

REPORT TO: Planning Committee
MEETING DATE: Tuesday 2 October 2012
BY: Executive Director (Services for Communities)
SUBJECT: Application for Planning Permission for Consideration

Application No. **12/00263/PM**

Proposal Variation of condition 5 of planning permission 08/00467/FUL to extend the areas from where waste can be transferred to the energy from waste facility

Location **Consented Energy From Waste Facility
Oxwellmains
Dunbar
East Lothian
EH42 1SW**

Applicant Viridor Waste Management Ltd

Per McNally Associates Ltd

Ward 7

RECOMMENDATION Consent Granted

PLANNING ASSESSMENT

As the area of the application site is greater than 2 hectares, what is proposed in this application is, under the provisions of The Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009, defined as a major development type proposal and thus it cannot be decided through the Council's Scheme of Delegation. The application is therefore brought before the Planning Committee for a decision.

As a statutory requirement of major development type proposals this application proposal was the subject of a Proposal of Application Notice (Ref: 11/00011/PAN) and, thereby, community consultation prior to the application being made to the Council. As a further statutory requirement a report on the pre-application community consultation that was undertaken is submitted with this application.

The report informs that a total of 25 people attended the two pre-application public exhibitions, one of which was held at Hallhill Healthy Living Centre in Dunbar and the other at Innerwick Village Hall, and that those attendees made a number of comments regarding the proposal. The conclusion of the report is that no material changes to the pre-application proposal were considered necessary. The proposal for which planning

permission is now sought is the same as that which was the subject of the community engagement undertaken through the statutory pre-application consultation of the proposal.

The application site, which has an area of some 6.9 hectares, forms the western part of the existing waste landfill site of Oxwellmains. The landfill site is operated by Viridor Waste Management Ltd under the terms of planning permission P/0867/91 granted in June 1993. It occupies a countryside location 4.5km to the south east of Dunbar, 2km to the northwest of the village of Innerwick, and 3.5km to the west of Torness Nuclear Power Station. The landfill site is bounded to the north by the main east coast railway line, to the east by farmland, to the south by the A1 trunk road and to the west by the Lafarge cement works.

In May 2008, through application 08/00467/FUL, planning permission was sought by Viridor Waste Management Ltd for the erection on the application site of an energy from waste with combined heat and power facility (EfW) and for associated works.

The purpose of the EfW would be to convert non-hazardous household, commercial and industrial waste into energy. It would have the capacity to process up to 300,000 tonnes per annum, based on two lines with a capacity of 150,000 tonnes each.

At their meeting in September 2009, the Planning Committee refused to grant planning permission for the proposed EfW for the following five reasons:

“1 It is not demonstrated to the Planning Authority that large amounts of waste would not be transported to the proposed energy from waste facility by road from sources outwith the local area and that with such sourcing and transportation of waste the proposed energy from waste facility would not accord with the proximity principle of criterion 1 of the Scottish Environment Protection Agency's 'Guidelines for Thermal Treatment of Municipal Waste 2009'.

2 The submitted heat plan does not demonstrate to the Planning Authority that the proposed energy from waste facility would be efficiently operated so as to effectively deliver combined heat and power outputs and therefore the proposed energy from waste facility would not accord with the energy recovery principles of criterion 5 of the Scottish Environment Protection Agency's 'Guidelines for Thermal Treatment of Municipal Waste 2009'.

3 It is not demonstrated to the Planning Authority that only residual waste would be treated at the proposed energy from waste facility and without the treatment being only of residual waste the proposed energy from waste facility would not accord with criterion 4 of the Scottish Environment Protection Agency's 'Guidelines for Thermal Treatment of Municipal Waste 2009'.

4 The proposed energy from waste facility would be visually intrusive and a further industrialisation of the area, detrimental to the amenity of the surrounding areas.

5 For the foregoing four reasons and with regard to public concerns about adverse environmental and health impacts of the proposed energy from waste facility, it is not the best practicable environmental option for treatment of the waste stream and therefore it would not accord with criterion 6 of the Scottish Environment Protection Agency's 'Guidelines for Thermal Treatment of Municipal Waste 2009'”.

The applicant appealed that decision to the Scottish Ministers. Following a public local inquiry, the decision of a Reporter appointed by the Scottish Ministers was to allow the appeal and thus planning permission (ref.08/00467/FUL) was granted for the proposed EfW subject to conditions.

Of these Condition 5 states:

“Unless otherwise approved in writing by the Planning Authority, waste received and treated at the energy from waste facility shall be restricted to:

- (1) Non-hazardous residual municipal waste arising within the East Lothian, Midlothian, Scottish Borders and City of Edinburgh Council areas; and
- (2) Non-hazardous residual commercial and industrial waste arising within the East Lothian, Midlothian, Scottish Borders and City of Edinburgh Council areas.

For the avoidance of doubt, waste generated outwith these areas but transferred to the facility via transfer stations (or some other form of intermediate treatment or handling facility) within these areas, is not to be classed as arising within the council areas identified in (1) and (2) above and shall not be treated at the facility, unless otherwise approved in writing by the Planning Authority.

