



Agenda Item 8

**USE OF LAND AND PREMISES AS
MATERIALS AND SOIL TREATMENT
FACILITY (CLASS 5 GENERAL
INDUSTRIAL) AT CARRON WORKS,
STENHOUSE ROAD, CARRON,
FALKIRK, FK2 8UW FOR ATG GROUP -
P/17/0733/CPE**

FALKIRK COUNCIL

Subject: USE OF LAND AND PREMISES AS MATERIALS AND SOIL TREATMENT FACILITY (CLASS 5 GENERAL INDUSTRIAL) AT CARRON WORKS, STENHOUSE ROAD, CARRON, FALKIRK, FK2 8UW FOR ATG GROUP - P/17/0733/CPE

Meeting: PLANNING COMMITTEE

Date: 12 September 2018

Author: DIRECTOR OF DEVELOPMENT SERVICES

Local Members: Ward - Carse, Kinnaird and Tryst

Councillor Gary Bouse
Councillor Joan Coombes
Councillor Jim Flynn
Councillor Laura Murtagh

Community Council: Larbert, Stenhousemuir and Torwood

Case Officer: John Milne (Senior Planning Officer), Ext. 4815

UPDATE REPORT

1. Members will recall that this application was considered at the meeting of the Planning Committee on 30 May, 2018 (copy of previous report appended). It was agreed that the Director of Development Services write to (a) neighbours of the site who would have received notification of a planning application of the site, and (b) the applicant to canvas additional information about the nature of the uses within the site over the last 10 years at least, whether they relate to the whole of the site or part of the site and whether these uses have been continuous.
2. It was also agreed that those written to be advised that the matters to be determined in this application are solely matters of evidential fact and law and the Planning Authority is not seeking the views in relation to the planning merits of the use.
3. Following Committee's earlier decision, 125 representations have been received and can be summarised as follows:-
 - The grounds under which the certificate is sought has been selected as "The use began more than 10 years before the date of this application and has operated continuously". A letter sent by SEPA to residents on 28 November 2012 states that Oran Environmental Solutions had vacated the site and that all residual waste had been removed. It also stated that they had no plans to trade on the site in the future.

- There is no further evidence of activity on the site at Carron Works, Stenhouse Road until 27 August 2015 when an application to transfer the licence to Envirotreat Scotland Ltd was submitted. This totals 33 months where no operations have taken place.
 - The site appears abandoned.
 - The SEPA license has been breached, through the storage of materials in the existing shed.
 - The SEPA license has been breached by the storage of materials in the yard area.
 - The previous operators of the site did not adhere to good practices, resulting in odour complaints, noise complaints and issues relating to flies and vermin.
 - There are other sites more appropriate for this type of use and to authorise such a use in the middle of a housing area is not appropriate.
 - Health of residents will be at risk.
 - The notification exercise is flawed, in that not enough residents were contacted.
 - Notification of a public meeting was at short notice
 - The business credentials of operators are in question.
 - This is not what local residents want or indeed need.
4. In relation to the extent of notification undertaken, it should be noted that there is no requirement for this to be undertaken in relation to an application for a Certificate of Lawfulness. The Planning Committee agreed that notification be undertaken in line with the requirement for a planning application. No public meeting (other than those of the Planning Committee) has been arranged by Falkirk Council as Planning Authority.
5. In relation to abandonment, tests established through case law include physical condition, length of time not used, whether the site has been used for any other purpose, and intention. The absence of activity from the site for a period of 33 months would not, in itself, be sufficient grounds to conclude abandonment of use of the site. The site has been kept maintained securely, there has been no intervening use with material still stored in the buildings and there is no evidence to suggest that the intention of the applicant is to use the site for any other purpose than Class 5 General Industrial. The submission of applications for a Certificate of Lawful Use indicate this to be the case.
6. The applicant has submitted a letter from Falkirk Council, dated 29 May 2000, to G.R. Service Company, that planning permission was not required for the use of the site for a Materials Recycling Facility and was considered to be permitted development in terms of the Town and Country Planning (Scotland) Act 1997.

