

## Appeal Decision Notice

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Decision by Oonagh Gil and Karen Heywood, Reporters appointed by the Scottish Ministers

- Planning appeal reference: PPA-230-1061
- Site address: 200 Sir Harry Lauder Road, Portobello, Edinburgh, EH15 2QA
- Appeal by Viridor Waste Management Ltd against the decision by City of Edinburgh Council
- Application for planning permission 07/04148/FUL dated 19 September 2007 refused by notice dated 13 August 2008
- The development proposed: rail transfer station for residual waste, comprising infrastructure, main and storage buildings, parking and weighbridge
- Date of public local inquiry: 8-12 and 16-18 February 2010

Date of appeal decision: 8 June 2010

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### Decision

We dismiss the appeal and refuse planning permission.

### Reasoning

1. Having regard to the relevant provisions of the development plan, national policy and guidance, the determining issues in this appeal are the impact of the proposal on: the setting of the Portobello Conservation Area and listed buildings; visual amenity; residential amenity; and the operation of the road network. We have also considered the best practicable environmental option and the need for the development.

Conservation area and listed buildings.

2. Portobello Conservation Area lies on the opposite side of Sir Harry Lauder Road from the appeal site. The appellant and the Joint Action Group indicated those parts of the conservation area from which the waste transfer station would be visible. The Scottish Planning Policy explains that setting is more than the immediate surroundings of a site or building and may be related to the view from it. Our site visits confirmed that the development would be seen from several sections of the conservation area, most notably from Brighton Place and Brighton Park, where the new building would be visible on the skyline above the listed buildings on East Brighton Crescent.



3. The buildings on East Brighton Crescent are fine examples of two storey plus basement Georgian villas, designed by John Baxter. All are category B listed. At the moment the setting of these properties, when viewed from Brighton Park, is largely contained by Sir Harry Lauder Road, which runs directly behind them. The road is elevated and planting on the embankment provides a wooded backdrop to the properties as well as screening the road. The road itself is not generally visible from Brighton Park, although larger vehicles travelling along it can be seen passing between the villas. Street lighting along the road also draws the eye and confirms the presence of this main arterial route.
4. Electricity pylons sit behind the listed buildings, to some detriment of the setting of these properties and the conservation area. Two telecommunications masts are also visible. At present, the appeal site has limited detrimental visual impact on the listed properties in East Brighton Crescent or on the conservation area. The existing industrial buildings to the east of the appeal site and the crane on the appeal site cannot be seen from the conservation area and do not affect its setting or the setting of the listed buildings.
5. Photomontages 5A, 5B and 5C submitted by Viridor show the anticipated visibility of the proposed buildings from a point within Brighton Park in both winter and summer. These images show that the amount of the building that would be visible from this area would be reduced when the trees are in leaf. The Joint Action Group also submitted representations of the likely visibility of the building, but these were the subject of considerable criticism by the appellant and we have not relied on them.
6. The appellant makes much of the screening and softening effect of the existing trees on the embankment. However, because the embankment is controlled by the City of Edinburgh Council, the continued existence of those trees cannot be guaranteed. They may be removed at any time, perhaps for reasons of road safety or for other reasons. Indeed, we saw that felling of fairly large trees on the embankment has occurred in recent months to prevent damage to the overhead electricity lines.
7. The appellant is willing to pay for additional planting on the road embankment and for its maintenance but, even with the introduction of further planting, the transfer station would be visible above the roofs of the listed properties on East Brighton Crescent throughout the year when viewed from a number of locations within the conservation area and specifically from Brighton Park and Brighton Place. We also note that the tree planting on the embankment is considerably less effective as a screen in the colder months. There would be little space within the appeal site to plant additional trees to provide effective screening.
8. An assessment of the effects of the proposed transfer station on Portobello Conservation Area was prepared by the appellant and submitted for the public inquiry. This report follows guidance from the Guidelines for Landscape and Visual Impact Assessment (second edition 2002). The appellant concludes that there are only three publicly accessible areas within the conservation area from where there would be some limited views of the development. None of these views is assessed as giving rise to significant adverse impacts. The appellant argues that the development would not compromise the objectives or overall integrity of the conservation area and would not be contrary to development plan policies.

