

UPDATE SHEET

PLANNING COMMITTEE – 9 February 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 19/01496/OUTM Development of up to 92,500 sq m GIA of storage and distribution units (B8), industrial units (B2) and light industrial units (B1c); service yards and parking areas; new vehicular accesses off Trent Lane/Station Road and Rycroft Road with associated earthworks, drainage and attenuation features and other associated works (outline – all matters reserved except for the principal means of vehicular access to the site).**
Land South of Junction 1 of the A50, Castle Donington.

Additional Information

Applicant Position

Following the publication of the Planning Committee agenda the applicant has contacted the District Council in respect of the following matters:

- They consider that the informal public open space (POS) being offered across the western part of the application site is significant (extending to some 11 hectares (25% of the site area)) and was introduced into the scheme as a result of the public consultation exercise where it was outlined that informal POS required enhancing in the area. As the proposed POS was provided as a direct response to the consultation exercise, they consider that considerable weight should be given to its provision in the overall determination of the application.
- A Counsel opinion has been provided by the applicant to outline that both this application and that at Netherfields Lane, Sawley (application reference 20/00316/OUTM) should be considered at the same Planning Committee.
- They request that the application be deferred from determination at the Planning Committee on the 9th February 2021 so as to allow the provision of further information which would relate to a material increase in the buffering to the southern site boundary and alternative options in terms of how the broader area would be profiled and landscaped so as to assist in enhancing the screening of the development. They consider such additional landscaping would address the reason for refusal of the application.
- The applicant has also advised that should the application be reported to the Planning Committee and it be refused then this would invite an immediate appeal and a resubmission of the application which would include the additional landscaping mitigation which would be proposed. The applicants consider that this would be a waste of resources in the circumstances that such a matter could be addressed as part of the current application. Given that the applicant at Netherfields Lane has been given an opportunity to resolve the sole outstanding issue of their application it is only reasonable that the applicant be given the same opportunity on the proposals at land south of Junction 1 of the A50.

Additional Representations

Two further third party representations to the application have been received with the comments raised summarised as follows:

- An investigation undertaken by the County Highways Authority in relation to heavy goods vehicle (HGV) movements on Rycroft Road (where a weight restriction is in force) identified 31 HGV movements during a week period in November 2020. Consequently, the report does not accurately consider the implications additional HGV movements associated with the development would have on the local roads, which would likely be higher than the 31 stated given that routes such as The Barroon and Hemington Hill were not considered. Such highways are not designed for HGV movements and damage has occurred to highway boundaries and grass verges as a result of such movements.
- The assessment should take into account human behaviour, i.e. HGV's not using the correct sat navs, ignoring signs or weight restrictions, or being lost, as that is what happens in reality.
- The visual impact of the development from The Barroon is profound with a full vista of the development visible from this point. Given the height of the buildings they would be visible from all directions and it will not be possible to screen the development as it is on low lying ground.
- The settlements of Castle Donington and Hemington are now surrounded by industrial development and the settlements need a respite from being encircled.
- Alternative sites for the development outside the District are not considered and they seems no reason for dismissing such sites (e.g. at Clifton or outside Derby) for this reason alone.
- The perception of driving past the development into Hemington and Castle Donington would be of a sprawling mass of industrial development and consequently the separation between the two settlements would be impacted on.
- The photomontages used by the applicant include photos of my enterprise, however the applicant has no involvement or influence on my enterprise and consequently they cannot rely on the presence of the planting as a basis of visually mitigating the development.
- There has been no consultation undertaken directly with me despite my property bordering the application site.
- The documentation in relation to drainage do not reference established drainage ditches which run south to north along the western edge of Hemington through my land and onwards into the application site. There is concern in respects of the impact of the development on such ditches and the potential flooding which may arise as water sits in these ditches.
- My land has not previously flooded to the extent that has been experienced in the past two years and this impacts on my harvestable stock as around 8% is stood in flood water. There is nothing within the documentation which would alleviate my concerns in respect of the potential impacts on flooding particularly given the amendments which would be undertaken as a result of the development. This development, combined with the East Midlands Gateway, will increase flood risk.
- The operation of my business relies on soil and water balance and if this is disturbed my business will be impacted on financially either through loss of income or additional expenditure to mitigate the impacts.

