

**REPORT TO:** Planning Committee  
**MEETING DATE:** Tuesday 7 September 2021  
**BY:** Executive Director of Place  
**SUBJECT:** Application for Planning Permission for Consideration

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Application No. **21/00231/PM**

Proposal Section 42 application to vary condition 3 of planning permission 15/00192/PM to allow Sunday working during the period time of 0800 to 1700 hours

Location **Smeaton Recycling Centre  
Whitecraig  
Musselburgh  
East Lothian  
EH21 8PZ**

Applicant Smeaton Recycling Centre

Per Wardell Armstrong LLP

**RECOMMENDATION** Consent Granted

## **REPORT OF HANDLING**

### **PROPOSAL**

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.

This application relates to Smeaton Recycling Centre, located to the south east of the town of Whitecraig. The site is located within the open countryside as designated by Policy DC1 of the East Lothian Local Development Plan 2018 (ELLDP). The site is also safeguarded for use as a waste management site under Policy W1 of the ELLDP as Smeaton Bing, Whitecraigs - Metal Recycler / Transfer station. The site is not located within an area of special character.

In March 2010, through a decision of the Planning Committee, planning permission (Ref: 09/00617/FUL) was granted for the use of the former shale and coal waste heap of Smeaton Bing and former agricultural land within the Edinburgh Green Belt, all at Crossgatehall to the southeast of Whitecraig as a waste recycling facility and, to enable that use, the reformation and reshaping of the existing bing to form bunds to contain an internal working area, the

erection in it of buildings, the formation of an access road and a sustainable urban drainage system (SUDS) pond, and for associated planting. Planning permission 09/00617/FUL has been implemented and the waste recycling facility is operational, and is known as Smeaton Recycling Centre. Planning permission 09/00617/FUL was granted subject to 15 Conditions.

In November 2012, through a decision of the Planning Committee, planning permission (Ref: 12/00346/PM) was granted for changes to the bunds, buildings, structures, landscaping and for the storage of inert materials and variations of Conditions 6, 7, 8 and 12 as changes to the scheme of development the subject of planning permission 09/00617/FUL.

In March 2018, through a decision of the Planning Committee, planning permission (Ref: 15/00192/PM) was granted for a variation of condition 8 (VI) and (VII) and condition 12 of planning permission 09/00617/FUL to allow the movement of vehicles and the undertaking of site operations over longer periods of time, and to allow the operation over a wider site area.

Condition 3 of planning permission 15/00192/PM states;

"Unless with the prior written approval of the Planning Authority:

(vi) During the time period of 0400 hours to 0530 hours Monday to Friday inclusive the only activity on site for the operation of the waste recycling facility shall be the movement from the site of one pre-loaded HGV. During the period of time of 0530 hours to 0700 hours Monday to Friday inclusive the only activity on site for the operation of the waste recycling facility shall be the movement from the site of HGV's and skip lorries with a skip having already been attached to them during a previous working day's permitted hours of operation of the waste recycling facility. There shall be no loading or unloading of such HGV's or lorries with skips during the period of time of 0530 to 0700 Monday to Friday inclusive. During the time period of 0800 hours to 1700 hours on Sundays the only activity on site for the operation of the waste recycling facility shall be no more than two HGV's entering and two HGV's leaving the site per hour; those HGV's can unload.

(vii) Other than for (vi) above no operational working of the waste recycling facility, including vehicle movements shall take place within the site outwith the hours of 0700 to 2100 Monday to Friday inclusive and 0700 to 1800 on Saturdays. No aggregate crushing shall take place on Saturdays or Sundays, or between the hours of 1800 to 2100 on Monday to Friday inclusive.

Reason:

In the interests of protecting the amenity of residential properties within the area."

Planning permission is now sought for the variation of condition 3 of planning permission 15/00192/PM to allow works to take place on a Sunday between 0800 hours and 1700 hours.