The Joint Action Group disagrees with this analysis and considers that the proposed development would be noticeably out of character. It would have a negative impact of considerable significance on the character and amenity of Portobello Conservation Area and on the setting of a group of category B listed buildings.

9. The appellant also points to the established relationship between industrial/rail related uses on the appeal site and Portobello Conservation Area. This historic relationship is not in dispute and is set to continue given the allocation of the appeal site in the recently adopted local plan. However, it is the scale of the building, and in particular its height, which causes concern. At the inquiry the appellant explained that the main building needed to be the height proposed in order to accommodate large refuse collection vehicles as they tip waste into the hoppers. It was suggested that any rail freight facility would require to be of a similar height, but no clear evidence to support this assertion was presented. Indeed, it seems from the historical map contained within the Envirocheck report (part of the planning application submission) that the last rail freight use on the site, the Freightliner terminal, operated without a substantial building.

10. The development would introduce a large scale industrial building as a backdrop to the listed buildings on East Brighton Crescent and this section of the conservation area. Although the removal of one of the telecoms masts would be beneficial, the introduction of the transfer station would alter the existing view and change the perception and feel of Brighton Park. This would be at variance with, and to the detriment of, the residential character and setting of these category B listed buildings and this part of the conservation area. The Portobello Conservation Area Character Appraisal notes that the Brighton and Rosefield area is one of the most attractive, least altered and most architecturally important areas of the conservation area.

11. We conclude that the proposed development would neither preserve nor enhance the character or appearance of the Portobello Conservation Area. We have also had special regard to the desirability of preserving the setting of the listed buildings as required by Section 59 of the Planning (Listed Buildings and Conservation Areas)(Scotland)Act 1997. We conclude that the development would be detrimental to the setting of the listed buildings on East Brighton Crescent. It would be contrary to policies Env 3 and Env 6 of the Edinburgh City Local Plan 2010, policies ENV 1C and ENV 1D of the Edinburgh and the Lothians Structure Plan 2015 and to the Scottish Planning Policy (paragraph 112).

#### Visual amenity

12. The main building would have an external footprint of 38 metres by 80 metres with a height of 14 metres to the eaves and 16 metres to the ridge when measured from the existing ground level adjacent to the concrete apron on the track side. The building would reach 35.90 metres above Ordnance Datum and would be significantly taller than any other buildings in the vicinity, including the industrial buildings to the east. The appellant did not disagree with the Joint Action Group's assertion that the existing industrial buildings are 7.2 metres high to the eaves and 8 metres to the ridge. The proposed design of the main building is functional. It would be constructed using a steel portal frame with profiled steel cladding to the exterior. Its design is appropriate to the proposed use and the industrial

nature of the site. Nevertheless, the height and scale of the building means that careful consideration must be given to how it would affect the surrounding townscape.

13. In addition to views to the building from within the conservation area explained above, the transfer station would be visible from other publicly accessible parts of the surrounding area, including the footbridge at Hope Lane and parts of Milton Road, Portobello Park and golf course and Stanley Street. The appellant submitted a landscape and visual impact assessment as part of the planning application, which concluded that the development would have limited visual effects with no substantial or severe visual impacts identified. The Joint Action Group disagrees with this analysis and considers that the visual effects would be much greater.

14. From the south side of Portobello Park it is possible to see across Portobello to the Firth of Forth and the hills beyond. There is some tree planting in place between the park and the rail line and the spires of churches are visible above the trees. The Portobello Conservation Area Character Appraisal points out *“on approaching the town, a series of focal points, particularly church spires, predominate. Together the combination of views and landmarks give the area considerable legibility”*.

15. Although the trees would soften views of the main body of the transfer station to some extent when they are in leaf, we consider that the building would dominate this skyline and introduce a large and unattractive structure, which would appear out of character and scale with the area. From some locations it would block views of the spire of St John’s Church, a category A listed building.

16. The building would also affect views towards Arthur’s Seat from the Hope Lane footbridge. Given that this view is already influenced by the general industrial nature of the foreground, the change brought about by the new structure would not, in itself, merit refusal of the proposal.

