

WARDS AFFECTED: NORTHOWRAM AND SHELF

PLANNING COMMITTEE

11th January 2011

POSSIBLE ENFORCEMENT ACTION FOR NON COMPLIANCE WITH PLANNING CONDITIONS ATTACHED TO PERMISSIONS FOR WASTE TRANSFER STATION, INDUSTRIAL BUILDING AND STORAGE BUILDING - OPERATING 24 HOURS AT SWALESMOOR ROAD HALIFAX

Report of Head of Planning

1. Issue

- 1.1 The Head of Planning submitted a written report to Planning Committee on the 13th April 2010, which provided information on possible enforcement action for non-compliance with planning conditions attached to a permission for waste transfer station, industrial building and storage building at Swalesmoor Road, Halifax. Planning permission had been granted for waste transfer operations, an industrial building and a storage building at the site with planning conditions attached which limited the hours of operation of vehicles over 3.5 tonnes entering and leaving the site. Concerns have been received regarding vehicles operating outside the times allowed by the planning conditions. The result was that heavy goods vehicles were causing noise and disturbance to residents as they travelled on the road network past their properties, which were outside the Calderdale boundary. Other breaches of planning control were also being investigated at the site, which included minor operations and an unauthorised extension to the pet food building permitted by Application Number 08/01223.
- 1.2 The report provided information on the concerns raised and enforcement investigations together with a response from the applicant's agent and the Head of Planning's assessment as to whether formal enforcement action should be taken.
- 1.3 The applicant's agent and an objector attended the meeting and addressed the Committee.
- 1.4 Planning Committee resolved that
 - (a) the Head of Planning be requested to submit a written report to a future meeting of this Committee which provides additional information in respect of vehicle movements to and from the site together with the breach of conditions; and

(b) Planning Officers be requested to arrange a meeting with the applicant's agent and those raising concerns with a view to improving relations between the operator and the community.

2. Need for a decision

- 2.1 The Constitution delegates to the Head of Planning to take decisions on whether or not to take formal enforcement action in relation to breaches of planning control.
- 2.2 The site employs 136 full time staff (99 of which live in Calderdale) and the waste transfer activities do provide a much needed facility. Taking formal action may limit the effectiveness of the waste recycling activities and have employment implications. However, residents in the wider area are concerned regarding noise and disturbance in the evenings as a result of vehicles travelling on the road network in close proximity to their properties. The Head of Planning is seeking the views of Planning Committee as to whether formal action is appropriate, due to the sensitivity of the issues involved.

3. Recommendation

- 3.1 That Planning Committee provides its view on the expediency of taking formal enforcement action in relation to the operating hours of vehicles over 3.5 tonnes at the site.
- 3.2 That Members note the report

4. Background and/or details

- 4.1 The general background to this matter is contained within the report considered by Planning Committee on the 13th April 2010. This report is attached as Appendix 1. In summary, the concerns raised by objectors relate to the noise and disturbance caused from the Heavy Goods Vehicles travelling at night past residential properties in Queensbury, to and from the site over a 24 hour period. This affects sleep patterns. There were also issues raised regarding odours from the vehicles. Basically, if the vehicles only travelled during the permitted hours, then residents would receive some respite from the noise and odours which the vehicles generated.
- 4.2 In relation to element (a) of the minutes, the traffic survey undertaken at the site was carried out on Tuesday 27th April 2010. Whilst there are day to day fluctuations in traffic at the site, the traffic consultant's report indicates that the day of the survey was considered to be a typical day's operation.
- 4.3 To determine the existing traffic levels though Queensbury an automatic traffic count survey was undertaken on entry to Queensbury on the A647 Halifax Road between the junctions of Roper Lane and Moor Close Lane.

- 4.4 The survey was undertaken for a full week period commencing on 21st April 2010 using automatic count equipment, with traffic loops installed on the carriageway to record the number and classification of vehicles.
- 4.5 The Pet Food and animal by-product operations generated 58 vehicle trips overnight (1900-0700), which equates to 2-3 vehicles entering and leaving per hour (4.8 two-way vehicle trips per hour). The agent for Envirowaste subsequently confirmed in an email that this comprises the 43 movements associated with the Pet Food operation, 14 for rendering (these are typically the “smelly” wagons) and 1 associated with maintenance. The agent went on to indicate that there were no out of hours traffic movements associated with the meat and bone meal shed (Shed 5) recorded in the survey on that night, but the general figures average about 5 in and 5 out over a 24 hour period.
- 4.6 The data showed a significant proportion of vehicles were recorded as travelling north along the M6 and could have travelled either on the A644 via Queensbury, or the A629 via Illingworth (or possibly on the motorway network via M62). However, it was considered that the majority of these vehicles were likely to have passed through Queensbury. Therefore, for the purposes of assessment it was assumed that all of these vehicles did pass through Queensbury.
- 4.7 The survey also included a small number of vehicles whose origin/destination had not been recorded due to being a third party vehicle, therefore for robustness these have also been assumed to pass through Queensbury and are included in the totals.
- 4.8 According to the traffic consultants 25 vehicle movements passed through Queensbury during the overnight period (1900-0700). These vehicle movements were a combination of full, part full and empty covered wagons (or cab only), refrigerator wagons, covered skip wagons and tankers.
- 4.9 Based on the two-way vehicle movements identified above that may pass through Queensbury, these can be compared to the total traffic on this route, as shown in the following table:

