. In my opinion, there is sufficient and precise evidence to support the lawful use of the site and I consider that the above requirements have been fulfilled. I am therefore recommending that it would be appropriate to issue a CLUDE accordingly, for the plastic processing and recycling uses and the area identified in the application.

- (1) **Purpose of the Report** To enable the Committee to determine the application.

(2) Information and Analysis

Application Details

The application is submitted by 360 Environmental Limited on behalf of Eurocell Profiles Limited (trading as Merritt Plastics). It relates to the recent historic (previous 10 years), use of approximately 2.0 hectares of land and buildings situated within an industrial setting on the established Manners Avenue Industrial Estate, on the south-western outskirts of Ilkeston. The application states that for the preceding 10 years (from 2003), the land has been used continually during this time for the importation, sorting and processing of plastic wastes; primarily plastic window frames, plastic off-cuts, etc, which the applicant company use as a raw material to produce extruded lengths of plastic for reuse in the construction industry.

Site Location and Description

The site which is situated on land reclaimed by the County Council (former Manners Colliery) is enclosed by security fencing and walls, is situated on the northern edge of the Manner Avenue Industrial Estate, directly south-west of Ilkeston Town centre. The application area, which is irregular shaped, is roughly level land and is bounded to all sides by the industrial estate, except for the south-western boundary where there is a (new) extensive housing estate. The application site is dominated by a large rectangular shaped, single-storey industrial unit. Externally, there is a large cylindrical silo close to the building, a weighbridge and an extensive open yard area, part of which is used as a compound for temporary storage of plastic waste. All access to and from the site is via Manners Avenue, the main access road into the industrial estate.

Existing Use

The application contends that the principal works at the site are plastic processing and recycling, and the manufacture of an extruded UPVC which is used in the construction industry for window frames and doors. The detailed works are identified and comprise of the importation (buying), storing, sorting, cleaning and processing of plastic (UPVC) window and door frames, and offcuts. The plastics which are purchased from several companies are stored temporarily outside in designated bays. The plastics are then transferred into the large industrial building where they are shredded and metals removed. Materials are then graded and washed, then colour sorted. The granular plastic is then processed (micronised), to a powder form and then heat is applied and extruded to form new lengths of UPVC for reuse. A large silo in the yard area is used to contain the UPVC in granular form. The company operates 7 days a week over a 24 hour period.

All access to the site is via a gated and locked entrance off Manners Avenue.

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Supporting Information

Accompanying the application are:

- Three written and signed statements from current employees (office manager, quality manager and factory manager) working at the application site, all of which identify the nature of the works and that the operations have been undertaken continuously throughout the relevant period.
- A written declaration from the land owner and the company owner. The declaration states that the company has operated on the site since 1995 for plastic recycling and processing to make various UPVC products.
- Three planning permissions, all granted by Erewash Borough Council, for construction of industrial units (2001), erection of signage (2005), the erection of silos for plastic granules storage (2005) and the erection of external storage bays (2001).
- A quantity of invoices from various companies over the relevant period for UPVC materials.
- Copies of waste transfer notes (as required by the Environment Agency) which indicate that over the specified period 2003-present, waste comprising of plastic waste was collected from the site.
- Copies of rating valuations as issued by Erewash Borough Council.

Comments received

Local Member

Councillor M Booth has been consulted on the application and is aware that the company has been on this site for many years..

Erewash Borough Council

No information to contradict information on the application but confirms that noise complaints received at first in August 2006.

Environment Agency

No objection.

Case Analysis

This application claims that for the last ten years and before, the site has been used for plastic recycling. There are two key elements to consider:

- the quality of the supportive evidence; and
- proof of the continuity of the works on the site during the ten year period from submission of the application.

The key evidence with regard to proof of the site works is in my opinion that received from any outside bodies who would have an accurate and impartial but historic recollection of the site workings. In this case, this is the

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Environment Agency and the Borough Council. Clearly, the Agency, in particular, has had record of the site and has been visiting the site regularly over the period of time in question. Similarly, with regard to continuity of the works on site, the evidence put forward by the Environment Agency and the Borough Council is helpful in this respect. In the event, both these authorities are equally supportive and have not contested the applicant's claims in any respect. The individual and separate statements made by the owner and staff, all confirm that the works at the site have remained unchanged and have been un-interrupted for the last ten years, and corroborate the contention that the use is established. This would appear to indicate that there has been no discontinuance in any of the site works, as the regular visits (particularly by Environment Agency staff) would have highlighted any discontinuance of the activities at any given time during the last ten years.

Collectively, the evidence which includes invoices from companies who bring in and take away the plastic strongly suggests that the site has been used in the manner suggested. This, together with the results of the consultations carried out, would lead me to the opinion that the evidence is sufficiently precise and unambiguous. Given that the application must be judged on the balance of probability and taking all the evidence into account, I am satisfied that the use of this land for plastic recycling has subsisted for a period of ten years or more. Conversely, the County Council has no evidence of its own to contradict the statements that have been made by the applicant company. Government guidance contained in paragraph 8.15 (Annexe 8) of the Department of Environment (DOE) Circular 10/97 states amongst other things that:

"If the LPA have no evidence of their own, or from others, to contradict or otherwise make the applicant's version of events less than probable, then there is no good reason to refuse the application.."

It is concluded, therefore, that the development taking place on this site is lawful and that a Certificate of Lawful Use or Development for the importation segregation and processing of waste plastics should be granted accordingly.

(3) **Financial Considerations** The Correct fee of £3,695 has been received.

(4) **Legal Considerations** This is an application submitted under Section 191 of the Town and Country Planning Act 1990, as amended by Section 10 of the Planning and Compensation Act 1991. However, its determination is in accordance with the statute, is compatible with human rights under the European Convention on Human Rights (including a persons' entitlement to a fair and public hearing in the determination of his civil rights and obligations, under Article 6).

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The determination of this application concerns matters of fact and not questions on amenity or planning merits. The activity at the application site may result in an impact on amenity in terms of visual impact, noise or traffic, but cannot be conditioned. In the case of a CLEUD, the action of the Waste Planning Authority is prescribed by law, in that the Town and Country Planning Act 1990 (as amended) requires that a CLEUD be granted where sufficient evidence is provided, showing the use over the prescribed period without taking account of any amenity concerns. Nevertheless, such a grant will not provide any continuity for the commission of any public or private nuisance.

(5) **Environmental and Health Considerations** As contained in the report.

In preparing this report the relevance of the following factors has been considered: prevention of crime and disorder, equality and diversity, human resources, property and transport considerations.

(6) **Background Papers** Application details, together with plans, statements and enclosures of various dates. Letters/emails from Erewash Borough Council dated 11 November 2013. Letter from Environment Agency dated 12 November 2013.

(7) **OFFICER'S RECOMMENDATION** That the Committee approves the grant of a Certificate of Lawful Use for use of the land identified in the application details for the importation, cleaning processing, sorting, shredding, separating and recycling of waste plastics.

Mike Ashworth
Acting Strategic Director – Environmental Services