In support of the application a report on Sunday Working has been submitted which informs that Hamilton Waste & Recycling run a successful waste and recycling business at the purpose built Smeaton Bing facility in East Lothian. The business has invested extensively in the site and processes and have won UK national awards for their recycling expertise. The site has been operating since April 2014 and now employs 95 full time staff making it a significant employer within East Lothian. Hamilton Waste & Recycling operate within a competitive market and need to continue to win waste and recycling contracts from the public and private sector. A number of upcoming contracts will require Sunday working. Should the contracts be secured and the economy recovers as it is anticipated to do Hamilton Waste & Recycling hope to employ a further 10-20 full time staff. This planning application seeks to change planning control to allow the operation of the Solid Recovered

Fuel Facility and the Main Processing Shed between 0800 and 1700 on a Sunday. It is not proposed to operate any external plant; all activity would be internal to those two buildings. The only external operations would consist of a separator and sorting equipment including a screen, picking station, air density separator, water separator and a dumper. Planning permission is therefore sought to vary condition 3 to read:

Unless with the prior approval of the planning authority:

(vi) During the time period of 0400 hours to 0530 hours Monday to Friday inclusive the only activity on site for the operation of the waste recycling facility shall be the movement from the site of one pre-loaded HGV. During the period of time of 0530 hours to 0700 hours Monday to Friday inclusive the only activity on site for the operation of the waste recycling facility shall be the movement from the site of HGV's and skip lorries with a skip having already been attached to them during a previous working day's permitted hours of operation of the waste recycling facility. There shall be no loading or unloading of such HGV's or lorries with skips during the period of time of 0530 to 0700 Monday to Friday inclusive.

(vii) During the time period of 0800 hours to 1700 hours on Sundays there shall be no more than two HGV's entering and two HGV's leaving the site per hour; those HGV's can unload. During the period of time of 0800 hours to 1700 hours on Sunday the only activity on the site other than the HGV movements and loading/unloading permissible through this planning condition shall be operations within the Solid Recovered Fuel Facility and the Main Processing Shed. Other than the loading/unloading of HGV's permissible through this planning condition the only permitted external operations on Sunday are the use of a separator including a screen, picking station, air density separator, a water separator and a dumper.

(viii) Other than for (vii) above no operational working of the waste recycling facility, including vehicle movements shall take place within the site outwith the hours of 0700 to 2100 Monday to Friday inclusive and 0700 to 1800 on Saturdays and 0800 to 1700 on Sundays. No aggregate crushing shall take place on Saturdays or Sundays, or between the hours of 1800 to 2100 on Monday to Friday inclusive.

Reason:

In the interests of protecting the amenity of residential properties within the area.

Under the provisions of The Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017 the proposed development falls within the category of a Schedule 2 Development, being one that may require the submission of an Environmental Impact Assessment (EIA). Schedule 3 of The Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017 sets out the selection criteria for screening whether a Schedule 2 development requires an EIA. On the 7th May 2021 the Council issued a formal screening opinion to the applicant. The screening opinion concludes that it is East Lothian Council's view that the proposed development is not likely to have a significant effect on the environment such that consideration of environmental information is required before any grant of planning permission. It is therefore the opinion of East Lothian Council as Planning Authority that there is no requirement for the proposed development to be the subject of an EIA.

A Noise Assessment Report also forms part of this planning application.

## **DEVELOPMENT PLAN**

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 South East Scotland Strategic Development Plan (SESplan) and the adopted East Lothian Local Development Plan 2018.

The application does not raise strategic issues and there are no relevant SESplan policies.

Policies W1 (Waste Management Safeguards), NH12 (Air Quality), NH13 (Noise), and T2 (General Transport Impact) of the adopted East Lothian Local Development Plan 2018 are relevant to the determination of the application.

Also relevant to the determination of this application is Scottish Planning Policy (SPP): June 2014. Paragraph 176 of SPP states that the planning system should:

- i. promote developments that minimise the unnecessary use of primary materials and promote efficient use of secondary materials;
- ii. support the emergence of a diverse range of new technologies and investment opportunities to secure economic value from secondary resources, including reuse, refurbishment, remanufacturing and reprocessing;
- iii. support achievement of Scotland's zero waste targets: recycling 70% of household waste and sending no more than 5% of Scotland's annual waste arisings to landfill by 2025; and
- iv. help deliver infrastructure at appropriate locations, prioritising development in line with the waste hierarchy: waste prevention, reuse, recycling, energy recovery and waste disposal.

## REPRESENTATIONS

Also material to the determination of the application are the written representations received from the public. Ten letters of objection have been received in relation to this application. The main grounds of objection are:

- o Concern with regards to potential increase in HGV traffic caused by the proposal;
  - o Concern with noise and disruption – the peace and tranquillity of the Carberry Estate is blighted by noise and traffic coming from and to the recycling centre;
  - o ELC should be pursuing the growth of other operators and spreading the locations of recycling with the Council area to reduce the concentrated impact on one small community;
  - o Sunday working should be limited to between 10am and 4pm;
  - o the existing Traffic Management Plan is not complied with and operational hour extensions have already led to increased noise, dust and odour emissions;
  - o the supporting information submitted fails to take into consideration the construction of the new shed which is closer to the boundary. This new shed will result in an increase in noise level which is currently unknown. The shed is closer to a residential property and will have a direct impact on the occupants of that property particularly if noise levels increase on Sunday when residents are more likely to be at home;
  - o Increased pollution, noise, dust and odours caused by the proposal as well as litter management;
  - o impact on road safety as vehicles pose a greater risk to road users especially cyclists. If operational on a Sunday this will affect more people;
  - o most operation is outwith buildings in the area between sheds, main shed with recycling machinery working outside the shed as well as inside. Crushers working, waste being shifted, tipper truck etc. This is normal practice from Hamilton 6 days a week causing noise problems with high decibel machinery;
  - o Neighbour notification not received;
  - o Concerns with lack of compliance with speed restrictions on adjoining roads;
  - o Complaints to SEPA poorly handled;
- \* Impact on ability of home owners being able to sell a property;

The grants of planning permission 09/00617/FUL, 12/00346/FUL and 15/00192/PM for the waste recycling centre were granted subject to conditions to control aspects of the operation of the waste recycling facility, including a series of working controls on matters of noise, working hours and vehicular movements for the site. Other than the variation to the working hours to allow working on a Sunday all other controls would remain in place. On the matter of the existing Traffic Management Plan not being complied with, it would be for the Planning Enforcement service to investigate any complaints on this to establish whether there was any breach of planning control.

The handling of any complaint to SEPA is not a material planning consideration in the determination of this planning application.

With regards to neighbour notification, the Council is required to notify properties within 20 metres of the site. In this regard, no residential properties fell within this 20 metre limit. Nevertheless, a site notice was placed by the Council at the entrance of the site notifying the community of the application. An advertisement was also placed in the East Lothian Courier on the 06th November 2020 and again on the 18th December 2020 after revised plans were received notifying the public of the application. Accordingly the application has been sufficiently notified to satisfy the statutory requirements of the Town and Country Planning (Scotland) Act 1997.

Concerns with regards to breach of speed limits adjacent to the site should be brought to the attention of Police Scotland. They are not material planning consideration relevant to the determination of this planning application.

The matter of the Council pursuing other locations for waste disposal is not a material planning consideration relevant to the determination of this planning application.

## **COMMUNITY COUNCIL**

No comments have been received from the Community Council.

## **PLANNING ASSESSMENT**

Policy W1 of the East Lothian Local Development Plan 2018 states that consented waste management sites are identified on the associated Proposals Map and are safeguarded for waste management purposes. Development proposals that would compromise the operation of any of these sites will be resisted. Proposals for additional complementary waste management uses on these sites will be supported in principle. Through the grants of planning permissions 09/00617/FUL, 12/00346/FUL and 15/00192/PM the use of the site as a waste recycling facility has already been established. The proposed variation of the condition would allow the applicant to expand operations on the site to include working on a Sunday. Accordingly it would facilitate the existing operation of the site and is consistent with the overall use of the safeguarded waste recycling site. Therefore as the proposals would not compromise the operation of that waste management site they are not contrary to Policy W1 of the adopted East Lothian Local Development Plan 2018.

Notwithstanding the above the determination of this application rests on the planning considerations of the likely additional impacts the proposed change to operations at the recycling centre would have on the amenity of nearby residential properties and whether they would result in a road safety hazard.

The report on Sunday Operations submitted with the application informs that the works proposed to take place on a Sunday within the site already take place on other days of the week and have been assessed through previous planning applications. However, a full noise

assessment has been undertaken by SLR to establish what the noise impact of that Sunday working would be. The noise assessment undertook noise monitoring on a Sunday at the four nearest properties to Smeaton Bing. The noise impacts were modelled, following industry methodology that was agreed in advance with the Council's Environmental Health Team.

The applicant's Noise Assessment states that the surveys were undertaken at three locations representative of the closest Noise Sensitive Receptors. These survey locations include Sawmill House (NSR04), Pentland View, within Springfield Steading (NSR03), and Crossgate Hall (NSR05) and were agreed with SEPA. The assessment has shown that the noise rating level has been predicted to be below the representative background sound level at all the receptor locations during each operational scenario with the exception of at NSR04 (Sawmill House) when both the SRF and Main building are operating simultaneously, where the rating level is predicted to be +2dB above the background level. In accordance with BS4142:2014+A1:2019, though it is considered that a rating level exceeding the background level by this amount would still equate to low impacts.

