

DEVELOPMENT PLAN

Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that “where in making any determination under the planning Acts, regard is to be had to the development plan, the determination shall be made in accordance with the plan unless material consideration indicates otherwise.

Unitary Development Plan - current status

The Unitary Development Plan for Sunderland was adopted on 7th September 1998. In the report on each application specific reference will be made to those policies and proposals, which are particularly relevant to the application site and proposal. The UDP also includes a number of city wide and strategic policies and objectives, which when appropriate will be identified.

STANDARD CONDITIONS

Sections 91 and 92 of the Town and Country Planning Act 1990, as amended by Section 51 of the Planning and Compulsory Purchase Act 2004 require that any planning application which is granted either full or outline planning permission shall include a condition, which limits its duration.

SITE PLANS

The site plans included in each report are illustrative only.

PUBLICITY/CONSULTATIONS

The reports identify if site notices, press notices and/or neighbour notification have been undertaken. In all cases the consultations and publicity have been carried out in accordance with the Town and Country Planning (General Development Procedure) Order 1995.

LOCAL GOVERNMENT ACT 1972 – ACCESS TO INFORMATION

The background papers material to the reports included on this agenda are:

- The application and supporting reports and information;
- Responses from consultees
- Representations received;
- Correspondence between the applicant and/or their agent and the Local Planning Authority;
- Correspondence between objectors and the Local Planning Authority;
- Minutes of relevant meetings between interested parties and the Local Planning Authority;
- Reports and advice by specialist consultants employed by the Local Planning Authority;
- Other relevant reports.

Please note that not all of the reports will include background papers in every category and that the background papers will exclude any documents containing exempt or confidential information as defined by the Act.

These reports are held on the relevant application file and are available for inspection during normal office hours at the Development and Regeneration Directorate Services in the Civic Centre.

Philip J. Barrett
Director of Development and Regeneration Services.

apply to the application site and the proposed development will be fully assessed against these policies in this report. Further, the proposed form of development for residential development will be assessed against the requirements of UDP policies H1; H7; H8 and R2 of the adopted UDP.

The proposed development site is 2253.33 square metres in area and currently occupied by an agricultural building (referred to by the applicant as an American Barn).

The proposed development is a departure from the Development Plan and has been advertised accordingly.

At the meeting of the Sub Committee on 1st July Members resolved to visit the site on 11th July, after the preparation of this report. Any issues raised at the site meeting will be addressed at the sub-committee meeting.

The South Lodge Farm complex has a long planning history which is summarised below.

Outline planning permission for residential development on the site was first applied for April 1991, (App No 91/0606). The application was refused on 2nd July 1991, the grounds for refusal were, development in the open countryside, adequacy of land allocated for housing elsewhere and the unsatisfactory means of access proposed.

In 1993, the applicant applied for outline planning permission for residential development of up to 8 units (App No 93/1367). The application was refused in November 1993, the grounds for refusal were similar to those of the 1991 application. In January 1994, the applicant submitted an appeal against the refusal of planning permission. The appeal was dealt with by means of a public hearing on the 23rd March 1994. The appeal was dismissed.

Members may recall that in 2000 an unauthorised access into the site to serve car boot fair operations in the barn was removed following an unsuccessful appeal by the applicant against the Council's enforcement notice.

An application (reference 02/02230/FUL) for the conversion of the north barn into two dwellings and the creation of a new access onto North Road, was approved by Committee in April 2003. In the Committee report it was stated that any change/ further development on the remainder of the site which would lead to an intensification of the use of the access, would require improvements to be made to the visibility splays at the junction with North Road.

In 2003 an application for 6 houses on the site was submitted (ref 03/01734/OUT). The proposal was again refused on grounds related to its adverse impact on the settlement break and being prejudicial to highway safety. The subsequent appeal was also dismissed.

TYPE OF PUBLICITY:

Press Notice Advertised
Site Notice Posted
Neighbour Notifications

CONSULTEES:

Environment Agency
Hetton Town Council
Northumbrian Water
Director Of Community And Cultural Services

Final Date for Receipt of Representations: **03.06.2008**

REPRESENTATIONS:

Hetton Town Council - has submitted an objection to the proposed application on the grounds of concern for traffic safety in relation to the access road onto North Road with particular reference to the on-going traffic issues and road safety/road management problems which have been highlighted regularly to the City Council over recent years.

