



**MINUTES OF THE MEETING OF THE
PLANNING COMMITTEE**

**TUESDAY 1 SEPTEMBER 2009
COUNCIL CHAMBER, TOWN HOUSE, HADDINGTON**

Committee Members Present:

Councillor B Turner (Convener)
Councillor J Bell
Councillor D Berry
Councillor L Broun-Lindsay
Councillor J Caldwell
Councillor A Forrest
Councillor D Grant
Councillor N Hampshire
Councillor W Innes
Councillor P McLennan
Provost S Richardson
Councillor T Trotter (afternoon session only)
Councillor J Williamson

Council Officials Present:

Mr P Collins, Executive Director of Environment
Mr R Montgomery, Head of Transportation
Mr B Stalker, Development Management Manager
Mr D Evans, Senior Environment & Consumer Services Manager (morning session)
Ms M Ferguson, Corporate Legal Adviser
Mr C Clark, Principal Environmental Protection Officer
Mr K Dingwall, Principal Planner
Mr A Stewart, Senior Planner
Mr G Talac, Transportation Planning Officer (afternoon session)
Ms J Squires, Planner (afternoon session)
Mr M Greenshields, Transportation Planning Officer (afternoon session)
Ms P McGeady, Legal Officer
Mr R Sinclair, PR Officer

Clerk:

Ms A Smith (morning session)
Ms S Birrell (afternoon session)

Visitors Present:

Item 1 – Mr Sheerin

Item 2 – Mr Johnston, Ms Dawson

Item 3 – Mr Scott

Item 4 – Mr Don, Mr Bruce, Mr Banks, Mr Scandrett, Mr Wilson, Mr Collin, Mr Nightingale, Mr Cook, Mr James

Item 5 – Mr Precious, Mr Beck, Prof Morris

Item 6 – Mr Hodge, Mr Beck, Prof Clark, Mr McAlpine

Apologies:

Councillor R Knox

Councillor S Mackinnon

Declarations of Interest:

None

Extract from minute

4. PLANNING APPLICATION NO. 08/00467/FUL: ERECTION OF AN ENERGY FROM WASTE WITH COMBINED HEAT AND POWER FACILITY AND ASSOCIATED WORKS AT DUNBAR LANDFILL, OXWELL MAINS, DUNBAR

The Executive Director of Environment had submitted a report on the application for planning permission. The Development Management Manager informed Members that the Scottish Environmental Protection Agency (SEPA) had been the principal consultee. The application passed the 6 criteria in SEPA's Guidelines for Thermal Treatment of Municipal Waste 2009 and it also passed Scottish Planning Policy 10 and Policy ENV11 of the approved Edinburgh and Lothians Structure Plan 2015. He informed the Committee that representatives from SEPA were present to answer questions from Members.

The Convener asked the Executive Director of Environment for clarification of how use of the proposed facility related to the Council's strategy for waste. The Executive Director replied that the decision taken by Committee today would be taken solely as planning authority and not as waste management authority. The Council, as waste management authority, had no agreement to send waste to the proposed site. The Council was currently investigating options for waste and had previously issued a public notice under the EU procurement process, receiving 13 replies, including 1 from Viridor. The Council would be meeting with providers to discuss matters in more detail over the coming months. He advised Members that the report before Committee had no formal bearing on the Council's waste strategy.

Officers and representatives from SEPA responded to questions from Members on a number of issues including the heat plan, the incinerator capacity, distance, volume and delivery of waste, the railhead, A1 junction, odour issues, experiences at the Dundee plant, emissions, air quality, weighbridges, quantities, definition of capacity measure and the proximity principle.

Mr Don, Viridor's Regional Manager for Scotland, informed Members that Viridor was Scotland's leading waste management company and had been in East Lothian since 1997. He advised that Viridor used the very latest, safe, technology available. He referred to the extensive site selection process. The Dunbar site had Scotland's only waste rail link. He indicated that SEPA was satisfied with the application in terms of the proximity principle. He highlighted Viridor's excellent environmental record with regards to waste at Oxwell Mains. He stated that the proposal offered a boost to the local economy, with 150 construction posts and 47 full time posts and would bring £10 million into the East Lothian economy. The proposal met ambitious targets and was key to the Scottish Government's zero waste plan. He concluded that the location was right, the economic case compelling and the application had the support of the Scottish Government.