7. The representations received are noted, however they do not raise any matters either relevant to the determination of the application or which would indicate that a Certificate of Lawfulness should not be issued. It is not considered that, albeit there have been periods of little or no activity, that the site has been abandoned. Any breaches of SEPA licences are not a matter for the Planning Authority. The Planning merits of the use are not matters that can be taken into account in the determination of this application, nor can the practices of previous operators or the identity of the applicant.
8. The applicant submits that while activity levels on the site have fluctuated over time, it has been consistently used for the recycling of waste. Waste is kept on site prior to it being recycled to ensure sufficient material is available at all times. Waste has been kept on site continuously. Waste Management Licences have also applied to this site for well over ten years, as has been confirmed by SEPA. At the present time there is approximately 5,000 tonnes of waste soils on site awaiting treatment/recycling. It is intended that this waste will be dealt with by the applicant once the planning position is confirmed.
9. The applicant has expressed some concern about the notification of neighbouring properties and the submission of subsequent representations. He submits that representations from those opposed to the use of the site require to be treated with a degree of caution.

10. CONCLUSION

- 10.1 It is concluded that no evidence or information has been submitted from neighbours, third parties or the applicant which would indicate that a Certificate of Lawfulness should not be issued.

11. RECOMMENDATION

11.1 A Certificate of Lawfulness should be issued for the following reason(s):-

1. **Based on the evidence available, it is considered that it has been satisfactorily demonstrated that the site has been used for a use within Class 5 (General Industrial) of the Town and Country Planning (Use Classes) (Scotland) Order 1997. A certificate of lawfulness should therefore be issued.**

Informative(s):-

1. **For the avoidance of doubt, the plan(s) to which this decision refer(s) bear our online reference number(s) 01.**

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pp. Director of Development Services

Date: 31 August 2018

LIST OF BACKGROUND PAPERS

1. Evidence submitted by the applicant under P/17/0733/CPE.
2. Falkirk Council's Planning Enforcement Charter (updated June 2016).
3. Planning Circular 10/2009 - Planning Enforcement.
4. Falkirk Council Local Development Plan (2015).
5. Objection received from Mrs Leanne Steel, 2 Burder Park, Carron, Falkirk, FK2 8FL on 29 January 2018.
6. Objection received from Chris Ferrie, Chris.ferrie@btinternet.com on 19 July 2018.
7. Objection received from Lorna Watson, Ljfaescotland2004@yahoo.com on 19 July 2018.
8. Objection received from Susan Beats, 32 Anderson Drive, Carron, Falkirk, FK2 8DU on 19 July 2018.
9. Objection received from Susan Beats, 32 Anderson Drive, Carron, Falkirk, FK2 8DU on 23 July 2018.
10. Objection received from Mrs Mhairi Brown, 10 Campbell Christie Drive, Falkirk, FK2 7GS on 23 July 2018.
11. Objection received from Carrie Gault, Email - Diskokitten@hotmail.co on 23 July 2018.
12. Objection received from Stefanie & Stuart Paterson, 9 Waddell Street, Carronshore, Falkirk, FK2 8HF on 23 July 2018.
13. Objection received from Mr John MacNeil, Email - Ffc4dafc0@aol.com on 23 July 2018.
14. Objection received from Clare McGarr, Email Claremcgarr@googlemail.com on 23 July 2018.
15. Objection received from Stella Christie, Email - Sacstar2010@gmail.com on 23 July 2018.
16. Objection received from Kevin & Rebecca McQueenie, 14 Waterfurs Drive, Falkirk, FK2 7GB on 23 July 2018.
17. Objection received from Gillian Starr, 26 Adam Crescent, Stenhousemuir, Larbert, FK5 4DQ on 23 July 2018.
18. Objection received from Mr David Seaton, Email - Dmseaton@blueyonder.co.uk on 23 July 2018.
19. Objection received from Jane Mitchell, 15 Alloa Road, Carron, Falkirk, FK2 8EJ on 23 July 2018.
20. Objection received from Barbara Seaton, Email - Barbaraseaton@blueyonder.co.uk on 23 July 2018.
21. Objection received from Lynne Rose, 30 Campbell Christie Drive, Falkirk, FK2 7GS on 23 July 2018.
22. Objection received from Mr Paul Christie, 14 Carrongrange Gardens, Stenhousemuir, Larbert, FK5 3DU on 23 July 2018.
23. Objection received from Laura Robinson, Email - Laurarobin76@gmail.com on 23 July 2018.
24. Objection received from Alison Blair, 35 Carrongrange Gardens, Stenhousemuir, Larbert, FK5 3DU on 23 July 2018.
25. Objection received from Mr Duncan Mitchell, Email - Duncanhmmitchell@gmail.com on 23 July 2018.
26. Objection received from Stella Christie, Email - Sacstar2010@gmail.com on 23 July 2018.
27. Objection received from Carrie Blair, 35 Carrongrange Gardens, Stenhousemuir, Larbert, FK5 3DU on 23 July 2018.
28. Objection received from Mr Rob Herriot, 10 Campbell Place, Falkirk, FK2 7GQ on 23 July 2018.

