

DARLINGTON BOROUGH COUNCIL

PLANNING APPLICATIONS COMMITTEE

COMMITTEE DATE: 4 June 2014

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APPLICATION REF. NO:	12/00753/FUL
STATUTORY DECISION DATE:	21 January 2013
WARD/PARISH:	CENTRAL
LOCATION:	Alexander Le Skerne, Unit 37, Cleveland Trading Estate
DESCRIPTION:	Variation of condition 2 (hours of operation), 13 (storage heights), 17 (approved plans) and removal of condition 4 (structural survey) of planning permission 08/00429/CU dated 16 October 2012 (for change of use to processing ferrous and non-ferrous metals) to permit operating hours between 08:00 am to 17:00 pm Mondays to Fridays, 08:00 am to 13:00 pm Saturdays, and not on Sundays or Bank Holidays; storage height restriction only within 9m of site perimeter; use of eastern access for deliveries, relocation of weighbridges, and amend external site layout (Amended Site Layout Plan and Planning Statement received 15 January 2013, Ground Investigation Report received 18 February 2013; Additional information and amended plans received 9 August 2013; Traffic Management Plan received 2 October 2013; amended Noise Assessment received 14 May 2014)
APPLICANT:	Ward Bros (Steel) Ltd

APPLICATION AND SITE DESCRIPTION

The application site is located within the south east corner of the Cleveland Trading Estate. The Trading Estate comprises a number of commercial uses, office spaces, industrial units and more recently a new facility for the storage and processing of scrap metals (European Metal Recycling Limited). The East Coast mainline runs to the east of the site. The nearest residential dwellings can be found 70m to the south east of the site on the opposite side of the rail line (Lucknow Street).

In 2012 planning permission (see Planning History) was granted, subject to conditions, at the application site for a change of use of the land and existing building for the processing of ferrous

and non-ferrous metals. The applicant signed a Unilateral Agreement stating that within six months of the occupation of the application site, their existing operation on Albert Hill would cease. The applicants have complied with the requirements of the Agreement and the site has been in operation since approximately September 2013 but not in accordance with the extant planning permission.

This is therefore an application submitted under Section 73 of the Town and Country Planning Act 1990 (as amended) to vary and remove a number of the planning conditions attached to the planning permission. The conditions that they wish to vary are:

Condition 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 unless agreed otherwise, in writing by the Local Planning Authority.

The applicant has requested that the condition be amended to allow the site to operate slightly earlier between the hours of 0800 to 1700 Monday to Friday, 0800 to 1300 on Saturdays with no working on Sundays or Bank Holidays.

Condition 13

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

This condition was imposed to prevent nuisance from noise in the interests of amenity. The applicant considers that the site's context and existing views into the site must be taken into consideration. The rail line is lower than the site and runs very close to the existing barrier to the site making it difficult for passengers to see material stored at a height higher than what the current condition currently allows. They consider that this will particularly be the case in the centre of the site away from the site boundaries. They are requesting the condition be amended to state that the height of any material stored externally within 9m of the site perimeter shall not exceed 4m.

Condition 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.

The applicant has requested that the revised layout of the site be approved in accordance with the latest submitted plans. The previously approved plans show access to the site from an entrance to the north with the weighbridge and site cabins located adjacent to it. The west access was to be used by staff working on the site.

The business is now operating whereby the western access is used for all deliveries into the site and the inward and outward weighbridges and cabin have been sited adjacent to the access. The applicant has acquired the office building on the corner of Cleveland Street and Forge Way and the car parking areas associated with this building would be used by any staff. The access to the north of the site would only be used when it is unavoidable to have more than three deliveries arriving at the same time.

Two new metal frame and sheeted buildings have been erected on the north west boundary of the site which are used for the depolluting of vehicles which involves draining of any fluids left in the vehicles system prior to it being moved to the main yard to be dismantled. The smaller unit is open fronted to allow access with vehicles whilst the larger building is enclosed.