Mr Don and Mr Wishart, Viridor's Planning Adviser, answered questions from Members regarding the heat plan, potential users, feasibility thereof, odour issues, treatment of residues, waste amenity recycling/percentage not recycled/recyclable, indirect waste, metal removal and transportation of toxic fly ash.

The Convener then invited those people speaking against the application to address the Committee.

Mr Bruce, of East Lammermuir Community Council, informed Members that the local community did not want this proposal to go ahead. The community council had held a public meeting, with the applicant, the Council and SEPA in attendance, and the conclusion from the public was that the community council should submit an objection to this application. He referred to the Local Government (Scotland) Act 2003 which gave local authorities an obligation to improve the wellbeing of its area. He stated that the unspoken purpose of a Council was to be the voice of its people and its greatest influence was the mindset of its community. He drew attention to a number of issues, impact on health, the proximity principle, size of the plant, efficiency, transport and visual impact. He concluded that the proposal would be bad for East Lammermuir and for East Lothian and he urged the Committee to refuse this application.

Mr Banks advised that he was the Chair of the IRATE Steering Group, a grass roots group opposed to this application. He referred to the proximity principle and stated that if consent was granted East Lothian would be incinerating rubbish from well beyond this county, from the south of Scotland and the north of England. He drew attention to the visual impact, which had been dismissed in the report, the lack of a Heat Plan, production of electricity and the scale of the facility, which at 300,000 was almost at large scale size. Broader issues, of air quality and health concerns had also to be taken into account. He stated that other councils in Scotland had rejected proposals for waste incinerators and urged this Council to do the same.

Mr Scandrett spoke on behalf of the East Lothian Green Party. He informed the Committee that he also drew on 15 years experience of pollution and environmental justice issues and as a former community worker at the Douglas housing estate, near to the Dundee incinerator. He referred to risk and concerns about health, and to SPP10 and highlighted some of the problems with the Dundee incinerator. He stated that elected members had a duty to consider risk. He drew attention to the various

stages in the waste hierarchy. He referred to citizen's environmental initiatives taking place throughout East Lothian, such as plastic bag free towns, stating these were opportunities to be built on and for the Council to work in partnership with communities. He urged rejection of this application.

Mr Wilson of Kirk Park advised Members that he was speaking as a Dunbar resident and father. He expressed concern about the adverse health effects on children. He indicated that the Oxwell Mains site adjoined the John Muir Way, which was a growth area in terms of tourism. This area already had Lafarge and Torness. East Lothian Council did not have a requirement to deal with the waste from other areas of Scotland. He suggested that at the very least a decision should be suspended pending study into the medical and scientific effects of the joint emissions. He concluded that East Lothian was the garden of Scotland and urged Members not to allow it to become the dumping ground for Scotland.

Mr Collin of Rosebery Place drew attention to the history of the site. He stated that the proximity principal had not been met, as waste would be brought in by road from some distance away. He stated that the proposed incinerator used old technology. This would be one of the largest incinerators in Scotland, located in the furthest corner of East Lothian; there was no reason for this to be located in East Lothian, in Dunbar. He asked the Committee to refuse the application.

Mr Nightingale of West Meikle informed the Committee that he was one of the closest neighbours to the application site. He stressed that the proposal would have a significant effect on him personally, and highlighted concerns about pollution. He commented that Viridor had stated that this area was already an industrial site however there were 3 kilometres of green space between the existing industrial sites. He referred to the creeping industrialisation of this area of East Lothian. He concluded that this was not the right location for the proposal, it would be better located where the waste was generated, and he urged rejection of the application.

Mr Cook of East Links Road focussed on health issues. He informed Members that numerous studies had been carried out in relation to these incinerators and the cocktail of chemicals released. He gave details of the increase in cancer deaths in children as a result of proximity to an incinerator and cited cases from Italy and Sweden. He asked Members to reject this application.

Mr James, representing Sustainable Dunbar, drew attention to the volume of lorries carrying waste materials. He commented that the point of risk had to be emphasised. There was no guarantee that energy from waste would work effectively. He referred to the heat plan, stating that it did not approach the Scottish Government's targets. He asserted that there was no enthusiasm locally for an incinerator and urged Members to refuse this application.

The Convener asked the local members to open the debate and for Councillor McLennan to comment first.