Director of Community and Cultural Services (Environmental Health) - has indicated that in view of the proximity of the development to residential properties conditions should be imposed, on any consent which might be granted, to control working hours and noise, fumes and dust emissions from the construction works .

POLICIES:

In the Unitary Development Plan the site is subject to the following policies:

H_1_Provision for new housing

H_7_Provision for executive housing

H_8_Windfall sites to accord with other policies unless specific benefits are provided

R_2_Taking account of spare infrastructure / reduced travel / vacant & derelict land

EN_10_Proposals for unallocated sites to be compatible with the neighbourhood

CN_6_Retain / enhance important open breaks & wedges between / within settlements

CN_15_Creation of the Great North Forest

T_14_Accessibility of new developments, need to avoid congestion and safety problems arising

T_22_Parking standards in new developments

B_2_Scale, massing layout and setting of new developments

COMMENTS:

The main issues to consider when assessing this application are:

- The Principle of the Development
- Affect upon Visual Amenity/Design
- Affect upon Highway Safety

Principle of the Development

The application site falls within the open countryside and as such is subject to policy CN6 of the adopted UDP, which aims to retain and enhance important open breaks and wedges within and between settlements. The complex of buildings which make up South Lodge Farm are within the settlement break.

The justification for policy CN6 indicates that the reasons for identifying settlement breaks are:

- _ to help to retain the distinct physical characteristics of the City's constituent communities
- _ to assist in the regeneration of the older or poorer quality urban areas by focussing resources and investment into the built up area
- _ provide open space lungs, sometimes incorporating leisure/recreational facilities which help to alleviate local deficiencies.

The applicant has argued that the removal of the 'American' barn from the site would help to enhance the settlement break. However, its replacement with 4 dwelling houses and a long stretch of adopted road would change the nature and characteristics of the area from agricultural/rural to urban. The replacement of the American Barn by 4 dwellings, the existing conversion of the former stone barns to dwellings and the South Lodge Farm house, together with the activities that are associated with dwelling houses, would not help to retain or enhance this important settlement break. Indeed the agricultural *raison d'etre* for the farm would be essentially removed and a residential hamlet created. Approval of the scheme would make it difficult to resist further residential development adjacent to the access road which would result in further erosion of the settlement break. Consequently, it is considered that the proposal represents a form of development which would be contrary to Policy CN6 of the adopted UDP.

This approach is supported by the advice in Planning Policy Statement No. 7: Sustainable Development in Rural Areas (PPS7). While seeking to raise the quality of life in rural areas it clearly states that it is important to continue to protect the open countryside for the benefit of all, in part through focussing development in or next to existing towns and villages and by preventing urban sprawl. At Key Principle 1(iv) it advises that:

"New building development in the open countryside away from existing settlements, or outside areas allocated for development in development plans should be strictly controlled; the government's overall aim is to protect the countryside for the sake of its intrinsic character and beauty...so it may be enjoyed by all".

It re-iterates advice in PPS3 Housing that priority should be given to the re-use of previously developed ('brownfield') sites in preference to the development of greenfield sites. In this case the extension of the residential element of the South Lodge Farm complex would extend the non-agricultural development and hence sprawl in to the open countryside and at the same time set an undesirable precedent for such development on adjacent land. Consequently, the development proposed is considered to be contrary to the advice in PPS7.

Following a public hearing into the appeal on the 2003 application on the site (referred to earlier) the Inspector concluded that while the removal of the barn

and its redevelopment for housing would be an improvement to the settlement break, its removal without redevelopment would be a greater improvement. The Inspector went on to find that the "site falls within a defined settlement break which is in an area of open countryside and the proposal would, therefore, harm the character and appearance of the surrounding area, contrary to UDP policy CN6". The appeal was dismissed.

In addition to policy CN6, policies EN10 and CN15 also apply. Policy EN10 states that all proposals for new development on sites not allocated for specific uses will be considered on their individual merits taking account of the predominant land use of the area and other policies and proposals of the plan.

Policy CN15 relates to the creation of the Great North Forest and aims to resist developments which would adversely affect this. It is considered that the development of 4 dwellings on the site of a barn would not significantly affect the creation of the forest. It is recognised that planting to support that policy has been undertaken on land to the north of the application site by the applicant.

