

Notes of meeting regarding Birchwood, Hoe Lane, Nazeing

Location: Epping Forest DC, Civic Offices

Date: 11 June 2009

Time: 14.00

Present:

John Gilbert - Director of Environment & Street Scene (EFDC) (JG)

Stephan Solon – Planning Enforcement Manager (EFDC) (SS)

Fay Rusby – Environmental Health Officer (EFDC) (FR)

Caroline Skinner - Senior Health Improvement (NHS West Essex) on behalf of Alison Cowie –
Director of Public Health NHS West Essex (West Essex PCT) (CS)

Ruth Shaw – Senior Environment Officer (Environment Agency) (RS)

Richard Rajham – HM Inspector of Health & Safety (HSE) (RR)

Richard Bassett – Cabinet Member for Emergency Planning (EFDC) (RB)

Alex Chown – Team Leader – Lower Lee Catchment (Environment Agency) (AC)

Stuart McMillan – Asst. Divisional Fire Officer (Essex Fire & Rescue) (SM)

JG assumed the Chair of the meeting and all present introduced themselves and their role within their organisations. The meeting then opened by each agency present setting out the present position as regards the history of and involvement in the site.

Agency history and regulatory involvement to date

SS set out the planning situation as follows:

- o the site has consent for “General Industrial Purposes”. This was granted by the Planning Inspectorate on appeal and has no limiting conditions other than some working hours restrictions which include part working on a Saturday and no working on a Sunday
- o Issues started to develop around 3 years ago when the site was being operated by Essex Wood Recycling (EWR). Waste wood was brought onto the site for chipping. EFDC took the view that this activity was waste related and therefore fell outside of the general Industrial Purpose planning approval. However, Counsel’s advice was sought which indicated a contrary view. This contrary view was shared by Essex County Council (as Waste Planning Authority) who concluded that this not a ‘waste operation’.
- o the pile of wood on site got ever larger such that EFDC took the view that the core operation on site was now one of storage and not wood processing. Around this time the operator of the site changed and the new operators Scott & Scott approached EFDC to seek consent for incineration. This was rejected by EFDC and the EA. In October 2007 EFDC issued an enforcement notice for the unauthorised use of ‘storage’. This notice was appealed with a public inquiry scheduled for December 2008. In the meantime a new planning application was made for a temporary consent for a mixed use – storage and general industrial. Unfortunately the date of consideration of this application clashed with the public inquiry, and because the Planning Inspectorate would not rearrange its Inquiry date, the decision was made to withdraw the enforcement notice and proceed with the new application. EFDC gave consent for the new usage and attached a raft of operational conditions. In January 2009, the timber caught fire, and in view of that the new consent was not taken up, leaving the original consent in place, but now without the enforcement notice in being
- o EFDC and the EA were content throughout that chipping was actually taking place on site
- o the most recent fire has resulted in a cessation of use, but once the site is cleared, the original process could recommence as before.
- o Whilst there remains surprise that the County Council do not consider this to be a waste operation, EFDC does not wish to push this point, because of the possible implications on other sites within the district

FR then set out the environmental regulatory position from EFDC's point of view

- o when the site commenced operations EFDC took the view that it was caught by the pollution prevention and control (PPC) legislation. However, the English Regulations, as to differ from Scotland, do not include timber shredding within their remit and therefore PPC did not apply
- o EFDC was therefore left with the nuisance powers within the Environmental Protection Act to deal with dust and similar nuisances. An abatement notice was served upon EWR but just prior to the matter going before the Courts, EWR went into liquidation, and the case could not proceed
- o since Scott & Scott have been on the site complaints have been few, and no evidence to justify the service of notice has been obtained. Local residents have not actively complained, nor kept diaries etc as requested. No quantitative monitoring has been undertaken.
- o recent changes in the law, and the introduction of the Environmental Permitting Regulations (EPR), has resulted in all nuisance matters being dealt with by the EA

AC then set out the EA's regulatory position

- o Alex confirmed that the EPR had shifted lead responsibility from EFDC to the EA. However, they were prepared to act if evidence existed, but residents and other agencies would have to be able to provide / support that evidence.
- o Scott & Scott operated under an exemption under the EPR. This enabled them to bring wood onto the site for chipping, subject to certain controls such as a maximum tonnage (20,000 tonnes on site). The EA accepted that there may be other waste on the site, but unless it could be clearly shown that this was delivered to the site with the waste timber, it was assumed that this was already present on the site. (Within the timber metal arisings should be incidental such as screws, nails, metal straps associated with packing)
- o Government was aware of abuses of the current exemptions process and a consultation was currently underway with a view to tightening regulatory controls. These would not be available for some time.
- o The major power available to the EA was to remove the exemption (deregister). The burden of proof to support this action was high and in any event it did not prevent an immediate reapplication which could be made on-line and would be approved (no facility to take past activities into account!)
- o A part from the fires this year we hold no records of complaint from this site.

