

**Licensing Committee****10 September 2014**

ICD Scrap Haulage Ltd Metal Dealers Licence	
ES-10-14-F	
Patti Dinsdale Team Leader - Environmental Health	Infrastructure Services Department / Environmental Services

1.0 Summary

- 1.1 The Licensing Committee are asked to make a decision on an application to grant a Metal Dealers Licence to ICD Scrap Haulage Ltd because adverse representations or objections have been received to the grant of the application from Development Service - Planning.
- 1.2 The Committee can decide that a licence be approved, approved with additional conditions or refuse the licence. The Licensing Authority must refuse an application where the premises are not suitable or convenient for the conduct of the activity as set out in paragraph 4.8. Otherwise the authority is bound to grant the application.

2.0 Decision Required

- 2.1 That the Committee RESOLVE to:
 - 2.1.1 approve the licence;
 - 2.1.2 approve the licence with additional conditions; or
 - 2.1.3 refuse the licence, stating clearly the reason for refusal as detailed in paragraph 4.8 of the report.

3.0 Detail

- 3.1 An application for a Metal Dealers Licence has been received. In considering an application for a licence the Licensing Authority shall make such reasonable enquiries as they think fit and use the result of these enquiries in making their decision.
- 3.2 The application received is to operate a scrap metal dealers business from Lower Scord, Scalloway, ZE1 0UG and Unit One, South Bay, Greenhead, Lerwick, ZE1 0PX. The part of the application relating to the latter address, Unit One, South Bay, Greenhead, Lerwick was subsequently verbally withdrawn on 25 July 2014.
- 3.3 Development Management – Planning Service were consulted on this application and have objected to the granting of the licence due to unauthorised activity outside, outside of containers, i.e. open storage of scrap metal at the applicants' premises, that in their opinion would have an unacceptable adverse environmental impact on the amenity of the area. Attached as Appendix 2 and 3.
- 3.4 A Licensing Authority cannot reach a final decision on an application unless the persons who made the objections and the applicants have had the opportunity to be heard or provide their views on the objection in writing. The applicant and the persons who have submitted objections have been invited to appear at this meeting in person or provide their views in writing prior to the meeting.

4.0 Implications

Strategic

- 4.1 Delivery On Corporate Objectives – The Licensing functions helps to make Shetland healthier and safer, an objective in the Single Outcome Agreement.
- 4.2 Community /Stakeholder Issues – None
- 4.3 Policy And/Or Delegated Authority – Appendix 2 of the Council's Scheme of Administration and Delegation states where the authorised officer receives an objection or adverse representation to a proposal under the relevant legislation and conditions cannot address the issue(s) raised; or the proposal is recommended for refusal for reasons other than a clear technical failure to comply with legislative requirements, the matter will be referred to the Licensing Committee for determination.
- 4.4 Risk Management – There is a risk of reputational damage if the Council's licensing regime and development control regimes are contradictory.
- 4.5 Equalities, Health And Human Rights – None.
- 4.6 Environmental – None.

Resources

4.7 Financial – None.

4.8 Legal – The Licensing Committee’s decision may be challenged by appeal to the Sheriff Court.

The activity of Metal Dealing is regulated by the Civic Government (Scotland) Act 1982 (“the Act”) Schedule 1, paragraph 5 of the Act states that the licensing authority must either grant or refuse to grant an application made to it for a licence. In particular, paragraph 5 (3) states:

“A licensing authority shall refuse an application to grant or renew a licence if, in their opinion—

(a) the applicant or, where the applicant is not a natural person, any director of it or partner in it or any other person responsible for its management, is either—

- (i) for the time being disqualified under section 7(6) of this Act, or
- (ii) not a fit and proper person to be the holder of the licence;

(b) the activity to which it relates would be managed by or carried on for the benefit of a person, other than the applicant, who would be refused the grant or renewal of such a licence if he made the application himself;

(c) where the licence applied for relates to an activity consisting of or including the use of premises or a vehicle or vessel, those premises are not or, as the case may be, that vehicle or vessel is not suitable or convenient for the conduct of the activity having regard to—

- (i) the location, character or condition of the premises or the character or condition of the vehicle or vessel;
- (ii) the nature and extent of the proposed activity;
- (iii) the kind of persons likely to be in the premises, vehicle or vessel;
- (iv) the possibility of undue public nuisance; or
- (v) public order or public safety; or

(d) there is other good reason for refusing the application;

and otherwise shall grant the application.”

