



PLANNING COMMITTEE 3rd December 2015

REPORT OF THE HEAD OF PLANNING AND BUILDING CONTROL

Land at Winterley Lane, Walsall

1.0 PURPOSE OF REPORT

1.1 To update Planning Committee members the current position regarding works at Winterley Lane. The works are permitted by application number 14/0191/WA.

1.2 Planning permission was issued on 12 May 2014 for the infilling and capping of former limestone mine shafts using on site and imported inert fill. The material to be used in the filling would be processed using a crusher and screen to make engineered infill. The site area was reduced to protect the area of the former lime kilns and the works scheduled to last 12 months before the restoration of the ground to open space.

1.3 The permission was subject to 20 conditions. A number of these conditions required the submission of details prior to the commencement of work on site and these details were considered to go to the heart of the application necessitating their discharge before works commenced.

1.4 The applicants commenced work on site prior to the discharging of all the necessary conditions. This unlawful start on site was then subject to enforcement action and a report was taken to the January 2015 planning committee. Following agreement to pursue action, the applicants engaged with the LPA with regard to ensuring the necessary information was in place.

1.5 The applicants did submit the necessary information as agreed to enable the conditions to be discharged. The conditions were subsequently discharged on 30th March 2015 allowing the subsequent lawful commencement of development to take place.

1.6 Work has now proceeded on site in accordance with the agreed details and no outstanding enforcement items remain.

1.7 This report has been prepared to update Members on the current operation on site and the measures put in place to address any detrimental impacts on the surrounding environment. A series of 25 questions have been brought to the attention of officers as part of this review and these are considered below.

2.0 RECOMMENDATION

2.1 **To note** the comments of the Head of Planning and Building Control in respect of the questions raised.

3.0 FINANCIAL IMPLICATIONS None at the present time though subsequent costs may be incurred if enforcement action or continued monitoring is required.

4.0 POLICY IMPLICATIONS

The report recommends enforcement action in order to seek compliance with planning policies. The following planning policies are relevant in this case:

The Black Country Core Strategy (BCCS)

http://www.walsall.gov.uk/index/environment/planning/local_development_framework/ldf_core_strategy.htm

This was adopted under the current Local Development Framework system, and the NPPF says that for 12 months from the publication of the national framework “*decision-takers may continue to give full weight to relevant policies*. However, it is more than 12 months since the NPPF was published in March 2012. Now (as with the saved policies of Walsall’s UDP) the NPPF advises that “... *due weight should be given to relevant policies ... according to their degree of consistency with this framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given)*.” To consider the conformity of the BCCS with the NPPF the four Black Country councils have completed a ‘Compatibility Self-Assessment Checklist’ (published by the Planning Advisory Service) and have discussed the results with a Planning Inspector. Whilst there is no formal mechanism to certify that the BCCS is consistent with the NPPF the discussions led officers to the conclusion that the exercise identified no issues that would conflict with the NPPF or require a review of the BCCS in terms of conformity. The results of this assessment are to be published on the BCCS and Council websites and it is planned to report to the Council’s Cabinet to confirm this view. In the absence of evidence to the contrary it is considered that the BCCS policies should be given full weight in planning decisions.

The relevant policy is:

TRAN2: Planning permission will not be granted for development likely to have significant transport implications.

It is considered in this case that the relevant provisions of the BCCS can be given full weight.

Walsall’s Unitary Development Plan (UDP)

www.walsall.gov.uk/index/environment/planning/unitary_development_plan.htm

Policies that have been saved and not replaced by the BCCS remain part of the development plan. However, in such cases the NPPF says “*due weight should be given to relevant policies in existing plans according to their degree of consistency with this framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given)*”.

The relevant policies are:

GP2: seek to make a positive contribution to the quality of the environment, whilst protecting

people and ensuring adequate and safe access is provided.

ENV1: Identifies the Green Belt boundaries.

ENV2: Seeks to control development in the Green Belt. Any engineering or other operation or the

making of a material change of use of land is inappropriate in the Green Belt if it conflicts with the

openness and purposes of the Green Belt.

ENV3: Relates to detailed evaluation of proposals within the Green Belt.

ENV10: Development will not be permitted if the health, safety or amenity of its occupants or users

would be unacceptably affected by pollution.

ENV14: Encourages reclamation and development of derelict and previously developed land

where possible in accordance with other policies. Where previous uses have affected the stability

of the site the application must be accompanied by a site investigation report.

ENV18: Seeks to protect, manage and enhance existing woodlands, trees and hedgerows.

ENV23: Proposals must take account of opportunities for nature conservation.

ENV25: Proposals for development which affect archaeological sites will normally be accompanied

by an evaluation of the archaeological resource.

