

**Development Control (South Sunderland and City Centre)
Sub-Committee**

05th January 2010

REPORTS FOR CIRCULATION

REPORT BY DEPUTY CHIEF EXECUTIVE

PURPOSE OF REPORT

This report is circulated to the Sub Committee Meeting. It includes additional information received after the preparation of both the report on applications and the supplement. This information may allow a revised recommendation to be made.

LIST OF CIRCULATED ITEMS

Applications for the following sites are included in this report.

South Area

2. Ingleside, Tunstall Road
4. Sunderland Furniture Warehouse, Hendon Street Covered Storage
5. Land Adjacent To Puma Sunderland Tennis Centre, Silksworth

Number:	2
Application Number:	09/04013/FUL
Proposal:	Change of use from residential care home to supported housing for homeless people (Retrospective).
Location:	Ingleside, Tunstall Road, Sunderland SR2 7RU

Subsequently to the preparation of the main report to the Sub-Committee further consideration has been given to the impact of antisocial behaviour issues and additional issues.

Antisocial behaviour issues

The vast majority of objections received as a result of the consultation mentioned antisocial behaviour incidents attributed the existing residents of Ingleside. These incidents include antisocial behaviour such as noise, vandalism, fighting.

The City Council's Anti Social Behaviour officer has been contacted by only one local resident regarding anti social behaviour arising from the property. The anti social behaviour in this case consisted of noise late at night and in the early hours of the morning. Ingleside Management informed the Antisocial Behaviour Officer that they had removed tenants from their property due to unacceptable behaviour.

PC Kirkup on behalf of Northumbria Police stated in his representation that from May 2009 until November 2009 there have been 18 calls to the police relating to incidence of disturbance in the street and noise and music originating from the premises. These calls are being made in the main from a neighbour adjoining the address. PC Kirkup also states since the intervention of the police and other partner agencies, calls to the police have decreased. In addition, the Environmental Health team have conducted investigations following allegations of a noise disturbance emanating from the premises. The result of these investigations has shown that there is not enough evidence to suggest that a statutory noise nuisance was being created as a result of activities within the curtilage of the premises. Therefore they have no objection to this application. Should further complaints be received they will be investigated and if appropriate, action will be taken by the Environmental Health service under the Environmental Protection Act 1990.

Additionally, Mediation between parties has been arranged and took place on 18th December 2009 with a view to resolving any outstanding antisocial behaviour issues. A consensus was reached between the project and local residents and an agreement signed.

Whilst it is evident incidences of antisocial behaviour have occurred it is not

possible to attribute all incidences described within the objection letters solely to the use of the premises as supported housing. A small number of occurrences which can be recognised as originating from the individuals housed within the premises have been dealt with by the relevant authorities and applicant and are subsequently in decline. There is also not enough evidence to suggest that a statutory noise nuisance is being created as a result of the use of the premises. It is therefore not considered that the use of this building as supported housing will give rise to excessive antisocial behaviour which would unduly compromise the residential amenity of the neighbouring properties. The proposed use will therefore accord with policy B2 in this respect.

Additional issues

It emerged through initial consultation with the City Council's Adult Services team that they did not support this application. This issue was also raised in a number of objectors. Further clarification was sought from that Service as to the reason behind their response. It would appear Adult Services had not been contacted by the project to discuss their intended use and style of support. They are therefore not able to add their support to the application. However, the City Council's Diversity and Inclusion team state that this is the only voluntary sector LGB project in the city and provides for a real need. They have offered support to the project and are in the process of setting up meetings with the view to addressing this support and the strengthening of the management structure, policies and procedures.

Conclusion

As the characteristics of this use are so specific, should Members be minded to approve this application, it is recommended a condition is imposed stating the use shall enure to the benefit of the applicant only, in order that the Local Planning Authority may retain control over the development, and to comply with policy B2 of the UDP.

