**Carlisle City Council**

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| **Report to:-** | **Development Control Committee** |  |  |
| **Date of Meeting:-** | 12th November 2010  | **Agenda Item No:- ED 34/10** |  |
| Public | Operational | Delegated: No |
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| Accompanying Comments and Statements | Required | Included |
| Environmental Impact Statement: | No | No |
| Corporate Management Team Comments: | No | No |
| Financial Comments: | No | No |
| Legal Comments: | No | No |
| Personnel Comments: | No | No |
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| Title:- | **Application 08/1089 Egertons Recovery Limited, Caxton Road, Newtown Industrial Estate, Carlisle.**  |
| Report of:- | **Assistant Director (Economic Development)** |
| Report reference:- | ED 34/10  |

Summary:-

This Report refers to application 08/1089, which was granted retrospective planning permission at the July 2010 meeting of the Development Control Committee. The approval of the application enables Egertons Recovery Limited to lawfully operate its vehicle recovery service from their depot in Newtown Road Industrial Estate, subject to compliance with several planning conditions. Because of concerns regarding the retrospective nature of the application the Committee requested that a Report be brought

Assistant Director (Economic Development)

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| **Contact Officer:** | Sam Greig | **Ext:** | 7176 |

To the Chairman and Members of the ED 21/10

Development Control Committee

before the Development Control Committee in October setting out progress in complying with the conditions. At the October meeting Members were informed that the operator had failed to comply with the conditions and that the Council had begun enforcement proceedings. Consequently Members requested that a further Report be presented to the Development Control Committee outlining what progress had been made by the operators in terms of complying with the enforcement notice.

**Recommendation:-**

That Members note the contents of the Report and support the Officer’s recommendations in terms of progressing enforcement action.

**1.0 Introduction**

1.1 Members will recall that a retrospective planning permission, for the change of use of a depot situated within Caxton Road Industrial Estate to enable it to be used as a vehicle recovery centre, was approved at the Development Control Committee held on the 16th July 2010.

1.2 The planning permission was subject to a series of conditions that the operators of the premises have to adhere to in order to ensure that the operation does not prejudice the living conditions of the occupiers of the neighbouring residential properties. A copy of the schedule of conditions has been appended to this Report.

1.3 Some of these conditions necessitate physical alterations to the site, which were required to be completed within a two month period from the date of the permission, such as the creation of a landscaped bund, the installation of a drainage system and the resurfacing of the concrete hardstanding, whereas other conditions regulate how the operation is carried out. In respect of the latter, conditions were imposed specifying the operating procedure for those recoveries outside conventional office hours, i.e. other than 8am to 6 pm Monday to Friday, while other conditions restricted where vehicles could be stored and the type of forklift trucks that could be used.

1.4 At the Development Control Committee Members expressed concern regarding the retrospective nature of the application and the fact that Egertons had been operating from the site since March 2008. Whilst accepting that the implementation of the mitigation measures, which are required through the imposition of the aforementioned conditions, would minimise any adverse impacts Members requested that the Case Officer present a Report to a subsequent meeting of the Development Control Committee reporting on the applicants’ compliance with them within the time frame specified in the conditions.

1.5 That subsequent Report to Members, which was presented at the October Development Control Committee meeting, identified that work had begun on the installation of the landscaped bund, which is positioned parallel with the boundary that the site shares with its neighbouring properties on Newtown Road, and that the surface water drain had been installed at the base of the bund.

1.6 As the physical works required by Conditions 6 and 7 had not been completed within the required timeframe the operator is in breach of the requirements of these conditions. As a result of the Egertons failure to comply with these conditions the Council served a “Breach of Condition Notice” under Section 187A of the Town and Country Planning Act.