ENV26: Seeks to protect the Borough's industrial archaeology including canal heritage.

ENV32: Proposals should take in to account the surrounding context particularly within or adjacent

to the Green Belt including consideration of the effect on the local character of the area, vehicular

and pedestrian patterns and visual relationship to surrounding areas.

ENV33: deals with landscape design and opportunities to create and enhance environmental

quality.

ENV40: The quality of all water resources will be protected.

JP8: Bad neighbour industries will be given careful consideration and should be capable of

providing satisfactory screening and landscaping and must be subject to stringent operational

control to minimise disturbance.

T1: All development should conform to the accessibility standards set out in policies T10-T13.

T4: Classifies the highway network and specifies that residential streets and minor roads are those

where traffic volumes and speeds should be quite low. Sometimes traffic calming measures will be

required.

T5: Seeks to implement selective improvements to highway infrastructure and states highway

improvement schemes should be designed to minimise any adverse impact on the environment or

the amenity of residents.

T7 – All development should satisfy the car parking standards set out in Policy T13.

T13: Development will provide adequate on-site parking to meet its own needs, and that there will

be no adverse effect on highway safety and the environment.

LC5: Seeks to protect a network of Greenways throughout the Borough.

It is considered in this case that the relevant provisions of Walsall's saved UDP policies are consistent with the NPPF

5.0 LEGAL IMPLICATIONS None arising from this report.

6.0 EQUAL OPPORTUNITY IMPLICATIONS None arising from this report.

7.0 ENVIRONMENTAL IMPACT None arising from this report.

8.0 **WARD(S) AFFECTED** Rushall-Shelfield

9.0 **CONSULTEES** None.

10.0 **CONTACT OFFICER** Shawn Fleet – 01922 654053 Development Management

11.0 **BACKGROUND PAPERS** Planning permission 08/0520/FL and enforcement report to 8th January 2015 Planning Committee

David Elsworthy
Head of Planning and Building Control

Planning Committee
4th December 2015

12.0 BACKGROUND AND REPORT DETAIL

12.1 In total 25 questions have been raised with regard to the development. These can be grouped into four main categories namely, traffic movement, role of the Environment Agency, works on site and monitoring.

12.2 The questions asked are as follows:

Question	Subject
1	Is there a limit on the number lorries which can access the site?
2	How many visits have been made to the site by Walsall Council officers and the Environment Agency?
3	What work on site and infilling of shafts has been done?
4	Is the work consistent with the permission?
5 a	Can assurances be provided on the material tipped on site?
5 b	Is Walsall or another Council purchasing material off site?
6	How is the site monitored?
7	Are Walsall and EA resources sufficient to meet demands?
8	Is noise and air quality monitored?
9	Who will pay for the repair costs for Winterley Lane?
10 i	Who checks the consignment notes on site?
10 ii	Is this an unlicensed brick-crushing business?
10 iii	Council Road Sweepers – who pays for them?
10 iv	Is the site being monitored?
10 v	What commercial vehicles are stored on site?
10 vi	Pumping water on site and water in shafts?
10 vii	Why was the weight limit on road removed?
10 viii	Is there a tonnage allowed on site each week?
10 ix	What are the Environment Agencies views about the development?
10 x	What is the Green Belt status and what is the potential for housing?
10 xi	If the developers over run, will an extension of time application be brought to committee?
10 xii	What are the hours of activity allowed on site?
10 xiii	Has EU grant funding been made available to the developers?
10 xiv	Should the developers be giving monthly reports to the Council?
10 xv	What increases in traffic using the road and bridge have there been?

12.4 A response to each of these questions is given below:

Question	Subject	Response
1	Lorries on site	There cannot be a limit on the lorries on Winterley Lane, as it is an adopted highway. The disturbance and disruption arising from the operations on site are addressed through the use of conditions attached to the planning permission. Conditions 4, 5 and 6 in particular address amenity.
2	Visits by Council and EA	The Council do not as a matter of course inspect development sites on a regular basis once planning permission has been given. The reasons for this are twofold, the first being the high level of resources involved in monitoring the hundreds of active development sites in the Borough at any time and secondly, consistent inspection without established reasons would be considered an intrusion of a business's ability to perform their operations. The Council recognises the need for enforcement inspections where evidence is presented to indicate an apparent breach of the planning permission and inspections are undertaken where supported by evidence. During the initial stage of development on site, approximately eight visits were undertaken to the site by Highways and Planning officers in respect of mud being dragged out onto the road resulting in a temporary road closure and subsequent improvements to site operations. As part of the permitting process the site is monitored by the Environment Agency.
3	Work on site	It is understood work has progressed on the infilling of approximately half of the shafts on site. The work is not being undertaken in a sequential manner with each shaft being infilled fully before being capped and then work moved on to the next shaft. Rather, work is proceeding on a phased basis where a series of shafts in close proximity are infilled and then completed before work moves on to another part of the site. The progress of infilling is not monitored for the reasons given in response to question 2.
4	Work consistent with permission	It is understood work is generally proceeding according to the expected phasing. It is noted some work proceeded on site prior to the lawful commencement of development however the applicants are still bound by the time limits set in the original permission. The processing of materials on site for sale is not permitted by the planning permission and should evidence be brought forward that this is taking place, officers will undertake inspections to establish whether a formal breach of planning control has taken place.
5 a	Material tipped on site	The quality of material being imported into the site is monitored by the Environment Agency. To date no contaminated or hazardous waste has been noted being imported into the site.
5 b	Purchasing material off site	Following enquiries within the Council, Planning Officers have not identified any material being purchased from the operators. If evidence is available to indicate material is being bought from the site by the Council, this will be inspected and if appropriate, enforcement action taken.
6	How is the site monitored	The site is principally monitored by the Environment Agency as part of the permitting process.