The applicant contends that the site is brownfield as its use is for the keeping of horses and horse related activity. However, one of the key issues is the fact that the barn is part of the original farm buildings, which has diversified the nature of its use over time. PPS3 in considering the question of Previously Developed Land, specifically excludes land which is or has been occupied by agricultural buildings from that designation. As such it is considered that the site is greenfield as defined in PPS3. Consequently, the proposed residential development is considered to be contrary to the requirements of PPS3.

Further, as the proposal is for the erection of 4 dwellings on greenfield land, policy SP4 of the council's Interim Strategy for Housing Land (ISHL) also applies.

Policy SP4 states that housing development on greenfield land will be supported where it can be shown that the release of the site can be justified on the basis of a sequential search and sustainability assessment and where it can be demonstrated that it contributes to the objectives of the ISHL. The policy goes on to state that proposals on greenfield sites will be given particular weight where they meet strategic requirements for area regeneration or for the provision of high value housing.

The applicant has submitted a sustainability appraisal, based on the draft assessment within the Housing Allocations DPD and gives the site a total score of 53/100 with emphasis placed on the fact that the site is brownfield and its accessibility to Hetton Town Centre. As the assessment within the Housing Allocations DPD is currently in draft form (it formed part of the consultation exercise for the document October 2007), it has limited weight. The Council's sustainability assessment as set out in the ISHL is currently the approved assessment and allows a comparison of the application site with those sites assessed in the ISHL. Using the ISHL assessment criteria, the application site achieves a score of only 15/100, much less than all sites in the ISHL and consequently poor in terms of sustainability. In this respect the proposal is considered to be contrary to policy R2 of the adopted UDP as it is unlikely to minimise the use of the motor car for journeys to local facilities. Moreover there are no factors within the developer's control that could improve the sustainability of the site.

Policy SP4 also gives particular weight to developing on greenfield sites where executive housing is provided. The applicant states that the development provides executive dwellings. However, having examined the layout of the dwellings, which have 4-bedrooms, one of these having en-suite facilities, single garages and very small gardens, it is considered that they do not fall under the definition of executive dwellings as set out in the ISHL (appendix 5). The dwellings take the form and layout of a standard 4-bedroomed house type which can be found on most new build housing estates. In addition, the density of the proposed development needs to be considered, the proposal equates to a density of 34-36 dwellings/ha, which is not considered to be conducive with executive housing, which the ISHL indicates would be more likely to be at a density of 10-15 dwellings/ha. The proposed development is therefore considered to be contrary to the requirements of policy SP4 of the ISHL.

As indicated above, there is a lengthy planning history to the application site and the neighbouring buildings since the early 1970's. This indicates that applications for conversions of buildings have been considered acceptable due to their limited impact on the open countryside and the settlement break, whereas applications for new housing development have been considered unacceptable, and contrary to Policy CN6 of the UDP, due to their impact on the settlement break and the open countryside.

The key issue for this planning proposal is the fact that the development is located within the settlement break and is classed as a greenfield site with a poor sustainability score. The proposed dwellings, the activities associated with dwelling houses and the proposed access road do not help to retain or enhance this settlement break, which is a specific requirement of policy CN6. Proposals for new build in this location have over time been resisted and there have been no significant changes in planning policy or guidance to now allow this type of development. Consequently, the proposal is considered unacceptable in principle being contrary to advice in PPS3 and PPS7, contrary to policy CN6 of the adopted UDP and policy SP4 of the ISHL.

Affect upon Visual Amenity/Design

It is acknowledged that the existing barn buildings are unattractive and its removal would provide the opportunity for an improvement to the landscape of the area. However, it is not considered that the proposed re-development of 4 no. two-storey suburban type houses in this area is an appropriate form of development

Single storey properties dominate within in the vicinity such as South Lodge Farm (Lane House) to the south east of the site. Further, traditional barn courtyard conversions often feature a mixture of 1, 1.5 and 2 storey buildings. There are no such units incorporated within the proposed development.

Policy B2 of the adopted UDP requires new development to respect and enhance the best qualities of the locality and relate harmoniously to adjoining areas. The Residential Design Guide (Draft SPD) provides further detailed guidance on new housing and emphasises the importance of integrating new housing within its surrounding context. In this case the sensitive rural setting of the site, in a settlement break where development would not ordinarily be allowed, would suggest a different approach, to that submitted, would be required in terms of

block heights typically associated with rural buildings arranged around a courtyard.