	Total	HGV's	Total HGV%	Pet Food and Animal by-product HGV's	Pet Food and Animal by-product HGV%
1900-0700	1937	101	5.2%	25	1.3%

- 4.10 The report concludes that the Pet Food and animal by-product operations overnight that passed through Queensbury represent a minimal amount of traffic that would not be perceivable over day-to-day fluctuations. The number

of vehicle movements generated overnight represents only 1.3% of traffic and equates to approximately 1 vehicle entering and leaving the site per hour (2.1 two-way vehicle trips). However, in terms of impact on residents it should be noted that about 56% of the vehicles travelling through Queensbury are carrying the malodorous animal waste bound for the rendering plant.

4.11 In relation to element (b) of the minutes the liaison engagement with the community is as summarised below:

- A Local Liaison Group (LLG) has been set up with a Calderdale officer as Chairperson to invite local residents, concerned parties and local Councillors from Bradford and Calderdale for evening meetings to discuss issues surrounding the history and future proposals at Swalesmoor.
- Envirowaste have set up a 24 hour hotline for complaints/questions
- Envirowaste have provided a point of contact for information about intended changes and hear concerns.
- First LLG meeting on 4 August – Chaired by Richard Seaman (Calderdale Development Manager) - attended by Cllr Baines Cllr Taylor Shibden Valley Group and local Calderdale residents. Meeting included a tour of the site with questions and answers session. Future proposals tabled for discussion.
- Second Meeting on 25 August – same chair and same people again plus Swalesmoor Action Group (Mr & Mrs Barker) two residents from Roper Lane and Cllr Walls (Queensbury Ward Councillor). Meeting included a second tour of the site with question and answer session.
- Third meeting on 16 September – smaller informal group to look at the proposals in more detail, Mr & Mrs Barker, Cllr Walls and a local resident. Future proposals put forward for more detailed discussion
- Fourth Meeting 28 on October – Shibden Valley Group representative, two Calderdale residents, Cllr Walls.
- The next Meeting provisionally timetabled for 17th January 2010.

4.12 The original reason for the planning condition related to residential amenity. There were no highways reasons for a planning condition to restrict the hours of operation.

4.13 There have been problems with the vehicles carrying animal products and spillages have occurred. However, the vehicles carrying the animal products are now covered. Other regimes, which the Council does not administer, control the transport of such products. The Local Government Ombudsman has investigated whether any maladministration has taken place by the

Council. No maladministration has been found by the Local Government Ombudsman, in how the Council has investigated the odours from the vehicles.

- 4.14 All of the properties in the immediate vicinity of the site are now within the ownership of the company. The condition is clearly in breach and this is not in dispute. Vehicles entering and leaving the site are in low gear at the entrance to the site and the noise generated by the vehicles at this point was not high.

The planning regime does not seek to regulate the noise from traffic movements once the vehicles have left the site and are travelling along the road network. VOSA (Vehicle and Operators Services Agency) has controls over the roadworthiness of goods vehicles and it checks on the mechanical condition, loading and unloading. Environmental Health legislation does not control noise from vehicles travelling along the adopted road network.

- 4.15 The Local Planning Authority has to assess whether the resultant breach of the planning condition results in a situation which is in accordance with relevant planning policies. The use of the site has been established with the numerous planning permissions granted for waste transfer storage and industrial purposes on the site. The principle of the development has been clearly established and cannot be revisited. The issue for consideration is therefore whether there is any adverse effect on amenity arising from the hours of operation outside the permitted hours that falls within the scope of Local Planning Authority Control.
- 4.16 For the reasons outlined officers do not consider that it is appropriate to pursue formal enforcement action against Envirowaste in relation to the condition limiting the hours of operation of vehicles over 3.5 tonnes entering and leaving the site. However, it is considered important that Envirowaste continue to liaise with the community on an ongoing and formal basis and maintain arrangements for handling complaints and queries about their activities.

