

EXTRACT OF MINUTES OF THE SAFER CLEANER GREENER STANDING PANEL MEETING HELD ON 23 JULY 2009

The Director of Environment and Street Scene, Mr John Gilbert, introduced the item on recent fires at Birchwood, Hoe Lane, Nazeing. He introduced Alex Chown and Andy White, both officers of the Environment Agency.

Mr Gilbert summarised the history of the site for the Panel. The site's planning consent for 'general industrial purposes' was granted by the Planning Inspectorate on appeal and had no limiting conditions imposed on it other than some working hours. Around three 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 fell outside the general industrial purpose planning approval. However, Counsel advice indicated a contrary view, which was shared by Essex County Council (as the Waste Planning Authority) who concluded it was not a 'waste operation'.

The pile of wood got larger and EFDC took the view that the core operation was now storage and not wood processing. Around this time the operator of the site changed and the new operators, Scott and Scott approached EFDC to seek consent for incineration. This was rejected by EFDC and the Environment Agency (EA). In October 2007 EFDC issued an enforcement notice for unauthorised storage. This was appealed and a public enquiry was scheduled for December 2008. In the meantime a new planning application was made for a temporary consent for mixed use, storage and general industrial. The date of consideration of this application clashed with the public enquiry. 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. The new consent was not taken up leaving the original consent in place but now without the enforcement notice. In May 2009 another (smaller) fire started on this same site.

Local residents do not wish this to continue and have petitioned for closure of the site.

This issue went to the Planning Standing Panel who asked that this Panel look into the environmental impact of the fires on this site.

Alex Chown of the Environmental Agency commented that this was a waste activity producing wood chippings which fits into the Environmental Permitting Regulations 2007 and came under paragraph 13 as an activity seeking to maximise waste recovery. Anyone could apply for permission to carry out such activity under paragraph 13 on line. It had to be timber related and must be a manufacturing activity (in this case chippings). Scott and Scott took over the stockpile and registered last May with the EA. They subsequently had a major fire on site. The EA has since made a number of visits to the site and have made suggestions on dust suppression etc. Things seemed to be operating normally. They then had another fire at the end of May 2009. The EA seriously considered deregistering them, but they could simply reapply on line, which had no facility to take past activities into account. They held meetings on the site with their representatives and produced an action list for them to conform with. They also asked them to stop business immediately until the action list was clarified and agreed. With the legislation as it stands they could not demand improvements but could only ask for it.

Mr Gilbert said that there were some key issues to be considered:

- (a) Use of the site overall (Planning issues). It would be difficult to get them to stop via this route.
- (b) Damage to the public highways by their delivery lorries etc.
- (c) Nuisance from their site activity (dust etc.). EFDC may be able to serve notice on operations on this site. The legal position will have to be checked to see what action the council is allowed to take.
- (d) The two fires affected the local residents. Officers had monitored the air quality of the first fire, and none of the national air quality standards relating to breathable particles were

breeched; although the scale and nature of the fires could have had a detrimental affect on local residents already suffering from respiratory conditions and during the fire they were advised to stay indoors.

(e) The fire in May was smaller but hotter, with a high plume taking materials up and out of the immediate area.

(f) The Essex Fire and Rescue Service's (EFRS) use of water to put out the fire – the water would then go into the local water courses. The EFRS's policy was not necessarily to put the fire out immediately, but to let it burn out in a controlled manner; their primary consideration was to protect life and property. Using large volumes of water to put out the fire would have repercussions on the local water courses, assuming that they had enough water available to use.

Mr Gilbert had prepared a draft letter and Q&A sheet for the Panel to consider prior to its issue to local residents. This would be sent on behalf of all the agencies concerned explaining what was happening now, some of the history and proposed future action for the site.

There was a need to distinguish between the controls over the regular legal business of the site and the two fires. The agencies could only regulate the bona fide business and the fires could not be controlled as there was no evidence to say how the fire had started. The site was now being secured (fenced around its perimeter) and the Health and Safety Executive (HSE) had served an Improvement Notice requiring the fencing to be completed by 7 August. The site was not secure before.

Councillor Jacobs asked when the government were going to 'beef up' the Environmental Permitting Regulations. Mr Chown said they had begun looking at it from last year. It had been delayed and they were now looking at completing it by April 2010. The proposal for paragraph 13 was that businesses would require a standard permit enabling temporary suspension etc.

Councillor Jacobs asked had the site had ceased operations for the time being, and were they being monitored? He was told that they were, especially by the residents.

Councillor Jacobs then asked if we asked them to move the business, would they be entitled to receive compensation. He was told that they now operate under a fully legal planning consent and if the council were to ask them to move it would be liable to pay compensation.

Councillor Colling said it came down to planning and if the council could put conditions on the site. The site needed to be made secure, the amount of timber on the site needed to be controlled and this could be done by condition. If they handled less tonnage then they would need smaller lorries. Mr Chown agreed. He was also keen to ensure that all the agencies saw the proposed conditions to ensure that it did not happen again. The operators would need to show that they were running a competent business.