17. Taking into account all anticipated views of the proposed building, we consider that it would be damaging to the character and appearance of the area around it and that its height, scale and form would have a negative effect on the wider townscape and a detrimental impact on visual amenity. We conclude that the proposal is contrary to local plan policies Des 1 and Des 3 a).

18. There was some discussion at the inquiry about the relevance of local plan policy Des 10. The policy states that it relates to buildings that rise above the building height prevailing generally in the surrounding area. The text of the local plan states that the policy establishes a presumption against new buildings that are conspicuously taller than their neighbours. By these definitions, the waste transfer station is a tall building. It is contrary to parts a) and b) of this policy, as it would not enhance the skyline and the scale of the building is not appropriate in its context. The council, who drafted the policy, suggests that Des 10 does not apply to this development, as it relates to specific public viewpoints set out in supplementary planning guidance. This interpretation is not what the adopted local plan says, either in the policy itself or the accompanying text. We consider the proposal to be contrary to policy Des 10 a) and b).

## Residential amenity

19. A noise impact assessment accompanied the planning application in September 2007. This was revised and resubmitted in February 2008. The council's environmental health officers were concerned about potential noise impact on the upper floors of properties in Stanley Street and Park Avenue. However, if noisier operations, such as loading and unloading trains, were to start later on in the day, they were satisfied that the likely noise impacts from the proposed development would not be significant and could be controlled by conditions.

20. SEPA originally objected to the proposed development on the grounds that there was insufficient information on noise. This objection was withdrawn when further information was submitted. A waste management license would be necessary before the site was operational. This would include controls on noise and would be granted and enforced by SEPA.

21. There was extensive cross-examination of the appellant's noise witness at the inquiry by the Joint Action Group and the council. This revealed a number of basic errors in the assessment of road traffic noise. Understandably, this does not give neighbouring residents confidence that the impacts have been assessed properly. When these errors were corrected it became apparent that the increase in road traffic noise as a result of the proposed development would be 0.7 dB(A) in the morning peak (compared to 0.4 dB(A) in the original assessment) and 1.3 dB(A) in the afternoon peak (instead of 0.6 dB(A)). PAN 56 – Planning and Noise explains that for noise of a similar character a change of 3 dB(A) is the minimum perceptible under normal conditions.

22. We therefore agree with the assessment made by the council's environmental health officers and conclude that noise impacts could be ameliorated and controlled by a combination of site design, including lorries unloading within the building and acoustic fencing; operational hours conditions; and conditions specifying noise limits and the use of broadband reversing alarms on site vehicles.

23. In relation to odour, a site specific amenity risk assessment and an odour risk assessment accompanied the planning application. A number of different sources of potential odour impact were identified, including from refuse collection vehicles; discharge of refuse into the feed hopper; discharge of waste from the feed hopper to the compaction unit; operational areas within the transfer building; and the storage containers. The odour risk assessment included an assessment of actual odour from containers at the appellant's landfill site at Oxwellmains in Dunbar.

24. Council environmental health officers considered that the full containers would be likely to produce the most odours. A condition requiring the storage of containers no closer than 60 metres to any residential property could be attached if planning permission were granted. This was the distance at which odour could not be detected from full containers at Oxwellmains. At the Portobello site, the nearest house is 85 metres away from the proposed location of containers. Although SEPA officers did not comment on the odour risk

assessment, they did point out that a waste management licence would be necessary, which would include conditions on the need for offensive odours to be controlled and contained within the site boundary.

25. Another odour specialist reviewed the odour risk assessments and a further odour risk assessment was carried out for the inquiry. That specialist considered that the only two sources of odour would be likely to be fugitive emissions from the waste transfer building and from the storage of containers. He concluded that the storage of containers would be unlikely to affect amenity provided that their walls were intact; access hatches were maintained in good condition; waste residues did not accumulate on external surfaces; and waste was not stored on site for extended periods. He advised that these measures would be required for the odour management plan, which would be a condition of the SEPA waste management licence.

26. Within the transfer building, waste material would be transferred directly into hoppers, minimising odour. The container would then be charged by hydraulic ram. Waste would only be exposed to air when it was emptied into the hopper and when the containers were closed. Waste would not be routinely stored overnight, unless in closed containers. The design would make it easier to maintain a relatively high level of housekeeping and to prevent the accumulation of waste on surfaces when compared to older transfer stations such as that at Powderhall.