It is considered that the development proposed is unacceptable in design terms and would appear dominant and alien within the defined settlement break and the locality generally to the detriment of visual amenity. The proposed development is considered to be contrary to policies B2, and EN10 of the adopted UDP.

The submitted design and access statement suggests the proposal is an energy efficient design with an integrated approach to ventilation, solar gain and daylighting. There is no evidence from the design of the buildings how an integrated approach has been adopted. The design and access statement suggests the dwellings will achieve level 3 of the Code for Sustainable Homes. In the event that Members are minded to grant consent for the proposal conditions would need to be imposed to ensure that the scheme achieved at least that level to ensure that the scheme complies with the code for sustainable homes as required by the Councils Core Strategy (CS15) which reflects the requirements of the Regional Spatial Strategy and will be supported by the emerging Housing DPD.

Affect upon Highway Safety

The proposed development involves the erection of a further four dwellinghouses within the South Lodge Farm complex. In order to access these dwellings a new access road, to adoptable standard, is proposed. The access to the site is situated on the B1284 North Road which is subject to high prevailing traffic speeds and has a record of accidents at the proposed location of the access. While there is an existing access in the approximate location which the applicant claims to be constructed in accordance with the requirements of two earlier consents for the conversion of the barns on the eastern edge of the complex (consents nos 97/00481/FUL and 02/02230/FUL) the full details have never been agreed as required by conditions on those consents and as such is unauthorised. At that time it was recognised that the existing access to the south of the stone barns was dangerous with very limited visibility in either direction and that an alternative was required which would be safe for the limited level of traffic envisaged from the converted stone barns, the farm house and the farm traffic.

The proposed development if granted consent would lead to the potential for additional development on adjacent land and therefore it is appropriate to consider the implications of such an outcome on highway safety. At present there is no speed limit on this section of North Road (i.e. the national speed limit of 60 mph applies). It is well known that traffic speeds on North Road in this area are high, this and the horizontal and vertical alignment of North Road in this vicinity has led in recent years to several accidents at the adjacent bend in the road, as follows:

- 2002 1 serious;
- 2003 2 serious and 1 fatal;
- 2004 1 slight;
- 2005 nil;
- 2006 1 serious and 1 slight.

In such conditions it is not considered that a safe access for the level of development proposed, and potentially in future, can be achieved.

Members may be aware that in 2000 the American Barn was used for the purpose of car boot sales without planning consent. Retrospective applications were submitted and refused and subsequently, enforcement notices were served. The subsequent appeals (by the applicant) were dismissed, following which the access in a similar position to that now in place was closed.

The Inspector at the appeal in to the refusal of the 2003 application was swayed by the appellant's proposals for the access with a 4.5m set back, rather than 2.4 m as in this case, concluding that it appeared that a satisfactory access could be provided. Such an access arrangement would require demolition of sections of the stone barn complex and reductions in height of the boundary enclosure to the complex, none of which are proposed in this case. Since that time the Manual for Streets has come in to operation, which gives less consideration to the set back required for visibility splays and more to the assessment of risk. Where a site is not allocated for development on the UDP and where there is an accident record, as in this case, it is considered that no additional risk should be introduced to users of the highway network.

It is considered that this development would lead to an access serving a number of properties which as a result of the likely number of turning movements into and out of the site, prevailing high traffic speeds on and the horizontal and vertical alignment of North Road would lead to conditions prejudicial to highway safety and contrary to the requirements of Policy T14 of the adopted Unitary Development Plan.

Conclusion

The proposed development of 4 no. two-storey residential dwellings is considered to be unacceptable in principle, being contrary to advice in PPS 3 and PPS7, contrary to adopted Unitary Development Plan policies EN10, and CN6, and ISHL policy SP4 ; is considered to be unacceptable in terms of its design and its impact on visual amenity and thereby contrary to policies B2 and EN10 of the adopted UDP; and would be likely to lead to conditions prejudicial to highway safety contrary to the requirements of policy T14 of the adopted UDP.

It is therefore recommended that the proposed development be refused on the grounds set out below.

RECOMMENDATION: Refuse

Reasons:

- 1 The proposed development, by reason of its positioning within a defined settlement break between the settlements of Hetton-le-Hole and East Rainton would intrude in to the open countryside to the detriment of the visual amenities of the area and as such would be contrary to the requirements of policy CN6 of the adopted Unitary Development Plan and advice in PPS 3 and PPS 7.