**The Council's Environmental Protection Manager** has been consulted on the application. He has reviewed the noise assessment report and confirms that he is satisfied that specific noise associated with proposed Sunday Operations will generally be below existing background noise levels and, as such, there will be no significant impacts upon sensitive receptors due to noise. However, he advises that it would be prudent to restrict Sunday Operations to those activities assessed within the noise report and, as such, he requests the following conditions be attached to any grant of consent:

- o Sunday working associated with the Solid Recovery Fuel (SRF) Facility and the Main Processing Shed shall be restricted to between 0900 and 1700 hours.
- o Sunday working associated with the SRF shall be internal only.
- o Sunday working within the Main Processing Shed of the Materials Recycling Facility shall be restricted to the following operations:
  - o Operation of a 360o digger, a shredder, a trammel, and air density separator, a picking station and a loading shovel.
  - o External operations shall be restricted to a separator, a screen, a picking station, an air density separator, a water separator and a dumper.
  - o No additional HGV movements shall be permitted into or out of the site.

Subject to the imposition of those planning controls the Council's Environmental Protection Manager advises that the proposed variation of Condition 3 to allow Sunday Operations would not have a harmful impact on the amenity of any neighbouring or nearby residential property due to noise.

**SEPA** have also been consulted on the application. They have advised that they believe there will be no impediment to the existing SEPA issued site licence being amended to allow Sunday operations. Therefore they have no objection to this planning application to allow for Sunday operations.

They have stated that they have one current official complaint about operations on this site. Although the process for addressing this is not complete they believe the amendment to alter the licence to allow for Sunday working is possible. It is believed these complaints relate to noise, odour, dust and litter.

SEPA have however stressed that the SEPA licence only addresses aspects of operations which SEPA can regulate. They state that they do not regulate nuisance from the movement of vehicles and they are aware that local residents are unhappy about lorry movements on the roads and the noise from the chains hitting the skips etc. On this condition 3 of planning

permission Ref: 15/00192/PM, states that "during the time period of 0800 hours to 1700 hours on Sundays the only activity on site for the operation of the waste recycling facility shall be no more than two HGV's entering and two HGV's leaving the site per hour." Those HGV's can unload. The agent for the application has confirmed that the applicant is not seeking permission through this application to increase the number of HGV movements to and from the site on a Sunday and that the number of vehicles entering the site would remain as already approved. Therefore, there would be no increase of nuisance to neighbouring residential properties from vehicles.

**The Council's Road Services** confirm that they have no objection to the application. It can therefore be reasonably concluded that, proposal would not be a road safety hazard consistent with Policy T2 of the adopted East Lothian Local Development Plan 2018.

Given the site's location within the Battle of Pinkie Historic Battlefield, **Historic Environment Scotland** has been consulted on the application. They have responded to confirm that they have no comments to make on the proposal. As such, no objection is raised to the application and the proposal would not be detrimental to the character or appearance of the Battle of Pinkie Historic Battlefield.

A revised version of Planning Series Circular 3/2013 (Development Management Procedures) was published by the Scottish Government in September 2015. Annex I of the Circular gives guidance on applications for planning permission under section 42 of the Town and Country Planning (Scotland) Act 1997, as amended. The application that is the subject of this report is made under section 42 of the Act. Annex I states that "Planning authorities should attach to the new permission all of those conditions from the previous permission, where it is intended these should apply and ensure (where appropriate) that permission is granted subject to the conclusion of any appropriate planning obligation".

Therefore, planning permission should again be granted subject to the 9 conditions imposed on planning permission 15/00192/PM which all should continue to apply to the operation of the site. Subject to the compliance with these 9 planning conditions the operation of the waste recycling use on Sundays during the period time of 0800 to 1700 hours would not conflict with Policies W1, NH12, NH13 and T2 of the adopted East Lothian Local Development Plan 2018 and Scottish Planning Policy: June 2014.

## **RECOMMENDATION**

That planning permission be granted subject to the following conditions:

- 1 Within two months of the date of the grant of this planning permission a Traffic Management Plan embodying the measures of traffic control set out in Chapter 6 of the Environmental Statement docketed to planning permission 09/00617/FUL, to minimise the impact of construction and operational site traffic on the area and additionally measures to encourage more sustainable methods of travel by employees to and from the site, including the provision of cycle parking and car share schemes shall be submitted to and approved by the Planning Authority. The waste recycling facility shall thereafter be operated in accordance with the Traffic Management Plan so approved.

Reason:

In the interests of the amenity of the residents of the area, and in the interests of road safety.