To this end, the operator of the energy from waste facility hereby approved shall maintain a written log recording the nature and source of the waste entering the facility. If waste is delivered via a transfer station (or some other form of intermediate treatment or handling facility) the log must detail the primary geographic source, by council area, of the waste. The log shall be made available to the Planning Authority on request.”

The reason for Condition 5 is “To ensure that waste is not being transported for treatment at the plant from outwith these council areas, in accordance with the proximity principle”.

Planning permission is now sought for a variation of Condition 5 to extend the areas from where waste can be transferred to the EfW. Accordingly, the applicant has applied to re-word Condition 5 as follows:

“Unless otherwise approved in writing by the Planning Authority, waste received and treated at the energy from waste facility shall arise within Scotland and be restricted to:

- (1) Non-hazardous residual municipal waste; and
- (2) Non-hazardous residual commercial and industrial waste.

For the avoidance of doubt, waste generated outwith Scotland but transferred to the facility via transfer stations (or some other form of intermediate treatment or handling facility) within Scotland, is not to be classed as arising within Scotland and shall not be treated at the facility, unless otherwise approved in writing by the Planning Authority.

To this end, the operator of the energy from waste facility shall maintain a written log recording the nature and source of the waste entering the facility. If waste is delivered via a transfer station (or some other form of intermediate treatment or handling facility) the log must detail the primary geographic source of the waste. The log shall be made available to the Planning Authority on request”.

The determination in the case of this application has to be limited to a decision on the merits or otherwise of the variation of Condition 5 for which planning permission is sought. The determination cannot be extended to a reconsideration of the merits or otherwise of the application site being developed for a EfW, because planning permission is already granted for that.

Section 25 of the Town and Country Planning (Scotland) Act 1997 requires that the application be determined in accordance with the development plan, unless material considerations indicate otherwise.

The development plan is the approved Edinburgh and the Lothians Structure Plan 2015 and the adopted East Lothian Local Plan 2008.

There are no policies of the approved Edinburgh and the Lothians Structure Plan 2015 or of the adopted East Lothian Local Plan 2008 that are relevant to the determination of this application because of the specific terms of the proposal that is subject of the application.

Material to the determination of the application is Scottish Planning Policy: February 2010, the Scottish Government's Zero Waste Plan and the Scottish Environment Protection Agency Guidance Note 6 entitled "Guidance on input to development management consultations in relation to Zero Waste Plan issues" (issued March 2012).

Also material to the determination of the application are the representations received from the public.

There are a total of 21 written representations, all of which make objection to the proposed variation of Condition 5.

A copy of each written representation is contained in a shared electronic folder to which all Members of the Committee have access.

The main grounds of objection are summarised as follows:

- At the Public Inquiry, Viridor said that they would not need to import waste from outside Lothian and Borders;
- Condition 5 is a key condition imposed on the grant of planning permission 08/00467/FUL;
- The applicant's submission does not provide new arguments to reverse this decision;
- The Proposed variation would breach the proximity principle;
- To approve this application would encourage others to be less than open in their applications and to seek to alter conditions imposed on them once planning permission is obtained;
- The local area is becoming a dumping ground for all and sundry; and
- Increase in traffic from all over Scotland would lead to increased traffic congestion and would make the A1, and in particular its junction at Oxwellmains, more dangerous.

Dunbar Community Council raise concerns over the proposed variation of Condition 5. They do not believe that waste should be transported long distances as this would have a significant impact on the environment.

East Lammermuir Community Council, a consultee on the application raise concerns over the proposed variation stating that the limitations imposed by Condition 5 on where waste originates from was the bedrock of the granting of planning permission 08/00467/FUL. The proposed variation does not reflect faith in the public inquiry system and does not in any way take account of the strong objections local people have made about the idea of waste

being transported long distances to East Lammermuir. The Community Council are aware that there remain strong sustained objections to the proposed variation of Condition 5.

When the appeal decision was taken to grant planning permission 08/00467/FUL on 14 December 2010 national planning policy on waste management was set out in the National Planning Framework for Scotland 2 (NPF2), Scottish Planning Policy: February 2010 and the Scottish Government's Zero Waste Plan.

The Zero Waste Plan, which the Scottish Government, published in June 2010 continues to set a long-term policy framework for future waste management in Scotland.

As then, NPF2 continues to state that waste management infrastructure has an important part to play in realising the Scottish Government's objective of a greener Scotland. The planning system has a crucial role to play in ensuring that installations are delivered in time to allow waste management targets to be met.

Scottish Planning Policy which was published in February 2010, then and now states that the Scottish Government has adopted Zero Waste as a goal. To this end a significant commitment to enabling the development of new waste management infrastructure through the planning system is required. In paragraph 213 of Scottish Planning Policy reference is made to the proximity principle, which requires that waste is dealt with as close as possible to where it is produced.

A further material consideration in the appeal decision that granted planning permission 08/00467/FUL was SEPA's 'Guidelines for Thermal Treatment of Municipal Waste' 2009, which provided more detailed guidance on the Scottish Government's policy on the requirement to recover energy from waste in an efficient manner. Part of that detailed guidance set out the proximity principle as being a key land use planning consideration in terms of the location of a proposed EfW. That proximity principle was one of ensuring that waste is dealt with as close to source as possible, in order to avoid the adverse environmental impacts of unnecessary transport.