4.9 Human Resources – None.

4.10 Assets And Property – None.

5.0 Conclusions

- 5.1 The Licensing Committee are asked to make a decision on an application for the grant of a licence to carry out the activity of Metal Dealing because an adverse representation or objection has been received.

For further information please contact:

Patti Dinsdale Team Leader – Environmental Health

Tel: 01595 744842 Email@ patti.dinsdale@shetland.gov.uk

3 September 2014

List of Appendices

Appendix 1 – Application details and discussion

Appendix 2 – Objection from Development Management – Planning

Appendix 3 - Details and clarification of objection from John Holden, Team Leader – Development Management Planning Service

Appendix 4 – Plan of premises at Lower Scord, Scalloway

Appendix 1 – Application details and discussion

Application for a Metal Dealers Licence - Application Number: MDL/14/03

Name and Address of Applicants and Premises:

Barbara Anne Leslie, Heimdaal, Cunningsburgh, Shetland (Director)
Jonathan Patrick Doogan, address as above
Premises: Lower Scord, Scalloway, Shetland, ZE1 0UQ

Discussion:

This is an application for a Metal Dealers Licence for ICD Scrap Haulage Limited at Lower Scord Scalloway, Shetland, ZE1 0UQ (see plan Appendix 4). The company have applied for opening hours at the above address from 7am to 11pm 7 days per week.

The Company have had a licence for Metal Dealing in Shetland since 2008. They moved to the current site just prior to their previous 3 year licence expiring on 18 May 2014.

Development Control – Planning Service have objected to the granting of the licence due to unauthorised activity outside, outside of containers - i.e. open storage of scrap metal at the applicants' premises that in their opinion would have an unacceptable adverse environmental impact on the amenity of the area. Details of their objection is attached as Appendix 2 and Appendix 3.

For an objection to be valid it must be due to the premises not being suitable for the conduct of the activity having regard to:

- (i) the location, character or condition of the premises and
 - (ii) the nature and extent of the proposed activity or
 - (c) there is other good reason for refusing the application;
- Otherwise the authority is bound to grant the application.

Conclusion:

Development Control - Planning have provided details of their objection to the application and the Committee is asked to decide whether the unacceptable environmental impact they set out in their objection make the premises unsuitable for the activity of metal dealing. If the Committee agree then they must refuse the application.

The Licensing Authority should not refuse an application if the concern can be addressed by placing conditions on the Licence. Development Control -Planning have indicated that if the storage or recovery of reusable metal were to take place within a building that itself was acceptable in planning terms, and this building was to be regarded and defined as the premises the metal dealers licence related to, this would mitigate the adverse effects on the amenity of neighbouring residents caused by such activities in this location taking place in the open, without screening. It would therefore be possible to grant the licence with additional conditions to resolve Planning concerns.

Dinsdale Patti@Infrastructure Services

From: Gardiner Kay@Infrastructure Svs
Sent: 15 July 2014 14:54
To: Dinsdale Patti@Infrastructure Services
Subject: FW: Public Entertainment Licence & Licence Consultation
Attachments: SecureZIP Attachments.ZIP

Hi Patti

Can you please have a look over what Jonny has sent with regard to the Metal Dealers.

Thanks

Kay

From: Wiseman Jonny@Development Service
Sent: 15 July 2014 14:09
To: Environmental Health Administration Team
Cc: Sineath Norman@Development Service; Holden John@Development Service
Subject: Public Entertainment Licence & Licence Consultation

Hi. In response to your public entertainment licence and metal dealers licence consultations, our comments are listed below.

I hope this is ok. If you have any questions, then please feel free to give me a shout.

Cheers

Jonny

For I.C.D. Scrap Haulage Ltd at the Lower Scord: there has been a bit of history on this site and I have been reading through Norman Sineath's correspondence, to get an idea of our departments involvement with the site. From Norman's letters to I.C.D Scrap Haulage, it appears that they have deviated from the conditions of the original application approved on the site, by way of the installation of an unauthorised hard standing area, the unauthorised storage of scrap and other materials, and the unauthorised siting of steel containers. Norman wrote to I.C.D Scrap Haulage seeking the installation of the required SuDS drainage system as per the approved planning permission condition number 3 and 4. Norman also requested that the unauthorised siting of the scrap and other materials, and the steel containers be removed from the site by Monday 12 May 2014. Also, that a retrospective planning application be submitted for the unauthorised hard standing area. No confirmation has been received that I know of or can find filed, that confirms the scrap and containers have been removed from the site, and no retrospective planning application has been received for the hardstanding.

