



PLANNING COMMITTEE – 15TH AUGUST 2012

SUBJECT: ENFORCEMENT REPORT EE/09/017 – WITHOUT PLANNING PERMISSION CHANGE OF USE OF WAREHOUSE FOR THE STORAGE AND DISPATCH OF STEEL SECTIONS AND SHEETS (B8) TO USE FOR THE FABRICATION OF HEAVY STRUCTURAL STEEL WORK (B2) AT ROWECORD ENGINEERING LIMITED, COMMERCIAL STREET, PONTYMISTER

REPORT BY: CHIEF EXECUTIVE

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1. This case relates to an existing authority to enforce issued by Committee on 3rd August 2011. The report and its recommendations are attached. That authorisation sought to bring an unauthorised B2 industrial use under control by making the unauthorised use subject to conditions to moderate its impacts upon nearby residential properties.
 2. Following the Committee authorisation to enforce Officers prepared an Enforcement Notice in accordance with the report and it was subsequently issued on 17th October 2011. Copies of the notice were sent out via Royal Mail recorded delivery. The copy addressed to the owners (Rowecord Engineering) was delivered to their registered address and subsequently their legal representatives lodged an appeal on their behalf. In that appeal they made reference to the fact that the copy of the notice addressed to Rowecord Holdings Ltd, had not apparently been delivered. In addition the Planning Inspectorate wrote to the Council on 24th November 2011 regarding the wording of the notice, noting that it appeared to be the Local Planning Authority's intention to under enforce but expressing concern that there was an element of uncertainty in the notice.
 3. The Development Control Manager sought clarification of the Inspectorate's comments but these were not forthcoming. Attempts were made to establish what has happened to the notice addressed to Rowecord Holdings Limited, via Royal Mails Track and Trace system and their customer care complaints procedure but to no avail. Therefore in view of the failure to serve a copy of the notice on Rowecord Holdings Limited, together with the comments of the Inspectorate, it was decided that the notice dated 17th October 2011, should be withdrawn and a fresh notice issued and served. Accordingly a letter dated 5th December 2011, withdrawing that notice was sent out and copied to the Inspectorate who closed their appeal file.
 4. This matter is now returned to Committee to explain the consideration that has been given with regard to the issue of a fresh notice in the light of recent appeal events. It is also returned to Members because a Local Member for Risca has asked for the original authority to enforce to be reconsidered. The Local Member is concerned that the impact of the unauthorised use cannot be adequately moderated and that the appearance of the site is detrimental to the visual amenity of the area. It is therefore the Local Member's view that a more appropriate authorisation should be the complete cessation of the current B2 use of the site.

5. Firstly with regard to the issue of a fresh notice, following the withdrawal of the original notice advice was sought from the Council's Legal Section as to the form that a new notice should take and to establish, in the absence of any further guidance from the Inspectorate, what was the basis the concern relating to the withdrawn notice. The exact basis for the concern has not been fully established as planning permissions do include conditions that run for perpetuity and "under enforcement" is in effect the granting of planning permission. Notwithstanding the fact that a complete understanding of the Inspectorate concern has not been established, the Council's Legal Services have been consulted on the wording of a draft enforcement notice and consider that it should be simpler in its requirements. The draft re-wording of the notice requirement are as follows:

Cease the use of the land and buildings for the manufacture of steel products, falling within Class B2 of The Town and Country Planning (Use Classes) Order 1987, including the ancillary making of and the receiving of deliveries, between the following times:

- 18:30hrs to 07:30hrs on the following day Mondays to Thursdays
- 18:30hrs Fridays to 08:30hrs Saturdays
- 13:30hrs Saturdays to 07:30hrs Mondays (inclusive of Sundays) and not at all on Bank Holidays

6. These requirements present simple and straightforward times. They do not include the previously recommended more complex conditions relating to noise, however they critically exclude activity during anti social hours. Should disturbance occur during the working day it would be necessary for the Environmental Health Department to take separate action. The Environmental Health Section have been hampered in their consideration by the lack of information that would have been available or required if an application for planning permission had been submitted, which has led to the suggested simplified conditions above.
7. During the course of this case and from its beginning the owners of the site have been invited to make an application for planning permission to regularise the unauthorised use. Solicitors acting for the owners have indicated that an application for planning permission could be made. A draft of the revised enforcement notice was forwarded to the Solicitors on 12th June to inform the owners that such an action would have to be taken if planning regularisation was not sought. A response was received to the effect that due to annual leave commitments the Solicitors would not be able to reply for at least 21 days. A further reminder was sent to them on 11th July but at the time of preparation of this report a response has not been received. Because this matter has now been ongoing for such a long period it is not considered that it should be held in further abeyance.
8. Turning next to the concerns of the Local Member it is to be noted that those concerns are to an extent shared by the Environmental Health Department in so far as the use is not compatible in terms of its close proximity to residential properties. At the time of preparation of this report three letters have been received from local residents underlining the concerns of the Local Member and raising specific complaints:
- The noise levels are "intolerable" particularly at night.
 - Dust, fumes and detritus are polluting nearby properties.
 - The crane and materials stacked in the yard are unsightly.

The hours of operation suggested at 1.6 above should broadly control the main concern regarding activities during the night/weekends. It should be pointed out at this point that the use authorised in the 1960s was not restricted in terms of hours of operation. In addition noise complaints are not entirely restricted to the current use alone and records indicate noise has also been an issue when the site was in B8 (storage and distribution) use. The suggested hours at 1.6 may therefore be viewed as an improvement in control. The potential for noise arising during the day is difficult to quantify because of the lack of information (as pointed out in 1.7), the owners have indicated that they have taken steps to reduce the problems by improved work practices. Thus if a continued use is permitted but it does give rise to further nuisance, responsibility will fall upon the Environmental Health Department to take

appropriate action. The issues of pollution (dust, fume, detritus) appear to arise from may be described as poor site management rather than the B2 use itself. This type of problem could equally arise under a variety of use such as the authorised B8 use, for example from dust created by vehicles being driven over dry scalplings. The complaints have been passed to the Environmental Health Department to take action under its powers regardless of the outcome of the planning action.

9. In considering the appearance of the site it should be borne in mind that it was granted permission in the 1960s for the storage of steel and subsequent permissions were granted for fixed equipment such as a Scotch Derrick to lift stock stored externally. It has a commercial history of around fifty years, with lawful steel storage and distribution covering most of that period. External storage therefore has been part of the history of the site for a significant period, although in terms of intensity it may have risen and fallen, with in recent times the site having periods without commercial activity. The earliest aerial photograph available dated 1991 shows a yard on the opposite side of the building (away from the residential properties) full of steel stock with the Scotch Derrick crane in situ. Technically there are questions as to the current lawful use of the site, however there is no avoiding the fact that it holds a large extant building with a footprint of around 8,000 square metres and it has been used for commercial employment purposes for most of the past 50 years.
10. The location of the site and its juxtaposition with residential properties is not satisfactory but it is historical. It is the planning view that an enforcement action to require the complete cessation of the current use is likely to founder at appeal because of insufficient weight being given to the commercial history of the site and the imposition of conditions to ameliorate any continuing use. Also the site could be operated responsibly, and if it is not the Authority has other powers to control nuisance.
11. **RECOMMENDATION:** That officers should be authorised to issue and serve a revised enforcement in accordance with the requirements at 1.6 and to take appropriate legal action in the event it is not complied with.