Seven new dividing barriers have been erected on the north boundary of the site to create eight open bays for the storage of materials. These bays are approximately 3.5m in height and vary in distance apart. They project approximately 8m into the main yard area. These bays contain scrap that does not require the large plant to reposition it and no plant would be positioned within the bays.

The Noise Assessment carried out by AES to support the original planning application recommended the sub division of the yard area into three sections with the erection of three, four metre high barriers extending from the northern façade of the warehouse building to form the main external storage bays. Two storage bays have been erected on site which are 8m long and 4m high and they are divided into individual units to allow for the external storage of metal. The units are lower than the 4m high walls to allow vehicles to tip materials straight into them. Materials would also be stored between the units. A further barrier has been erected adjacent to the eastern storage bay which would shelter the shearer and baler.

The applicant has requested the removal of **Condition 19** which states

Within the external areas of the site, outside the storage bays delineated by the 4m high noise barriers, there shall be no storage of any scrap metal related material.

This condition was imposed by Members of the Planning Applications Committee. The applicant has requested that removal of the condition. They consider that the business processes a variety of different grade of scrap and other materials and, as such they cannot be all stored in the approved external bays. Although a large part of the material would be stored within the building, the applicant considers that there needs to be a degree of flexibility in external storage to ensure the business can function appropriately.

The applicant has also requested the removal of **Condition 4** which states:

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 prior to the development being brought into use (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 prior to the development being brought into use. The gable wall shall unless otherwise agreed with the Local Planning Authority be retained in perpetuity. Should the structural survey recommend that the gable wall is removed or if the wall is removed in any event, an alternative solid noise barrier, of a construction and height to be agreed with the Local Planning Authority, shall be erected in its place prior to the development being brought into use and shall thereafter be retained in perpetuity unless otherwise agreed with the Local Planning Authority.

The original planning permission involved the possible retention of the gable walls facing the railway line of the warehouse building that was demolished and this condition was imposed to secure the submission of a structural survey to show that the walls were structurally sound.

However, these gable walls have been reduced to 3.5m to match the metal acoustic fence that forms the perimeter of the site.

The implications of the proposed variations and removal of the conditions will be considered in detail within the Report.

PLANNING HISTORY

The most relevant entry is:

08/00429/CU In October 2012 planning permission was granted following the signing of a Unilateral Agreement for a change of use of the site to the processing of ferrous and non-ferrous metals

PLANNING POLICY BACKGROUND

Borough of Darlington Local Plan 1997

EP2 Employment Areas

Darlington Core Strategy Development Plan Document 2011

CS16 Protecting Environmental Resources, Human Health and Safety

Tees Valley Joint Minerals and Waste Development Plan Document – Core Strategy DPD

MWC8 General Locations for Waste Management Sites

Tees Valley Joint Minerals and Waste Development Plan Document – Policies and Sites DPD

MWP12 Small Scale Waste Management Operations

RESULTS OF CONSULTATION AND PUBLICITY

Following the initial consultation exercise the Local Planning Authority received sixteen standard objection letters which concluded:

- *The application is not a minor variation to the original planning application but a total revamp of it and makes all previous assessments irrelevant;*
- *The use of the eastern access to the site is unacceptable due to traffic issues*
- *The relocation of the weighbridges is unacceptable as it will have an adverse impact on the Cleveland trading Estate and needs to be at least 60m from the site exit onto the road*
- *The extension of the hours of operation is unacceptable as it will in effect increase capacity on the site adding to traffic and pollution issues*
- *Increase in storage heights is unacceptable as it will increase the noise and dust pollution and increase fire hazards*
- *The removal of condition is unacceptable*

Following the submission of an amended site layout plan and Planning Statement in January 2013, four detailed objections letters were received from European Metal Recycling, Forge House Group, Edmundson Electrical Limited and Charter Self Drive raised comments on highway matters, the location of the weighbridge, the Noise Impact Assessment, the Transport

Assessment and planning policy EP17 of the Borough of Darlington Local Plan 1997. These letters have been taken into consideration by the Local Planning Authority.

