

**DARLINGTON BOROUGH COUNCIL**

**PLANNING APPLICATIONS COMMITTEE**

**COMMITTEE DATE:**

**Page**

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**APPLICATION REF. NO:** 08/00429/CU

**STATUTORY DECISION DATE:** 10 July 2008

**WARD/PARISH:** CENTRAL

**LOCATION:** Alexander Le Skerne, Unit 37 Cleveland Trading Estate (as amended by plans received 2 September 2008)

**DESCRIPTION:** Change of use to processing ferrous and non ferrous metals

**APPLICANT:** Mr Billy Ward

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## **INTRODUCTION**

This application was to be heard by Members of the Planning Committee in July 2008. The recommendation was to refuse the application based on insufficient information being submitted with the application to establish whether or not the proposed change of use would have adverse impact upon the surrounding B1 office uses and residential properties. The application had to be withdrawn from that Agenda as a further noise assessment just prior to the Committee, and Officers needed the appropriate timescale to assess the additional information.

The applicant refused to withdraw the application and lengthy discussions have since taken place between the Council's Environmental Health Officer and the applicant's various Noise Consultants.

## **APPLICATION AND SITE DESCRIPTION**

The application site measures approximately 1.4 hectares and is located on the southeast corner of the Cleveland Industrial Estate. The site consists of a large three bay general industrial building measuring 7200m<sup>2</sup>; a site office and an open yard area. There are two accesses into the yard area.

The applicant, Ward Bros Steel, wish to move their existing operation from their Albert Hill site, currently located to the south of the application site, to the Alexander Le Skerne building. Since the application has been submitted, the applicant has demolished two of the bays of the building. Whilst this work did not require planning permission, the submitted drawings and Noise

Assessments had to be amended to reflect what had occurred on site. As a result the proposal involves the retention of one third of the existing building, the section that forms the boundary with Cleveland Street. The northern elevation would be rebuilt and constructed from brickwork and horizontal cladding.

The proposal involves the change of use of the site from a general industrial use (Class B2) to a premises used for the processing of ferrous and non ferrous metals, which is a sui generis use ie. a use which does not fall within a use class. Generally speaking, ferrous metals are magnetic metals derived from iron or steel. Products made from ferrous metals include appliances, furniture, containers and packaging like steel drums and barrels. Non ferrous metals are nonmagnetic metals such as aluminium, lead and copper.

The Trading Estate is an area in predominately commercial and industrial uses with the East Coast mainline forming the eastern boundary. The area has seen a great deal of regeneration take place in recent years, with improved access and new modern buildings.

The development is one that falls within the thresholds set out in Schedule II of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulation 1999 (SI/1999/293) (the "1999 Regulations). As required by the 1999 Regulations, the Local Planning Authority is required to adopt a formal opinion as to whether or not an Environmental Impact Assessment (EIA) is required for the development. This process has been undertaken and, having taken into account the criteria set out in Schedule 3 to the 1999 Regulations, the Local Planning Authority has determined that the proposal does not constitute EIA development.

## **PLANNING HISTORY**

None relevant

## **PLANNING POLICY BACKGROUND**

The following policies within The North East of England Plan Regional Spatial Strategy to 2021 are relevant:

- Policy 2 Sustainable Development
- Policy 7 Connectivity and Accessibility
- Policy 6 Protecting and Enhancing the Environment
- Policy 37 Air Quality
- Policy 40 Planning for Renewables

The following policies within the Borough of Darlington Local Plan are relevant:

- EP2 Employment Areas
- EP5 Other Uses in Employment Areas
- EP17 Waste Material Storage, Processing and Transfer

## **RESULTS OF CONSULTATION AND PUBLICITY**

Five letters of objection have been received which can be summarised as follows:

- *The use will create unacceptable amounts of large commercial vehicle movements causing nuisance to accessing Units 1 to 8 Forge Way*
- *Traffic congestion;*
- *The applicant's existing site is frequently on fire, and this site would be at a similar risk;*
- *Debris would be dropped on the roads from the vehicles entering and leaving the site;*
- *Conditions placed on other units (Unit 26 Forge Way) by the Council that scrap vehicles or rubbish cannot be stored on site.*
- *The findings of the Transport Statement are not correct;*
- *Noise report is not complete and does not take into account certain commercial neighbouring units;*
- *Concerns over dust and other airborne pollutants;*
- *The Estate is now becoming attractive with more firms wanting to relocate to the area. New units have replaced the old style industrial units. This application would be a big step backwards*
- *To allow the development would directly contravene the Local Plan*
- *The development would create smells, be dirty, noisy and potentially dangerous*
- *The outdoor space could be used to create a "Scrap Mountain" like the one at the existing Edward Street facility*

Following the submission of the amended drawings, a further seven letters of objection have been received, raising the following additional concerns:

- *The further reduction in warehouse space will mean that more work is carried out externally, which can only result in more noise, dust, dirt and disturbance. Reducing the warehouse space will of course save on rates but at the expense of the disturbance to nearby businesses;*
- *The noise levels will be extremely high;*
- *The burning of waste material at regular intervals produces smelly and dirty fallout and can be hazardous to health;*
- *The constant use of heavy vehicles and cranes causes vibration that can be felt indoors;*
- *The facility will be unsightly and will have a devaluing effect on the surrounding businesses;*
- *We object to the total reclassification of the site to B2 use. The building has been used merely as a warehouse and has not been used for any heavy industrial purposes whatsoever. There is bound to be a significant variation in trafficking, noise and pollution;*
- *We are concerned over the safety of the site having witnessed fires at the current location;*

Charter Self Drive have submitted a further detailed letter commenting on the amended proposal, concluding that the application should be rejected as it is totally unacceptable and contravening Policy EP 17 of the Local Plan as:

- *There are adjacent Class B1 uses*
- *The site is adjacent to the main railway line*
- *The noise, dust, pollution and increased traffic will have an adverse impact on the surrounding area*

**Northumbrian Water**

Northumbrian Water have raised no objections

**Environment Agency**

The Environment Agency has no objections and commented as follows:

*“ The site will require an Environment Protection Permit and as such, all site operational issues will be addressed during the permit application process. A member of our Environmental Protection Team will arrange a meeting with the applicant to discuss any relevant issues ”*

**PLANNING ISSUES**

The applicant states in their Supporting Statement, *“that the relocation of the Ward Bros Steel business has a number of wider benefits for the area. The existing site is much larger than the proposed site and the existing operation will be consolidated and made more efficient. The relocation would allow for the existing site to be redeveloped and decontaminated. The proposed site will allow for the business to operate in a more efficient way, which has associated environmental benefits. In addition to this the majority of sorting will be conducted indoors on the new site whereas on the existing site, the majority of work is conducted outdoors”*. The Statement continues *“It’s difficult to envisage a more appropriate location for such a use as this in the Darlington area. The proposed development will essentially compact the Ward Bros operation into a smaller efficient site, therefore reducing its visual/environmental impact”*.

The main issues to be considered here are whether or not the proposed change of use is acceptable in the planning policy terms:

**Planning Policy**

Policy EP2 of the Borough of Darlington Local Plan identifies the application site as being within an Employment Area. This policy states that permission will be granted for B1 (Business) uses within the Area and B2 (General Industry) and B8 (Storage or Distribution) uses providing they do not harm the amenity of the area or nearby residential areas.

The proposals are for a change of use to the processing of ferrous and non-ferrous metals, this does not fall under a use class and is therefore Sui Generis. Although the proposals are Sui Generis the processes that will take place on the site are definitively industrial in nature. The overwhelming industrial nature of the process outlined in the application means that the most suitable location for the use would be on established employment land such as EP2.2 (Cleveland Street/The Forge). However as the Sui Generis use is not addressed in the policy EP2 there are other policies that relate to the provision of other uses in employment areas.

Policy EP5 (Other Uses in Employment Areas) states that development will be permitted in policy E2 areas only to the extent that it accords with the policies applicable to it and forms part of comprehensive proposals for development or redevelopment within B1, B2 or B8. The proposal does not form part of a wider proposal for development that is B1, B2 or B8 uses therefore for the purpose of assessing this proposal, the other policy that is applicable is EP17.