So on that bases, the Planning Authority formally objects to the granting of the Metal Dealers Licence for I.C.D Scrap Haulage Ltd at the Lower Scord site, due to the site and business undergoing the preliminary stages of Enforcement Action. A copy of Norman Sineath's letters both dated 22 April 2014, are attached to this email for your reference.

For I.C.D Scrap Haulage Ltd at Unit One, South Bay, Greenhead, Lerwick. If you could provide a plan showing where Unit One, Greenhead is, then we will check to see if any planning applications has been received for a change of use.

Regards

Jonny Wiseman

Planning Officer - Development Management

Development Services
Shetland Islands Council
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ZE1 0LZ

Tel: 01595 744 830



Shetland Islands Council

Executive Manager: Iain S McDiarmid
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If calling please ask for:
Norman Sineath
Enforcement Officer
Development Management
Direct Dial: 01595 744860

Your Ref:
Our Ref: **2014/0016/EN and 2013/127/PPF**

Date: 22 April 2014

Dear Sir/Madam

Planning Permission Reference No. 2013/127/PPF
To form hard standing: Lower Scord, East Voe, Scalloway, Shetland, ZE1 0UQ

Unauthorised external storage of steel containers and scrap materials at Lower Scord, East Voe, Scalloway.

Unauthorised creation of a hard standing area at Lower Scord, East Voe, Scalloway.

I refer to the above planning permission (copy attached) and in particular to conditions 3 and 4 of the said permission. Condition 3 specifies that a scheme for sustainable drainage (SUDS) surface water treatment and flood attenuation be submitted to the Planning Authority for approval within 3 months of the date of the consent. Condition 4 specifies that details of the position, design, materials of a fencing enclosure to be used in the development be submitted to the Planning Authority for approval within 3 months of the date of the consent. This planning application was approved on **30 July 2013**, and to date the above required details have not been submitted to the Planning Authority. There is therefore an ongoing breach of the said conditions of this planning permission.

In order to rectify this situation, I would be grateful if you would take steps to retrospectively submit the details required by conditions 3 and 4 to this office as soon as possible and in any case by **Monday 12 May 2014**.

A recent site visit has established that there are several steel containers and a substantial amount of scrap and other materials being stored externally on this site. Our records show that there is no authorisation for the storage of external materials

on this site, other than on the area of land which is the subject of the above stated planning permission, and which is authorised only for the storage of materials associated with construction and civil engineering, together with plant, steel containers and welfare units. There therefore is no planning permission for the external storage anywhere on this site for scrap or other such materials. Scrap being stored within specifically designed storage containers would be permissible on the hard standing area which is the subject of the stated planning permission.

I would therefore be grateful if you would take steps to ensure that all unauthorised steel containers, external scrap and other such materials are removed from the site as soon as possible and in any case by **Monday 12 May 2014**.

It was also established that a new hard standing area has been created immediately to the south of the site entrance. Our records show that no planning permission has been sought for this, and so therefore, at present, this is an unauthorised development.

I would therefore be grateful if you would take steps to retrospectively submit the enclosed planning application form to this office as soon as possible and in any case by **Monday 12 May 2014**. Alternatively, this new hard standing area site should be reinstated.

I hope that the above clarifies the respective planning issues relating to the overall site. However, if you have any further queries regarding the above, then please do not hesitate to contact me on the above number.

Yours faithfully

 Executive Manager - Planning

Dinsdale Patti@Infrastructure Services

From: Holden John@Development Service
Sent: 18 August 2014 16:23
To: Dinsdale Patti@Infrastructure Services
Cc: Sineath Norman@Development Service; Wiseman Jonny@Development Service
Subject: RE: ICD Scrap Haulage Ltd - Metal Dealers Licence

Good afternoon,

The Council's current adopted policy (Structure Plan Policy SPWM2) is supportive of proposals for waste management facilities which take account of the waste hierarchy, the best practicable environmental option (BPEO) and other Structure and Local Plan policies. Policy W1 of the emerging Local Development Plan is supportive of recycling materials (which is what scrap metal can be said to represent).

The Council has recently accepted that the principle of expansion of industrial use within the area of the applicant's premises at Lower Scord was compatible with the existing authorised uses through the granting of Planning Permission Ref 2013/127/PPF – To form hardstanding; Lower Scord, East Voe, Scalloway, Shetland, ZE1 0UQ. This was a retrospective application, with development being brought closer to the main public road A970. This land's intended use was for storing materials, plant and containers/welfare units associated with construction and civil engineering projects. The fact that there was little or no scope to reduce the visual impact was identified when the application was being considered, but this shortcoming was deemed to be offset by the identified benefits of providing such a new facility and the socio-economic benefits for Shetland.