An additional representation from Lockington cum Hemington Parish Council has also been received which outlines the findings of the CHA investigation into HGV movements on Rycroft Road (as referred to above) and that such HGV movements are only likely to increase as a result of the development given that all traffic management solutions possible have been explored by the CHA. Given that

individual HGV driver behaviour cannot be controlled the existing situation would be worsened and impact on the amenity of the settlements as such this should be carefully assessed as part of the application.

Matters Raised by Members at the Technical Briefing

At the technical briefing on Wednesday 3rd February 2021 Members raised the following matters which required further consideration/clarification.

- It was requested that further discussion be undertaken with Leicestershire County Council Highways Authority in respect of HGV movements through the neighbouring settlements.
- It be specified what alterations would be made to the land levels on the site so as to form the plateaus for the development.
- It be outlined how the height of the units would compare to units in the area including those at East Midlands Gateway and the Marks and Spencer unit.

Officer Comment

In terms of the matters raised the following comments would be provided:

Applicant Position on POS and request for deferral

The provision of the informal public open space and its accessibility for the local community as a result of the development is acknowledged and welcomed as part of the overall development. It is, however, considered that the benefits of such informal POS would not outweigh the significant visual and landscape harm which arises as a result of the development.

In terms of Counsel's opinion provided by the applicant, this has been considered by the District Council's Legal Team and on the basis that there is 'demand' for both developments, and that both pass the flood risk sequential test, the District Council would not be acting unreasonably by determining the application in advance of making any future decision on the Netherfields Lane application.

In terms of the proposed landscaping changes now being offered by the applicant, so as to potentially address the reason for refusal, it is considered that, even at this late stage, it would be appropriate to allow for further details to be submitted by the applicant and for these to be subsequently considered by the District Council's Landscape Advisor before such time a decision is made on the application. Such an approach would be reasonable in light of landscape and visual impacts being the only reason for refusal. This approach would not be dissimilar to that afforded to the applicants of the proposed employment development at Netherfields Lane, Sawley who have been given further time to address an outstanding technical issue on their application. If the application reported on the agenda this evening is to be determined prior to such information being considered, then it is possible that the District Council would be seen to have acted unreasonably by an inspector at any subsequent appeal.

The refusal of the application would also result in a duplication of process. The applicant has made it clear that a revised application would be immediately submitted proposing the same form of development, but which would include the additional landscaping mitigation which the applicant wishes to be considered at this time.

In light of the above, and taking into account the guidance within the NPPF, it is considered that the most appropriate approach would be for the application to be deferred so as to allow the additional landscaping mitigation to be considered and the application re-reported to the Planning Committee for a decision once such information is assessed.

Additional Representations

The comments within the additional representations are acknowledged and insofar as the issues referred to are concerned, officers would comment as follows:

The issue associated with HGV through neighbouring settlements has been appropriately assessed in the Committee report. Whilst acknowledging the findings of the investigation undertaken by the County Highways Authority (CHA) in November 2020 in relation to HGV movements on Rycroft Road the CHA have been approached on this matter and have reaffirmed that they have no objections to the application on highway safety grounds. It is the case that the majority of the HGV vehicle movements are associated with units at the East Midlands Gateway (EMG) with it being known that substantial alterations were made to the highway network in and around the EMG which has complicated matters when users are trying to find that particular site (given that it is not readily signposted from the strategic highway network).

Notwithstanding this, this is an existing issue and is not a matter which the applicant would be required to address as part of their application. Taking into account the location of the application site adjacent to the strategic highway network (A50) and the design of the highway so as to prevent HGV movements towards Hemington and Lockington it is considered that the conclusions reached in the Committee report would not alter as a result of the CHA investigation. It remains the case that the enforcement of a weight restriction designated to a highway would be a matter for the police.

It is considered that Committee report has undertaken an appropriate assessment of alternative sites for the proposed development in line with the Environmental Impact Assessment (EIA) Regulations and NPPF. Specifically, the applicant wishes to utilise a site which is served by the A50/M1 corridor and this would not be the case with a site at Clifton or available sites at Derby as referred to in the representation.