Policy EP17 (Waste Material Storage, Processing and Transfer) is the policy that will determine whether the proposals are in accordance with the other policies EP2 and EP5 as the proposal is for a use other than B1, B2 or B8. The policy provides guidance on the location, appearance and

operation of activities, which are generally unsightly, and can cause problems even in industrial areas. The policy states that permission may be granted where:

- 1) There are no adjacent class B1 uses.
- 2) The storage or processing of any material in the open is not visible from the main or branch line railways, the main road network, the line of the cross-town route or residential property.
- 3) There is adequate screening of the site by a fence, wall or other means of enclosure.
- 4) There is no material adverse impact on the amenity of the surrounding areas.

The next section of the Report assesses the proposed change of use against the above criterion.

### **BI Office Uses**

The majority of the properties in the locality of the application site fall under B2 and B8 uses. However, Cleveland House and Cleveland Hall, both situated adjacent to the application site, are in B1 use. Charter Self Drive on Forge Way, also adjacent to the application site is a B8 use with an ancillary B1 use. Forge House, which is on the opposite side of the access road leading into the Estate, contains B8 and B1 uses (particularly in the section of the building closest to the application site). This means that the proposal does not accord with the first criteria point.

### **The Storage or Processing of Materials**

The East Coast Main line runs along the eastern boundary of the application site. Whilst two bays have now been demolished, the eastern gable wall of the two bays has been retained and a 3.5m high barrier would also enclose the site. A 4m high barrier would be erected within the site to screen the external processing areas. These features would screen the external yard area from the railway line.

The application site is not close enough to the main road network or the line of the cross town route to be seen from these routes. The nearest dwellings are on the Albert Hill, approximately 70m to the south east of the application site and it would be justified to say that any open storage of material would not be visible from the dwellings.

A planning condition can also be imposed to restrict the height of any externally stored materials to that of the proposed means of enclosure for the site.

The proposed application would accord with the second criteria point.

### **Screening**

As previously mentioned, the bay, which forms the boundary on Cleveland Street, would remain and a 3.5m high barrier would enclose the remainder of the site. The proposed application would accord with the third criteria point.

### **Amenity**

The fourth criterion refers to any material adverse impact on the amenity of the surrounding area. Possible impacts, in this instance are traffic impacts; visual appearance land contamination and noise.

The site has two existing accesses, with the northern access used by HGVs bringing and removing materials to the site. Staff and visitors to the site would use the western access. A

Transport Statement accompanied the application and it concludes “ *conditions on the highway network will be improved with the proposed development...the proposed development will generate fewer trips than that which are currently generated from the Alexander le Skerne Works site. Secondly it is evident that with the removal of the existing site across the road, conditions will also be improved locally on the highway network*”

The Council’s Traffic Manager has stated that the traffic generated by the development would already be on the main highway network at this point and therefore no highway objections have been raised. If planning permission is granted, planning conditions have been requested relating to improvements to the access road; provision of dropped crossings and the provision of secure cycle parking areas.

A Phase 1 Desk Top Study for Land Contamination accompanied the application, which concluded that due to the past industrial uses of the site, a Phase 2 investigation is required to allow a full assessment of the contaminative setting of the site. The Council’s Environmental Health Officer has requested the imposition of a planning condition requesting that a Phase 2 investigation is carried out prior to the commencement of the development. In addition further conditions have been requested for information on drainage systems and the type of surface proposed for the yard.

The Cleveland Trading Estate has been the subject of new developments. The building within the application is the most dominant building with the surrounding units being predominately two/three storeys high. The northern elevation of the Alexander Le Skerne building would be rebuilt using brickwork and horizontal cladding to match the appearance of the bay to be retained. A 4m high brick wall would be built, within the site, at right angles and attached to the existing building, to create bays. Whilst, no details have been submitted to show the design of the 3.5m barrier for the site, it is expected to take the form of steel plated fencing. It is considered that the development would not have a detrimental impact upon the visual appearance of the local area.

The remaining issue is noise. On the current site, activities include the manual sorting of metals including delivery and removal of 1 tonne skips by forklift, a fixed hydraulic shearing plant loaded by a Liebherr 942 Litronic dozer, and a smaller mobile hydraulic and a bailing machine loaded by a second Liebherr 942 Litronic dozer. At the proposed site, the manual sorting and the bailing operations would be conducted indoors.