Local Member Councillor McLennan stated that this issue had been very emotive in the Dunbar area for a considerable time and local members had received extensive representation. The Scottish Government had set the goal of a Zero Waste Scotland.

East Lothian Council was currently at 40% recycling, however, there would be a percentage of waste that could not be recycled, which had to be dealt with. As stated previously, the Council was undergoing a process with bidders on how it dealt with its own residual waste. He referred to the change in Scottish Government Policy on Waste Management in January 2008 and to comments by Cabinet Secretary Richard Lochhead. He advised that the Sustainable Development Commission supported the use of smaller, more efficient plants such as combined CHP or District Heating.

He referred to SEPA's Guidelines on "Thermal Treatment of Municipal Waste" and to the 6 criteria that had to be addressed in the determination of planning applications for an energy from waste facility. One of the criteria was demonstration of how energy recovery will be maximised. He stated that Viridor's heat plan was very speculative and based upon the development of agricultural/horticultural uses. The heat plan submitted was based on land, which at present was not designated for development; the Council had received no planning application in this respect and could not take a decision on its viability. This was a condition in the recommendation, but he believed this to be a fundamental material planning consideration that Viridor had not achieved. Transport of waste was also a very important issue and also subject to a condition in the recommendations. Viridor did not have the certainty of the retention of the existing railhead; this again was an issue fundamental to the application. The proximity principle was also hard to clarify due to ongoing discussions between Edinburgh and Midlothian Councils regarding the Millerhill development and also East Lothian Council's desire for a local solution.

The people in the Dunbar area, particularly Innerwick and Oldhamstocks, had seen the amenity of their area suffer because of the existing industrial outlook of Lafarge, Torness and the existing Landfill site. Further industrialisation of the area would be a step too far and would have a material detrimental effect on the amenity of the area.

Councillor McLennan concluded that for all the foregoing reasons he would be recommending refusal of the application and asked colleagues to support his position.

Local Member Councillor Bell stated that waste was an important and emotive issue. She had received many representations since Viridor first submitted an application, the most representations regarding any application since she had been a member of this Committee. She had attended briefings by Viridor and a number of public meetings and had heard views from both sides. She commented that the efficiency of the proposed plant was not clear. The heat plan was vague and dependent on users not yet signed up. There was mention of developments not yet in the pipeline, on land not currently designated for development. She referred to concerns about the destination of residues and to odour issues.

She highlighted concerns about the size of the potential plant, and its chimney, on the landscape and the effect on the amenity of local residents. She had received considerable representation on the health issues of emissions and was not convinced beyond reasonable doubt that there would not be an effect in the long term on the health of local people. She expressed concern about the issue of proximity and linked to this she had concerns about transportation; the railhead, increased numbers of lorries on the roads and the safety of the junction with the A1.

Councillor Bell concluded that she was not convinced that the benefits of this plant outweighed the loss of amenity to local residents and potential detriments and she was therefore unable to support this application.

Local Member Councillor Hampshire stated that the key issues to be considered were: *Location, Compliance with the proximity principle and Transport* – thousands of tonnes of waste would be transported over 30 miles to be incinerated: this was not the best practicable environmental option. Local authorities, supported by SEPA, had worked together for two years to produce an Area Waste Plan and a site close to the city bypass had been identified for a waste treatment facility: this was the best practicable environmental option.

Visual Impact – the facility proposed was in some of the most beautiful coastline in the country and this area had endured more than its fair share of disruption. Planning Policy DC1 prevented development in the countryside unless it could be demonstrated that there was a need for the development. There may be a need for a waste treatment facility but there was no justification for it to be developed in the countryside or at this location. He reminded Members of the reasons for allocation of this policy to this particular area. This area also had Lafarge and Torness, which was enough large-scale industrial development.

Demonstration of Need – local authorities had no alternative plan in place to treat their residual waste, only 40% of waste was currently recycled and other treatment facilities were needed to reach the new targets. He argued that the best practicable environmental option was not being considered.

Demonstrate that only residual waste will be treated – this application did not demonstrate this. Local authorities recycled waste by a separate collection system, however many households did not recycle and considerable waste in the Council's refuse vehicles had tonnes of recyclable waste. He queried who was responsible for determining that the waste was only residual and had every effort been taken to remove recyclable material from this waste.