A further letter was submitted by Charter Self Drive containing photographs of vehicles waiting and entering the applicant's previous site.

Following the submission of a revised Noise Impact Assessment in May 2013 further detailed letters were received from Forge House Group and Charter Self Drive raising concerns about the adequacy of the technical details in the submitted Assessment, which have been taken into consideration by the Local Planning Authority.

Following the submission of additional information in August 2013, further detailed letters of objection were received from Charter Self Drive (supported by a letter from MAS Environmental), European Metal Recycling (supported by a Technical Note from Cameron Rose) raising concerns about the application being submitted under Section 73, highways and access matters, storage heights, hours of operation, the Noise Assessments, which have been taken into consideration by the Local Planning Authority

Following the submission of the Traffic Management Plan in October 2013 further detailed letters of objection were received from Charter Self Drive (supported by a letter from Cameron Rose) and European Metal Recycling raising concerns over the Plan and the impact of the proposal on the highway network which have been taken into consideration by the Local Planning Authority

Following the submission of a Noise Impact Assessment in November 2013 European Metal Recycling submitted a letter of objection stating that the Assessment did not address their previous concerns.

Consultee Responses

The **Council's Highways Engineer** has raised no objections to the proposal

The **Council's Environmental Health Officer** has raised no objections to the proposal

Environment Agency has advised that the applicant should ensure that all changes are compliant with any Environmental Permit relating to the site

PLANNING ISSUES

Section 73 of the Town and Country Planning Act 1990 (as amended) applies to applications for planning permission for the development of land without complying with conditions subject to which a previous planning permission was granted. The Local Planning Authority (LPA) may only consider the question of the conditions subject to which the planning permission should be granted rather than the principle of the development. The LPA may decide to grant planning permission subject to conditions differing from those imposed in relation to the previous planning permission. Section 73A of the Act permits the submission of retrospective planning applications for planning permission to authorise development which has been carried out without complying with some planning conditions to which it was subject.

Planning Policy

Policy EP17 (Waste Material Storage, Processing and Transfer) of the Borough of Darlington Local Plan that the original application was assessed against and is referred to in some of the objection letters is not a saved policy and can no longer be considered.

Policy MWC8 of the Tees Valley Joint Minerals and Waste Development Plan Document – Core Strategy DPD states that sustainable waste management will be delivered within the Tees Valley through a combination of large and small sites for individual waste facilities. Small waste management sites will be provided throughout the plan area and be well related to the source of waste or the markets for any materials produced.

Policy MWP12 of the Tees Valley Joint Minerals and Waste Development Plan Document – Policies and Sites DPD states that small-scale waste management operations involving the sorting, recycling or recovery of value from municipal solid waste and commercial and industrial waste will be permitted where it can be demonstrated that they:

- Are located on land allocated for industrial uses or where there is an existing industrial use;
- Are well-located in relation to the sources of waste to be managed or the markets for the materials being produced;
- Would create no unacceptable impacts on the amenity or operational viability of neighbouring land uses either on their own or cumulatively; and
- Would not lead to an unacceptable impact on the local highway network from any traffic generated.

It is important to note that the principle of the use of the site has been established by the existing planning permission granted in 2012 once the Unilateral Undertaking had been signed and the scope of this application is limited to considering whether or not the variations and removal of conditions are acceptable.

Amenity Issues

Condition 2

The storage and metal processing plant operated by European Metal Recycling on the Cleveland Trading Estate is authorised to operate between the 0700 to 1800 Monday to Friday and 0700 to 1200 on Saturdays with no operations taking place on Sundays and Bank Holidays. However, between the hours of 0700 and 0800 there can be no loading or tipping of Heavy Goods Vehicles; crane movements of scrap metal on site; delivery or loading of skip wagons and operation of other processing machinery. This condition was imposed by the Planning Inspectorate when allowing an appeal against the Council's decision to refuse planning permission for the site to be used for the storage and processing of scrap metals.

