

AGENDA ITEM

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**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**

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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 been 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.

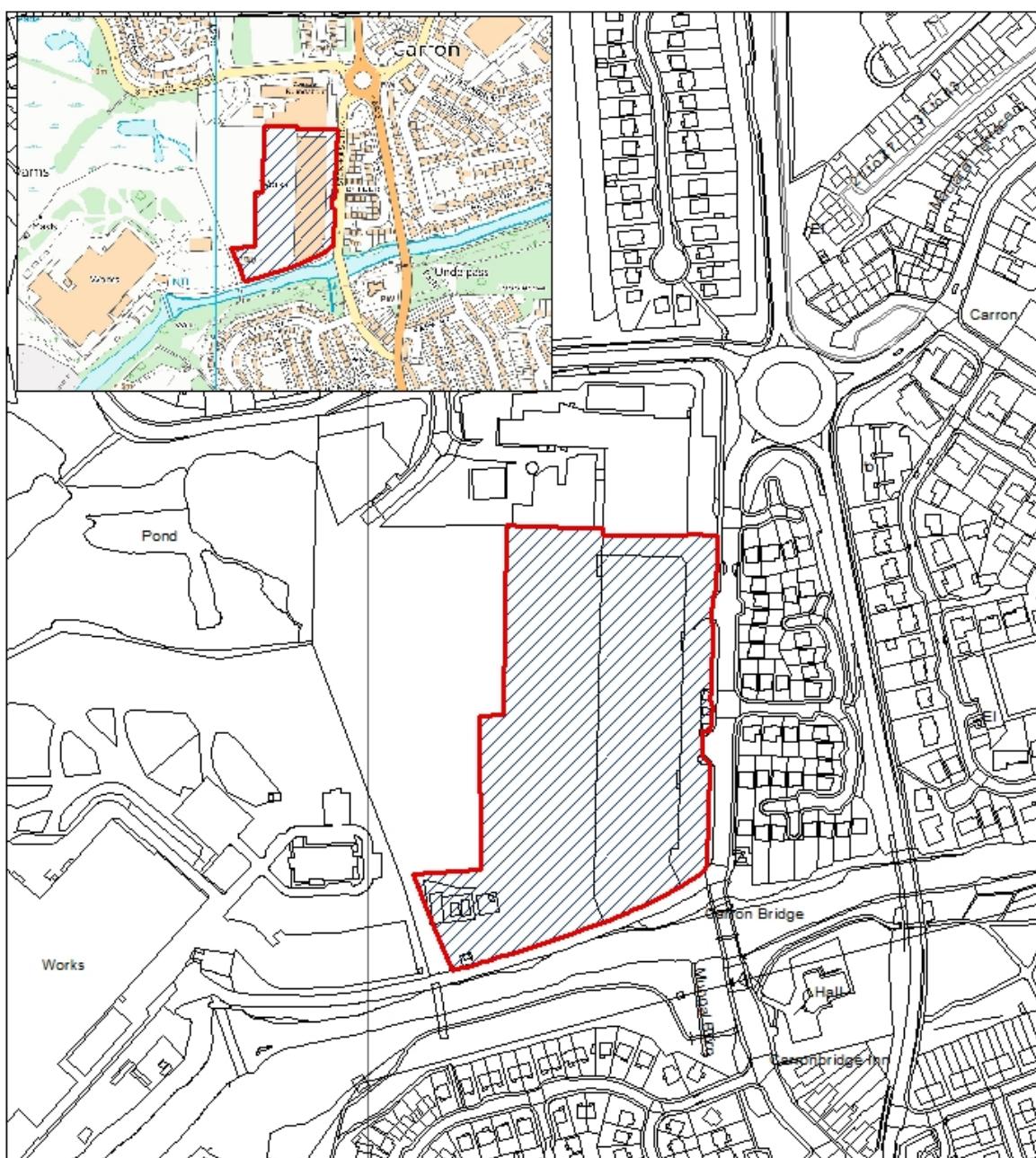
Any person wishing to inspect the background papers listed above should telephone Falkirk 01324 504815 and ask for John Milne, Senior Planning Officer.

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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