27. The latest odour risk assessment concluded that odour from the transfer building was unlikely to become a problem even with no further engineering controls, other than the intrinsic design of the building. One of the scenarios modelled assumed that the doors would be open at all times and that there was no mechanical ventilation. In reality, the doors would be closed between deliveries and there would be mechanical ventilation of the area around the hoppers.

28. It was apparent at our site visit to Powderhall that the waste being transferred there was exposed to air when being tipped into the storage pit, when it was in the pit itself and when it was being lifted by crane before being put into the containers. We also understand that waste at the bottom of the pit can remain there for some time, with the potential to become more odorous. This means that there are many more opportunities for odours to be generated in the process that operates at Powderhall than in the proposed process at Portobello. Even so, the council's environmental health officers reported that SEPA rarely received odour complaints from residents living near to Powderhall and that they themselves had only one odour complaint on record from that site. We note that houses are nearer to Powderhall than they are to the Portobello site. Furthermore, we did not notice much in the way of odour when we were at Powderhall, even when we were within the building.

29. We therefore agree with the council's environmental health officers that odour would be unlikely to be a problem at the site because of the intrinsic design of the process and its containment within the transfer building. We consider that conditions requiring the submission of an odour management plan and restricting the storage of containers to positions no closer than 60 metres to any residential property could be imposed on a planning permission to ensure that odour would not be a problem. We also note that the

waste management licence would require offensive odours to be controlled and contained within the site boundary.

30. The council and objectors have expressed concerns about potential light pollution. However, the appeal site is located within the urban area not on its edge or within open countryside. There is lighting to the north on Sir Harry Lauder Road, to the east in the industrial area and to the west and south on Southfield Place and Stanley Street. Furthermore, the site is allocated for business and industrial development in the adopted local plan and any form of development on the site would have to be lit.

31. We note that the lighting design proposed would be low level and limited to the minimum necessary for the safe operation of the site. No lighting is proposed for those parts of the site where no working is proposed. All of the lighting would be dark sky compliant. We consider that a condition could be imposed to ensure that the lighting design respects the existing amenity of nearby residents.

32. An air quality assessment accompanied the planning application. The assessment concluded that the air quality objectives for all pollutants would not be exceeded as a result of the increased traffic associated with the proposed development.

33. In SEPA's first consultation reply they indicate that the model used in the air quality assessment is basic and commonly used as a screening tool. SEPA pointed out that the proposed development would be likely to introduce a disproportionately large increase in the number of heavy goods vehicles using Sir Harry Lauder Road. As the council has identified large vehicles as being the most significant source of pollution in the city, SEPA considered that the impact of these vehicles needed to be examined in more detail. However, although SEPA did object to the proposed development initially, the air quality assessment was not one of the reasons for objection. Furthermore, SEPA's final consultation reply withdrew all objections.

34. In their consultation report, council environmental health officers considered that the locations chosen for the air quality assessment (East Brighton Crescent, Windsor Place and Brighton Place) were representative of the closest residential properties to Sir Harry Lauder Road. Data obtained from the nitrogen dioxide monitoring location at the Sir Harry Lauder Road/Portobello roundabout at Baileyfield is well below the local air quality objectives. Environmental health officers were therefore supportive of the conclusions of the appellant's air quality assessment.

35. We note that the air quality assessment was based on the traffic flow information in the original transportation assessment, which estimated that, at the worst case, 464 heavy goods vehicles would enter and leave the site on any one day (928 trips). The appellant is willing to accept a condition restricting the number of vehicles to 350 (also see below), which means that air quality impacts would be likely to be even lower than those assessed.

36. Although local residents are concerned about the impact of the proposed development on air quality, the evidence from the air quality assessment and the lack of objection on these grounds from SEPA and the council's environmental health officers leads

us to conclude that the proposed development would not cause any of the air quality objectives to be exceeded.

37. Local residents are also concerned that the proposed development would lead to problems with flies, vermin, litter and dust. The appellant has assessed all of these potential impacts and council environmental health officers have considered that assessment. Officers note that mitigation measures proposed by the appellant would ensure that none of these potential impacts would cause any loss of amenity for nearby residents. All of these matters are issues that would be conditioned and controlled in the waste management licence.