7	Are monitoring resources sufficient	<p>Monitoring of a site can be undertaken in two main ways, the first of these is regular checks on a scheduled basis or according to key phases of development and the second is a responsive form of monitoring reacting to specific instances. The Council undertakes responsive monitoring of the site for the reasons given in response to question 2, namely the impact that on-going scheduled monitoring has on resources. Officers are of the view that resources exist to undertake a level of responsive monitoring of the site sufficient to enable breaches of planning control to be sufficiently evidenced should it prove prudent to pursue enforcement action. The service though is not resourced to a level where it is in a position to undertake a wide range of monitoring tasks including the frequent monitoring of active development sites across the Borough. This is not a situation unique to Walsall and indeed, the responsive form of monitoring is one adopted by most Local Planning Authorities.</p> <p>The Council is not able to comment on the Environment Agencies position with regard to the resources available for monitoring.</p>
8	Is noise and air quality monitored	In line with the responses to questions 2 and 7, the Local Planning Authority does not undertake frequent monitoring of air quality and noise levels on the site. Condition 5 of the planning approval sets a threshold for noise levels from the site and condition 6 deals with dust and odour. Where a breach of the condition is considered to have occurred, officers will undertake monitoring of the site taking into account the details given. It is not possible for the Council to resource sufficient monitoring equipment and staff time to allow for continual monitoring of a single site or indeed all development sites in the Borough.
9	Repair costs for Winterley Lane	Photographic records have been kept of Winterley Lane since 2012 and a dilapidation survey was undertaken with the site operator in February 2015. Photographs were taken at that time and it was noted by officers that damage had already been caused to the carriageway surface. The site operator agreed to provide road widening along Winterley Lane to act as passing points for vehicles, and that they would also repair all localised highway defects between Daw End Lane and their site entrance. The site operator also agreed to carry out any localised repairs to the carriageway whilst their site remained in use.
10 i	Checking consignment notes	Accurate records of material brought onto site should be kept by the site operators. In turn, these can be inspected by the Environment Agency in conjunction with an inspection of the material actually deposited. Any variance between the material on site and that recorded will highlight a breach of the environmental controls in place on the material that should be accepted.
10 ii	Brick-crushing business	To ensure the shafts are correctly filled with minimal void spaces between the imported materials, the operator will need to ensure that an appropriate range of material is used. This in part will need some material to be crushed prior to it being placed in a shaft. The crushing plant is controlled by a separate permit.

10 iii	Council Road Sweepers	Road sweeping is undertaken on the site by the operators as part of the agreed measures to keep the highway clear. The cost for this work is carried by the developer. The Council does not undertake additional road sweeping operations on Winterley Lane in respect of this development although occasionally road sweeping operations are undertaken in this locality but this is part of scheduled cleaning.
10 iv	Is the site being monitored	In line with the responses to conditions 2 and 7, the site is being monitored in a responsive manner.
10 v	Commercial vehicles stored on site	Other than the storage of vehicles associated with the works being undertaken on site, it is the Local Planning Authorities understanding that no commercial vehicles are being stored on site. If the owners of the site wished to apply for the parking of commercial vehicles on site, this would be a matter for The Driver and Vehicle Standards Agency (DVSA) to ensure they are licensed to do so. The Highway Authority do not have any powers to deal with commercial vehicle licensing operation within a private site.
10 vi	Pumping water on site	The issue of pumping water on site has been brought to the attention of Severn Trent Water and the Canal and Rivers Trust. To date, no objections to this activity have been raised with the Council. If it is established that water is being taken from a private source, then this would be a civil matter between the owner and the operator on site. With regard to the disposal of water, this can occur in one of three main ways. In the first instance, water should ideally be allowed to soak away into the ground through natural infiltration. The Council is aware of previous instances of run-off onto the public highway and this has now been controlled. The third route would be for excess water to be drained through the shafts or into the canal. If any of this drainage should impact on the existing environment causing pollution then this would be a matter for the Councils Pollution officers, Environment Agency or Natural England. To date, no information has been received by the Planning Authority to indicate pollution has occurred.
10 vii	Weight limit on road	Whilst a 3 tonne mgw (maximum gross weight) exists on the bridge itself. There is no weight limit on the section of Winterley Lane from Daw End Lane/ Bosty Lane junction to the site entrance. Accordingly, any taxed vehicle which isn't overloaded can travel to the site from the site without breaching the weight control. It is recognised that there is a sign plate opposite the Royal Oak PH at the start of Winterley Lane though this refers to the weight restriction being 420 yards ahead. The sign plate that brings the restriction into effect lies approximately 20 yards further on beyond the site entrance. A second plate is positioned some 30 yards on the other side of the bridge.
10 viii	Tonnage allowed on site	There are no restrictions on the amount of material that may be accepted on site. Residential amenity is protected thorough the use of conditions on the working practices on site and the hours of work.