As previously mentioned, there are some B1 office uses adjacent to and within the locality of the application site and the nearest dwellings on Albert Hill are approximately 70m away. Since the submission of the application, the applicant has employed a new Noise Consultant, AES, and they have been in discussions with the Council’s Environmental Health Department. A revised Noise Impact Assessment has been submitted, which concludes that a number of mitigation measures would ensure that the surrounding area would not be affected by noise. These measures are the restriction of the fixed and mobile plant to positions outlined in the Assessment, the provision of a 4m high acoustic barrier (brick wall) extending at right angles to the warehouse building to provide acceptable internal and external noise levels at all of the noise receptor locations. A further 3.5m high acoustic barrier would be constructed around the perimeter of the site. The retained gable end of the demolished bays, which is 11m high, would also be retained to provide screening of site noise to the properties on Dodsworth Street and the dwellings on Allan Street.

This Assessment has been considered by the Council Officers and by an independent consultant, Parsons Brinkerhoff (PB), on behalf of the Council. PB have confirmed that the noise calculations in the AES Assessment are accurate and they consider that the application should not be refused on noise grounds, subject to the imposition of suitable planning conditions. To conclude, the proposed change of use would comply with criteria points 2), 3) and 4) of the policy but it does not comply with the first criteria point, as there are B1 uses adjacent to the site. However, a Noise Impact Assessment has been submitted with the application which concludes, that subject to specific mitigation measures secured by planning conditions, the proposed development would not create any unacceptable noise levels to the detriment of the nearby buildings. The proposed perimeter fencing would also help to screen the external yard area from the surrounding properties and a Dust Action Plan would be secured by planning condition.

On balance, it is considered that the proposed change of use, along with the associated external alterations and mitigation measures, would be acceptable in this location. A further benefit of the relocation of the existing operation is that it would be moved further away from the dwellings on Allan Street and within Albert Hill, controlled by a planning permission with more onerous planning conditions.

### **SECTION 17 OF THE CRIME AND DISORDER ACT 1998**

The contents of this report have been considered in the context of the requirements placed on the Council by Section 17 of the Crime and Disorder Act 1998, namely the duty on the Council to exercise its functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent crime and disorder in its area. It is not considered that the contents of this report have any such effect.

### **CONCLUSION**

The proposed change of use would comply with criteria points 2), 3) and 4) of Policy EP17 (Waste Material Storage, Processing and Transfer) of the Borough of Darlington Local Plan, but it does not comply with the first criteria point, as there are B1 uses adjacent to the site. However, a Noise Impact Assessment has been submitted with the application which concludes, that subject to specific mitigation measures secured by planning conditions, the proposed development would not create any unacceptable noise levels to the detriment of the nearby buildings. The proposed perimeter fencing would also help to screen the external yard area from the surrounding properties and a Dust Action Plan would be secured by planning condition. On balance, it is considered that the proposed change of use, along with the associated external alterations and mitigation measures, would be acceptable in this location. The following planning policies have been taken into consideration:

#### **The North East of England Plan Regional Spatial Strategy to 2021:**

- Policy 2 Sustainable Development
- Policy 7 Connectivity and Accessibility
- Policy 6 Protecting and Enhancing the Environment
- Policy 37 Air Quality
- Policy 40 Planning for Renewables

#### **Borough of Darlington Local Plan:**

- EP2 Employment Areas

- EP5 Other Uses in Employment Areas
- EP17 Waste Material Storage, Processing and Transfer

## RECOMMENDATION

### PLANNING PERMISSION BE GRANTED SUBJECT TO THE FOLLOWING CONDITIONS:

1. The development hereby permitted shall be commenced not later than the expiration of three years from the date of this permission.

REASON - To accord with the provisions of Section 91(1) of the Town and Country Planning Act, 1990.

2. The site shall not operate outside the hours of 09:00 to 17:00 Hrs Monday to Friday, 09:00 to 13:00 Hrs on Saturdays, and not on Sundays or Bank Holidays.