38. All parties to the inquiry referred to local plan policy Hou 8 – Inappropriate Uses in Residential Areas. The appeal site is not located within a residential area but is instead an area allocated as Business and Industry in the local plan. However, there are residential areas to the north on the opposite side of Sir Harry Lauder Road and to the west and south west on the opposite side of the railway. We therefore agree that the proposed development should be assessed against Hou 8.

39. As we have found that conditions and the waste management licence could control noise, odour, and other potential impacts and that there would be no issue with light pollution or air quality, we conclude that there would not be a detrimental impact on the living conditions of nearby residents. Therefore, the proposed development would comply with policy Hou 8. We reach a similar conclusion in relation to local plan policy Env 18.

#### Road network

40. The original transport assessment was submitted in September 2007 in support of the planning application. Surveys of traffic flow along Sir Harry Lauder Road were undertaken in 2006 to obtain the baseline conditions, the design year was 2010 and the trip profile of the waste arriving at the existing Powderhall waste transfer station was used as the basis of the assessment. However, as Powderhall deals with 150,000 tonnes of waste per annum, the trip data was factored to account for the potential 300,000 tonnes of residual waste that could be transferred at the Portobello site. The original transport assessment estimated that a maximum of 464 heavy goods vehicles would enter and then leave the site on any single day (928 trips).

41. Council's transportation officers assessed the transport assessment and had no objections to the proposed development. They noted that:

- the 464 vehicles entering the site would be a 'worst case';
- the majority of movements into and out of the site would be outwith commuter peak times;
- Sir Harry Lauder Road would operate at 76% capacity in the morning peak and 98% in the afternoon peak with the development traffic, compared to 75% and 96% respectively without it;
- the development would generate additional traffic on the roads around the site, although this would not be additional traffic on the network;

- this additional traffic would not be significantly greater than other rail head uses on the site; and
- the site is well served by arterial routes leading to Sir Harry Lauder Road (Seafield Road; Portobello Road, Milton Road). Therefore, refuse collection vehicles accessing the site would be unlikely to use local roads for access.

42. An updated transport assessment was prepared for the inquiry. This took into account survey information on traffic flows on Sir Harry Lauder Road undertaken in 2009, an updated design year of 2013 and what is stated to be a more realistic maximum figure for waste traffic entering and leaving the site of 325 vehicles (650 trips). The updated assessment has not been considered by council transportation officers, who did not consider that any updating was necessary.

43. At the inquiry, the appellant agreed to our suggestion that a condition could be imposed to prevent more than 350 heavy goods and refuse collection vehicles entering the site on any working day. As the original assessment revealed that 464 vehicles entering and leaving the site would not have a significant impact on the operation of the local road network, we consider that 350 vehicles would have an even less significant impact.

44. We also agree with the points made by council officers that additional traffic on the roads around the site would not be additional traffic on the network. This additional traffic would be similar to that potentially generated by other rail freight uses on the site. In addition, the site is well served by arterial routes leading to Sir Harry Lauder Road so that refuse collection vehicles accessing the site would be unlikely to use local roads for access.

45. Local plan policy Tra 1 states that the suitability of a proposal will be assessed with regard to its impact on the existing road network, amongst other things. Given our conclusions above, we do not consider there is any conflict with the requirements of this policy. Structure plan policy TRAN 5 requires local plans to include policies regarding the transport implications of new development and is not relevant to the assessment of a particular proposal.

46. With reference to structure plan policy TRAN 6, the local plan has allocated the appeal site for Business and Industry under policy Emp 3. There is no doubt that the proposed use would generate major new lorry movement, although it is not clear what the structure plan means by an all-purpose road. However, we are particularly struck by the fact that the site is also safeguarded for rail freight related development in the recently adopted local plan under policy Tra 11. Any proposed use of the site for rail freight would be likely to have similar implications for the road network. Therefore, we do not consider that there is an issue with policy TRAN 6.

Need and the best practicable environmental option (BPEO)

47. Local plan policy Inf 2 lends support for the development of waste management facilities on land designated Business and Industry under policy Emp 3, where there is a need for the facility and the proposal represents the best practicable environmental option

(BPEO). Structure plan policy ENV 11 supports proposals meeting the Area Waste Plan's BPEO and capacity and infrastructure requirements.