29. Objection received from Emily Crombie, Southfield, Airth, Falkirk, FK2 8QH on 23 July 2018.
30. Objection received from Julie Green, Email - Rigbaby.info@gmail.com on 23 July 2018.
31. Objection received from Jenna Orr, Email - Jennaorr@live.co.uk on 23 July 2018.
32. Objection received from Mr & Mrs Ian & Fiona Strathie, 14 Montgomery Drive, Carron, Falkirk, FK2 8SJ on 23 July 2018.
33. Objection received from Mr Barry Paterson, 8 Moulder Place, Falkirk, FK2 7FZ on 23 July 2018.
34. Objection received from Lauren Nugent, Email - Laurennugent@hotmail.com on 23 July 2018.
35. Objection received from Mrs L Scott, Email - Lescalja@aol.com on 23 July 2018.
36. Objection received from Mhoraig Chisholm, 17 Carronlea Drive, Carron, Falkirk, FK2 8DN on 23 July 2018.
37. Objection received from Erin Brooks, Email - Erinmbrooks@icloud.com on 23 July 2018.
38. Objection received from J Johnstone, Email - Janey.johnston@hotmail.com on 23 July 2018.
39. Objection received from Mr Stuart Sharp, Email - Stuartsharp74@hotmail.co.uk on 23 July 2018.
40. Objection received from Dorothy McCabe, 8 Carronlea Drive, Carron, Falkirk, FK2 8DN on 23 July 2018.
41. Objection received from Bob Clark, Email - Bob_clark041@hotmail.com on 23 July 2018.
42. Objection received from Lynsey Ritchie, Email - Zumbalynsey@live.co.uk, Lamond View, Stenhousemuir on 23 July 2018.
43. Objection received from Mr & Mrs Kevin Sharp, 24 Park Road, Falkirk, FK2 7PR on 20 July 2018.
44. Objection received from Mr Gregor Hall, 2 Carrongrange Avenue, Stenhousemuir, Larbert, FK5 3DR on 24 July 2018.
45. Objection received from Mr Andrew Pratt, 16 Burder Park, Carron, Falkirk, FK2 8FL on 24 July 2018.
46. Objection received from Laura Roberts, Cavaroberts@live.com on 24 July 2018.
47. Objection received from Mrs Edith Malcolm, 5 Williamson Avenue, Falkirk, FK2 7FG on 24 July 2018.
48. Objection received from Colette Pratt, 16 Burder Park, Carron, Falkirk, FK2 8FL on 24 July 2018.
49. Objection received from Gillian Gow, Gilliangow2@gmail.com on 24 July 2018.
50. Objection received from Lorna Baird, Stronvar, 10 Carronshore Road, Carron, Falkirk, FK2 8DZ on 24 July 2018.
51. Objection received from Mr Craig Dickson, Ckd321@sky.com on 24 July 2018.
52. Objection received from Jennifer Walker, Jennigarvin@hotmail.com on 24 July 2018.
53. Objection received from Dawn Robertson, Dawn.hunter0407@yahoo.co.uk on 24 July 2018.
54. Objection received from Mr Eric Milligan, 51 Carrongrange Gardens, Stenhousemuir, Larbert, FK5 3DU on 24 July 2018.
55. Objection received from Fiona Donnelly, 63 Muirfield Road, Stenhousemuir, Larbert, FK5 3BN on 24 July 2018.
56. Objection received from Mhairi Brown, Brown.d20@sky.com on 24 July 2018.
57. Objection received from Natalie Dyer, 8 Burder Park, Carron, Falkirk, FK2 8FL on 24 July 2018.
58. Objection received from Claire Donaldson, Claraclairey@yahoo.co.uk on 24 July 2018.
59. Objection received from Liz Houlston, Lizh4@outlook.com on 24 July 2018.