5. Options considered

Possible actions which could be taken

- 5.1 The formal action which could be taken in relation to the breach of conditions include the following:
- Service of a Breach of Condition Notice – there is no right of appeal to the Secretary of State although the validity of the notice or the authority's decision to serve it can be challenged by an application to the High Court for Judicial Review. If the notice is not complied with then a prosecution could be sought in the Magistrates Court. The maximum fine on conviction is £1,000

- Service of an Enforcement Notice- there is a right of appeal to the Planning Inspectorate. The maximum fine on conviction for non compliance with the Notice is £20,000. However, costs can be awarded against the Local Planning Authority if it is found to have acted unreasonably and taken formal action unnecessarily.

5.2 As outlined above it is considered that the most appropriate course of action is not to pursue formal enforcement action but maintain ongoing liaison between Envirowaste and the community.

6. Consultation

6.1 The Head of Democratic and Partnership Services has been consulted and his comments are as follows: Members need to give clear and cogent reasons why in their opinion they consider that enforcement action is expedient or not. Members should also be aware that these reasons may be employed if any subsequent action is taken.

7. Financial Implications

7.1 The serving of an Enforcement Notice is likely to result in an Enforcement Notice appeal being lodged with the Planning Inspectorate. Costs can be awarded against the Council for unreasonable behaviour. There is no current budget for any such costs and therefore they would have to be met from compensatory savings within the existing budget.

8. Equality and Diversity

8.1 There are no equality and diversity implications arising from any actions which may or may not be taken.

9. Contribution to Delivering Population Outcomes

9.1 The continued efficient operation of the site will help to safeguard local employment. Furthermore, the operation of the site supports the recycling of waste. Allowing vehicles over 3.5 tonnes to enter and leave the site 24 hours per day therefore contributes to the achievement of the following population outcomes: safeguard Calderdale's future and foster economic prosperity for all; and improve the quality of our environment and promote respect for Calderdale's heritage.

10. Corporate implications

10.1 Waste transfer and recycling activities contribute significantly to the sustainability agenda and whilst such activities have to be balanced against any other adverse effects on the environment and amenities of residents, the

curtailment of evening activities at the site may limit substantially the effectiveness of the site in dealing with waste.

11. Conclusions

- 11.1 The original reason for imposing the hours of operation condition was to protect the amenity of residents in the immediate vicinity of the site. Hours of operation conditions are not imposed to protect residents from disturbance from vehicles on the main highway road networks. However, any effects do have to be balanced against the overall benefits to the environment as a whole from the effective management of waste. It is considered that it is not expedient to take formal action in relation the breach of planning conditons relating to hours of operation of vehicles over 3.5 tonnes.

**Geoff Willerton
Head of Planning**

Reference: AFM/ENF/07/61263

Date: 16th December 2010

Further information

Should you have any queries in respect of this report, please contact in the first instance:

Richard Seaman on Tel. 01422 392241 richard.seaman@calderdale.gov.uk

NON EXEMPT DOCUMENTS ARE AVAILABLE FOR INSPECTION AT:

Planning Services, Northgate House, Northgate, Halifax. HX1 1UN

Twenty four hours notice (excluding holidays and weekends) may be required in order to make the material available).

Please contact Richard Seaman 01422 392241 to make arrangements for inspection.

Appendix 1

CALDERDALE MBC

WARDS AFFECTED: NORTHOWRAM AND SHELF

PLANNING COMMITTEE

13 April 2010

POSSIBLE ENFORCEMENT ACTION FOR NON COMPLIANCE WITH PLANNING CONDITIONS ATTACHED TO PERMISSIONS FOR WASTE TRANSFER STATION, INDUSTRIAL BUILDING AND STORAGE BUILDING - OPERATING 24 HOURS AT SWALESMOOR ROAD HALIFAX

Report of Head of Planning

1. Issue

- 1.1 Planning permissions have been granted for waste transfer operations, an industrial building and a storage building at the site, with planning conditions attached which limit the hours of operation of vehicles over 3.5 tonnes entering and leaving the site. Concerns have been received regarding vehicles operating outside the times allowed by the planning conditions. The result is that the heavy goods vehicles are causing noise and disturbance to residents, as they travel on the road network past their properties, which are outside the Calderdale boundary.
- 1.2 Other breaches of planning control are also being investigated at the site, which include minor operations and an unauthorised extension to the pet food building which was permitted by application 08/01223 (building 3).