SM set out the regulatory position of the Essex Fire Service (EFS)

- o EFS viewed the site as a workplace with its primary concern being the safety of the workforce on site or others visiting the site.
- o The volume of water available in the Nazeing area via water mains for firefighting is as expected for a rural risk area; water supplies for the site itself are as expected by the Essex Fire & Rescue Service given its location. Additional water supplies to the site would be for the occupiers/operators to provide and pay for via the local water company.
- o In terms of managing a fire of such magnitude at such a location, firefighting operations employed are normally to contain and control rather than to seek to extinguish. In managing a fire in this way some of the considerations are: availability of water, risk to fire-fighters and the general public, contaminated water run off, the operational fire cover required for other areas in the county.

RR set out the position of the Health & Safety Executive (HSE)

- o the site had a previous history with the HSE. A prohibition Notice had been served on EWR in respect of the safety of the timber being stockpiled, and the Notice prevented any further addition of timber to then stockpile. As soon as material had left the site, such that the risk had been abated, the Notice was deemed to have been complied with
- o EWR was also served with an Improvement Notice to secure the site. This was not followed up or reserved when the business transferred to Scott & Scott

- o the HSE could be minded to reserve an Improvement Notice again in order to secure the site, but further technical advice would have to be sought

CS explained the concerns of the West Essex Primary Care Trust (PCT)

- o PCT would be concerned about the potential dangers to children from access to the site
- o PCT to seek information on the extent to which there have been additional GP referrals for respiratory illness in the area and also the contention that there may be cancer clusters located in and around the area

General discussion

JG explained that there was a very high level of concern amongst local residents supported by locally elected Members and Members (including prospective members) of Parliament. The local feeling was very clear – they wanted the facility to be closed down and clearly could not understand why the regulatory authorities were unable to achieve this. Following the latest fire this pressure has increased with a number of petitions circulating demanding that something be done.

AC explained that proposed revisions to the EPR would provide the EA with additional regulatory powers. However, these were still subject to consultation and would not be available in the short term.

CS sought information on how the fires started. SM explained that it was likely that there had been “human intervention” but that the who and the how would never be established. Even if it were deliberate, the Police would not pursue since there has been no attempt, as far as is known, to benefit from, the fire e.g. false insurance claims etc.

RR felt that it might be possible to support the service of an Improvement Notice to secure the site, although such a notice would not seek any specific solution. However, he indicated that the minimum sought would mirror the requirements for a building site.

SM added that it would also be beneficial for the stockpiles of timber to be sub-divided into smaller units, thus providing additional fire breaks and an easier to manage situation in the event that a further fire was to occur.

Possible interventions by the regulatory agencies

Each agency was requested to detail what regulatory action it might be able to take:

- o The HSE and Fire Service agreed that some action could be taken to deal with the current levels of site security, possibly, as mentioned earlier, through the HES serving an Improvement Notice on both the site owners and the operators
- o The EA had already “threatened” to remove the existing exemption and effectively deregister the premises. However, they were allowing the operators time to make good on their commitments to improve the management of the site. The EA accepted it was important to maintain their regulatory pressure on the operator. AC also emphasised the importance of the EA receiving usable evidence of nuisance or misuse of the site. Although residents were reluctant on the basis of “what’s the point”, evidence was vital to the EA’s ability to maintain regulatory pressure on the operator.
- o EFDC were asked whether it was possible to seek relocation of the operation. SS explained the options available, but each had its difficulties including the site remaining available to another operator to come in and do the same (or worse!) or the costs of compensation that would need to be paid if a process of discontinuance was pursued

- o EFDC could approach the operator seeking information as to why they had not brought forward previously discussed proposals for site fencing and constructing a building to fully enclose the operation
- o CS asked whether pressure might be applied to the operator on the basis of them wanting to be a welcomed element of the local community and to be seen as a responsible local business

Agreed actions

- (1) a joint letter, from all the agencies, to be sent to the local residents explaining the regulatory position, what could be achieved and any proposed actions. The importance of the provision of evidence would also be included in the letter
- (2) a joint letter, from all the agencies, to be sent to the owner and operator, setting out the regulatory position, and the depth of feeling of local residents and the potential actions of the agencies
- (3) more frequent regulatory inspections carried out jointly by the agencies. This is intended to increase and then maintain the regulatory pressures on the owner/operator
- (4) HSE and Fire Service to seek expert advice from their organisations regarding the nature of action which could be taken now, particularly regarding site security
- (5) EFDC to liaise with the Essex County Council regarding waste planning issues
- (6) WE PCT to seek information on local GP referrals and cancer clusters
- (7) To meet again in 4 to 6 weeks time to discuss progress