

**FALKIRK COUNCIL**

**Subject: WEST CARRON LANDFILL, STENHOUSE ROAD, CARRON**  
**Meeting: PLANNING COMMITTEE**  
**Date: 2 NOVEMBER 2011**  
**Author: DIRECTOR OF DEVELOPMENT SERVICES**

**1. INTRODUCTION**

- 1.1 West Carron landfill site is currently regulated by SEPA under the Pollution, Prevention and Control (PPC) regime. The company holding the permit, GR Services Ltd, is in liquidation and is not considered by SEPA to be the landfill operator. The company currently running the landfill site is Oran Environmental Solutions Limited which share the same directors as GR Services Ltd. A company called AC&H Orn 6 Limited owns the land on which the landfill sits. This land is held in trust for the directors of Oran Environmental Solutions Limited/GR Services Ltd.
- 1.2 Discussions are ongoing about a potential transfer of the PPC permit but, if it is not transferred to a new site operator who meets the required criteria, SEPA has advised that there is a significant risk that the West Carron landfill site could be abandoned either partially or completely. An immediate response would be required to ensure that public health, the environment and the amenity of the area in which the site is located is protected. Falkirk Council has agreed to assist in this process by providing SEPA with supporting advice in relation to identifying the immediate, and short-term operational measures required. Consequently a contingency plan is currently being prepared by SEPA to ensure that an effective immediate response can be delivered at short notice if required.

**2. HISTORY**

- 2.1 The deposition of waste material at the site dates back to the 1700's and the inception of the Carron Iron Works. The site was vacated by the Carron Iron Works in the 1950's and previously deposited foundry waste material was excavated for road construction purposes. The site, since the 1950's has been used for landfill purposes by a number of site owners and landfill operators.
- 2.2 The inception of landfill at the site pre-dated the need for planning permission by some 200 years. The then operators of the site in 2005 (GR services) sought and were granted a Certificate of Lawful Use and Development (CLUD) for the site on 2 June 2005 ( Application reference F/2005/0164). The issue of this certificate confirms the lawful use of the site for landfill purposes.
- 2.3 A planning application submitted by GR Service Co (Falkirk) Limited to regularise unauthorised landfill works comprising the formation of a new lined cell and the raising of land form levels, was refused planning permission on 23 September 2009.

- 2.4 During the first half of 2010, site levels were monitored and levels within the operational cell remained in compliance with the terms of the CLUD (Certificate of Lawful Use and Development ) except for the earth bund along the southern edge of the site and the completed cell to the south west. It should be noted that this cell was re profiled during 2010 to smooth out the steep gradient to ensure that the structure was more stable and to ensure that, when it is capped, it would shed water which would minimise the ongoing generation of leachate and gas with associated pollution potential and nuisance. These works were carried out under the supervision of SEPA.
- 2.5 The site operator during this time was GR Service Co (Falkirk) Limited. Regulation of operational issues/concerns relating to odour, birds and noise is the responsibility of SEPA.
- 2.6 Since September 2010, GR Service Co (Falkirk) Ltd has not been trading and SEPA do not consider that this company is the landfill operator. GR Service Co (Falkirk) has submitted an application to transfer the permit to AC&H Orn 6 Limited. This latter company own the land on which the landfill sits. This transfer application has not been progressed to date although recent discussions with a further party are progressing.

### **3. CURRENT POSITION**

#### ***Planning***

- 3.1 The site is presently operating without the benefit of planning permission.

#### ***Environmental***

- 3.2 The site, which is regulated by SEPA, may be abandoned without notice presenting immediate management issues.

### **4. PLANNING ISSUES**

- 4.1 Works continue on the site at cell 2. These levels now constitute an increase above the original levels that were permitted by the CLUD. Oran has been advised that the works constitute the need for a planning application to regularise the current planning position. To date no planning application has been forthcoming. The need for planning permission to be secured has been raised in current permit transfer discussions.

## 5. POTENTIAL ENFORCEMENT APPROACHES

- 5.1 **Planning Contravention Notice (PCN)** – A PCN notice can be served on anyone who is the owner or occupier of the land in question or on an individual with any other interest in the land. It enables the planning authority to obtain information about activities or development where a breach of planning control is suspected. The serving of a PCN does not constitute taking enforcement action but it is an offence not to comply with any requirement in the notice. It is entirely discretionary and there is no requirement to serve a notice before taking formal enforcement action nor does the serving, or not of a notice affect any other power exercisable in respect of any breach of planning control. In this particular case the PCN could be used to establish the intentions in respect of finished levels.
- 5.2 **Enforcement Notice (EN)** – requires landowners or other interested parties who have breached planning control to correct the breach and sets out actions or work required to make development acceptable. The EN must clearly state/set out the matters which appear to the planning authority to constitute a breach of planning control. The EN should also specify the timescale for compliance to resolve the breach. There is a right of appeal to the Department of Environment Planning Appeals (DPEA) by interested parties against the serving of an EN. Previously it was permitted for an appeal to be made where the grounds of appeal could be made by an appellant that the breach ought to be granted planning permission. However this element has been repealed under the 2006 Act (modernising planning agenda). It should be noted that The DPEA appointed Reporter can hold an Inquiry or Hearing. Given the complexities of this case, this is a real possibility.
- 5.3 **Stop Notice (SN)** – A SN is normally served in conjunction with an EN where the Planning Authority considers that the relevant activity should cease before the compliance period in the enforcement notice. A SN must be served in conjunction with an EN and can prohibit any or all of the activities which comprise the alleged breach of planning control in the related EN. There is no right of appeal to Scottish Ministers against a SN. The validity of the SN can however be challenged via the Court of Session seeking a Judicial Review. A Planning Authority can withdraw a SN at any time (without prejudice to their power to serve another notice). If a SN is served without due cause, or an appeal against the EN is successful, the Council may face a claim for compensation.
- 5.4 **Temporary Stop Notice (TSN)** - introduced as part of the new legislative changes under the 2006 Act, a TSN can be served on its own requiring the cessation of an activity from the moment it is displayed on site. There is no right of appeal against the serving of a TSN. The maximum period for a TSN is 28 days after which the notice expires. It is not possible to issue a further TSN after 28 days unless between the notices, the planning authority has taken another form of enforcement action.
- 5.5 **Fixed Penalty Notice (FPN)** – The new legislation (2006 Act) makes provision for a Planning Authority to issue a FPN as an alternative to prosecution for breaching the terms of an EN. By paying a FPN, the person or interested parties discharge the liability for prosecution but it does not discharge the requirement to comply with an EN.
- 5.6 **Use of an Interdict** – A planning authority could apply for an interdict to restrain breaches of planning control. Consideration of this option is largely dependent on the seriousness of the breach of control. An interim interdict can also be considered and it would be the responsibility of the planning authority to present sufficient facts to establish a compelling need for immediate protection.