60. Objection received from Mr Bryce Houlston, Bryceh4@outlook.com on 24 July 2018.
61. Objection received from Mr James McLean, 32 Campbell Christie Drive, Falkirk, FK2 7GS on 24 July 2018.
62. Objection received from Gaynor McCourt, Gaynormccourt@gmail.com on 24 July 2018.
63. Objection received from Mr Ian Hunter, ianhunter01@gmail.com on 24 July 2018.
64. Objection received from Mr Steve Boslem, Steveboslem@hotmail.co.uk on 24 July 2018.
65. Objection received from Tracey Mutter, 3 Carronlea Drive, Carron, Falkirk, FK2 8DN on 27 July 2018.
66. Objection received from Kenneth McLean, 17 Carrongrange Gardens, Stenhousemuir, Larbert, FK5 3DU on 26 July 2018.
67. Objection received from Laura and Steven Wilson, 19 Stephens Croft, Falkirk, FK2 7GU on 26 July 2018.
68. Objection received from Helen Miller, 33 Steps Street, Stenhousemuir, Larbert, FK5 4LH on 26 July 2018.
69. Objection received from Jayne Galloway, 20 Sainford Crescent, Falkirk, FK2 7QF on 26 July 2018.
70. Objection received from David MacPhedran, 33 Steps Street, Stenhousemuir, Larbert, FK5 4LH on 26 July 2018.
71. Objection received from Scott Wright, 2 Innerpeffray Drive, Carron, Falkirk, FK2 8BN on 26 July 2018.
72. Objection received from Ms. Tracy Mutter, 3 Carronlea Drive, Carron, Falkirk, FK2 8DN on 26 July 2018.
73. Objection received from Mark Wilson, 22 Arthur's Drive, Stenhousemuir, Larbert, FK5 4DP on 26 July 2018.
74. Objection received from Lynda Russell, 1 The Haven, South Alloa, Stirling, FK7 7LB on 26 July 2018.
75. Objection received from Ryan Newlands, 28 Cotland Drive, Falkirk, FK2 7GE on 26 July 2018.
76. Objection received from Laura Newlands, 28 Cotland Drive, Falkirk, FK2 7GE on 26 July 2018.
77. Objection received from Sharyn Kemp, 13 Arthur's Drive, Stenhousemuir, Larbert, FK5 4DP on 26 July 2018.
78. Objection received from Alistair Apedaile, 4 Tulliallan Place, Stenhousemuir, Larbert, FK5 4TN on 26 July 2018.
79. Objection received from Denise McAnsh, 4 Beaumont Drive, Carron, Falkirk, FK2 8SN on 26 July 2018.
80. Objection received from Eddie and Sheena Short, 27 Callander Drive, Larbert, FK5 3ES on 26 July 2018.
81. Objection received from David Halcrow, 6 Carronlea Drive, Carron, Falkirk, FK2 8DN on 26 July 2018.
82. Objection received from Iain McKenna, 9 Mulloch Avenue, Falkirk, FK2 7GA on 26 July 2018.
83. Objection received from Pat McKay, 12 Cauldhame Farm Road, Falkirk, FK2 7FQ on 26 July 2018.
84. Objection received from Carolina Parker, 38 Carrongrange Gardens, Stenhousemuir, Larbert, FK5 3DU on 26 July 2018.
85. Objection received from Dr Lucie Risk, 9 Mulloch Avenue, Falkirk, FK2 7GA on 26 July 2018.
86. Objection received from Emma McMinn, 16 Longdyke Place, Carronshore, Falkirk, FK2 8TD on 26 July 2018.