The issue in respect of the landscape and visual impacts has been appropriately assessed in the Committee report and it is considered that an appropriate conclusion has been reached in this respect. It is also the case that the application has been appropriately assessed in relation to the impact on the physical and perceived separation between Castle Donington and Hemington (criteria (ii) of Policy S3 of the adopted Local Plan) where it is determined that the impact would not be contrary to both parts of criteria (ii) and consequently would not substantiate a reason for a refusal of the application in this respect.

Issues in relation to flood risk and surface water drainage have been appropriately considered by the Environment Agency (EA) and Lead Local Flood Authority (LLFA) who have raised no objections to the application subject to the imposition of conditions. Whilst the submitted documentation from the applicant may not specifically refer to drainage ditches which are not named it is the case that the EA and LLFA have access to their own information and consequently would have appropriately considered the impacts to all watercourse as a result of the

development. The EA and LLFA also raised no objections in respect of the impacts to water quality subject to the imposition of conditions.

In terms of the consultation process the application was publicised by the placement of site notices, the publication of a press notice in the Derby Evening Telegraph and direction of correspondence to immediate neighbours. The District Council does not hold records of land ownership and consequently could not undertake direct consultation with the adjoining business with the representation being from an address within the settlement of Hemington which is not adjacent to the application site. It is not a mandatory requirement of a planning application that an applicant undertake direct discussion with adjoining land or property owners and the third party would not be prejudiced by any decision made on the application given that they have provided a representation.

Matters Raised by Members at the Technical Briefing

The issue in relation to HGV movements is addressed above and in terms of the amendments to the ground levels the plateaus for Zones A and B would be 3.40 metres above the ground levels within the flood mitigation zone with those within Zones C and D being 2.40 metres above those within the flood mitigation zone.

In terms of a comparison in heights between the proposed units and those on other sites around the site these would be as follows:

The units constructed as part of the development would have the following plateau levels and heights:

Development Zone A Units – Plateau = 34 metres Above Ordnance Datum (AOD); Overall Height = 52 metres AOD (18 metres);

Development Zone B Units – Plateau = 34 metres AOD; Overall Height = 52 metres AOD (18 metres);

Development Zone C Units – Plateau = 33 metres AOD; Overall Height = 41 metres AOD (8 metres); and

Development Zone D Units – Plateau = 33 metres AOD; Overall Height = 48.5 metres AOD (15.5 metres).

The units constructed at the East Midlands Gateway, to the south-east of the site, have the following plateau levels and heights:

Unit 1 (Amazon) – Plateau = 70 metres AOD; Overall Height = 89.25 metres AOD (19.25 metres);

Unit 2 (XPO/Nestle) – Plateau = 71.98 metres AOD; Overall Height (at highest point) = 106.98 metres AOD (35 metres);

Unit 3 (Shop Direct) – Plateau = 72 metres AOD; Overall Height = 94.21 metres AOD (22.21 metres);

Unit 4 (Kuehne+Nagel) – Plateau = 74 metres AOD; Overall Height = 94.3 metres AOD (20.3 metres);

Unit 5 (Games Workshop) – Plateau = 67 metres AOD; Overall Height = 81.34 metres AOD (14.34 metres); and

Unit 12 (DHL) – Plateau = 66.5 metres AOD; Overall Height (at highest point) = 102.8 metres AOD (36.3 metres).

The Aldi distribution centre, to the north-east of the site, has a plateau level of 33.75 metres AOD and an overall height of 51.65 metres AOD (17.9 metres).

The Marks and Spencer distribution centre, to the south-west of the site, has a plateau level of 35 metres AOD and an overall height of 62.5 metres AOD (27.5 metres).

Officer Correction to Committee Report

On page 24 of the Committee report the reference to the “*Moderate Adverse’ impact at 5 of the viewpoints and receptors*” should state a “*Moderate Adverse’ to ‘Moderate Adverse/Minor Adverse’ impact at 5 of the viewpoints and receptors.*” This clarification is provided for the avoidance of doubt.

Conclusion

In light of the matters raised by the applicant, in respect of further information being submitted to address the reason for refusal, it is considered that the application should be deferred to allow such information to be submitted and subsequently assessed by the District Council’s Landscape Advisor.

RECOMMENDATION – DEFER DECISION ON THE APPLICATION.