For the reasons given above it is recommended that subject to no new points of objection being received by 8th January 2010, Members **grant** permission for the proposal subject to the conditions listed below;

Recommendation: Grant permission

Conditions

- 1 This permission shall be granted for a limited period of one year from the date of approval and the use authorised shall be discontinued and the premises reinstated to their former condition at or before the expiry of the period specified in this permission unless the permission is renewed, in order to review the situation in the light of experience and to comply with policy B2 of the UDP.
- 2 Unless otherwise first agreed in writing with the Local Planning

Authority, the development hereby granted permission shall be carried out in full accordance with the following approved plans:

Location Plan received 22.10.2009.

Site Plan received 22.10.2009.

Existing and Proposed floor plans received 22.10.2009.

In order to ensure that the completed development accords with the scheme approved and to comply with policy B2 of the adopted Unitary Development Plan.

- 3 This permission shall enure to the benefit of the applicant only, in order that the Local Planning Authority may retain control over the development, and to comply with policy B2 of the UDP.
- 4 Notwithstanding the submitted drawings hereby approved the number of residents shall not exceed thirteen, at any one time, in the interests of the amenities of adjoining residential occupiers and to comply with policy B2 of the UDP.
- 5 Notwithstanding the submitted drawings, the windows in the eastern elevation of the building, facing 1 Valebrooke Avenue, with the exception of the kitchen windows, shall be fitted with non-opening or top opening obscure glazing and shall be maintained as such thereafter, in order to achieve a satisfactory form of development and to comply with policy B2 of the UDP.
- 6 Notwithstanding the submitted drawings, refuse should at all times be stored fully within the curtilage of the site, except on the day of collection, in order to ensure a satisfactory form of development and to comply with policy B2 of the UDP.

Number:	4
Application Number:	09/04355/FUL
Proposal:	Change of use from warehousing (Class B8) to waste materials recycling facility (Class B2) and waste transfer station (sui generis).
Location:	Sunderland Furniture Warehouse, Hendon Street Covered Storage

Subsequent to the preparation of the main agenda report a letter of representation has been received from the Environment Agency (EA) objecting to the application based upon a lack of information submitted. In particular, it is noted that the information which has been submitted is insufficient to properly assess whether the site has previously been subject to a contaminative use; such an assessment is considered particularly important in this instance given the site's sensitive environmental setting on the Magnesium Limestone principal aquifer. Given that a preliminary risk assessment has not been supplied, the potential risk to controlled waters is presumed to be unacceptable as there is no evidence to indicate otherwise. In order to overcome this objection, the EA have recommended a preliminary risk assessment (produced in accordance with relevant guidance) be carried out and provided prior to granting planning permission.

As mentioned in the agenda report, the main issues to be considered in assessing the application are the principle of the proposed change of use, the impact of the proposed use on the amenities of any neighbouring residents and any highway/parking implications. In addition, any environmental implications of the proposed development must be considered in this instance.

Principle

The proposed use, which would comprise a materials recovery facility (MRF) for recyclable waste materials collected from the kerbside collected by the Council and a plastic washing/processing line, which fall within Class B2 of the Town and Country Planning (Use Classes) (Amendment) (England) Order 2005, as well as a waste transfer station, which is a sui generis use.

Policies EC2 and EC4 of the UDP relate to land for economic development and specify Classes B1 (Businesses), B2 (General Industry) and B8 (Storage or Distribution) as acceptable primary uses; proposals for uses not listed shall be decided on their individual merits. Policy SA1(3) of the Council's adopted Unitary Development Plan (UDP) allocates Hendon Industrial Estate, within which the site is located, as an existing employment site and identifies the following as acceptable primary uses within the Estate: light industry, offices, research and development, general industry, storage and distribution (Classes B1, B2 and B8).

As such, having regard to the aforementioned policies and given the predominantly industrial nature of the surrounding area, the proposed Class B2 uses of the site comply with the aforementioned policies. In addition, whilst no specific reference is made to waste transfer stations within the aforementioned policies, it is considered that such uses are most appropriately located within industrial estates and are similar in nature to Class B2 operations.

As such, the proposed recycling facility accords with policies EC2, EC4 and SA1(3), being a Class B2 use, and, whilst the proposed waste transfer station constitutes a sui generis use, it is similar in nature to, and would operate in conjunction with, the proposed B2 use. The proposed change of use is therefore considered to be acceptable, in principle.