87. Objection received from Rebecca Loggie, 23 Letham Terrace, Letham, Falkirk, FK2 8QR on 26 July 2018.
88. Objection received from Audrey Hutchison, 11 Carrongrove Road, Carron, Falkirk, FK2 8NX on 26 July 2018.
89. Objection received from Lisa Cordiner, 63 Bryce Avenue, Carron, Falkirk, FK2 8JB on 26 July 2018.
90. Objection received from Victoria MacLaren, 26 Inch Colm Avenue, Larbert, FK5 4FP on 26 July 2018.
91. Objection received from Janis & Andy Marshall, 47 Carrongrange Gardens, Stenhousemuir, Larbert, FK5 3DU on 26 July 2018.
92. Objection received from Mr A Gault, Tonygault@hotmail.co.uk on 31 July 2018.
93. Objection received from Lorna Watson, Ljfaescotland2004@yahoo.com on 25 July 2018.
94. Objection received from Claire M Adams, 23 Buchanan Court, New Carron, Falkirk, FK2 7FE on 25 July 2018.
95. Objection received from Mr John Dyer, 8 Burder Park, Carron, Falkirk, FK2 8FL on 25 July 2018.
96. Objection received from Angus MacDonald MSP, 2 York Arcade, Grangemouth, FK3 8BA on 25 July 2018.
97. Objection received from Anna Boslem, Anna_gault@hotmail.com on 25 July 2018.
98. Objection received from James & Marilyn Brown, 8 Carrongrove Avenue, Carron, Falkirk, FK2 8NG on 25 July 2018.
99. Objection received from Elspeth Slater, 12 North Street, Falkirk, FK2 7NG on 25 July 2018.
100. Objection received from Mr Eric Milligan, Ericmilligan@hotmail.com on 25 July 2018.
101. Objection received from Mr Simon Hutchison, Hutchisonsimon@hotmail.co.uk on 25 July 2018.
102. Objection received from Mr James Mitchell, Jimmymitchell1@live.co.uk on 25 July 2018.
103. Objection received from Mr Jason Laurie, Jason@odyssey-it.com on 25 July 2018.
104. Objection received from Sharon Dalli, 2 Goosedubs Place, Falkirk, FK2 7GW on 25 July 2018.
105. Objection received from Linzi Hutchison, Linzyc@hotmail.com on 25 July 2018.
106. Objection received from Nancy Archibald, 30 Lodge Drive, Stenhousemuir, Larbert, FK5 4DJ on 25 July 2018.
107. Objection received from Elizabeth Philliben, Lizziemadwife@icloud.com on 25 July 2018.
108. Objection received from Laura Bennie, Lauraandgarethbennie@hotmail.co.uk on 25 July 2018.
109. Objection received from Lindsay Fairweather, Lindsayfairweather@yahoo.co.uk on 25 July 2018.
110. Objection received from Eileen Fairweather, Eileenmsfairweather@yahoo.co.uk on 25 July 2018.
111. Objection received from Mr Derek Brown, Dexbrown1970@yahoo.co.uk on 25 July 2018.
112. Objection received from Greig Carter, Gac_online@sky.com on 25 July 2018.
113. Objection received from Mr Gary Robert Carlyle, 5 Dow Lane, Stenhousemuir, Larbert, FK5 4WH on 25 July 2018.
114. Objection received from Sharon Hughes, Sharonh1608@sky.com on 25 July 2018.
115. Objection received from Mr John A W Archibald, 27 Dow Lane, Stenhousemuir, Larbert, FK5 4WH on 25 July 2018.
116. Objection received from John L Archibald, 30 Lodge Drive, Stenhousemuir, Larbert, FK5 4DJ on 25 July 2018.

117. Objection received from Mr James Penn, J.penn950@btinternet.com on 25 July 2018.
118. Objection received from Carol Macdonald, 42 Sainford Crescent, Falkirk, FK2 7QF on 25 July 2018.
119. Objection received from Lindsay Penn, Lindsaypenn80@gmail.com on 25 July 2018.
120. Objection received from Mhoraig Chisholm, 17 Carronlea Drive, Carron, Falkirk, FK2 8DN on 25 July 2018.
121. Objection received from Lorraine Archibald, Lorrainearchibald@live.co.uk on 25 July 2018.
122. Objection received from Eilidh Dolbear, 4 Stewart Avenue, Carron, Falkirk, FK2 8FJ on 25 July 2018.
123. Objection received from Carol Ann McCallum, 105 Alloa Road, Stenhousemuir, Larbert, FK5 4JU on 25 July 2018.
124. Objection received from Mr Brian Colborn, 54 Beaumont Drive, Carron, Falkirk, FK2 8SN on 25 July 2018.
125. Objection received from Lynette Wilson, 22 Arthur's Drive, Stenhousemuir, Larbert, FK5 4DP on 25 July 2018.
126. Objection received from Mr Aiden Wyllie, 6 Cotland Drive, Falkirk, FK2 7GE on 27 July 2018.
127. Objection received from Mr Andy Marshall, 47 Carrongrange Gardens, Stenhousemuir, Larbert, FK5 3DU on 27 July 2018.
128. Objection received from Elspeth Slater, 12 North Street, Falkirk, FK2 7NG on 24 July 2018.
129. Objection received from Mr Iain Fleming, 49 Park Road, Falkirk, FK2 7PU on 24 July 2018.