2. Need for a decision

- 2.1 The Constitution delegates to the Head of Planning to take decisions on whether or not to take formal enforcement action in relation to breaches of planning control.
- 2.2 The site employs 136 full time staff (99 of which live in Calderdale) and the waste transfer activities do provide a much needed facility. Taking formal action may limit the effectiveness of the waste recycling activities and have employment implications. However, residents in the wider area are concerned regarding noise and disturbance in the evenings as a result of vehicles travelling on the road network in close proximity to their properties. The Head of Planning is seeking the views of Planning Committee as to whether formal action is appropriate, due to the sensitivity of the issues involved.

3. Recommendation

- 3.1 That Planning Committee provides its view on the expediency of taking formal enforcement action in relation to the operating hours of vehicles over 3.5 tonnes at the site.
- 3.2 That Members note the report

4. Background and/or details

- 4.1 The site is located on Swalesmoor Road within a wider industrial complex. The whole site incorporates waste transfer activities and a skip hire business. The site is within the Green Belt and is located to the north of Boothtown. It is situated on a high plateau off the western side of Swalesmoor Road.
- 4.2 There have been numerous planning permissions granted on the site. The main existing uses on the site at present are waste transfer/recycling operations, and storing, blending and washing animal by-products for pet food manufacture and the storage of meat and bonemeal. There are existing industrial (B2) and storage uses (B8) operations at the site.
- 4.3 Below is a list of relevant planning permissions on the site.

Reference	Description	Status
1. 80/03648/FUL	Filling of a section of a disused quarry	Permitted
2. 82/01357/EST	Use of land for maggot breeding	Permitted
3. 82/03188/FUL	Recovery and site processing of stone and ash deposits	Permitted
4. 86/00819/FU	Modify condition on existing permission	Permitted
5. 86/01819/FUL	Single storey building to form staff room and store mechanical plant.	Permitted
6.	Extension of time on application No 86/00819	Permitted

87/01742/FUL		
7. 97/01091/WAS	Change of use from maggot breeding shed to waste transfer loading station	Permitted
8. 99/00813/191	Use of land for maggot breeding (Lawful Development Certificate)	Refused (insufficient evidence)
9. 02/00185/COU	Change of use from maggot breeding to waste transfer (Building No. 1)	Permitted Conditions attached regarding hours of operation of vehicles over 3.5 tonnes visiting and leaving the site
10. 02/00186/COU	Change of use from ancillary maggot breeding use to industrial B2 (Building No. 3) and provision of trailer and lorry park are (Retrospective)	Permitted Conditions attached regarding hours of operation of vehicles over 3.5 tonnes visiting and leaving the site
11. 02/00187/COU	Change of use from ancillary mink farming to Storage B8 (Building No.4)(Retrospective)	Permitted Conditions attached regarding hours of operation of vehicles

		over 3.5 tonnes visiting and leaving the site
12. 02/01165/CON	Change of use and refurbishment to form office building extension (part retrospective)	Permitted
13. 06/01411/FUL	Proposed detached shed for the storage of meat and bone meal (Amended Plans and retrospective). Same development as this application under consideration.	Refused
14. 06/01412/FUL	Proposed garage extension for the storage, repair and recycling of equipment.	Refused
15. 09/00058	Retention of Building 5 for storage of meat and bonemeal (retrospective)	Permitted. No conditions attached regarding hours of operation or numbers of vehicle movements

- 4.4 A planning condition was attached to permissions 02/00185, 02/00186 and 02/00187 (numbers 9, 10 and 11 on the above list) which limited the use of vehicles above 3.5 tonnes entering the site between 1900 and 0700 the following day. The condition states:

Unless otherwise agreed in writing by the Local Planning Authority no goods vehicle of 3.5 tonnes gross weight or more may enter or leave the site after 1900 hours on one day until 0700 hours the next day. Furthermore no goods vehicles of 3.5 tonnes gross weight or more may enter or leave the site at all on Sundays or Bank Holidays.

- 4.5 The reason for the condition was as follows: *in the interests of the amenity of neighbouring residents* (my underlining). The condition was considered appropriate because at the time of the planning application there were residential properties in third party ownerships (ie outside the control of the

applicants) located immediately to the east of the site and in very close proximity to the access to the site.