48. The City of Edinburgh Council has worked with four other local authorities to develop the Lothian and the Borders Area Waste plan and, within this context, it is developing an integrated waste management strategy. It is evident that the authority is engaged in securing viable solutions for the treatment of waste that would otherwise go to landfill, including the development of a zero waste project. However, as things stand, and despite the recognition of Seafield as a potential site for an integrated waste management facility in the local plan under policy Inf 2 and recent decisions to acquire a large site at Millerhill, there seems to be little likelihood of these facilities being available in the near future.

49. It is expected that the proposed transfer station would operate on a commercial basis serving existing and future contracts in the Edinburgh area for non-hazardous residual commercial and industrial (C&I) wastes. One daily train could transport 150,000 tonnes of residual waste each year from Portobello to the landfill site at Oxwellmains. The appellant led evidence at the inquiry about the considerable volume of C&I waste arising in the Edinburgh area. It is reasonable to anticipate that, if permission were granted, the operator would secure contracts that could be served by this development.

50. The City of Edinburgh Council, as waste authority, and SEPA have not sought provision of a large transfer station in the Area Waste Plan. However, the Area Waste Plan does not account for need in relation to non-municipal waste, which is acknowledged in SEPA's consultation response on the planning application. PAN 63 – Waste Management states that waste transfer stations are "*necessary elements in waste stream handling*". Scottish Planning Policy (paragraph 214) recognises that there needs to be a significant increase in waste management infrastructure across Scotland and transfer stations are one of the types of installation said to be required. National Planning Framework 2 (NPF2) states, "*planning authorities should facilitate the provision of a network of waste management installations which enable the movement of waste to be minimised*".

51. We acknowledge that there is a need to find new solutions for the treatment of waste of all types, as promulgated in NPF2. However, there is no planning or policy document that indicates that there is a requirement for a large waste transfer station for C&I waste in the Edinburgh area. Consequently, we find it difficult to conclude that there is an explicit need in the public interest for a stand alone transfer station in this location and of the scale proposed. We accept that there is a commercial need for a road to rail waste transfer station to deliver C&I waste collected by the appellant to their landfill site at Oxwellmains.

52. In relation to the BPEO, PAN 63 explains that it is a key concept for the Area Waste Plan and will assist in determining the most sustainable method of waste management in a specific instance. Life cycle assessment, which looks at the environmental effects of waste management "*from cradle to grave*", is also mentioned in the PAN as an aid in determining the BPEO in the context of Area Waste Plans. The appellant considers that life cycle assessment (or analysis) is not relevant for the proposed waste transfer station because it concerns the assessment of different treatment options and no waste treatment would take place within the proposed development. We concur.

53. In the context of the BPEO, the appellant led evidence about the reduction in CO<sub>2</sub> emissions that would flow from transporting waste by rail rather than road, claiming a reduction in the region of 116 tonnes CO<sub>2</sub> per year (based on 150,000 tonnes of C&I waste). However, the limited information available about the source and alternative destination of the waste makes it difficult to establish potential CO<sub>2</sub> savings with any certainty. In any event, although the source of such waste is not known, we consider it is reasonable to assume that a significant proportion would emanate from the Edinburgh area. It is also evident that, in the absence of the proposed waste transfer station, C&I waste collected by the appellant would travel to Oxwellmains by road, as it does at the moment.

54. Given the difficulties of assessing BPEO for a stand-alone waste transfer station, particularly for C&I waste, and the lack of clear evidence about the explicit need for this facility in the public interest, we are unable to conclude that the development accords with policies Inf 2 and ENV 11. However, this site is allocated for Business and Industrial use in the local plan. Furthermore, we have found that impacts on the road network and on residential amenity would be acceptable or could be controlled by conditions and a waste management licence. Consequently, we do not consider that the difficulty we have expressed in relation to these policies is of particular significance in the circumstances of this case.

#### Other matters

55. Local plan policy Des 6 requires developers to demonstrate design for energy efficiency; that low or zero carbon equipment would be incorporated into the development; and that other features would reduce or minimise environmental resource use and impact. The text of the local plan explains that the policy should be read with supplementary guidance, which includes a sustainability statement and checklist to be submitted with planning applications.