Any person wishing to inspect the background papers listed above should telephone Falkirk 01324 504815 and ask for John Milne, Senior Planning Officer.

FALKIRK COUNCIL

Subject: USE OF LAND AND PREMISES AS MATERIALS AND SOIL TREATMENT FACILITY (CLASS 5 GENERAL INDUSTRIAL) AT CARRON WORKS, STENHOUSE ROAD, CARRON, FALKIRK, FK2 8UW FOR ATG GROUP - P/17/0733/CPE

Meeting: PLANNING COMMITTEE

Date: 30 May 2018

Author: DIRECTOR OF DEVELOPMENT SERVICES

Local Members: Ward - Carse, Kinnaird and Tryst

Councillor Gary Bouse
Councillor Joan Coombes
Councillor Jim Flynn
Councillor Laura Murtagh

Community Council: Larbert, Stenhousemuir and Torwood

Case Officer: John Milne (Senior Planning Officer), Ext. 4815

1. DESCRIPTION OF PROPOSAL / SITE LOCATION

- 1.1 This application relates to a Certificate of Lawfulness (Existing Use) for the use of land and buildings at Stenhouse Road, Carron, Falkirk. This use falls within Class 5 of the Town and Country Planning (Use Classes) (Scotland) Order 1997.
- 1.2 The applicant submits that this site has been used as a waste facility (Class 5 General Industrial) for a period in excess of ten years. The types of waste that have been dealt with has included but not limited to domestic, industrial, commercial, soils and muds. Details of the types of waste dealt with in this facility are noted in the Scottish Environment Protection Agency (SEPA) Waste Management Licence and Modifications submitted with the application.
- 1.3 The applicant plans to continue operating this site as a waste management facility but intends only accepting waste soils for recycling and re-use. SEPA have provided a letter dated 19th January 2018 to Falkirk Council stating that they have no objection to the application for Certificate of Lawfulness. They have also confirmed that waste management activities have occurred on the site since 2000 and that the current Waste Management Licence is still active. They also confirm that the operator is still in a position to re-commence operations if he wishes. The applicant confirms that there has been short periods since 2000 when activities on site were greatly reduced. This was a result of the site changing from one operator to another. However during these periods, waste was still stored on site, the Waste Management Licence was still in place and the site was still being regulated by SEPA.

2. REASON FOR COMMITTEE CONSIDERATION

- 2.1 The application was called in by Councillor Joan Coombes to seek clarification as to what the continued use of the site means in real terms.

3. SITE HISTORY

- 3.1 There is no planning site history pertinent to the proposal.

4. CONSULTATIONS

- 4.1 SEPA has raised no objection to the Certificate of Lawfulness for Existing Use or Development.
- 4.2 In SEPA's opinion, the information submitted is accurate in that it describes the licensed activities at the site. The activities that have gone before have been waste management activities and are as described in the Waste Management Licence conditions. The authorisations have been active, and still are, however due to financial issues and the requirement to apply for a Pollution Control permit, no physical works have taken place at the site since 2016. This does not mean that they could not recommence under the stipulations of active Licence WML/L/1018502.

5. COMMUNITY COUNCIL

- 5.1 No comments received.

6. PUBLIC REPRESENTATION

- 6.1 In the course of the application, one contributor(s) submitted letter(s) to the Council. The salient issues are summarised below:-

- Objections in relation to vermin, noise, litter and odour from the site.

7. PLANNING ASSESSMENT

- 7.1 Section 150(1) of the Town and Country Planning (Scotland) 1997 Act enables anyone (not just the landowner or a person with an interest in the land) to apply to the planning authority for a decision on whether a specified existing use, operational development, or failure to comply with a planning condition or limitation, which has already taken place, is lawful for planning purposes. For the purposes of this Act, uses and operations are lawful at any time if -
- (a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason), and
 - (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.