REASON - In order to allow the Local Planning Authority to retain control over the development

3. External machinery shall be fixed to the exact locations outlined on the site plan shown as Figure 3 contained in the Noise Impact Assessment Report (ENG\_LYLE\_16345/RevC).

REASON - To prevent nuisance from noise in the interests of amenity

4. The existing eastern gable wall of Warehouse Bays 1 and 2 shall be the subject of a structural survey in order to check its stability and integrity. (The assessment shall only be carried out by a person qualified to undertake such structural surveys). Any improvement works recommended as a result of the structural survey shall be implemented. Should the structural survey recommend that the gable wall is removed, an alternative solid noise barrier, of a construction and height to be agreed with the Local Planning Authority, shall be erected in its place.

REASON - To prevent nuisance from noise in the interests of amenity

5. The Rating Level (as defined in BS 4142:1997) as a result of site operations shall not exceed the background noise level value by more than 5dB(A) at the receptor locations specified in Figure 2 of the AES Noise Impact Assessment report reference ENG\_LYLE\_16345/RevC, when measured in accordance with BS 4142:1997. The background noise level to be used shall be that specified in the AES Noise Impact Assessment report reference ENG\_LYLE\_16345/RevC, or if it is the opinion of the Local Planning Authority that these noise levels are no longer applicable, the background noise level shall be measured and agreed with the Local Planning Authority. (For monitoring purposes, where it is not possible to access the receptor locations specified in Figure 2 of the AES report, noise measurements shall be taken at the nearest boundary location to each receptor and the resulting noise level at that receptor determined using calculation.)



REASON - To prevent nuisance from noise in the interests of amenity

6. Operations shall not commence on the site until the modifications intended to improve the noise insulation properties of the existing warehouse building (as detailed in Paragraphs 8.3 & 8.4 of the AES report reference ENG\_LYLE\_16345/Rev C) have been undertaken, and a report demonstrating that these modifications have been undertaken has been approved by the Local Planning Authority.

REASON - To prevent nuisance from noise in the interests of amenity

7. Operations shall not commence on the site until the noise barriers intended to reduce the noise impact at neighbouring buildings as detailed in Paragraphs 8.5 & 8.6 of the AES report reference ENG\_LYLE\_16345/RevC (The locations of these noise barriers is shown in green in Figure 4 of that report) have been constructed, and a report demonstrating their completion has been approved by the Local Planning Authority.

REASON - To prevent nuisance from noise in the interests of amenity

8. Operations shall not commence on the site until a Noise Management Plan has been submitted to, and approved by, the Local Planning Authority. The Noise Management Plan shall include details regarding the management of fire exit doors, roller shutter doors, vehicle reversing alarms and drop heights for scrap material.

REASON - To prevent nuisance from noise in the interests of amenity

9. Only the machinery shown in Figure 3 of the AES report reference ENG\_LYLE\_16345/RevC shall be used on the site. Any additional or replacement machinery shall only be used with the prior approval of the Local Planning Authority. Full details of any such machinery, including an updated Noise Impact Assessment, shall be submitted to, and agreed with, the Local Planning Authority.

REASON - To prevent nuisance from noise in the interests of amenity

10. Prior to commencement of development, a Dust Action Plan shall be submitted to and agreed by the Local Planning Authority, thereafter the development shall be carried out in accordance with the agreed plan.

REASON - To ensure that nearby residential properties are not adversely affected by dust.

11. The development hereby permitted shall not commence until a scheme to deal with contamination of land and/or groundwater, including soil contamination, ground/surface water contamination, landfill gas, leachates and stability as appropriate, has been submitted and approved by the Local Planning Authority and until the measures approved in that scheme have been fully implemented. The scheme shall include all of the following measures unless the Local Planning Authority dispenses with any such requirement specifically and in writing:-

A desk top study, carried out by a suitably qualified person, to identify and evaluate all potential sources and impacts on land and/or groundwater contamination relevant to the site. The scope of the study shall be agreed with the Local Planning Authority before it is

commenced and the report shall conform to any such agreed requirements. Two copies of the desktop study and non-technical summary shall be submitted to the Local Planning Authority upon completion of the development.