- 5.7 **Notice Requiring Application For Planning Permission For Development Already Carried Out (Sec 33A Notice)** Sec 33 A gives planning authorities the power to issue a notice requiring a retrospective planning application, which would then allow the planning authority to consider the grant of planning permission subject to any conditions or limitations that would make the development acceptable in planning terms. Before issuing a Section 33A the planning authority should, as with any enforcement action, consider whether the action is commensurate to the breach. Furthermore it is recommended that such a notice should not be served where the planning authority were of the view that permission would clearly not be granted. In setting a date by which the application is to be made, the planning authority should consider the scale and complexity of the development and allow a reasonable period for submission of the planning application.

## 6. CONCLUSION- PLANNING ISSUES

- 6.1 In Planning terms, the overall use of the site is lawful, having the benefit of a CLUD, which Falkirk Council approved in 2005. It is acknowledged that there is a breach but this solely relates to a breach in the height of the land deposit in relation to the CLUD levels. The height of both cells remain below the heights of the authorised adjoining landfill cells and therefore in visual terms, it is not considered that (in terms of height alone) there is an adverse visual impact at this time.
- 6.2 Serving an Enforcement Notice would require the operator to remove the fill from both the current operational cell (cell 2) and the adjacent recently profiled cell, (cell 1) which has been re –graded. This would require fill to be removed resulting in further odour nuisance, litter and bird nuisance. This would also leave this area of the landfill site at a significantly lower level than that of the adjoining cells to the north. SEPA has advised that this scenario would exacerbate surface drainage concerns which could lead to significant leachate and gas issues with associated pollution potential and nuisance.
- 6.3 Reverting back to the site levels permitted by the CLUD, the operator could cease works and vacate the site without restoration. The CLUD levels constitute a level site profile and, unlike a planning permission, there are no planning conditions included with a CLUD which require the restoration of the site. However the levels of a finished landfill cell require a gradient to allow the shedding of water in a manner which removes the risk of leachate and gas generation in the aftercare phase.
- 6.4 The entire landfill area, to which the cells in question relate, is an authorised landfill in land use terms. There has been no lateral expansion in the footprint of the landfill area. If there was to be such expansion at any time in the future without the benefit of planning permission, the use of the above enforcement powers including the serving of a stop notice/temporary stop notice would be seriously considered.
- 6.5 It should also be noted that many of the above mentioned concerns such as dust/litter/smell pollution are the remit of SEPA.
- 6.6 Recent discussion with SEPA confirms that SEPA are currently considering their options in respect of enforcement powers and therefore it would be prudent to liaise further with SEPA in this regard. The use of enforcement action under the planning legislation has been carefully considered but has not been pursued while there remains the prospect of a better solution.

## **7. ENVIRONMENTAL ISSUES**

- 7.1 SEPA confirmed that it is in discussion with a potential operator with regard to the prospect of this other party taking over operations at the site. This would include taking ownership of the land and making an application to transfer the PPC permit from the liquidator to this other party. Discussions are on going and SEPA has confirmed that they are expecting more details soon.
- 7.2 If the permit is not transferred to a new site operator who meets the required criteria, SEPA has advised that there is likelihood that there is a significant risk that West Carron landfill site could be abandoned either partially or completely. This could have consequences for the Council in its role as public health and contaminated land authority and work continues on examining potential impacts.
- 7.3 SEPA is responsible for enforcement of the PPC permit conditions which in broad terms are aimed at ensuring the site is run in a safe manner without presenting significant risk of harm to the community or environment.
- 7.4 SEPA advise that the vast majority of complaints they receive regarding West Carron landfill are in relation to odours and, more specifically, landfill gas odours. SEPA further advise that a lack of proactive investment at site has contributed to this issue. Other types of complaint received from nearby residents include; dust, litter, seagulls and visual disamenity.

## **8. RECOMMENDATIONS**

### **8.1 It is recommended:**

- a) **that Planning Enforcement is not pursued at this stage while there remains the prospect of a better solution; and**
- b) **that Council officers continue to liaise with SEPA and report back to members as appropriate.**

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**Director of Development Services**

**Date:** 26<sup>th</sup> October 2011

Any person wishing to inspect the background papers listed above should telephone Falkirk 01324 504756 and ask for Ian Dryden.