Residential Amenity

UDP policy B2 requires that the scale, massing and layout of new development should respect and enhance the best qualities of nearby properties and the locality.

As mentioned in the main agenda report, the applicant proposes to operate the MRF and waste transfer facility between the hours of 07:00 and 18:00 on Mondays to Fridays and 07:00 to 12:30 on Saturdays (which can be conditioned accordingly) whilst the plastic processing facility would operate 24-hours per day, seven days per week. The nearest residential properties to the site are situated approximately 70 metres away from the site, namely the tower block standing directly opposite Hendon Road, D'Arcy Court; dwellings in Raine Grove and Beresford Grove to the north of the tower block exist nearby.

The submitted Noise Assessment, wherein measurements were taken from a point between and in front of the tower block and the dwellings to the north in Raine Grove, concluded that the predicted noise levels of the proposed operation would remain significantly lower than the measured background noise levels (generated primarily by Hendon Road during daytime) and, as such, would pose an insignificant direct impact on nearby residential properties. In order to ensure that no undue noise disturbance would be generated late at night by the proposed plastic processing facility, should Members be minded to grant consent it is recommended that a condition be imposed prohibiting the roller shutters of the units from being open during hours when the materials recovery and waste transfer facilities would not be operated.

The potential noise generated by vehicles was not fully quantified within the Assessment, which has projected 40no. 2-way vehicle movements per day of HGVs or equivalent. However, given that the site exists within a well-established commercial and industrial area, which generates significant activity amongst such vehicles throughout the day, and the site can currently be operated within Class B8 without the requirement for planning permission, which would also be likely to attract large goods vehicles, it is not considered

that such a creation of vehicular movement would be likely to generate undue noise disturbance to nearby residents.

With regard to the above, the proposed change of use is not considered to be harmful to the amenity of nearby residents and, as such, accords with the requirements of policy B2 of the UDP.

Highway/Parking Implications

Policy T14 of the UDP requires proposals for new development to be readily accessible by pedestrians, cyclists and users of public transport, not cause traffic congestion or highway safety problems on existing roads, make appropriate safe provision for access and egress by vehicles, pedestrians, cyclists and other road users, make provision for the loading and unloading of commercial vehicles and indicate how parking requirements will be accommodated. Policy T22 states that, in deciding the appropriate level of car and cycle parking to be provided in connection with a proposal, the Council will have regard to the development type (e.g. scale, use, catchment, user characteristics) and locational characteristics (e.g. accessibility by modes other than private car, population density, historic character).

Topic 13 of the adopted Development Control Supplementary Planning Guidance (SPG) expands upon policy T22 and states that uses falling into Class B2, as predominantly proposed, should provide one space per 50 sq. metres of gross floor area, which would require a provision of 61no. to 62no. spaces in this instance, if applied to the proposed B2 and sui generis uses. The site currently has consent to operate within Class B8 which would require the provision of 18no. to 19no. spaces; the proposal, when applying such standards, would therefore require an additional 43no. spaces.

Such a standard is considered to be excessive in this instance when considering the individual nature of the proposed operation, which would be unlikely to result in large numbers of employees and customers visiting the site. It is stated within the application form that a total of 19no. full-time staff would be employed by the development, although only 8no. parking spaces would be provided; 2no. of which would be dedicated disabled bays. However, additional information was submitted by the applicant indicating that 15no. of the staff would work on a shift basis and the maximum number of employees on site at any given time would 9no.; 5no. shift workers plus 4no. day staff. The applicant has also indicated that car sharing and the use of public transportation shall be encouraged and it is considered that any additional parking demand could comfortably be accommodated informally within the site without compromising manoeuvrability given its substantial area.

With regards to the manoeuvrability of RCVs, HGVs and similar vehicles in particular, it is considered that, by siting the staff and visitor parking spaces adjacent to the westernmost unit and leaving the majority of the existing hardstanding open, such vehicles would comfortably be able to manoeuvre safely within the site. In addition, adequate visibility would be retained at the

site entrance/exit through the retention of the steel palisade fencing and splayed vehicular crossing at the gate directly outside the site.