It is considered that allowing this application site to operate one hour earlier than previously agreed is not unreasonable having taken account the above and the findings of the submitted Noise Impact Assessments. Officers have no objection to the imposition of a revised planning condition 2.

Condition 13

Environmental Health has considered the findings of the latest Noise Assessment which has been updated on a number of occasions in response to previous comments. An assessment of the effect of working on a 4m stock pile and a 6m stock pile, in terms of average noise levels (LAeq) and maximum noise levels (LAFMax) has been included with the Assessment. For both

scenarios, the increase in noise levels when working at 6m as opposed to 4m is at, or less than 3.0dB(a). It is stated that these increases are assessed as negligible and the Assessment concludes that working stock piles up to 6m should be acceptable. The Environmental Health Officer accepts these findings and recommends that the stock piles within the bays attached to the north façade of the building could reach 6m, but not beyond this height.

The applicant requested that the condition be amended so that the height of any material stored externally within 9m of the site perimeter shall not exceed 4m. Officers consider that a more appropriate condition would be to permit material to be stock piled up to 4m within 9m of the east perimeter but the materials must not be stock piled higher than 6m in the remaining bays over 9m from the east perimeter.

Condition 17

The Assessment relating to the nearest residential receptor shows a calculated Rating Level (which includes a +5dB penalty to account for the nature of the noise) of 1.7dB below the measured background noise level.

Regarding commercial receptors, the Assessment shows that calculated average noise levels (LAeq) for the proposed facility are generally below the existing noise levels which results in a calculated change in noise levels of 1.5 dB or less, with the exception of receptor R7 (Cleveland House which is adjacent to the site) which has a noise level above the existing level and an increase of 6.4 dB. The Assessment presents the estimated internal LAeq levels assuming a partially open window and a closed window. Internal noise levels are shown to be below 50 dB with the exception of Cleveland House, which is marginally above the criterion with a partially open window but well within the criterion level with a closed window.

The Assessment presents the estimated internal LAMax noise levels assuming a partially open window and a closed window. For naturally ventilated buildings, a criteria of 60 dB is stated and some exceedances of this value are shown with an open window. With closed windows the criterion is comfortably met at all locations. The Assessment states that taking into consideration the existing noise levels to the commercial receptors, these receptors are currently exposed to LAMax levels comparable to those estimated for the facility as being currently operated and consequently the LAMax levels resulting from the proposed facility are assessed as negligible.

Environmental Health has not received any complaints regarding noise associated with the site since it became operational last year. On the basis of the information which has been submitted concerning noise Environmental Health would not raise any objection to the general overall operation of the site and the revisions to the layout etc.

It is also considered that the additions to the site, such as the new buildings and bays, do not adversely harm the visual appearance and character of the application site or the surrounding area.

Condition 19

This condition has been superseded as the site is currently operating in breach of this condition due to the erection and usage of the additional bays on the northern boundary of the site. It is considered that the usage of these bays needs to be controlled by planning conditions.

Whilst there remains limited open space outside of the bays, to allow for turning space for vehicles and workers etc, officers are concerned that the removal of the condition would allow

stock piling of materials in these areas of unlimited height and it is considered that this condition should remain in the interests of protecting the amenity of the area. The Applicant has agreed to retain this condition and the description of the application has been amended to omit the request.

Condition 4

Officers agree that condition 4 is no longer deemed relevant and there is no requirement to repeat the condition if permission is approved.

Highway Matters

The inbound weighbridge is located 30 metres into the site providing space for 3 large vehicles waiting to enter the site. When entering the site vehicles do not wait on the inbound weighbridge for more than a couple of minutes before moving straight into site to deposit waste. Any potential queuing will take place within the site when vehicles are waiting to leave and should not result in any queuing on the public highway. The weighbridge for outward traffic is located close to the exit providing more space for vehicles to wait within the site before exiting. Moreover, drivers only need to enter the site office when exiting the site.