- 4.6 The site has been operational for some considerable time and the application for the waste transfer building was retrospective. The Enforcement Team was not aware of any complaints regarding the hours of operation from the site following the granting of the permission for the waste transfer station. Concerns were raised in the Enforcement Team about the hours of operation of the site in 2008. Environmental Health Officers had received concerns in July 2007. The concerns in 2008 appear to have coincided with the re-routing of vehicles by Bradford Council onto Roper Lane. A Traffic Regulation Order is in place through Queensbury (outside Calderdale) that prevents Heavy Goods Vehicles from travelling on roads other than the A647 and A644. This was to reduce the impact of such vehicles through the residential areas in Bradford.
- 4.7 **The concerns raised** relate to the noise and disturbance caused from the Heavy Goods Vehicles travelling at night past residential properties in Queensbury, to and from the site over a 24 hour period. This affects sleep patterns. There were also issues raised regarding odours from the vehicles. Basically, if the vehicles only travelled during the permitted hours, then residents would receive some respite from the noise and odours which the vehicles generated.

Other Concerns Raised and Enforcement Investigations

- 4.8 Planning Enforcement Officers and Environmental Health Officers investigated the concerns which were raised. There had been problems with the vehicles carrying animal products and spillages had occurred. However, the vehicles carrying the animal products are now covered and are refrigerated. Other regimes, which the Council does not administer, control the transport of such products. The Local Government Ombudsman has been investigating whether any maladministration has taken place by the Council. No maladministration has been found by the Local Government Ombudsman, in how the Council has investigated the odours from the vehicles.
- 4.9 In relation to the operating hours for vehicles over 3.5 tonnes, the operator had been contacted and discussions with the operator and their agent have taken place. The operator has clearly admitted that there is a breach of the planning conditions in relation to the operating hours. Site monitoring has also take place and a breach of the operating hours by vehicles over 3.5 tonnes was found.
- 4.10 Numerous other issues regarding the site have been raised including unauthorised operational development. Shed 5 is used for the storage of bone meal and had been operating without the benefit of planning permission, following the refusal of planning permission 06/01411 for proposed detached shed for the storage of meat and bone meal (Amended Plans and retrospective). A further planning application was submitted 09/00058, with

additional information and it was put before the Planning Committee for a decision. Members were mindful to permit the application. The application was referred to the Secretary of State under the Departure from the Development Plan Procedure. No objections were raised by the Secretary of State and the application was permitted in January 2010. No conditions were attached limiting the hours of operation or the size of goods vehicles entering the site. Shed 5 is therefore now authorised and no further action is required.

- 4.11 Shed 3 (pet food storage and processing) has also been extended without the benefit of planning permission. The building is being extended to upgrade the facilities including the Ice Plant. A planning application to reflect the works which have been carried out is being prepared by the agent and is expected to be with the Council within the next month.
- 4.12 Other more minor breaches of planning control are still under investigation and these include earth mounds and operations beyond the original red line of the approved planning applications.

Non compliance with the operating hours conditions and planning permissions

- 4.13 Enforcement investigations into breaches of planning control can take some time and the preparation of applications to try to resolve breaches of planning control are also time consuming. Contact was made with the operator to highlight the breaches of planning control. A Planning Contravention Notice (PCN) was served in November 2009 on the operator of the site. The possible breaches of planning control referred to included the following:
- Operating hours – 24 hours per day
 - Shed 5 building
 - Extension of pet food building (shed 3)
 - Earth mounds, tipping and activities outside the red line
- 4.14 The PCN asked 62 questions about possible breaches of planning control. Such a notice requires the recipient to answer the questions. Along with the Council's own results of investigations the PCN responses provide information for the Local Planning Authority to assess whether further action should be taken. A detailed response has been received to the PCN. Information regarding traffic movements has not been received as yet, however, a decision does have to be made as to whether formal action will be taken.
- 4.15 The key area of concern which has been raised by residents is the operating hours of heavy goods vehicles to and from the site in breach of planning conditions attached to planning permission 02/00185, 02/00186 and 02/00187.

Response from the agent in relation to the reasons for the 24 hour operation for the pet food and MBM operations.