1.7 The previous Report to this Committee identified that a “Breach of Condition Notice” requires full compliance with the conditions in question and specifies the period for compliance, which must not be less than 28 days. Such a notice takes effect immediately from the date that it is served and it is a criminal offence not to comply with its requirements. The only right of appeal is to the High Court and, in the event of non-compliance, the Council can take legal proceedings in the Magistrates Court who, upon conviction, can impose a fine of up to £1,000.

1.8 The “Breach of Condition Notice” was served on the 13th October and the 28 day timeframe for compliance expired on the 10th November. Within the specified timeframe Egertons were required to:

* complete the construction of the proposed acoustic/visual barrier (including the associated surface water drain to the south side of the barrier) in accordance with the approved scheme; and
* complete the concreting and installation of the drainage scheme to the vehicle storage area in accordance with the approved details.

**2.0 Whether The Breach Of Condition Notice Has Been Complied With.**

* 1. At the time of preparing this current Report, the landscaped bund/acoustic fence had been erected along the rear of Nos. 182 to 192 Newtown Road, measuring 60m in length. The bund needs to be landscaped in accordance with the approved scheme and the Council’s Landscape Architect has advised that there is no reason why that planting cannot now take place [Members should note the planting of the bund did not form part of the Breach of Condition Notice as the Notice was served in the early stages of the planting season]. Aside from the planting, in order to comply with the approved scheme the operator needs to extend the bund to the site’s eastern boundary which abuts Caxton Road [a further 25m]. The uncompleted section would screen the site from the rear garden of No. 180 Newtown Road as well as a plot of land to the rear of St. Barnabas Church Hall, which has planning permission for the erection of four dwellings [the permission has yet to be implemented]. The proposed length of the acoustic/visual barrier was extended during the application process following advice from the applicant’s noise consultant that this section of the bund was required to mitigate the potential effects of the development upon the future occupiers of the four approved dwellings. Egertons explanation for having not yet installed the bund in its entirety is because it involves the repositioning of a palisade fence, which is required to keep the site secure.
	2. The remaining physical works to be undertaken relate to those required by Condition 7. This condition requires the operator to concrete and drain the vehicle storage area in accordance with the approved scheme. Egertons Site Manager instructed a drainage contractor to carry out these works; however, following a site inspection the contractor informed the Site Manager that there are difficulties in complying with the approved means of draining the vehicle storage area because of the fall in levels across the site. The Case Officer has met with the contractor to discuss the problems of complying with the approved drainage scheme. The contractor explained that the complication has arisen as the “aco drains” to be installed require a certain fall in order for the surface water to drain away and that the necessary fall cannot be achieved across the length of the vehicle storage area because of the variation in site levels. At that meeting an alternative arrangement was suggested, which would involve repositioning the interceptor and draining the site towards the centre of the vehicle storage area [the lowest point of the site] as opposed to the northern extent of the yard.
	3. Until the issue regarding the drainage system has been resolved it is not practical to make good the existing concrete surface. Where new areas of concrete are required the contractor has asked whether it would be possible to use tarmac as opposed to concrete, as this would be quicker to lay. There would be no objection to tarmac being used; however, concrete had originally been proposed by Egertons and it is for this reason alone that the condition stated that the yard must be concreted in accordance with the approved scheme.

2.4 In summary, the requirements of the “Breach of Condition Notice” [specified in paragraph 1.8] have not been met. A 60m section the acoustic/visual barrier has been erected, although it needs to be extended in length by a further 25m. The uncompleted section of the bund is required to safeguard the living conditions of the future occupiers of the dwellings that have planning permission to be erected on the land to the rear of St. Barnabas Church Hall. Work has not commenced on these dwellings and, therefore, the absence of this section of the bund will not impact upon the living conditions any neighbouring properties; however, notwithstanding, this fact work could commence on these dwellings and, therefore, there is still a requirement for the acoustic/visual barrier to be formed. When considering this particular issue Members should be mindful of the fact that the completed section of the bund will help mitigate the impact that the use of the vehicle storage area will have upon those properties on Newtown Road. It is also worth noting that the Council has not received any complaints regarding the premises since it was reported that a vehicle had been unloaded in the yard late in the evening of Sunday 22nd August 2010.