For such reasons, it is considered that the proposed parking provision is acceptable in this instance and it is not considered that the proposal would compromise highway safety or the free passage of traffic, in accordance with policies T14 and T22 of the UDP.

Environmental Implications

Policy EN14 is relevant in this instance, which states that, 'where development is proposed on land which there is reason to believe is either:

- (i) unstable or potentially unstable;
- (ii) contaminated or potentially at risk from migrating contaminants; or
- (iii) potentially at risk from migrating landfill gas or mine gas,

The Council will require the applicant to carry out adequate investigations to determine the nature of ground conditions below and, if appropriate, adjoining the site. Where the degree of instability, contamination, or gas migration would allow development subject to preventive, remedial, or precautionary measures within the control of the applicant, planning permission will be granted subject to conditions specifying the measures to be carried out'.

To this regard, PPS23 encourages a precautionary approach whereby at least a preliminary risk assessment should be provided prior to the determination of applications on potentially sensitive sites in order to assess the level of risk involved.

The application site is considered to be particularly sensitive given its setting on a Magnesium Limestone principal aquifer. Having regards to the comments provided by the Environment Agency, as summarised previously within the report, it would appear that insufficient information has been submitted in order to make such an assessment. The applicant was notified of such concerns accordingly and, whilst expressing his willingness to provide the requested information, the applicant was only notified of such concerns via a letter from the Environment Agency dated 23 December 2009 and, given the short timescale, it has not possible for such an assessment to have been undertaken prior to the committee meeting.

Consideration has been given to recommendation of deferral of the application to the next scheduled Sub-Committee meeting of 2nd February 2009, however, the applicant has indicated that such a delay would compromise his ability to meet other necessary deadlines relating to the proposed facility, in particular to fulfil contractual obligations of the contract awarded by the Council for materials collection, as well as to replace a previous facility in Spennymoor which has recently been closed. A Preliminary Risk Assessment was submitted by the applicant on 4th January

2010, as requested by the Environment Agency, however given this short timescale the EA, or the LPA, have been unable to properly assess this report prior to the committee meeting. Nevertheless, the applicant has indicated their confidence that the concerns raised by the EA can be satisfactorily addressed. The outcome of the Preliminary Risk Assessment shall determine whether any conditions relating to contamination are necessary to any consent.

Conclusion

It is recommended that Members be minded to grant planning permission. However, whilst the statutory 13-week period allowed for determination of the application does not expire until 26 February 2010, in order that the application can be determined within the applicant's requested timescale and in accordance with the LPA's prescribed timescale Members are recommended to delegate the decision to the Deputy Chief Executive to either approve or refuse planning permission depending on whether a Preliminary Risk Assessment has been submitted to the satisfaction of the Environment Agency and the LPA by 26 February 2010.

RECOMMENDATION: Delegate to the Deputy Chief Executive to either:

- 1) Grant Permission subject to conditions relating to the following issues (notwithstanding the outcome of the Preliminary Risk Assessment) and subject to satisfactory address of the objection raised by the Environment Agency by 26 February 2010, or such other date as is agreed by the Deputy Chief Executive;

or

- 2) Refuse permission should the objection raised by the Environment Agency not be satisfactorily addressed by 26 February 2010, or such other date as is agreed by the Deputy Chief Executive.

CONDITIONS

1. Standard condition regarding three years to commence.
2. Standard condition regarding accordance with approved plans.
3. Hours of operation for materials recovery and waste transfer facilities and no vehicle movements outside of these hours.
4. Hours of delivery.
5. All waste processing works to take place within buildings.
6. Roller shutters not to be open during night.
7. Burning of waste prohibited.
8. No mobile crusher on site.
9. All vehicles to be fitted with broadband reversing alarms.
10. Conditions to ensure that any contamination is mitigated against, if required.