The applicant has confirmed that having three large vehicles enter the site at one time is extremely rare, but to help control any additional traffic, the following management measures will be taken:

- Drivers will be made aware that they only need to wait on the inbound weighbridge for a couple of minutes and not to leave their vehicle and enter the site office. This will ensure that inbound vehicles pass over the weighbridge in a quick and easy process to reduce any potential vehicle build up at the entrance of the site.
- An additional weighbridge operative has been employed to avoid any delays so there is one operative on incoming weighbridge and one on outgoing.
- Ward Bros have a booking system whereby HGV drivers need to book a time to make their delivery or collection and this applies to the majority of larger deliveries made to the site. This system allows Ward Bros to control the timings of when vehicles will be entering and exiting the site.
- At busy times and when the arrival of more than 3 deliveries at a similar time is unavoidable, a secondary access will be opened from the north side of the yard (see Site Layout Plan) and the driver directed to this entrance when either making the booking or by Ward Bros staff situated at the main entrance.

The Council's Highways Engineer has occasionally observed the operations and traffic movements at different times of the day since the site became operational and he has not witnessed any issues of backing up onto the adopted highway/estate roads by vehicles entering the site, other than the normal and expected give way manoeuvre to vehicles exiting the main estate road which is part of the standard highway code rules of the road.

A Traffic Management Plan has been submitted with this application and has been implemented on the site and the Highways Engineer has had no complaints or reports of issues from any member of the public or occupier of the industrial estate.

The accident statistics since the site went operational have been reviewed and there have been no reportable accidents from the site becoming operational until the end of March 2014 which is the latest information available to the Council, therefore it is considered that the operations have not had a detrimental impact on the safety of the local highway network.

The Council's Highways Engineer has raised no objections to the revised access arrangements and a condition can be imposed to ensure that the site continues to operate in accordance with the above measures which form the Traffic Management Plan for the site.

Other Conditions

Officers have also considered the need to re-impose, reword, remove any planning conditions that were attached to the original submission or add any new conditions so that this application, if approved, becomes the authorised planning permission for the site.

There will be a need to revise the wording of some of the previous conditions so they refer to the updated Noise Assessment and there are previous conditions that are no longer relevant and new conditions that need to be imposed as a result of the amendments to the layout of the site and to reflect the works that have been carried out.

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

Planning permission (ref no 08/00429/CU) has been granted to use the site for the processing of ferrous and non-ferrous materials. The site has been in operation since approximately September 2013 but not in accordance with the extant planning permission. This is a planning application submitted under Section 73 of the Town and Country Planning Act 1990 (as amended) to vary and remove a number of the planning conditions attached to the extant planning permission.

Having taken into account the revised layout and supporting documentation the Local Planning Authority considers that the current operation of the site does not cause unacceptable harm to the amenity of the surrounding area or to highway safety and the relevant conditions can be varied and removed as requested. The Local Planning Authority has also considered the other outstanding conditions attached to the extant planning permission and the conditions below are deemed to appropriately reflect the current working practices of the site.

RECOMMENDATION

PLANNING PERMISSION BE GRANTED SUBJECT TO THE FOLLOWING CONDITIONS:

1. The site shall not operate outside the hours of 0800 to 1700 Monday to Friday, 0800 to 1300 on Saturdays and not on Sundays and Bank Holidays

REASON: In order to allow the Local Planning Authority to retain control over the development in the interests of residential amenity

