

UPDATE SHEET

PLANNING COMMITTEE – 2 JUNE 2021

**To be read in conjunction with the
Report of the Head of Planning and Infrastructure to Planning
Committee**

- (a) Additional information received after the publication of the main reports;**
- (b) Amendments to Conditions;**
- (c) Changes to Recommendations**

A1	20/00316/OUTM	Demolition of existing structures and the erection of new building to accommodate up to 78,967sqm of storage and distribution (Use Class B8) and ancillary office (Use Class B1) floorspace, with associated infrastructure including access, parking, servicing and landscaping Land at Netherfields Lane Sawley
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Ward Member Comments

- Questions need or demand for the development, having regard to existing vacant premises in the area
- If need is quantified and planning permission granted, a time limit should be imposed on the development of the site to confirm this need and to avoid more empty structures in the vicinity
- Policies S3 and Ec2(2) should be tightened up
- Impact of additional traffic on residents of Sawley Marina when turning right onto Tamworth Road
- Assurances should be provided that flood water redirected after the development will not impact upon wildlife or habitat
- Requests use of mature tree planting with raised bunds so as to shield the development most effectively
- No buildings should be erected higher than as indicated in the submitted illustrative viewpoints
- CCTV cameras on buildings could greatly reduce anti-social behaviour, such as motorbikes and fly tipping
- Emergency plan for flood evacuation should be put in place

Additional Third Party Representations

One further response has been received, submitted on behalf of the applicant in respect of a proposed employment development scheme to the southern side of the A50 (19/01496/OUTM, submitted by St Modwen Developments). The writer confirms that the response is a "comment" rather than an "objection", and can be summarised as follows:

- Concerns over the approach taken in respect of the assessment of the Netherfields Lane application by the District Council's flood risk consultants (who have provided advice in respect of both applications relating to the Netherfields Lane and St Modwen sites)
- Pleased to note the District Council's flood risk consultants support the site to the south of the A50 from a sequential test and flood risk perspective, but concerned over the approach taken in respect of the Netherfields Lane site and how this is translated into the Planning Committee report
- Not clear if the District Council's consultants consider the Netherfields Lane site acceptable from the sequential test perspective
- District Council's consultants should be asked to undertake a comparison between the Netherfields Lane and St Modwen sites in order to determine if one is sequentially preferable to the other
- St Modwen site is sequentially preferable to the Netherfields Lane site
- Netherfields Lane has a risk to life associated with it
- Approval would conflict with one of the tests referred to in the report in respect of Regulation 55 of the Conservation of Habitats and Species Regulations 2017 in that there would be a satisfactory alternative (i.e. the St Modwen site)

Applicant Comments

The applicant's agent comments as follows in respect of the third party comments referred to above:

- Both the St Modwen and the Netherfields Lane proposals lie entirely within Flood Zone 3 (with the exception of the land south of the railway line within the Netherfields Lane site which is not proposed for built development) and, as far as the Sequential Test is concerned, at a base starting point neither site is sequentially preferable
- Both the LLFA and the Environment Agency are comfortable with the Netherfields Lane proposals and have confirmed that they have no objection to the scheme which would not increase the risk of flooding elsewhere
- In any event, based on the planning policy comments within the Committee Report, this is not a situation where the sites are in competition with one another, and the granting of consent for one proposal would not necessarily remove the need / demand justification for the second – as such, the schemes should be dealt with on their own merits
- In terms of the representations made in respect of Regulation 55 of the Conservation of Habitats and Species Regulations 2017, the applicant's legal advisor comments that it is not expected that any works proposed to be undertaken would require a licence (and, if not, Regulation 55 is not even engaged)
- If Regulation 55 were to be engaged, however, application of the three tests set out in the Committee report is for the licensing authority to consider rather than the Local Planning Authority - when considering a planning application the Local Planning Authority is simply required to consider whether it is unlikely that a licence will be issued; given there is no objection by the County Ecologist, it is clear that it would not be unlikely that a licence, if needed, would be issued