It should be remembered that before the first fire they had been offered planning consent with conditions but they did not take them up after the fire.

Councillor Bassett said that there was a history to the site, and when the council tried to take enforcement action they sold the business to another company. They had also brought in all sorts of waste and rubble, which they were asked to take away over a specified period of time. It then burst into flame on the coldest night of the year. After that they brought in more wood and then had the second fire. The residents were concerned that they would build up a big pile of wood again and their lorries would continue to knock down telegraph poles. They were in totally the wrong location for this type of business. It was also affecting other types of local business, such as the local child minding nursery which had to put the fires down on their risk register. This may cause them to close down. Also, all the ash generated would cause health problems to the local people. We need to guarantee the residents that we are monitoring the site as closely as the law permitted. And we need to tell residents this. Scott and Scott seem to be more responsive and negotiations were better than enforcement.

Mr Gilbert informed the Panel the West Essex PCT had been asked to check with GPs about any abnormal numbers of referrals over the last six months. There were none. They have subsequently asked us to provide information on the nature of the materials concerned so that

they could do more research on longer term health effects. Our monitors in January showed no evidence of any harmful particles. As for the traffic problems caused by the delivery lorries, there was not much this Panel could do about that. That was for the Highways Authorities to deal with. It would be taken to the new Highways Panel. This Council and the EA had used whatever regulatory powers they had. They have also asked the residents to keep diaries on what has happened so that a case could be put together. Local residents wished to see the industrialisation of Nazeing brought to an end, but this is not something the council could do.

Councillor Mrs Sartin asked how far back had the PCT been asked to check their records. Mr Gilbert said that they checked from December 2008 to June 2009, there had been no increase. Councillor Bassett said that part of the problem was that the people of Nazeing went to Hertfordshire surgeries. Mr Gilbert said they would ask West Essex PCT to consult with East Herts PCT on these referrals.

Mr Chown said if a vehicle was carrying waste there was a duty of care and they could ask Scott and Scott to write to their customers to improve on their delivery. The EA could also work with the Police and set up roadside checks to check the lorries loading.

Councillor Bassett said it looked like the District Council's hands were tied. The use of small country lanes was an issue but nothing could be done about that. The residents needed to continue monitoring the site, but they feel that the Council was not helping them. That it was the Council's job not theirs. Councillor Ms Stavrou said that she used to live next to a problem site and it took six years of diarising everything, to make any progress. The Council could not do this on its own; it did not have enough employees. It must be borne in mind that this was a legitimate business carrying out its legitimate work.

Councillor Jacobs asked how the business made their money. He was told that they sell the wood chippings. They also charge gate fees but get their profit from the sale of the finished item. There were three grades of wood. The top grade got a good price. The second grade could be mixed with the top grade and sold. The bottom grade was only good for landfill. It should be noted that the fire burnt off all the bottom grade wood.

The Panel then considered the draft letter and Q&A document to be sent to the residents. Officers were trying to get this out to local residents as quickly as possible and had opted for a short covering letter and a Q&A briefing note.

It was noted that:

- There was ongoing co-operation with the current operator of the site (to be put in the last paragraph of the letter);
- The Q&A document referred to Scot and Scott Ltd. This was wrong, they were not a limited company;
- The Council will be actively monitoring the site over time;
- It should be said that the Council had turned down the application initially but this was then agreed by the Planning Inspector;
- There was too much detail about Paragraph 13, people would struggle to understand it. Officers should highlight the bits that apply;
- It also needed a preamble to introduce what Paragraph 13 was;
- Should be added that the rules are to be tightened up by the government by April 2010;
- It should explain why EFDC said that there were no breaches of air quality standards as they were monitoring small particulates.

The Panel were content to endorse the following recommendations. Councillor Bassett concluded that they needed to demonstrate to the public that the council was doing things, give them contact points and to stress to the residents that they should keep monitoring the situation.

The Chairman thanked the two officers from the Environment Agency for coming and advising the Panel.

RESOLVED:

- (1) That the current position regarding activities at the site be noted;
- (2) The Panel noted that the receipt of a petition in respect of the Birchwood Industrial Estate, Nazeing, would be dealt with in accordance with the petitions procedure as set out in the Council's Constitution;
- (3) That the current status of the negotiations between the Environment Agency and Scott and Scott, be noted in respect of:
 - (a) the tonnages of waste timber on the site;
 - (b) site security; and
 - (c) nuisance suppression;
- (4) That, if the current legal framework permits, the Council exercises its powers under the Environmental Protection Act 1990 in respect of any proven current or anticipated future statutory nuisance;
- (5) That, given that many local residents use surgeries in Hertfordshire, the West Essex Primary Care Trust be requested to seek information on unusual levels of GP and hospital referrals in respect of respiratory illness for the period December 2008 to June 2009 inclusive from the East Herts Primary Care Trust;
- (6) That the Epping Forest Safer Communities Partnership be requested to consider what support might be given in respect of the regulatory control of waste vehicles using the Birchwood site; and
- (7) That subject to the inclusion of amendments made, the letter and question and answer background paper to residents be approved and distributed.