- 4.16 The agent has confirmed that the pet food operation and meat and bone meal (MBM) operate 24 hours a day. The wood chip, waste transfer, transport operation and office operate between 0700 and 17.30 Monday to Friday and 0700 to 12.30 on Saturday morning. This is within the permitted hours. There is no evidence to suggest that this is not true.
- 4.17 The reasons for the pet food and MBM sheds operating 24 hours has been given by the agent as follows: "these processes need to operate over a 24 hour timescale as the collection of fallen stock, road kill and by-products from rendering plants and abattoirs has a 24 hour demand. They also need to deliver products to their customers in the pet food industry and the fuel end-users over a 24 hour period to supply their production lines. The previous mink farming operated over a 24 hour period. The pet food operation has developed on the site from previous uses and has continued to operate over the 24 hour period since well before 1996. MBM has been stored on the site since 1994/5 when it was stored in Shed 4 and this product has to be removed from abattoirs after normal working hours have ceased and work can re-commence".
- 4.18 **In relation to 24 hour working** the agent has stated "Both the pet food and MBM operations operate on a daily basis and when required including Saturdays, Sundays and or Bank Holidays. The MBM is transported to the site from the Erlings site in Thornton, Bradford. The 24 hour working is necessary on order to service the rendering plants and abattoirs on a 24 hour basis. The rendering plants produce MBM as a by-product and this has to be removed from the plant and stored somewhere before the plant can start again the following day. MBM is sold as a fuel to power stations and cement works and needs to be available on a 24/7 basis. Part of the operation is the storage of emergency dead stock and road kill which takes place in Shed 4 (storage of deadstock and other materials) and therefore has to be available on a 24/7 basis. The pet food production from Shed 3 is supplied to production lines on a 24/7 basis because they operate their lines on that same 24/7 basis and so it may be required at any time to continue the production line".
- 4.19 **With regards to the number of employees** at the site the agent has stated: "The total number of employees at the whole of the site is 136 full time with no part time employees. The pet food side employs 27 and the MBM employs 1 person. The waste transfer operation employs 14, the woodchip employs 1, the office employs 28, transport employs 49, concrete employs 1, security employs 2 and skip wagons employs 13. The business has begun from a small-scale farm based operation to an international group of companies that employs over 400 people in the UK, of which 136 are employed at Swalesmoor. The businesses are inter-related. The businesses deal with difficult and unpleasant materials that are by-products of a number of essential day-to-day activities. The fundamental approach of the company is to reduce waste by finding a source of use for what have previously been

considered as waste products. The innovative work and market leader status of the companies has meant that new processes and initiatives have been undertaken within the framework of current operations and some have resulted in physical changes on the site”.

- 4.20 **In relation to improved processes, emissions and odours** the agent has stated: “The pet food business has recently been improved to provide a high quality product that can be traced back to the farm giving customers an assurance of traceability previously not available. Since BSE and Foot and Mouth food scares, traceability and disease prevention have been high on the agenda, even for pet foods. The processing is automated and a large proportion of the product is transported for further processing in tankers. This improved the quality of the product and reduces emissions and odours. There is a current national production of 700,000 tonnes of this product per year and Calderdale produces over 80 000 tonnes of this”.
- 4.21 **In relation to the vehicle movements** the agent has stated: “The majority of vehicles travelling to the site comprise waste materials coming to the waste transfer station, which operates within the permitted operating hours. These are processed through the site and re-usable materials are taken out with the only the residue going out to landfill sites. Other materials coming into the site are the MBM to be stored, cooled and graded and transferred into vehicles to go out as fuel, pet food raw materials to come into the site to be cleaned, washed sorted and chilled and then taken out for further processing, emergency dead stock and road kill remains to be stored until removal to the rendering plant”.
- 4.22 There are no hours restrictions on vehicles movements in relation to the MBM in Shed 5. The waste transfer operations take place within the permitted hours. The main routes of vehicles for the MBM have been provided by the agent and these are between Swalesmoor Road, along Brighouse Road to the north west and then eastwards to the Erlings site (rendering plant in Thornton Bradford) and back again. The majority of other vehicle movements to and from the site are in the same direction through into Bradford utilising Brighouse Road in both directions on the A647.
- 4.23 Roper Lane located to the south west of Brighouse Road was used until the Traffic Regulation Order was in place. This route meant that part of the A647 and A644 was not used and the vehicles passed through the residential areas. The agent has highlighted that the site has been operating over a 24 hour period for some time.
- 4.24 The vehicles travelling in the evening times therefore serve the MBM and the pet food stage and processing building. The actual numbers of vehicles entering and leaving the site have been requested, however these details have still not been received.

Assessment as to whether formal action should be taken in relation to vehicles over 3.5 tonnes entering and leaving the site after 1900 hours including possible actions which could be taken

- 4.25 The operator is not committing an offence if a planning condition has not been complied with. Planning enforcement is a discretionary power of the Local Planning Authority. If a planning condition is not complied with then formal action does not automatically follow. For formal action to be taken there has to be a breach of planning control and the Local Planning Authority has to consider whether it is “expedient “ to take formal action, having had consideration to the development plan policies and all other material planning considerations. Section 172 of the Town and Country Planning Act states:

The Local Planning Authority may issue a notice where it appears to them that there has been a breach of planning control and that it is expedient to issue the notice having regard to the provisions of the development plan and to any other material considerations.