- 2 If any of the planting, seeding or turfing carried out in accordance with the details of landscaping approved by the grant of planning permission 12/00346/PM within a period of five years from the date of the grant of this planning permission die, are removed or become seriously damaged or diseased they shall be replaced in the next planting season with others of similar size and species, unless the Planning Authority gives written consent to any variation. The landscaping, tree planting and hedging shall continue to be maintained in accordance with the landscape and woodland management plan for the site approved by the grant of planning permission 12/00346/PM.

Reason:

In order to ensure the implementation and long-term maintenance of a landscaping scheme to enhance the appearance of the development in the interests of the amenity of the area.

3 "Unless with the prior approval of the planning authority:

(vi) During the time period of 0400 hours to 0530 hours Monday to Friday inclusive the only activity on site for the operation of the waste recycling facility shall be the movement from the site of one pre-loaded HGV. During the period of time 0530 hours to 0700 hours Monday to Friday inclusive the only activity on site for the operation of the waste recycling facility shall be the movement from the site of HGV's and skip lorries with a skip already having been attached to them the previous working day's permitted hours of operation of the waste recycling facility. There shall be no loading or unloading of such HGV's or lorries during the period of time of 0530 hours to 0700 hours Monday to Friday inclusive.

(vii) During the period of time of 0800 hours to 1700 hours on Sunday there shall be no more than two HGV's entering and two HGV's leaving the site per hour; those HGV's can unload. No additional HGV movements into or out of the site are permitted unless otherwise agreed with the Planning Authority. During the period of time of 0900 hours to 1700 hours on Sunday the only activity on the site other than the HGV movements and loading/unloading permissible through this planning condition shall be operations within the Solid Recovered Fuel Facility and the Main Processing Shed. Sunday working associated with the SRF shall be internal only. Sunday working within the Main Processing Shed of the Materials Recycling Facility shall be restricted to the following operations: Operation of a 360 degree digger, a shredder, a trammel, and air density separator, a picking station and a loading shovel. Other than the loading/unloading of HGV's permissible through this planning condition the only permitted external operations on Sunday are the use of a separator, a screen, a picking station, an air density separator, a water separator and a dumper.

(viii) Other than for (vii) above no operational working of the waste recycling facility, including vehicle movements shall take place within the site outwith the hours of 0700 to 2100 Monday to Friday inclusive, 0700 to 1800 on Saturdays and 0800 to 1700 on Sundays. No aggregate crushing shall take place on Saturdays or Sundays, or between the hours of 1800 to 2100 on Monday to Friday inclusive."

Reason:

In the interests of protecting the amenity of residential properties within the area.

4 The site access with the A6124 public road shall have a visibility splay of 9 metres by 215 metres on each side of it so that no obstruction lies within the splay above a height of 1.05 metres. The gates for that access shall be set back at least 19 metres along the length of the new access road from the western edge of the carriageway of the A6124 public road and shall open inwards to the site.

Reason:

In order to ensure the safe turning and off-road stopping of HGVs accessing the site, in the interests of road safety.

5 Details of all external lighting proposed to be used within the site shall be submitted to and approved in writing by the Planning Authority prior to its erection. The lighting shall be positioned and designed to ensure that no light from within the site spills beyond the boundaries of the working area or access road to be formed as part of the development hereby approved.

Reason:

In the interests the amenity of nearby properties and of this part of the East Lothian countryside.

6 The development hereby approved shall be used solely for the purposes of waste recycling in accordance with the approved plans docketed to this planning permission and planning permission 09/00617/FUL, including the ancillary office, parking and storage facilities. No part of the site other than as set out in the Operational Site Plan drawing no. ED11492/003 docketed to this planning permission shall be used for the purposes of storage, separation, processing or recycling of waste or any other materials, nor for parking or storage of vehicles.

Reason:

To ensure that none of the operations of the waste recycling facility or use of the site is harmful to the rural character of this part of the East Lothian countryside or the Edinburgh Green Belt.

7 Any fuel oil stored on the site shall be bunded or contained such as to avoid any spillage of leaked oil. Details of such measures shall be submitted to and approved in writing in advance by the Planning Authority.



Reason:

To ensure the site does not become contaminated.

- 8 Within two months of the date of the grant of this planning permission a litter control plan for the site shall be submitted to and approved by the Planning Authority. The litter control plan shall detail the measures necessary to prevent windblown litter within the site and from leaving the site. The waste recycling facility shall be operated in strict accordance with the litter control plan so approved.

Reason:

In the interest of the amenity of the area.

- 9 All loaded lorries which enter and leave the application site shall have their loads fully enclosed or fully sheeted.

Reason:

In the interest of the amenity of the area.