10 ix	EA views about the development	The Environment Agency have not raised an objection to the planning application and agreed to the issuing of a permit for the activities undertaken on site. On this basis, it is considered that the Environment Agency have no objection in principal to the works being undertaken.
10 x	Green Belt and housing potential	Despite the current temporary work on site having a noticeable impact on the appearance of the site, the land still lies within the Green Belt and once the site has been restored, the openness of the land should be re-established. Whilst the Council has no indication that the owners of the site are seeking to redevelop it for housing, such a proposal would prove difficult to support primarily due to the Green Belt designation.
10 xi	Extension of time application	If an application to extend the time limit for the restoration of the site is submitted, any recommendation will be taken to Planning Committee for consideration. Although unlawful works commenced on site prior to the discharge of conditions, the approved works took place from 30 th March 2015. Accordingly, the Local Planning Authority would expect the infilling works to cease before the end of March 2016.
10 xii	Hours of activity allowed on site	If the site is actively being operated outside of the times allowed by condition 4, officers can look at pursuing a Breach of Condition Notice. If information can be given about any works outside of the approved hours, officers can focus their inspections to these times. The conditions reads as follows: <i>No works, (including, land reclamation, stabilisation, preparation, and deliveries etc.), shall take place on any Sunday, Bank Holiday or Public Holiday*, and Site operating hours shall be 0700 to 1800 Monday to Friday and 0700 to 1300 Saturdays, with the material processing activities taking place between 0800 to 1600 Monday to Friday and 0800 to 1200 Saturdays only.</i> <i>(* Bank and Public holidays for this purpose shall be: Christmas Day; Boxing Day; New Year's Day; Good Friday; Easter Monday; May Day; Spring Bank Holiday Monday and August Bank Holiday Monday).</i>
10 xiii	EU grant funding	Any application for grant funding would have to be made by the applicant to the relevant funding body. This would be a private matter for the owners of the site and would lie outside of the planning framework.
10 xiv	Monthly reports to the Council	The site operators are not under a requirement to submit on-going monitoring reports to the Local Planning Authority. A condition to secure the submission of a regular monitoring would also be subject to challenge if pursued at the determination stage as such a condition would be unlikely to pass the tests in paragraph 204 of the NPPF especially in respect of the requirement for any conditions to be fairly and reasonably related in scale and kind to the development. The test of the suitability of such a condition would be a comparison to other civil engineering operations which are not encumbered by monitoring conditions.
10 xv	Increases in traffic	The volume of traffic using Winterley Lane as part of this development was considered during the determination of the application. Through this, it was considered the impacts on the highway were acceptable.

12.5 In summary, the LPA is satisfied with the current progress of development on site. It is recognized that the first phase of development was undertaken in advance of the conditions being discharged resulting in detriment to the surrounding environment and the need for enforcement action. This action addressed the harm arising. The more recent activities on site appear to have been undertaken in an appropriate manner comparable to other engineering operations in the Borough.

12.6 The LPA recognises that as a civil engineering operation, works on site can be disruptive hence the temporary nature of the approval. As winter approaches, it is also noted that the risks of disruption rise for example mud on the highway and to this end, greater use of the conditions to regulate the harm arising may be needed. Officers are prepared to make use of these conditions when necessary and will be working with the operatives to minimise any impact.

12.7 It is noted in the questions asked that the operators of the site have appeared to breach a number of conditions. Without specific details of such breaches, it has not proved possible to monitor for these instances. Officers will continue to keep track of the site and its operation and react where appropriate.