- 2 The location and construction of the proposed junction of the access road with the B1284 (North Road) and its subsequent use by the occupiers of/visitors to the proposed dwellings and existing development on the complex, including the principal farm house, would result in a level of turning movements at that junction, which with the prevailing high traffic speeds and accident record on North Road in this vicinity, would be likely to lead to conditions prejudicial to highway safety and contrary to the requirements of Policy T14 of the adopted Unitary Development Plan.
- 3 By reason of the form of the proposed dwellinghouses the development would appear as obtrusive and alien within the locality contrary to policies B2 and EN10 of the adopted Unitary Development Plan.
- 4 The proposed development would not be well related to local services and thereby would result in an unsustainable form of development contrary to the requirements of policy R2 of the adopted Unitary Development Plan and policy SP4 of the council's Interim Strategy for Housing Land.

Reference No.: 08/01617/VAR Variation of Condition

Proposal: Variation of condition 27 of permission 04/02864/FUL, Development of 20no junior sports pitches and associated changing facilities, carparking and landscaping.

Location: Proposed Sports Pavillion Staddon Way Houghton Le Spring

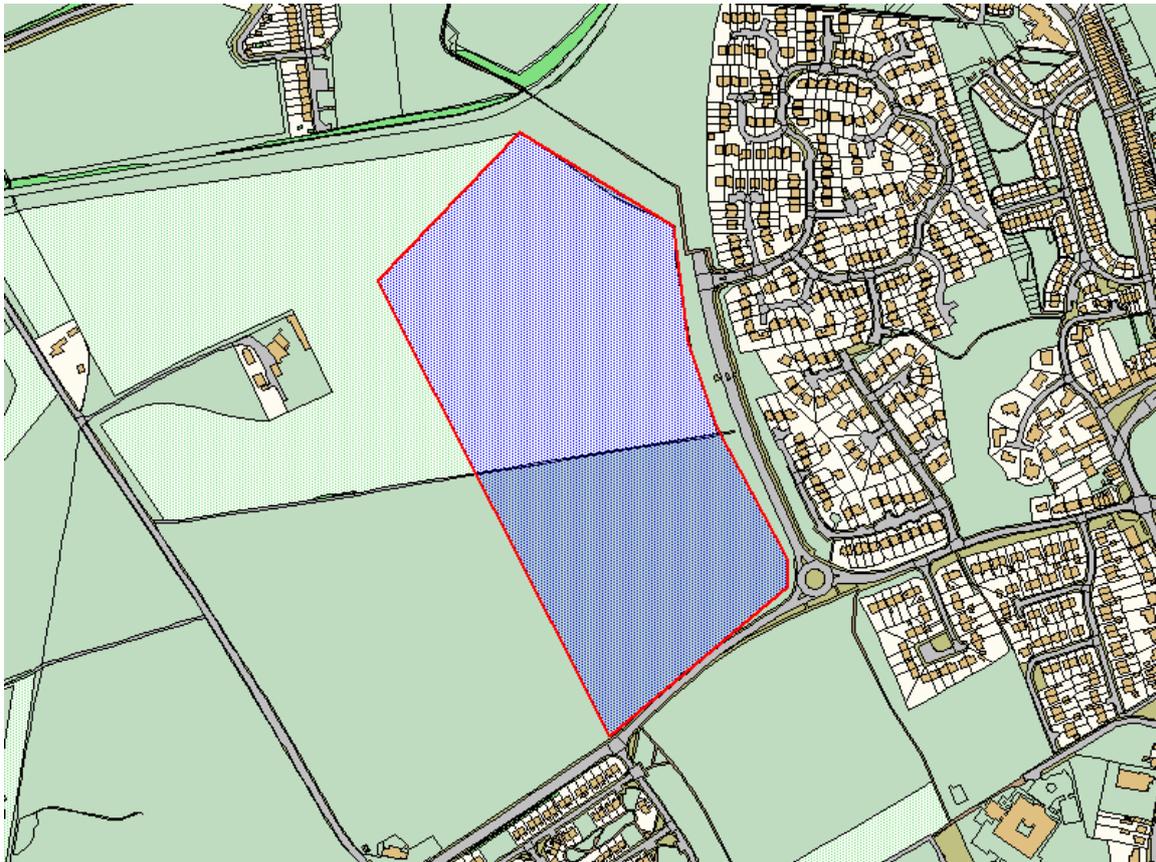
Ward: Houghton

Applicant: Russell Foster Tyne And Wear Youth League

Date Valid: 18 April 2008

Target Date: 13 June 2008

Location Plan



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PROPOSAL:

This is an application is made under Section 73 of the Town and Country Planning Act 1990 (as amended) to amend condition 27 of planning permission 04/02864/FUL granted 7th April 2005. Section 73 of the Act allows applications to be made to either remove or modify conditions previously applied to the

consent. Further section 73(2) makes it clear that the local planning authority shall consider only the question of those conditions, i.e. it may not enquire into the permission itself. If the application is approved the applicant will have two planning permissions for the same proposal, one with condition 27 as originally worded and one with the amended wording for that condition.

Condition 27 of application 04/02864/FUL reads as follows `No development approved by this permission shall be commenced until the works specified in the Remediation Statement have been completed in accordance with the approved scheme and a report validating the remediated site has been approved in writing by the local planning authority, in the interests of residential amenity and to comply with policy EN14 of the UDP.

The wording of the above condition means that the remediation works have to be carried out and completed as a single phase prior to any development commencing on site. However, the developer feels that there is a method and timescale benefit in phasing the works into 4 separate phases. The nature of the works proposed to be carried out in each of the phases is as follows:-

Phase 1 (Pitches 1 -15)

Remediation works proposed to commence (June 2008).
Laying of sports pitches proposed to commence (September 2008).
Proposed to commence operation (August 2009).

Phase 1, which covers the southern half of the site, was found in fact to be uncontaminated with respect to metals, inorganics and organics i.e. the appropriate safety standards for the tested contaminants were not exceeded. The survey and analysis reports, previously approved under condition 26, show that there is no need to undertake any remediation works within the area of phase 1. However, condition 28 covers the situation that if development works, such as levelling the pitches, were to reveal some unexpected contamination, then an additional method statement for the treatment of that contamination has to be submitted and approved by Sunderland City Council as Local Planning Authority.

Phase 2 (Changing Pavilion / Car Parking)

Remediation works proposed to commence (October 2008).
Construction of pavilion proposed to commence (November 2008).
Construction of external works proposed to commence (May 2009).
Proposed to commence operation (August 2009).

Phase 3

Remediation works proposed to commence (October 2008).
Laying of sports pitches proposed to commence (March 2009).
Proposed to commence operation (Spring 2010).

Phase 3 covers the most of the northern half of the site (the proposed pitch area) and was also found to be uncontaminated with respect to metals, organics and inorganics. A previous site investigation of land just beyond the site boundary

(following the line of the dismantled railway) detected the presence of slightly elevated metals (copper and nickel). This is detailed in Dunelm borehole location plan D1122/02 - borehole locations 3 and 4. However, this contamination has not been detected in samples taken within the site from the most recent site investigation (see Nt10128 /0004 hand augered borehole locations), i.e. all samples within and close to the site boundary showed safe concentrations of all metals.

Phase 4

No remediation works required within this area.

The purpose of the phasing is to allow the establishment of pitches 1-15 prior to operation of the site in August 2009.

The wording of the condition proposed by the developer is as follows-
'No development approved by this permission shall be commenced until the works specified in the Remediation Statement have been completed in accordance with the approved scheme and a report validating the remediated site has been approved in writing by local planning authority, in the interests of residential amenity and to comply with policy EN14 of the UDP',
As members will appreciate this wording is unwieldy and unclear. Accordingly if the proposed amendment is accepted then the Council has the option to further alter that wording to its own satisfaction.

The application has been advertised accordingly.

TYPE OF PUBLICITY:

Press Notice Advertised
Site Notice Posted
Neighbour Notifications

CONSULTEES:

Forestry Commission
Great North Forest

Environment Agency
Director Of Community And Cultural Services
Director Of Community And Cultural Services

Sport England
Forestry Authority

Final Date for Receipt of Representations: **07.07.2008**

REPRESENTATIONS:

Representation

232 letters of objection have been received to the proposal. Most of the objections raised relate to the proposal as a whole and not to the variation of the condition. Those objections which do refer to the amendment are considered below.