Number:	5
Application Number:	09/04508/LAP
Proposal:	Creation of an open access adventure play area.
Location:	Land Adjacent To Puma Sunderland Tennis Centre, Silksworth

Subsequent to the preparation of the main agenda report a letter of representation has been received from the Environment Agency (EA) objecting to the application based upon a lack of information submitted. In particular, it is noted that the information which has been submitted is insufficient to properly assess whether the site has previously been subject to a highly contaminative use; such an assessment is considered particularly important in this instance given the site's sensitive environmental setting on the Magnesium Limestone – a principal aquifer. Given that a preliminary risk assessment has not been supplied, the potential risk to controlled waters is presumed to be unacceptable as there is no evidence to indicate otherwise. In order to overcome this objection, the EA have recommended a preliminary risk assessment (produced in accordance with relevant guidance) be carried out and provided prior to granting planning permission.

In terms of the principle of the development, the site is allocated by the UDP proposals map as new and upgraded open space / leisure use and, as such, the policies which are relevant to this proposal are B3, L3, L4, L5 and L7. Policy B3 aims to protect public and private open space from development which would have a serious adverse effect on its amenity, recreational or nature conservation value whilst L3, L4 and L5 relate to the provision of outdoor sport and recreation, including public parks and amenity open space. Policy L7 encourages land allocated for open space or outdoor recreation, such as the application site, to be retained in its existing use. The proposal does not constitute a material change in the use of the site, given that it would remain open space / leisure use as a result of the proposed works; planning permission is essentially required in this instance due to the level of earthworks proposed. Given the requirement for planning permission to be obtained, all of the proposed development, including the play equipment and associated works to trees and pathways, is to be considered as part of this application.

As mentioned in the agenda report, the main issues to be considered in assessing the application are the design and appearance of the proposed development, any impact on trees and local wildlife and any drainage, health and safety and parking / highway safety and environmental implications.

Design and Appearance

UDP policy B2 requires that the scale, massing and layout of new

development should respect and enhance the best qualities of nearby properties and the locality.

The proposed equipment is to be constructed predominantly of natural timber, in-keeping with the wooded setting of the site, and the proposed hard and soft landscaping is considered to be sympathetic to the surrounding area while the proposed trees adjacent to the existing tennis centre would provide a degree of screening of the large gable end of this building. Whilst the proposed earthworks are substantial, the resulting contours would not result in any adverse visual impact.

The proposed scheme of landscaping is generally acceptable, however the main diagonal path from the Puma Centre across the play area is proposed to be surfaced using Type 1 limestone to dust; this is likely to be heavily worn and, as such, it is recommended that a more hard wearing surface material be used, such as tarmac or "Fibredec". In addition, it is recommended that a limestone to dust surround to the picnic tables should be used instead of grass as proposed, which would prevent wear of grass which will turn to mud in such a circumstance. In order to facilitate such amendments, it is recommended that a condition be imposed requiring the submission of an alternative scheme of landscaping.

Upon compliance with such a condition, it is considered that the proposal is unlikely to be detrimental to the environmental quality or appearance of the site or the locality in general, in accordance with the requirements of policy B2 of the UDP.

Impact on Trees and Wildlife

Policy CN17 of the adopted UDP states that the retention of trees, hedges and landscape features in all new development will be required where possible.

The trees proposed for removal are amongst woodland comprising young and semi-mature specimens. It is not considered that any of the trees identified for removal offer any significant positive visual amenity value in themselves, however, as a group provide a particularly positive aesthetic contribution to the site and the area in general. The selective removals would not significantly impact upon the beneficial cumulative visual impact provided by the trees within the site and, in fact, the resultant thinning may benefit the growth of the individual trees to be retained. The proposed replacements are considered to be of appropriate species and are well-sited, in particular those adjacent to the tennis centre which would act as a visual screen of the adjacent building.

In addition, the site lies within a wildlife corridor and is therefore covered by UDP policies CN18 and CN23. CN18 seeks to ensure the protection of wildlife habitats or creation of new and/or alternative wildlife habitats through development schemes, while CN23 seeks to employ measures to conserve and improve the environment using suitable designs to overcome any

potential user conflicts, avoid development which would adversely affect the continuity of corridors and where, on balance, development is acceptable because of wider plan objectives ensure appropriate habitat creation measures are taken to minimise its detrimental impact.