- 4.26 Government Guidance on planning enforcement contained in PPG 18 Enforcing Planning Control and Circular 10/97 Enforcing Planning Control and the associated guidance to Local Planning Authorities advises that enforcement action should be commensurate with the breach of planning control to which it relates. It highlights that it is usually inappropriate to take formal action against trivial or technical breaches of planning control which causes no harm to amenity in the locality of the site. Furthermore, Local Planning Authorities should not take action solely to regularise development. The enforcement regime does not exist to punish people purely for non compliance with a planning permission and or planning conditions. It exists to ensure that acceptable development takes place.
- 4.27 The original reason for the planning condition related to residential amenity. There were no highways reasons for a planning condition to restrict the hours of operation.
- 4.28 All of the properties in the immediate vicinity of the site are now within the ownership of the company. Some monitoring of the site has taken place in the evening times by the Team Leader in Enforcement. The condition is clearly in breach and this is not in dispute. Vehicles entering and leaving the site are in low gear at the entrance to the site and the noise generated by the vehicles at this point was not high.
- 4.29 The planning regime does not seek to regulate the noise from traffic movements once the vehicles have left the site and are travelling along the road network. VOSA (Vehicle and Operators Services Agency has controls over the roadworthiness of goods vehicles and it checks on the mechanical condition, loading and unloading. Environmental Health legislation does not control noise from vehicles travelling along the adopted road network.
- 4.30 The Local Planning Authority has to assess whether the resultant breach of the planning condition results in a situation which is in accordance with

relevant planning policies. The use of the site has been established with the numerous planning permissions granted for waste transfer storage and industrial purposes on the site. The principle of the development has been clearly established and cannot be revisited. The issue for consideration is therefore whether there is any adverse effect on amenity arising from the hours of operation outside the permitted hours. The concerns raised by residents include the noise and disturbance from the vehicles including the odours from the vehicles. The latter has been addressed in paragraph 4.8 above.

5. Options considered

Possible actions which could be taken

5.1 The formal action which could be taken in relation to the breach of conditions include the following:

- Service of a Breach of Condition Notice – there is no right of appeal to the Secretary of State although the validity of the notice or the authority's decision to serve it can be challenged by an application to the High Court for Judicial Review. If the notice is not complied with then a prosecution could be sought in the Magistrates Court. The maximum fine on conviction is £1 000
- Service of an Enforcement Notice- there is a right of appeal to the Planning Inspectorate. The maximum fine on conviction for non compliance with the Notice is £20 000. However, costs can be awarded against the Local Planning Authority if it is found to have acted unreasonably and taken formal action unnecessarily.

5.2 The key policy guidance is contained in PPG24 Planning and Noise. The Replacement Calderdale Unitary Development Plan does not have a saved policy in relation to noise generating uses. Policy E3 which referred to noise generating development has not been saved.

5.3 Planning Policy Guidance 24: Planning and Noise outlines the considerations to be taken into account in determining applications both for noise sensitive developments and for those activities which will generate noise. It also provides advice on how the planning system can be used to minimise the adverse impact of noise without placing unreasonable restrictions on development or adding unduly to the costs and administrative burdens of business. The general principles are that the planning system should ensure that, wherever practicable, noise sensitive developments are separated from major sources of noise (such as road, rail and air transport and certain types of industrial development).

5.4 In this case there are few residential properties in the immediate vicinity of the site and these are all now within the ownership of the company. No complaints have been received from anyone in the immediate vicinity of the site or from anyone along Swalesmoor Road in relation to noise generated at

the site or from any of the machinery or vehicles used in connection with the site.