Structure Plan Policy SPWM1 gives encouragement to waste management and waste related industries locating in and around Greenhead, Rova Head and Dales Voe. Before considering if the impacts of the open storage of scrap metal could be regarded as being acceptable at the applicant's premises the Council as planning authority would need to be satisfied that there is no acceptable existing alternative site. If the acceptability of open storage of scrap metal at the applicants' premises was to be tested I am of the opinion that it would be found to have an unacceptable adverse environmental impact on the amenity of the area - even given the industrial context, and be contrary to Shetland Local Plan Policy LPNE10. It is on this basis that the Planning Enforcement Officer wrote to the applicants to invite them to voluntarily remove the externally stored scrap that had been identified as being present on the site. Under the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013 the construction of buildings or other operations, or use of land for the disposal of refuse or waste materials or **for the storage or recovery of reusable metal** (*my bold*) falls to be a class that requires publication. These used to be termed 'bad neighbour' developments. Such developments will normally only be approved where there are no unacceptable adverse effects on the amenity of neighbouring residents, and the proposal includes appropriate measures to reduce the associated impacts.

I can confirm that the written communication to the perpetrators of what amounted to a breach of planning control (the applicants) made by the Planning Enforcement Officer, seeking their voluntary cooperation to remedying the situation, is the first and usual step to planning enforcement. Should this approach fail the planning authority is then at liberty, if it considers that the principle of the development carried out is acceptable and it can be appropriately controlled, to serve a formal notice inviting the making of an application. This counts as a formal action. The planning authority has not chosen to exercise this power in this instance.

I hope this clarifies the position.

John Holden
 Team Leader – Development Management
 Planning Service
 Ext 3898

From: Dinsdale Patti@Infrastructure Services
Sent: 30 July 2014 08:44
To: Holden John@Development Service
Subject: ICD Scrap Haulage Ltd - Metal Dealers Licence

Dear John

In the consultation on the application by ICD Scrap Haulage Ltd at Lower Scord the objection raised by officers is on the grounds that the site and business are in the preliminary stages of Enforcement Action by Planning.

The Civic Government (Scotland) Act 1982 allows (so far as is relevant) that an objection to an application for a licence under the Act must be refused by the authority if—

- (a) the applicant is either not a fit and proper person to be the holder of the licence;
 - (b) where the licence applied for relates to an activity consisting of or including the use of premises, those premises are not suitable or convenient for the conduct of the activity having regard to—
 - (i) the location, character or condition of the premises;
 - (ii) the nature and extent of the proposed activity;
 - (iii) the kind of persons likely to be in the premises; or
 - (c) there is other good reason for refusing the application;
- Otherwise the authority is bound to grant the application.

The licensing authority is bound by these constraints and, if none applies it must grant the licence.

Your objection appears to be on the basis that enforcement action has been commenced against the applicant. Whilst it is possible that your objection falls within paragraph b(i) above I shall be pleased if you will confirm this. An objection on this ground often relates to safety concerns in relation to the physical structure of a premises and whether it is appropriate to be used for the sort of licensable activity sought

What I ask you now to confirm is whether the premises can be made suitable by the enforcement action proposed by Planning. I am of the view that if it can, your objection should be excluded and the licence granted, as it must in accordance with the legislation. If it cannot be made suitable, please provide me with further information.

Many Thanks

Patti Dinsdale
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From: Holden John@Development Service
Sent: 28 August 2014 12:33
To: Dinsdale Patti@Infrastructure Services
Cc: McDiarmid Iain@Development Service; Sineath Norman@Development Service
Subject: RE: Condition on licence - ICD

Patti,

If the relevant activities (**the storage or recovery of reusable metal**) were to take place within a building that itself was acceptable in planning terms, and this building was to be regarded and defined as the premises the metal dealers licence related to, this would mitigate the adverse effects on the amenity of neighbouring residents caused by such activities in this location taking place in the open, without screening.

It is understood that the applicant is examining the possibility of undertaking the activities in a part of the site that could, with works (that will in themselves require planning permission), provide for the benefit of a certain amount of screening. It is not however possible to comment on the likely success and acceptability of such a proposal without sight of the detail, and this would mean that the premises, rather than being defined as a building that would need a separate planning permission (if only for change of use if it already exists), would be different and need to relate to a thus far unspecified area of land.

At this stage it is my opinion that a condition requiring the activities of the storage and recovery of reusable metal to take place within a building is the only option appropriate for members to consider (without prejudice to any separate planning decision needing to be taken).

Regards

John

John Holden
Team Leader – Development Management
Planning
Ext. 3898