To this regard, a protected species survey has been submitted which concludes that the site is considered to be of low ecological value and the plantation woodland will support a small range of breeding bird species that are typical of an urban site, although the trees within the site are not considered suitable for supporting bat roosts and there are no other structures within the site with the potential for roost creation. The risk to reptiles is also considered to be low given the lack of deadwood and thick ground cover, the high levels of disturbance and the urban setting of the site. Potential impacts of the proposal include a reduction in the suitability of a nearby lake for water voles, harm/disturbance to nesting birds, a reduction in woodland cover and the reduction in the suitability of certain parts of the site for foraging bats and the loss of some moderate foraging habitat for bats. Various mitigation measures are set out in section D4 of this report and, accordingly, it is recommended that a condition be imposed, should Members be minded to approve the application, for such measures to be carried out accordingly, in accordance with policies CN18 and CN23 of the UDP.

Drainage

Concerns were raised to the applicant that the flat area to west of the centre has been known to be prone to saturated ground conditions with occasional water standing and a drainage scheme should therefore be explored to include a likelihood of drainage into a watercourse. The applicant thereafter indicated that such 'ponding' issues are being covered by the swimming pool contractors as a separate issue. Notwithstanding this, it is not considered that the proposal would exacerbate such problems and, as such, it is not considered reasonable to impose a condition to address these concerns in this instance.

Health and Safety

It is noted that the proposed play tunnel emerges directly out onto the main diagonal path from the Puma Centre across the play area. Accordingly, it is recommended that the entrance of this proposed tunnel be set back approximately 1.3 metres in order to avoid any potential hazardous conflict between children exiting the tunnel and users of the path. Accordingly, a condition can be imposed requiring precise details of the play equipment to be submitted for the approval of the LPA.

Parking / Highway Issues

Policy T14 of the UDP requires proposals for new development to be readily accessible by pedestrians, cyclists and users of public transport, not cause traffic congestion or highway safety problems on existing roads, make appropriate safe provision for access and egress by vehicles, pedestrians,

cyclists and other road users, make provision for the loading and unloading of commercial vehicles and indicate how parking requirements will be accommodated. Policy T22 states that, in deciding the appropriate level of car and cycle parking to be provided in connection with a proposal, the Council will have regard to the development type (e.g. scale, use, catchment, user characteristics) and locational characteristics (e.g. accessibility by modes other than private car, population density, historic character).

Whilst the Council has no specific guidelines for standard parking requirements for developments of this nature, the proposal has clear potential to increase the parking demand of the centre; other outdoor leisure facilities within the City, namely Hetton Lyons and Herrington Park, have provision for approximately 100no. vehicles.

The current proposal offers no increase in parking provision, however it is acknowledged that there is a strong emphasis on accessibility and public transport links within the local area, although it is considered that there is scope for the improvement of facilities, such as bus stops and pedestrian crossings for disabled users.

In addition, directional and tourist signage on the local highway network no longer appears to accurately reflect the facilities currently available at the Centre. It is therefore considered that a signing strategy should be considered which accurately defines and provides adequate advance warning and information of the facilities available.

In order to address such concerns, should Members be minded to grant consent, it is recommended that conditions be imposed requiring a Transport Statement and Travel Plan to be submitted for the approval of the LPA. The Transport Statement will assist in identifying any shortfalls in accessibility / parking within the proposed development and will dictate a scheme of works to be prepared and agreed in order to address such issues. The Travel Plan should provide an overarching scheme for the whole Silksworth Sports Complex as well as an individual plan for the currently proposed facility and should include details of the appointment of a Travel Plan Coordinator who would be responsible for the implementation, monitoring and ongoing development of the Plan.

In terms of pedestrian safety, formal pedestrian crossing facilities should be designed in accordance with the Traffic Signs Regulations and General Directions, under which a 'zebra crossing' would not be permitted, as proposed by the Design and Access Statement. In addition, the tall grasses on either side of the flight of footsteps to the lake should be set back by approximately three metres to aid forward visibility for pedestrians. A potential conflict has also been identified between users of the 'pit track' where the BMX users and pedestrians share the same routes on the hill, which the applicant was advised of accordingly. The applicant indicated that the 'pit track' is aimed at pedestrians only and no longer for BMX users, which would avoid such a conflict.