- 5.5 The planning system can consider noise which may be generated from the site within the locality from new development. It can also consider the acceptability of introducing noise sensitive development adjacent to noisy uses or sources of noise. Here, the issue is the noise and disturbance from vehicles travelling along the road network in the evening which is some considerable distance from the site and where all other forms of vehicles including heavy goods vehicles travel over a 24 hour period.
- 5.6 The planning system does not control the noise from vehicles travelling along the road network. VOSA has controls over Heavy Goods Vehicles including their road worthiness. PPG 24 highlights that that a planning permission should not seek to duplicate the controls which are carried out by other relevant bodies. The planning system does not seek to control the movements of heavy goods vehicles when they have entered the adopted road network. It deals with the activities on the site and vehicle movements in and out of sites in the immediate vicinity of the site. The road network is designed to cater for all forms of vehicles including heavy goods vehicles.
- 5.7 The Head of Housing and Environment has been consulted regarding any possible noise disturbance generated from the vehicles. He has confirmed that the original reason for the planning condition restricting the hours of operation and including the words “unless otherwise agreed in writing by the Local Planning Authority” was because there were residential properties in close proximity to the access and egress to the site. They were in close proximity to the activities on the site and it was considered appropriate to protect them during the evenings and Sundays and Bank Holidays. These properties are no longer third party properties and the levels of disturbance to these properties is not high. He does not consider that he could support the taking of formal action to secure compliance with the planning condition.
- 5.8 Therefore, to penalise one company utilising heavy goods vehicles when other heavy goods vehicles are travelling on the road network in connection with other companies would not be considered to be reasonable and not commensurate with the breach of planning control. For these reasons it is considered that the Local Planning Authority could not sustain the service of an Enforcement Notice in relation to the operating hours for vehicles over 3.5 tonnes and defend the action through an Enforcement Notice appeal.
- 5.9 The agent through the PCN response has highlighted the need to retain the 24 hour operation. The service of either notice above would seek to reduce considerably the activities at the site and it is considered that this will hinder the waste operations at the site. Concerns have been raised by residents in the Queensbury area regarding the activities at the site and these do need to be considered carefully. However, there is always a balance to be struck between any effects on residents, which can be legitimately considered through the planning regime. The Planning Regime cannot be used where other regimes are available. The site employs a considerable number of staff

and the activities themselves contribute significantly to waste reduction principles and re-use of materials. It therefore assists in ensuring that there continues to be adequate capacity of recovery facilities to meet nationally set targets for recycling and recovery and this is in accordance with Policy ENV13 of the Regional Spatial Strategy and PPG4 Industrial and Commercial Development.

- 5.10 On balance and given the comments from the Head of Housing and Environment it is not considered that formal action should be taken as a case could not be made for taking action on residential amenity grounds and the consequence of the breach of the condition is considered to comply with relevant policy guidance. It is therefore considered that it is not expedient to pursue formal action for the breach of the operating hours condition.

6. Consultation

- 6.1 The Acting Head of Democratic and Partnership Services has been consulted and his comments are as follows: Members need to give clear and cogent reasons why in their opinion they consider that enforcement action is expedient or not. Members should also be aware that these reasons may be employed if any subsequent action is taken.
- 6.2 The Head of Housing and Environment has also been consulted and his comments are included in paragraphs 5.7 above.

7. Financial Implications

- 7.1 The serving of an Enforcement Notice is likely to result in an Enforcement Notice appeal being lodged with the Planning Inspectorate. Costs can be awarded against the Council for unreasonable behaviour. There is no current budget for any such costs and therefore they would have to be met from the existing budget.

8. Equality and Diversity

- 8.1 There are no equality and diversity implications arising from any actions which may or may not be taken.

9. Contribution to Delivering Population Outcomes

- 9.1 The continued efficient operation of the site will help to safeguard local employment. Furthermore, the operation of the site supports the recycling of waste. Allowing vehicles over 3.5 tonnes to enter and leave the site 24 hours per day therefore contributes to the achievement of the following population outcomes: safeguard Calderdale's future and foster economic prosperity for all; and improve the quality of our environment and promote respect for Calderdale's heritage.

10. Corporate implications

- 10.1 Waste transfer and recycling activities contribute significantly to the sustainability agenda and whilst such activities have to be balanced against any other adverse effects on the environment and amenities of residents, the curtailment of evening activities at the site may limit substantially the effectiveness of the site in dealing with waste.

11. Conclusions

- 11.1 The original reason for imposing the hours of operation condition was to protect the amenity of residents in the immediate vicinity of the site. Hours of operation conditions are not imposed to protect residents from disturbance from vehicles on the main highway road networks. However, any effects do have to be balanced against the overall benefits to the environment as a whole from the effective management of waste. It is considered that it is not expedient to take formal action in relation the breach of planning conditons relating to hours of operation of vehicles over 3.5 tonnes.

Geoff Willerton

Head of Planning

Reference: AFM/ENF/07/61263

Date: 1 April 2010

Further information

Should you have any queries in respect of this report, please contact in the first instance:

Miss Anne Markwell on Tel. 01422 392228 anne.markwell@calderdale.gov.uk

NON EXEMPT DOCUMENTS ARE AVAILABLE FOR INSPECTION AT:

Planning Services, Northgate House, Northgate, Halifax. HX1 1UN

Twenty four hours notice (excluding holidays and weekends) may be required in order to make the material available).

Please contact Miss Anne Markwell 01422 392228 to make arrangements for inspection.



NUMBERS OF THE SHEDS AND THE ACTIVITIES WITHIN EACH SHED

Shed 1 waste transfer

Shed 3 pet food production and storage

Shed 4 dead stock

Shed 5 Meat and Bone meal – building approved by application 09/00058