In addition, the applicant advises as follows:

- CCTV is expected to form part of the site's security arrangements, and would be managed by a management company established to manage the site. If incidents of anti-social behaviour and fly-tipping continued once the development was in place, the developer would be able to make footage available to the Police, to the District Council's Environmental Protection team, and / or to the Environment Agency, as appropriate.
- Should planning permission be granted, the applicant intends to start work on preparing applications in respect of the discharge of any pre-commencement conditions immediately, and is in negotiations with various occupiers and detailed negotiations with one, with these negotiations being predicated on a quick delivery. As such, the applicant would be agreeable to shortened timescales for implementation and suggests, for example, the principle of submitting reserved matters applications for the landscaping and for the first phase of built development (i.e. the first unit on the site) within one year from receipt of planning permission (but would welcome discussions over precise details with officers post-Committee).

Officer Comments

In terms of the third party comments raised regarding the sequential test, the District Council's flood risk consultants note that their advice provided that the assessed sites set out by the applicants were discounted based on acceptable reasoning and the information available at that time, and that they were not aware of any other sites which should have been included within the assessment. As such, they were satisfied that the scheme was acceptable in sequential terms, and consider that the Planning Committee report accurately reflects their advice.

The applicant in respect of the St Modwen site suggests that the Local Planning Authority (and its consultants) should have also considered the St Modwen and Netherfields Lane sites against one another in order to determine if one is sequentially preferable to the other (in effect, including the two sites in each other's assessments under the sequential test). In this regard, it is noted that the alternative sites set out in the Netherfields Lane application submissions did not include the St Modwen site (nor, indeed, did the St Modwen application consider the Netherfields Lane one). However, it is noted that the MHCLG's Planning Practice Guidance advises that, when applying the sequential test, a pragmatic approach on the availability of alternatives should be taken; regardless of the two sites' potential suitability compared to one another, in this instance, it would seem at the present time that it is far from certain that the St Modwen site could be available (and within a reasonable period of time). On this basis, it would seem that, even if the St Modwen site could be shown to perform better in this regard, a refusal of the Netherfields Lane on the basis that an alternative site was reasonably available would be difficult to justify on appeal.

Insofar as the impacts on protected species are concerned, it is understood that this comment relates to bats. It is noted that the residual effect on bats identified in the Environmental Statement would be negligible at the local level. Natural England's guidance on European protected species and the planning process advises that the Local Planning Authority will be required (at the planning application stage) to consider the likelihood of a licence being granted and, in doing so, the three tests set out in the main report. A licence in respect of impacts on bats is generally required for activities such as capturing, killing, disturbing or injuring them; damaging or destroying their breeding or resting places; and obstructing access to their resting or sheltering places. In this instance, the principal impacts in respect of bats are anticipated to be on foraging habitat, so (and as indicated by the applicant's legal advisor) it may well be the case that a licence from Natural England would not be required. Regardless, however, in view of the County Ecologist's views on the application, it is considered that, if a licence were to be required, there would seem to be no particular reason at this time to suggest that it would not be granted.

It is noted that, in order to ensure the scheme was implemented promptly in the event that weight is attached to a demonstrated immediate need or demand for the development, the applicant would be agreeable to the imposition of shortened timescales in respect of implementation of the development, and has, for example, suggested shortening the period within which reserved matters applications for the first phase must be submitted to one year (as opposed to the "default" three year period). Precise details of any bespoke timescales for submission of reserved matters could be agreed by officers under delegated powers in the event that members resolve to grant permission; consideration would also need to be given to the period within which development commenced following approval of reserved matters (and which is normally specified as a two year period from the approval of the final reserved matters).

Other Matters

For the avoidance of doubt, it is recommended that the outline list of conditions be amended as set out in the recommendation below.

RECOMMENDATION: ADD CONDITION(S)

32 Details of emergency evacuation during flooding events