



PLANNING COMMITTEE – 31ST OCTOBER 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 LTD., COMMERCIAL STREET, PONTYMISTER.

REPORT BY: CHIEF EXECUTIVE

1. Following representations from Solicitors acting on behalf of Rowecord, consideration of this matter by Committee on 3rd October 2012 was deferred to enable the company to provide such additional information as was considered should be presented to Committee. They were requested to provide that information by 17th October 2012, in time for it to be included in this report. In a letter attached to an email from Morgan La Roche, Solicitors on behalf of Rowecord on 16th October, they state that they have not been provided with sufficient notice to provide all the information they require to be included within the relevant report and suggest that the matter should be deferred to the next committee meeting. It is considered that the company and its representatives have had, over the months since this matter was first raised with them, ample opportunity to present any information that they feel relevant to the Council and that a further delay in deciding what action to take is unnecessary.
2. The Planning Committee deferred a decision on the 15th August 2012, for a site visit to consider the effect of the use on the residential amenity of nearby properties. Previous reports are attached.
3. At the site meeting Members raised concerns regarding the impact of the manufacturing activities on the neighbouring houses, as well as the external storage and dust from the new road around the southern corner of the building. The report was deferred at the Planning Committee on 5th September to allow further information to be reported including :-
 - details of Officers' meetings and communications with the Company and its representatives
 - an explanation of the difference between Classes B2 and B8 of the Use Classes Order, and what the company could do under the original permission externally
 - as detailed a breakdown as possible of the previous uses at the site based on planning permissions, local knowledge and any information provided by Rowecord.
 - full details of the noise readings taken by Environmental Health, and those from Rowecord if they're available.
4. Appendix A attached, sets out the details of all the meetings and exchanges of correspondence that have taken place between officers in the planning section and the company or its agents and representatives, regarding the planning issues surrounding the use of this site. Where those meetings or correspondence have involved other sections within the council these are marked appropriately.

5. "Development" is defined in section 55(1) of the Town and Country Planning Act 1990 as meaning, subject to exceptions, "the carrying out of building, engineering, mining or other operations in, on, over or under land or the making of any material change in the use of any building or other land". ("Land" includes buildings).
6. The Town and Country Planning (Use Classes) Order 1987 came into effect on June 1st 1987. The purpose of the order is to exempt from the need to obtain planning permission for changes of use within the same use class.

Class B2 is Use for the carrying on of an industrial process other than one falling within Class B1. ("Industrial process" means a process for or incidental to any of the following purposes: -
(a) the making of any article or part of any article (including a ship or vessel, or a film, video or sound recording);
(b) the altering, repairing, maintaining, ornamenting, finishing, cleaning, washing, packing, canning, adapting for sale, breaking up or demolition of any article; or
(c) the getting, dressing or treatment of minerals;
in the course of any trade or business other than agriculture, and other than a use carried out in or adjacent to a mine or quarry;).

The use for the purposes of a waste disposal installation for the incineration, chemical treatment or landfill of waste is excluded from this definition by subsequent amendments to the legislation.

Class B8 is Use for the storage or as a distribution centre.

Uses within this class may be carried out on entirely open land. The use of any building or land for the storage of, or distribution centre for, radioactive material or radioactive materials is excluded from Class B8 in Wales.

7. Therefore if the original use of the premises currently persisted on site the external storage of materials could be carried out on the land surrounding the building, as there were no conditions attached to the original planning permission for the site that would prohibit this activity. The 1991 aerial photograph of the site appears to show the existence of a derrick crane on site with a considerable amount of storage around it.
8. The Town and Country Planning (General Permitted Development Order) 1995, Schedule 2, Part 8, Class C, permits the provision of a hard surface within the curtilage of an industrial building or warehouse to be used for the purpose of the undertaking concerned. Therefore the formation of the storage area to the rear of the building did not require specific planning permission from the Local Planning Authority, as it would have been 'permitted development'.
9. Appendix B sets out the recorded planning history. Rowecord have supplied through their Solicitors four statutory declarations, three from persons who, over the years up until 2002, worked at the premises, together with one from a supplier of equipment used at the site. The objective of these declarations is to show that the usage of the premises to which they refer to is consistent with a B2 use as opposed to a B8 use. Other than this the company have not provided any other information regarding the use of the premises up until Rowecord Holdings purchased the site and occupation took place in autumn in 2008.
10. During the summer of 2010 both subjective and objective noise assessments were made as part of investigations by an Environmental Health Officer within the Pollution Control Team into noise emanating from the site.

During periods of monitoring there was evidence of sudden loud noises of metal banging, machinery noise and vehicle noise. Environmental Health visited both the premises themselves and the surrounding area during their investigations and concluded that the complaints were justified.

The results of one objective monitoring assessment, undertaken from 30th June 2010 to the 1st July 2010, from a residential garden, show that when compared to BS 4142 complaints would be extremely likely, as according to BS 4142 a rating figure of around 10 means that complaints are likely. During this particular night monitoring the outcome was a rating of 11. These readings illustrate just how much of an impact work during the night at these premises, affects the background noise level in the surrounding area.

Also, between the hours of 11pm and midnight noise levels exceeded 60dB 6 times. The World Health Organisation in its 'Guideline values for community noise in specific environments' states that the maximum noise level for sleep disturbance outside bedrooms is 60dB.

For a good sleep it is considered that indoor noise levels should not exceed 45db(A) with windows open and that intermittent noise has a more disturbing effect on sleep.

During remote noise monitoring, undertaken over the months of July and August 2010 metal banging and crashing were clearly audible inside a neighbouring residential bedroom.