2.5 The position regarding non-compliance with the approved drainage scheme is more complicated. Egertons Site Manager has attempted to progress those works; however, the drainage contractor has advised that the approved scheme, which was proposed by Egertons, is unworkable. Clearly, there is no merit in trying to pursue compliance with the requirements of that condition. Egertons Site Manager is aware of the concerns raised by Members regarding non-compliance with the conditions and, in order to demonstrate a willingness to address these issues, an application has been submitted to vary the details of that condition in accordance with a modified scheme as proposed by Egertons drainage contractor.

**3.0 Progressing Enforcement Action**

3.1 With regards to the “Breach of Condition Notice”, if Members felt it justified, the Council could take legal proceedings in the Magistrates Court on the basis that Egertons have failed to install the entire length of the acoustic/visual barrier. Prior to the application being determined by the Development Control Committee on the 16th July Egertons were aware of the two month timescale within which Officers’ had recommended that the physical works would have to be completed. Although the uncompleted section of the acoustic/visual barrier is not required immediately, due to development having not commenced on the approved dwellings to the rear of St. Barnabas Church Hall, Egertons have had adequate time to prepare and undertake these works and, as the acoustic/visual barrier remains incomplete, it is the Officer’s recommendation that the Council’s Enforcement Officers are instructed pursue matter through the Magistrates Court.

3.2 In respect of the drainage works, as the drainage contractor has advised that the approved scheme is unworkable it would be unreasonable of the Council to pursue legal proceedings on the basis of a scheme that cannot be adhered to. Whilst the scheme will not work Egertons Site Manager has submitted a planning application to vary those details. That application will need to be determined in accordance with the Council’s procedures and, if the scheme is acceptable, an appropriate timescale imposed for the implementation of those works.

**4.0 Recommendation**

4.1 That Members note the contents of the Report and support the Officer’s recommendations in terms of progressing enforcement action.

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| A**www.carlisle.gov.uk** | **Economic Development****Planning Services** **Civic Centre, Rickergate, Carlisle, CA3 8QG**Phone: 01228 817000 Fax: 01228 817199 Typetalk: 0800 95 95 98 Email: DC@carlisle.gov.uk  |

**Application for Planning Permission**

**Notice of Approval**

Town and Country Planning Act 1990

Town and Country Planning (General Development Procedure) Order 1995

 Applicant: Agent: (if any)

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|  Egertons Recovery Ltd | Taylor & Hardy |
| Moss LaneMobberleyCheshireWA16 7BS | 9 Finkle StreetCARLISLECumbriaCA3 8UU |

**Part 1 - Particulars of Application**

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| Date of Application: 27/11/2008 | Application Number: 08/1089 |

Particulars and Location of Proposal:

**Proposal:**

**Change Of Use Of Depot To Recovery And Storage Of Vehicles Involved In Accidents And Erection Of Palisade Fencing (Retrospective/Revised Application)**

**Location:**

**Caxton Road, Newtown Industrial Estate, Carlisle CA2 7HS**

**Part 2 - Particulars of Decision**

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| In pursuance of the powers under the above Act and Order the Carlisle City Council hereby gives notice that **Planning Permission Has Been Granted** for the carrying out of the development referred to in Part 1 hereof and as described and shown on the application and plan(s) submitted, subject to due compliance with the following condition(s): |