POLICIES:

In the Unitary Development Plan the site is subject to the following policies;

EN_14_Development on unstable or contaminated land or land at risk from landfill/mine gas

COMMENTS:

Following the receipt of many letters of objection relating to the whole proposal, it was decided to be re-advertise and re-consult neighbours in order to clarify this point that the application is an application to vary a condition on the existing permission rather than re-application for permission the overall development. As a result the final date of the receipt of representations is not until after the preparation of the main agenda report.

Planning permission (ref: 04/02864/FUL) was granted on 7th April 2005 for a recreational development comprising of 20no. junior sports pitches with associated changing facilities, car parking and landscaping. The permission was granted subject to 30 conditions. The present application is made under Section 73 of the Town and Country Planning Act seeks to vary condition 27 of this permission. Condition 27 of this permission relates to the carrying out of the works specified in the remediation statement in one phase prior to any development work commencing on site.

The application seeks to amend the condition so that the remediation works can be undertaken in four separate phases as indicated earlier in this report. Therefore the remediation works required as part of planning application 04/02864/FUL would be undertaken in four phases, with each phase taking place in three stages:- (1) excavation of clean topsoil and regrading of the landform to produce a level platform on which to build, (2) construction of pitches, sports pavilion, compound area and car park and including where required in the remediation strategy the emplacement of clean covers or hard standing (where the end use is car park); and (3) verification of the remediation works to ensure that user-sensitive areas do not contain any contamination which might pose a risk to human health, within 600mm of the finished surface and/or any contamination within 600mm of the finished surface as a result of imported soils. These remediation proposals/methodology have been examined by consultants working on behalf on the Council's Environmental Health service and recommended for approval to discharge condition 26 attached to the original permission. That approval has recently been issued.

The applicant has asked that the condition be amended to the wording indicated as follows:-

`Unless otherwise agreed with the Local Planning Authority, no development approved by this permission, other than the works specified in the remediation works strategy, and any associated temporary site compound, access or infrastructure required to implement the remediation strategy, shall commence until the works specified in the remediation strategy have been completed in accordance with the approved scheme, and a report or reports validating the remediated site phase(s) has/have been approved in writing by the Planning Authority in accordance with condition 26, in the interest of residential amenity and to comply with Policy EN14 of the UDP. The remediation strategy may be implemented and approved in 4 separate phases shown on drawing 03/0031/02C. Development works in each phase area can be implemented in each phase once the remediation strategy works for that phase have been implemented and approved in accordance with this condition and condition 26'.

Representation

232 letters of objection to the proposal have been received. However, the majority of the objections raised relate to the principle of the whole development and not the application to vary condition 27. As stated earlier in the report the application can only consider the acceptability of the request made to vary the condition, it cannot reconsider the merits of the 2004 application and subsequent permission.

A number of the objection letters whilst opposing the whole proposal have raised issues relating to the variation of the condition and these are considered below.

One objection letter basically states that "site remediation of the development site is now necessary because the ground investigations have identified contamination in one form or another. However, variation of the condition does not change the remediation proposals only the division of them into phases and order of when they take place.

Therefore the remaining grounds which make a valid reference to the variation of the condition 27 raised by objectors are considered as follows:-

1. The application to amend condition 27 cannot be looked at in isolation, rather conditions 19, 22 and 23 must also be considered.
2. The revised condition 27 would leave contamination on the site such as nickel, arsenic and copper.
3. No site investigation has been undertaken outside the application boundary or the land to be used for the temporary access.
4. There is a known landfill within 250m of the site.

1. Condition 19, 22 and 23 of the 2004 permission relate to the creation of acceptable visibility splays and access, the carrying out of an arboricultural survey and no tree felling to be undertaken without the prior written approval of the LPA respectively. This approval has already been given by the Council to

the felling of the trees following submissions made to discharge conditions 22 and 23. A separate felling licence still needs to be granted by the Forestry Commission and at the time of writing this report that had not been given. Condition 19 quite clearly relates to the permanent access to the development and refers to details being approved before the development commences. These details have already been approved and this access point will be employed to serve the compound proposed for phases 2-4 inclusive. Nevertheless, the temporary provision of a compound on land adjacent to a site with a planning permission, for the purpose of implementing that permission is permitted development under Class A Part 4 Temporary Buildings and Uses of the Town and Country Planning (General Permitted Development) Order 1995. A temporary access to this compound already exists as a farm land access and as the plant will only access the site once and leave it once no alterations to that access are required so no additional planning permission is required for use of the access.