In summary the types of noise experienced during the investigation indicates that this business gives rise to random noises, that may contain loud crashes of metal on metal, mechanical noise and vehicle noise. These noises would be enough to attract attention and therefore increase the likelihood of complaints and would be difficult to control. This noise is likely to result in nearby residential occupants suffering loss of amenity, as they would be unable to use their gardens as well as being disturbed inside their properties.

On 21st October 2010 a meeting was held at the Council Offices with the Company representatives from Rowecord, and the Environmental Health and Planning Departments. During this meeting it was agreed that a planning application would be submitted within 10 days and Environmental Health would impose conditions to resolve noise issues.

11. Following the meeting on site by the Planning Committee on 23rd August a local resident has written in with information that they wish to be taken into consideration when deciding how to proceed. That information is summarised as follows: -
1. All the planning applications submitted by John Cashmore's Ltd. and listed in the committee report referred to the storage of steel. Their occupation of the premises up until the early 2000s caused little nuisance to neighbours, there was only occasional noise and this was during the day as working hours were daytime only. The land to the side and rear of the building was not used as it was uneven and covered in vegetation, The main access was through a door half way along the building with a separate access to the workshop at the Fields Road end of the building, the road to both access points was tarmaced, therefore no dust was generated.
 2. Rowecord took over in the autumn of 2008 and immediately made major structural changes to the building and site, including the demolition of the workshop and the installation of large doors at either end of the building. A perimeter fence was erected, hardcore laid to the rear of the building and the floodbank was increased in height. A consequence of all those works was dust and noise affecting immediate residents.
 3. Rowecord operate 7 days a week and 24 hours a day when required, activities include shot blasting, welding, hammering and painting metal, working both inside and outside the building resulting in smells and a high levels of noise. The nature of the work involved results in abnormally large loads being taken from and delivered to the site at all hours of the day using the large doors at the Fields Road end of the building. Lorries generate dust using un-tarmaced areas of the site.

4. In January 2009 the writer met Mr. Colin Hagan of the Company to discuss the residents' concerns. It was the company's position that whilst they wished to get on with their neighbours they were a business and business concerns came first. A subsequent e-mail from Mr. Hagan re-iterated that position and that the site had been purchased to operated on a 24/7 basis as and when orders required. Because of the nature of their activity noise would be a normal consequence of that business.
5. Commencing in 2009 residents have on numerous occasions written to and telephoned both Environmental Health and Planning regarding dust and noise, particularly noise generated at night from the premises. Noise logs have been completed from 2009 to November 2011 and noise recording equipment has been installed in the writer's home. Photographs have been submitted showing dust generated by vehicles and the size of the loads being carried by those vehicles leaving the premises, such was the size of one load that was trying to leave the site in December 2010 that it hung over the boundary fence to the writers property and safety barriers within the site had to be dismantled to enable the vehicle to leave the site.
6. The writer was informed in August 2010 of a meeting between officers and the company regarding the use of the site at which the company accepted that they generated noise dust and smells but that these could not be avoided, as it was part and parcel of their operations. They did not accept that planning permission was required for their use of the premises or the alterations carried out to the building. It stated that the writer was informed that if a planning application had been submitted the Planning Authority could have carried out a 'risk assessment ' and either refused that application or granted it subject to conditions.
7. Not for the first time, continuously during the first two weeks of May 2011, the company undertook work using a crane and cutting metal outside the building, adjacent to the Old Age Pensioner's Bungalows at the end of Fields Road. A resident living adjacent to the site had worked for Cashmore's at the site for approximately 20 years; he and another former worker had been contacted by Rowecord and asked to confirm that manufacturing had been carried out during their time at the site. This they would not do saying that there had been no manufacturing at the site only storage. It was also the case that at the time of this gentleman's employment at the site that the building was insulated but this had been subsequently removed. This information together with their contact details had been forwarded to the Council.
8. There has been no change in circumstances since 2011 when an enforcement notice was issued and subsequently withdrawn. The company continue to operate most evenings and weekends and some nights. Noise and paint smells are still coming from the building and dust is being generated. As to the employment of local people it appears that workers are being bussed in as required, it has been noted that a minibus with Polish number plates has deposited 6-8 men in working clothes at the premises on several occasions.
9. Residents have been in touch with the council regarding nuisance on a regular basis since February 2009. The writer has kept a diary since 2010 and that there are entries on most days itemising instances of noise, smell, dust or hours of working. They worked for most of the day with both doors open on 7th August 2012. Work also took place on August Bank Holiday Sunday and Monday. On the 9th August, a large crane was working outside the rear of 4 Fields Road, following a complaint from the occupier an officer from Environmental Health attended and took photographs.
10. After the site meeting it is hoped that the committee have a more comprehensive understanding of the effect that the use of the site by Rowecord has on the surrounding area since they took over in 2008 and that the committee will be able to alleviate the residents problems as soon as possible. It is a quiet residential area occupied by a high proportion of pensioners who do not need to suffer at the hands of a company that are operating without the necessary permission. The site, in a residential area is unsuitable

for the purpose that Rowecord are using it for. If planning permission were sought now it would be refused.

12. In view of the previous approved uses of the site which included external storage and could have included an intensive use of the land around the building, including a crane, it is concluded that it would be reasonable in this case to limit the new element of the current occupation – the industrial use – to a daytime use only. The size of the building and the economic benefits associated with its use, along with the impact on neighbouring properties have been taken into account in coming to that conclusion.
13. **RECOMMENDATION:** That officers should be authorised to issue and serve a revised enforcement notice in accordance with the following requirements and in the event of non-compliance with the notice, authorisation is also sought to take such legal proceedings as may be required in order to terminate the breach of planning control.

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 cease that use during Bank Holidays.