Upon compliance with such conditions, it is not considered that the proposal would compromise highway/pedestrian safety or the free passage of traffic, in accordance with the requirements of policies T14 and T22 of the adopted UDP.

Environmental Implications

Policy EN1 states that the improvement of the environment will be achieved by:

- (i) seeking to minimise all forms of pollution; and
- (ii) encouraging, assisting or carrying out a wide range of environmental works, including the enhancement of vacant sites and buildings and the reclamation of derelict land.

To this regard, concerns were put to the applicant over potential smoke nuisance generated by the proposed 'fire pit' area. In response, the applicant indicated that the purpose of the 'fire pit' is to support a designated safe environment in which children and young people can to build small scale campfires and have barbeques under the supervision and guidance of trained play workers. The area will be used for short periods of time as part of a planned facilitated play programme, so the likelihood of the campfires creating a large amount of smoke over a long period of time is very minimal.

Policy EN14 is also relevant in this instance, which states that, 'where development is proposed on land which there is reason to believe is either:

- (i) unstable or potentially unstable;
- (ii) contaminated or potentially at risk from migrating contaminants; or
- (iii) potentially at risk from migrating landfill gas or mine gas,

the Council will require the applicant to carry out adequate investigations to determine the nature of ground conditions below and, if appropriate, adjoining the site. Where the degree of instability, contamination, or gas migration would allow development subject to preventive, remedial, or precautionary measures within the control of the applicant, planning permission will be granted subject to conditions specifying the measures to be carried out'.

To this regard, PPS23 encourages a precautionary approach whereby at least a preliminary risk assessment should be provided prior to the determination of applications on potentially sensitive sites in order to assess the level of risk involved.

From the information supplied, the application site has previously been subject to a potentially contaminative use, namely the storage of colliery spoil associated with a former colliery. In addition, the site is considered to be located in a particularly sensitive setting given its siting on the Magnesium

Limestone – a principal aquifer. Having regards to the comments provided by the Environment Agency, as summarised previously within the report, it would appear that insufficient information has been submitted in order to make such an assessment. The applicant was notified of such concerns accordingly and has indicated willingness to address such concerns through engagement with the Environment Agency. However, given the short timescales involved (the applicant was notified of such concerns via a letter from the Environment Agency dated 30 December 2009), it has not possible for the requested assessment to have been undertaken prior to the committee meeting.

Consideration has been given to the recommendation of deferral of the application to the next scheduled Sub-Committee meeting of 02 February 2009. However the applicant has indicated that such a delay would seriously compromise the ability to meet the necessary construction deadlines to comply with Pathfinder funding requirements, hereby jeopardising the delivery the proposed scheme. Given the scale of the proposed scheme the applicant has expressed confidence that the concerns raised by the Environment Agency can be addressed. The outcome of the Preliminary Risk Assessment shall determine whether any conditions relating to contamination are necessary to any consent. If, however, the objection raised by the Environment Agency is not withdrawn, it will be necessary to report this application back to the Sub-Committee in February 2010.

Conclusion

Whilst the statutory -week period allowed for determination of the application does not expire until 02 February 2010, in order that the application can be determined within the applicant's requested timescale it is recommended that Members grant consent in accordance with Regulation 3 of the Town and Country Planning General Regulations 1992 subject to conditions relating to the following issues (notwithstanding the outcome of the Preliminary Risk Assessment) and subject to satisfactory address of the objection raised by the Environment Agency by 02 February 2010.

RECOMMENDATION: Grant consent in accordance with Regulation 3 of the Town and Country Planning General Regulations 1992, subject to Environment Agency objection being withdrawn.

CONDITIONS

Conditions to cover the following matters:

1. Standard condition regarding three years to commence.
2. Standard condition regarding Accordance with approved plans.
3. Transport Statement.
4. Travel Plan.
5. Scheme of landscaping and precise siting of play equipment.
6. Implementation of landscaping scheme.
7. Protected species mitigation.
8. Site compound details.
9. Tree protection.
10. Replacement of any removed/damaged trees.

11. Replacement of newly planted trees.