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| 1. | The approved documents for this planning consent comprise: 1.      The Planning Application Form received 24th October 2008;2.      The Planning Statement received 3rd November 2008;3.      The site location plan received 24th October 2008;4.      The site layout plan received 22nd June 2008;5.      Technical details of the Klargester By Pass Separator 27th November 2008;6.      Noise report produced by QEM Systems Ltd received 14th June 2010; 7. The Notice of Decision; and 8. Any such variation as may subsequently be approved in writing by the Local Planning Authority.**Reason:**        To define the permission. |
| 2. | The premises shall be used for as a vehicle recovery and storage depot and for no other purpose.**Reason:** To preclude the possibility of the use of the premises for purposes inappropriate in the locality in accordance with Policies CP6 and EC1 of the Carlisle District Local Plan 2001-2016. |
| 3. | Recovery vehicles associated with the use hereby approved shall only use the vehicular entrance to the north of the site. **Reason:** To prevent disturbance to nearby residential occupiers and in accordance with Policy CP6 of the Carlisle District Local Plan 2001-2016. |
| 4. | Between 6 p.m. to 8 a.m. Monday to Friday, and at all times on Saturdays or Sundays any recovered vehicle shall only be unloaded within the building identified on the site layout plan received 22nd June 2010 with its doors closed, as outlined in the applicant's supporting statement received 3rd November 2008. **Reason:** To prevent disturbance to nearby residential occupiers and in accordance with Policy CP6 of the Carlisle District Local Plan 2001-2016. |
| 5. | The cameras hereby approved shall at all times be fitted with privacy blockers to prevent the neighbouring residential properties, including their domestic gardens, from being overlooked. **Reason:** To ensure that the privacy of neighbouring residential properties is safeguarded in accordance with Policy CP6 of the Carlisle District Local Plan 2001-2016. |
| 6. | Within two months from the date of this permission the proposed acoustic/visual barrier (including the associated surface water drain to the south side of the barrier) shall be constructed and completed in accordance with the approved scheme. The landscaping scheme shall be implemented in the next available planting season, in accordance with the details contained on the site layout plan received 22nd June 2010, unless otherwise agreed, in writing, by the Local Planning Authority. Any plants which die or are removed within the first five years following the implementation of the landscaping scheme shall be replaced during the next planting season. **Reason:** To ensure that the site is adequately screened and to ensure compliance with Policies CP5 and CP6 of the Carlisle District Local Plan 2001-2016. |
| 7. | Within two months from the date of this permission the vehicle storage area shall be concreted and drained in accordance with the details contained on the site layout plan received 22nd June 2010, unless otherwise agreed, in writing, by the Local Planning Authority. **Reason:** To ensure that the installation of a suitable surface water drainage system and to ensure compliance with Policies CP11 and CP12 of the Carlisle District Local Plan 2001-2016. |
| 8. | No vehicle with a height exceeding 2.5 metres above the adjacent ground level of the site shall be stored within the hatched area illustrated on the site layout plan received 22nd June 2010.**Reason:** To ensure that the proposed development is undertaken in a manner which safeguards the visual amenities of the area and to ensure compliance with Policies CP5 and CP6 of the Carlisle District Local Plan 2001-2016. |
| 9. | Any forklift truck to be used on the site shall comply with the details of the rough terrain forklift contained within Appendix A of the Noise Report produced by QEM Systems Ld received 14th June 2010. No other forklift truck shall be used on the site until details of the forklift truck have been submitted to and approved, in writing, by the Local Planning Authority. These details shall include an engineering solution that demonstrates that the forks of the truck shall not result in unacceptable levels of noise disturbance. **Reason:** To prevent disturbance to nearby residential occupiers and in accordance with Policy CP6 of the Carlisle District Local Plan 2001-2016. |
| 10. | The audible reversing alarm of forklift truck that is used on the premises shall be removed and replaced with a visual warning light. **Reason:** To prevent disturbance to nearby residential occupiers and in accordance with Policy CP6 of the Carlisle District Local Plan 2001-2016. |
| 11. | The audible warning alarms on recovery vehicles shall not be used when in operation on the premises. **Reason:** To prevent disturbance to nearby residential occupiers and in accordance with Policy CP6 of the Carlisle District Local Plan 2001-2016. |