A site investigation shall be carried out by a competent person to fully and effectively characterise the nature and extent of any land and/or groundwater contamination and its implications. The site investigation shall not be commenced until:

A desk top study has been completed satisfying the requirements of paragraph (a) above.

The requirements of the Local Planning Authority for site investigations have been fully established; and

The extent and methodology have been agreed in writing with the Local Planning Authority.

Two copies of the report on the completed site investigation shall be submitted to the Local Planning Authority on the completion of the development.

A written method statement for the remediation of land and/or groundwater contamination affecting the site shall be determined through risk assessment and agreed in writing with the Local Planning Authority prior to the commencement of the development. The works specified in the Reclamation Method Statement shall be implemented and completed in accordance with the agreed method statement by a competent person, no alterations to the method statement or associated remediation works shall be carried out without the written agreement of the Local Planning Authority.

Two copies of a completion report ( the 'Validation Report') confirming the objectives, methods, results and conclusions of all remediation works shall be submitted to the Local Planning Authority within 2 months of completion of the development.

Any contamination not considered in the Reclamation Method Statement but identified during the reclamation works should be subject to further risk assessment and remediation proposals agreed with the Local Planning Authority and the development completed in accordance with any further agreed amended specification of works.

REASON - The site may be contaminated as a result of past or current uses and/or is within 250 metres of a site which has been landfilled and the Local Planning Authority wishes to ensure that the proposed development can be implemented and occupied with adequate regard to environmental and public protection

12. Prior to the commencement of the development, precise details of the 3.5m high perimeter barrier and the 4m high internal yard barrier mentioned in AES report reference ENG\_LYLE\_16345/RevC shall be submitted to and approved in writing by the Local Planning Authority. The development shall not be carried out otherwise than in complete accordance with the approved details

REASON - In the interests of the visual amenity of the locality

13. The height of any materials stored externally shall not exceed 4m

REASON - To prevent nuisance from noise in the interests of amenity

14. Details of highway improvements to the development site including the access road to the site office/staff parking area; access onto Forge Way paving to the warehouse shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of the development. The development shall not be carried out otherwise than in complete accordance with the approved details

REASON - In the interests of highway and pedestrian safety

15. Prior to the commencement of the development, details of a secure cycle parking area shall be submitted to and approved in writing by the Local Planning Authority. The development shall not be carried out otherwise than in complete accordance with the approved details

REASON - To ensure that the site provides a secure storage area for cyclists

16. Prior to the commencement of the development, precise details of the surface material for the external areas and their associated drainage systems shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of the development. The development shall not be carried out otherwise than in complete accordance with the approved details

REASON - To prevent the increased risk of flooding of local watercourses and surrounding land by ensuring satisfactory means of surface water disposal

17. The proposed development shall be carried out in all respects in accordance with the proposals contained in the application and the plans submitted therewith and approved by the Local Planning Authority, or as shall have been otherwise agreed in writing by the Local Planning Authority.

REASON - To ensure the development is carried out in accordance with the planning permission.

### **SUGGESTED SUMMARY OF REASONS FOR GRANTING PLANNING PERMISSION**

The proposed change of use would comply with criteria points 2), 3) and 4) of Policy EP17 (Waste Material Storage, Processing and Transfer) of the Borough of Darlington Local Plan, but it does not comply with the first criteria point, as there are B1 uses adjacent to the site. However, a Noise Impact Assessment has been submitted with the application which concludes, that subject to specific mitigation measures secured by planning conditions, the proposed development would not create any unacceptable noise levels to the detriment of the nearby buildings. The proposed perimeter fencing would also help to screen the external yard area from the surrounding properties and a Dust Action Plan would be secured by planning condition. On balance, it is considered that the proposed change of use, along with the associated external alterations and mitigation measures, would be acceptable in this location, The following planning polices have been taken into consideration:

**The North East of England Plan Regional Spatial Strategy to 2021:**

- Policy 2 Sustainable Development
- Policy 7 Connectivity and Accessibility
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**Borough of Darlington Local Plan:**

- EP2 Employment Areas
- EP5 Other Uses in Employment Areas
- EP17 Waste Material Storage, Processing and Transfer