2. Conditions 26, 27 and 28 of permission 04/02864/FUL were imposed to deal with any contamination that may be present on the site. Condition 26 requires a detailed desk study and site investigations to be carried out. Two site investigation assessments were carried out across the site (Phase I and Phase II). Phase I investigations involved the sampling and analysis of topsoil and made ground to ascertain the presence and concentrations of potentially present pollutants. A total of 8 test pits and 6 bore holes were excavated on the site. The test pits were located in the Phase 1 area, whilst the bore holes were situated in Phase 2 and 3 areas of the site. Phase II Site Investigations involved the sampling and analysis of made ground (ground at a depth of 0.2 - 0.6m) samples again for the presence and concentrations of potentially present pollutants. A total of 25 trial pits were excavated.

The above site investigations revealed that whilst there are metals and inorganics present there are no elevated concentrations of any of these elements / compounds and as such the risk to human health is considered to be negligible. In addition to the above study and investigations, remediation objectives were determined through a risk assessment details of which have all been agreed with the LPA and as such condition 26 has been formally discharged. In reality the details approved in to discharge condition 26 involve covering the low levels of contamination found with 600mm of soil or hardstanding (depending on the proposed after use) and this is an acceptable means of preventing the contamination reaching users of the site and has already been formally approved within the discharge condition 26.

3. Condition 27 relates to the remediation works to be undertaken on the site whilst condition 28 will deal with any contamination not previously identified being found on the site during construction works. Between them these conditions and the submissions approved to discharge them will ensure that there would be no significant adverse impact on ground water or human health during construction activity and during use of the developed site.

The scope of the investigations were required to cover the application site only and not any adjoining land unless considered necessary owing to the levels of contaminants found to be present on the site. With regard to the proposed temporary access, no site investigation works of this land are required given that it is an existing farm access that will serve the site compound area from Coaley Lane.

4. The proximity of the development to a known landfill site was considered fully in the 2004 planning application and is therefore not relevant to the application currently under consideration. The approved scheme drawings included a gas membrane to be incorporated into the foundations of the proposed pavillion as a precautionary measure against any possible methane migrating from the landfill site. This a standard precautionary measure.

Conclusion

Examination of the objections shows that none of the matters raised give a sound planning reason to refuse this application to vary the condition. To be a relevant objection it would have to say why phasing the remediation would be an inferior approach to the present requirement of doing all remediation works before the development works start and non of the objections do that. Furthermore, if the remediation works are phased this would allow the overall works (and hence any possible disturbance to the residents) to be undertaken over a shorter period of time. If all the remediation works have to be done before any development works, as presently required, then the playing field seeding cannot be commenced until those works are all been validated. With phasing the pitches could be seeded in September of this year, following the regrading of the site of the pitches. This would be before any trees are removed from the site. If a licence is granted these trees can only be removed outside the period March to September to minimise disruption to nesting birds, unless an ecologist confirms that there are no active nests present. Without phasing the sowing of the pitches cannot, therefore, take place until next year (2009), thus lengthening the construction period.

It was also considered that developing the site in phases, with Phase 1 having a separate site compound, would reduce disturbance to people using the right of way that crosses the middle of the site, since without the phased approach the construction traffic would have to cross the footpath regularly throughout the Phase 1 works as it travelled from the compound already approved to the Phase 1 site.

It is recommended that the proposal to amend condition 27 is approved, however, as the period for the second round of consultations has not yet expired it is anticipated that should any further letters of representation be received then these will be reported as a Supplement to the main agenda.

Furthermore as noted earlier in this report the wording proposed by the applicants for the amended condition is considered to be unwieldy and confusing. Following consultation with the City Solicitor the following wording has been recommended for the amended condition.

"Unless otherwise agreed by the local planning authority, the remediation works specified in the approved Remediation Statement shall be undertaken sequentially in four phases as detailed in drawing 03/0031/02C and the submitted Design and Access Statement. The approved development works shall thereafter be undertaken in the same four phases as shown on the said drawing and these phased development works shall not be commenced until a report has been submitted to and approved in writing by the local planning authority that the relevant remediation works for that particular phase have been completed and validated, in the interests of residential amenity and to comply with policy EN14 of the UDP."

It is anticipated that should any further representations be received following the preparation of the main report then the issues raised will be addressed on a Supplementary report.

RECOMMENDATION: Dir. of Dev. and Regeneration to Report