The limitation of Condition 5 on where waste could be transferred from were imposed to ensure that the EfW would only treat waste arising from a relatively local area in order to accord with the proximity principle and thus with Scottish Planning Policy: February 2010 and SEPA's 'Guidelines for Thermal Treatment of Municipal Waste' 2009.

Since the appeal decision granted planning permission 08/00467/FUL, the Scottish Government published in February 2011 Annex B of its Zero Waste Plan. It confirms that the land use planning system is central to delivering waste management facilities for all waste to ensure that the objectives and targets of the Zero Waste Plan are met. It also confirms that there is a national shortfall in the operational capacity of waste management infrastructure required to meet the Zero Waste Plan targets by 2025.

Annex B of the Zero Waste Plan advises that references in paragraph 213 of Scottish Planning Policy to the proximity principle should be taken in the context of the guidance in Section 4 of the Annex. In Section 4 of Annex B it is stated that the "need and proximity for waste management facilities should be considered strategically as the achievement of a sustainable strategy may involve waste crossing planning boundaries within Scotland".

Whilst Annex B states that the Zero Waste Plan now supersedes some references to waste policy in Scottish Planning Policy: February 2010 it is not specific in defining what exactly has been superseded.

Further to the publication of Annex B of the Zero Waste Plan, the Scottish Environment Protection Agency issued in March 2012 Guidance Note 6 entitled "Guidance on input to development management consultations in relation to Zero Waste Plan issues".

On the matter of the proximity principle it is Guidance Note 6 that states that what Section 4 of Annex B means is that it is acceptable for waste arising from any location within Scotland to be treated in any waste management facility proposed within Scotland.

The Scottish Environment Protection Agency will not therefore require information about the origin of the waste to be treated in a particular waste management facility to be provided in a planning application for any such facility.

In a supporting statement submitted with this application the applicant claims that the limitation of Condition 5 of planning permission 08/00467/FUL on where waste to their approved EfW at Oxwellmains could be transferred from does not accord with Annex B of the Scottish Government's Zero Waste Plan and the related Scottish Environment Protection Agency Guidance Note 6.

In other words, through the applicant's proposed variation of Condition 5 approval is sought to allow the transfer of waste to their approved EfW from any location within Scotland.

This is consistent with the part of the Scottish Environment Protection Agency's Guidance Note 6 that advises that it is acceptable for waste arising from any location within Scotland to be treated in any waste management facility proposed within Scotland. Thus it is also consistent with Annex B of the Zero Waste Plan.

The Scottish Environment Protection Agency has been consulted on the application. They confirm that they no longer comment on the matter of proximity when consulted on waste management facility proposal. Given that the proposed variation to Condition 5 of planning permission 08/00467/FUL does not affect the nature of the waste to be transferred to the approved EfW at Oxwellmains, and that it is only the geographical area from where waste is to be transferred from, the Scottish Environment Protection Agency advise that they do not have any objection to the proposed variation of Condition 5.

Both the Council's Policy and Projects Manager and the Council's Environmental Protection Manager raise no objection to the proposed variation of Condition 5.

There is no proposal to increase the capacity of the approved EfW. Thus there is unlikely to be a significant increase in the amount of vehicles accessing it from the A1 trunk road.

Neither the Council's Transportation Service nor Transport Scotland raise concerns over the use of the existing road network, including the A1 trunk road for the transportation of waste to the approved EfW.

Originally the proximity principle was one of ensuring that waste was dealt with as close to source as possible, in order to avoid the adverse environmental impacts of unnecessary transportation. As this is no longer the requirement of Annex B of the Scottish Government's Zero Waste Plan and that it is now acceptable for waste arising from any location within Scotland to be treated in any waste management facility proposed within Scotland the proposed variation to Condition 5 of planning permission 08/00467/FUL is acceptable.

RECOMMENDATION

That planning permission be granted for the applied for variation to Condition 5 of planning permission 08/00467/FUL as follows.

1 Condition 5:

Unless otherwise approved in writing by the Planning Authority, waste received and treated at the energy from waste facility shall arise within Scotland and be restricted to:

- (1) Non-hazardous residual municipal waste; and
- (2) Non-hazardous residual commercial and industrial waste.

For the avoidance of doubt, waste generated outwith Scotland but transferred to the facility via transfer stations (or some other form of intermediate treatment or handling facility) within Scotland, is not to be classed as arising within Scotland and shall not be treated at the facility, unless otherwise approved in writing by the Planning Authority.

To this end, the operator of the energy from waste facility shall maintain a written log recording the nature and source of the waste entering the facility. If waste is delivered via a transfer station (or some other form of intermediate treatment or handling facility) the log must detail the primary geographic source of the waste. The log shall be made available to the Planning Authority on request.

Reason:

To ensure that waste is not being transported for treatment at the plant from outwith Scotland, in accordance with the guidance given in Annex B of the Zero Waste Plan.