In respect of failure to comply with conditions or limitations attached to a grant of planning permission, such failure may be considered lawful at any time if -

- (a) the time for taking enforcement action in respect of the failure has then expired, and
- (b) it does not constitute a contravention of any of the requirements of any enforcement notice or breach of condition notice then in force.

7.2 The salient issues in the current application are:

The applicant contends that an original Waste Management License was issued by SEPA in December, 2000 with the issue of a further 5 Waste Management License modifications in total for the site between 2009 and 2016. Copies of these licenses have been submitted within the application. A summary of activities contained within the licences are, to date, permitted wastes including household, commercial, industrial, scrap metal, asbestos, hazardous and non-hazardous soils and muds. The hours of operation are consented to be Mon - Fri 06.00 - 22.00. Sat 06.00 - 16.00. Sun 08.00 - 16.00. Permitted tonnage 74,999 tonnes/annum. To ratify the evidence, SEPA were consulted and have offered no objection. SEPA confirms that the information submitted is accurate in that it describes the licensed activities at the site. The activities that have gone before have been waste management activities and are as described in the Waste Management Licence conditions. The authorisations have been active, and still are, however due to financial issues and the requirement to apply for a Pollution Prevention and Control permit no physical works have taken place at the site since 2016. This does not mean that they could not recommence under the stipulations of the active Licence. Falkirk Council's Environmental Protection Unit have also been notified of the application and advise that the proposed site would operate under a full Waste Management Licence and as such all matters relating to noise would fall under the remit of SEPA to investigate and enforce.

7.3 Issues relating to contaminated land falls under SEPA's regulatory duties and potential odour and dust Issues arising from site construction and operation should be minimised/managed via appropriate SEPA Waste Management Licence conditions and operational site plan. These matters are not controlled by the Planning Authority and the objector is advised to approach Falkirk Council's Environmental Protection Unit and SEPA to secure remedy to perceived nuisances.

7.4 In real terms, the issue of this certificate ratifies that the entire site can be used for the purposes of Class 5 General Industrial within the Town and Country Planning (Use Classes) (Scotland) Order 1997.

7.5 Matters for consideration are:-

- (a) is the use of the site evidenced as a Class 5 use; and
- (b) has the regulation of the operations within the site fallen within SEPA's remit under the Waste Management Licence over the last 10 years?

It has been evidenced that the site has been considered as part of Class 5 - General Industrial - buildings and operations relating to the wider area known as Carron Works over a lengthy period.

It has also be evidenced that an appropriate regulator - SEPA - has the ability to regularise operations on the site. Indeed, submitted evidence would verify that the operations to be recognised have been subject to such regulation and licence.

7A CONCLUSION

The planning authority are not in a position to weigh the merits or otherwise of the proposal in terms of Development Plan policies. This type of application required an evidence based determination as to whether the use of the site has been established and is considered lawful in the absence of an explicit planning permission. The applicant has submitted sufficient evidence through a timeline of Licences issued by SEPA for the types of activities sought to be continued on the site. Based on the evidence submitted by the applicant and in the absence of any contradictory evidence being apparent, it is considered that the applicant has satisfactorily demonstrated that the site has been used for the purposes of waste management (Class 5 of the Town and Country Planning (Use Classes) Scotland Order 1997), including soil treatment, for a period in excess of 10 years. It is acknowledged that the site has been inactive since 2016. However taking into consideration, this recent time frame of inactivity and the fact that a Waste Management Licence is in place, it is considered that the site can be viewed as being in a period of use in excess of ten years. The recent lack of activity would not render the use abandoned. A Certificate of Lawfulness should therefore be issued.

8. RECOMMENDATION

8.1 A Certificate of Lawfulness should be issued for the following reasons:

- 1. Based on the evidence available, it is considered that it has been satisfactorily demonstrated that the site has been used for a use within Class 5 (General Industrial) of the Town and Country Planning (Use Classes)(Scotland) Order 1997. A certificate of lawfulness should therefore be issued.**

Informative(s):-

- 1. For the avoidance of doubt, the plan(s) to which this decision refer(s) bear our online reference number(s) 01.**

.....
Pp Director of Development Services

Date: 22 May 2018

LIST OF BACKGROUND PAPERS

1. Evidence submitted by the applicant under P/17/0733/CPE.
2. Objection received from Mrs Leanne Steel, 2 Burder Park, Carron, Falkirk, FK2 8FL on 29 January 2018.