2. All external machinery shall be fixed to the exact locations shown on the Site Plan entitled Figure E.1 contained within the Noise Assessment dated May 2014 entitled “Ward Bros (Steel) Ltd, Darlington” produced by URS unless otherwise agreed in writing by the Local Planning Authority
REASON: To prevent nuisance from noise in the interests of amenity
3. The Rating Level (as defined in BS 4142:1997) as a result of site operations shall not exceed a level of 5dB(A) above the background noise level at the residential location referred to within Noise Assessment dated May 2014 entitled “Ward Bros (Steel) Ltd, Darlington” produced by URS
REASON: To prevent nuisance from noise in the interests of amenity
4. The noise barriers, including the perimeter barrier and the internal bays, which have been erected to reduce noise impact at neighbouring buildings shall thereafter be retained in perpetuity and to a condition that is satisfactory to the Local Planning Authority
REASON: To prevent nuisance from noise in the interests of amenity
5. Notwithstanding the details shown on the approved plans and within one month of the date of the planning permission, a Noise Management Plan shall be submitted to and approved in writing by the Local Planning Authority. The Plan shall include details regarding the management of fire exit doors, roller shutter doors, vehicle reversing alarms and drop heights for scrap metal and the Plan shall be implemented within a timescale to be agreed with the Local Planning Authority
REASON: To prevent nuisance from noise in the interests of amenity
6. Only the machinery shown in Figure E.1 contained within the Noise Assessment dated May 2014 entitled “Ward Bros (Steel) Ltd, Darlington” produced by URS shall be used on the site and only in the positions shown therein. 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
7. The use hereby approved shall operate in complete accordance with the Dust Action Plan received 9 August 2013 produced by England Lyle unless otherwise agreed in writing, by the Local Planning Authority
REASON: In the interests of the amenity of the surrounding area.
8. The integrity of the works to the concrete yard, referred to in the document entitled “Desk-Based Environmental Risk Assessment. Ward Bros (Steel) Ltd, Alexander le Skerne, Darlington” Project No 13-0361.01 produced by Delta-Simons Environmental Consultants dated June 2013, shall be maintained, unless otherwise agreed in writing by the Local Planning Authority
REASON: To ensure that the development can be occupied with adequate regard to environmental and public protection
9. The height of any material stored externally within the bays along the north façade of the existing building and within 9m of the eastern perimeter of the site shall not exceed 4 metres. The height of any material stored within the remaining bays on the north facade shall not exceed 6 metres.

REASON: To prevent nuisance from noise from the site and the interests of the amenity of the surrounding area.

10. The height of any material stored externally within the open bays located on the northern perimeter fence shall not exceed 4 metres.

REASON: To prevent nuisance from noise from the site and the interests of the amenity of the surrounding area.

11. The use hereby approved shall operate in complete accordance with the Traffic Management Plan received 2 October 2013 produced by England and Lyle unless otherwise agreed, in writing, by the Local Planning Authority

REASON: In the interests of highway safety

12. Notwithstanding the details shown on the approved plans and within three months of the date of the planning permission, precise details of a secure cycle parking area shall be submitted to and approved on writing by the Local Planning Authority and the details shall be implemented within a timescale to be agreed with the Local Planning Authority

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

13. There shall be no burning of materials anywhere within the site

REASON: In the interests of protecting the environment and the amenities of the surrounding area

14. Within the external areas of the site, outside of the designated storage bays, there shall be no storage of any scrap metal related material

REASON: In the interests of protecting the visual amenities of the surrounding area

15. B5 – Detailed Drawings (Accordance with Plan)

THE FOLLOWING POLICIES AND DOCUMENTS WERE TAKEN INTO ACCOUNT WHEN ARRIVING AT THIS DECISION:

Borough of Darlington Local Plan 1997

EP2 Employment Areas

Darlington Core Strategy Development Plan Document 2011

CS16 Protecting Environmental Resources, Human Health and Safety

Tees Valley Joint Minerals and Waste Development Plan Document – Core Strategy DPD

MWC8 General Locations for Waste Management Sites

Tees Valley Joint Minerals and Waste Development Plan Document – Policies and Sites DPD

MWP12 Small Scale Waste Management Operations