Demonstrate how energy recovery will be maximised – the electricity generated and exported from the site would only provide 23.3% efficiency. To address this a heat plan had been submitted however it had no guarantee of support from local landowners or that there was a demand for this type of facility.

Demonstrate this is the best practicable environmental option for the waste stream – many reasons had already been given as to why this was not the best option. There were other technologies available but this application did not give Members the opportunity to consider them.

Councillor Hampshire concluded that this application failed to provide any pre-treatment that would ensure all practicable means possible would be used to remove all recyclable material from the waste before it was incinerated. It was on the wrong site and would mean the unnecessary transporting of thousands of tonnes of waste. It would not be energy efficient without the development of acres of glasshouses spread across the countryside and there was no guarantee that this would be deliverable. This application would not provide the best practicable environmental option. He asked Members to reject the recommendation and refuse this application for the reasons stated.

Provost Richardson indicated that she was very concerned with SEPA's response to its own criteria. She disagreed that the compliance with proximity principal criteria

would be met. She referred to the demonstration of need criteria and stated that East Lothian did not need a facility this size. She expressed disappointment that SEPA had not been more supportive of East Lothian's interests. She concluded that she would be supporting the local members and voting to refuse this application.

Councillor Caldwell referred to health issues, commenting that people in this area were currently subjected to Lafarge and Torness. There would undoubtedly be health risks associated with this application and more information on this would have been helpful. He agreed with residents and local members and would not be supporting this application.

Councillor Innes stated that he would not be supporting the application as it did not meet all 6 criteria that had to be addressed in the determination of any planning application for an energy from waste facility.

Councillor Broun Lindsay commented that he had considered this application very carefully. He indicated that after due consideration he could not support the officer recommendation and would be voting to reject this application.

The Convener brought the discussion to a close, indicating that the Committee had heard the case from the applicant, and had heard many concerns about the environmental, visual and health issues. He stated that the likely cumulative effect of the proposal on this area concerned him and he could not support this application. He indicated that a number of reasons for refusal had been given, to summarise: the cumulative impact of the proposals was unacceptable, in terms of visual, environmental and health issues. Other areas of concern mentioned were the transport issue and the impact on the amenity of the area. He moved that the report recommendation be put to the vote.

Decision

The recommendation that planning permission should be granted was put to the vote and received **no votes for** and **12 votes against**, with no abstentions. Accordingly the decision of the Committee was that planning permission be refused on the basis of the case made by elected members, particularly the three local members, against the proposed development, as recorded above. The Committee further decided that the specific reasons for the refusal to grant planning permission be drafted based on the content of the statements made by the three local members and that the drafted reasons be presented to the Convener and the three local members for their agreement prior to the decision to refuse planning permission being issued.

Post meeting note

The Convener and the three local members subsequently agreed that the decision to refuse planning permission was for the following reasons:

- 1 It is not demonstrated to the Planning Authority that large amounts of waste would not be transported to the proposed energy from waste facility by road from sources outwith the local area and that with such sourcing and transportation of waste the proposed energy from waste facility would not accord with the proximity principle of criterion 1 of the Scottish Environment Protection Agency's 'Guidelines for Thermal Treatment of Municipal Waste 2009'.

Extract from Minute of Planning Committee 01 09 09

- 2 The submitted heat plan does not demonstrate to the Planning Authority that the proposed energy from waste facility would be efficiently operated so as to effectively deliver combined heat and power outputs and therefore the proposed energy from waste facility would not accord with the energy recovery principles of criterion 5 of the Scottish Environment Protection Agency's 'Guidelines for Thermal Treatment of Municipal Waste 2009'.
- 3 It is not demonstrated to the Planning Authority that only residual waste would be treated at the proposed energy from waste facility and without the treatment being only of residual waste the proposed energy from waste facility would not accord with criterion 4 of the Scottish Environment Protection Agency's 'Guidelines for Thermal Treatment of Municipal Waste 2009'.
- 4 The proposed energy from waste facility would be visually intrusive and a further industrialisation of the area, detrimental to the amenity of the surrounding areas.
- 5 For the foregoing four reasons and with regard to public concerns about adverse environmental and health impacts of the proposed energy from waste facility, it is not the best practicable environmental option for treatment of the waste stream and therefore it would not accord with criterion 6 of the Scottish Environment Protection Agency's 'Guidelines for Thermal Treatment of Municipal Waste 2009'.