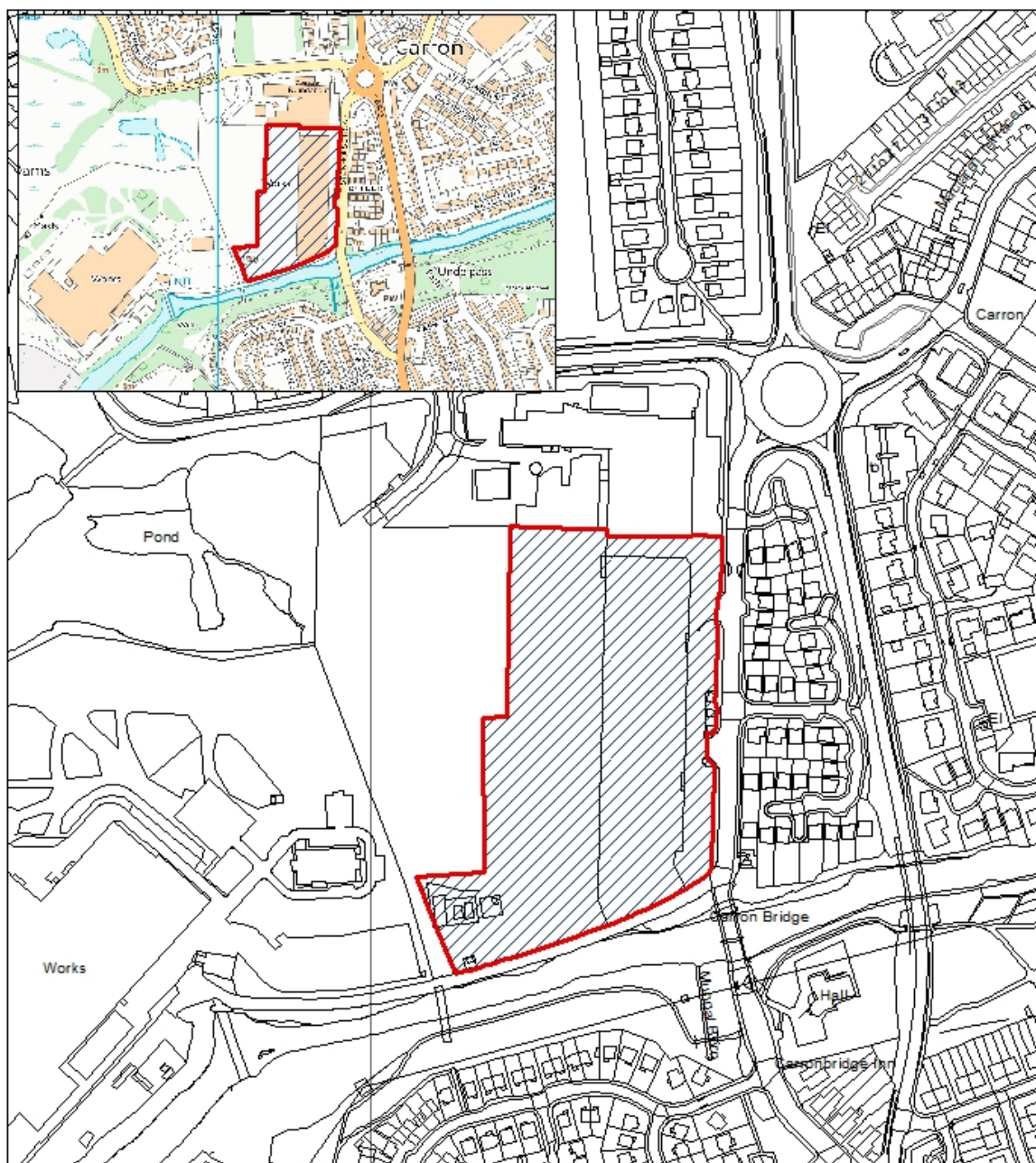
Any person wishing to inspect the background papers listed above should telephone Falkirk 01324 504815 and ask for John Milne, Senior Planning Officer.

Planning Committee

Planning Application Location Plan

P/17/0733/CPE

This plan is for location purposes only. It should not be interpreted as an exact representation of the application site.



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