56. In the initial checklist the appellant awarded the proposed development 30 points against a threshold of 41, with the proviso that there would be CO<sub>2</sub> savings achieved through modal shift from road to rail, which are not included and that further reports would be produced. The first assessment by council officers awarded 25 points. A subsequent sustainability report was submitted to the council, which detailed renewable energy generation would achieve 20% of the energy requirements of the on site office, amongst other things. Following receipt of the sustainability report, council officers scored the development at 44 points. The Joint Action Group considers that the checklist score should be only 14 points.

57. We agree with the point made by council officers in their original response that *“the nature of this application presents problems in assessment against some of the principles”*. We do not agree with the Joint Action Group’s view that adjustment of the appellant’s sustainability assessment scores between the first and second assessments by council officers should not have occurred. We see nothing unreasonable in this adjustment following the receipt of further information and it is not unusual for assessments of this nature to change following dialogue between the parties.

58. We consider the Joint Action Group's analysis on this matter to be overly pessimistic. It is not clear, for example, why no points were awarded for the renewable energy generation for the on-site office or for the public consultation carried out by the appellant. We consider the second assessment by council officers to be reasonable in the circumstances. We conclude that there is no conflict with local plan policy Des 6.

59. There is no evidence that the proposed development would prejudice the construction of a rail halt at Portobello (local plan policy Tra 10). The local plan Proposals Map shows a location for the station where Southfield Place and Brighton Place meet, to the north west of and outwith the appeal site.

60. Local plan policy Tra 11 states that planning permission will not be granted for development that would prejudice the retention of viable freight transfer facilities at Portobello. The proposed development would involve the transfer of residual waste from road to rail and would not conflict with this policy.

61. The Lothian and Borders Area Waste Plan supports the bulk movement of waste by rail, where practicable and where it can be used at reasonable cost. The Scottish Planning Policy similarly supports a shift in the movement of goods from road to rail and we see no reason why this should not also apply to the proposed development. PAN 63 considers that there may be significant planning, environmental, operational and economic advantages when rail transport can be used instead of road vehicles. NPF2 explains that modern treatment and transfer centres can be accommodated on industrial estates; that they should be located close to the population centres they serve; and they should be linked to tertiary waste management installations in a 'hub and spoke' arrangement, where possible by rail or water. All of these statements are supportive of the proposed development.

## Conclusion

62. Drawing these issues together, we find that:

- there is no conflict with structure plan policy TRAN 6 – Freight Movement and local plan policies Hou 8 – Inappropriate Uses in Residential Areas, Env 18 – Pollution and Air, Water and Soil Quality, Des 6 – Sustainable Design and Construction, Tra 1 – Location of Major Development, Tra 10 – Rail Halts and Tra 11 – Rail Freight;
- Structure plan policy TRAN 5 – Transport Implications of New Development is not relevant;
- the difficulty with local plan policy Inf 2 – Integrated Waste Management Facilities and structure plan policy ENV 11 – Waste Management is not significant;
- there is conflict with structure plan policies ENV 1C and ENV 1D – Historic Built Environment Designations and Interests and local plan policies Env 3 – Listed Buildings, Env 6 – Conservation Areas – Development, Des 1 – Design Quality and Context, Des 3 – Development Design and Des 10 – Tall Buildings; and
- there is conflict with part of the Scottish Planning Policy, although other parts of that document and other national planning policy and advice documents and part of the Area Waste Plan are supportive.

63. We acknowledge that many of the development plan policies and other material considerations are supportive of the proposed development. However, we consider that the detrimental impact on the setting of the conservation area and the listed buildings in Brighton Place; the detrimental impact on visual amenity generally; the consequent conflict with relevant development plan policies; and the need to have special regard to the desirability of preserving the setting of listed buildings required by section 59 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 to be so significant that a refusal of planning permission is justified. We have identified no other material considerations that would lead us to a different conclusion.

***This is a true and certified copy of the decision issued on 8 June 2010.***

OONAGH GIL  
Deputy Chief Reporter

KAREN HEYWOOD  
Principal Reporter