



PLANNING AND DEVELOPMENT COMMITTEE AGENDA

Wednesday, 4 October 2023 at 6.00 pm in the Bridges Room - Civic Centre

From the Chief Executive, Sheena Ramsey

Item	Business
1	Apologies for Absence
2	Minutes The Committee is asked to approve as a correct record the minutes of the meeting held 6 th September 2023 (copy previously circulated).
3	Declarations of Interest Members to declare interests in any agenda items
4	Planning Applications (Pages 3 - 4) Report of Service Director Climate Change, Compliance, Planning & Transport
4i	No.1 - Land Opposite A.E.I Cables, Birtley, DH3 2TB (Pages 5 - 16)
4ii	No.2 - Land To West Of Long Rigg Road And South Of, J R Adams Newcastle Ltd, Unit 5, Hannington Works, NE16 3AS (Pages 17 - 34)
4iii	No.3 - Land To The North Of Team Valley Retail World , Junction Of Dukesway And Tenth Avenue West, Gateshead, NE11 0BD (Pages 35 - 52)
6	Enforcement Team Activity (Pages 53 - 54) Report of Service Director, Climate Change, Compliance, Planning & Transport
7	Enforcement Action (Pages 55 - 62) Report of Service Director, Climate Change, Compliance, Planning & Transport
8	Planning Enforcement Appeals (Pages 63 - 66) Report of Service Director, Climate Change, Compliance, Planning & Transport

9 Planning Appeals (Pages 67 - 92)

Report of Service Director, Climate Change, Compliance, Planning & Transport

10 Planning Obligations (Pages 93 - 94)

Report of Service Director, Climate Change, Compliance, Planning & Transport



PLANNING AND DEVELOPMENT
COMMITTEE
4 October 2023

TITLE OF REPORT: Planning applications for consideration

REPORT OF: Anneliese Hutchinson, Service Director,
Climate Change, Compliance, Planning and
Transport

Purpose of the Report

1. The Committee is requested to consider the attached schedule of miscellaneous planning applications, which are presented as follows:-

PART ONE:

Planning Applications
Applications for Express Consent under the Advertisement Regulations
Proposals for the Council's own development
Proposals for the development of land vested in the Council
Proposals upon which the Council's observations are sought
Any other items of planning control

PART TWO: FOR INFORMATION ONLY

Applications determined in accordance with the powers delegated under Part 3, Schedule 2 (delegations to managers), of the Council Constitution.

Recommendations

2. Recommendations are specified in the schedule.

The Human Rights Implications of the recommendations have been considered. Unless specified there are no implications that outweigh the material planning considerations.

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Committee Report

Application No:	DC/22/00265/FUL
Case Officer	Joanne Munton
Date Application Valid	20 May 2022
Applicant	AEI Cables
Site:	Land Opposite A.E.I. Cables Durham Road Birtley Central Birtley Gateshead DH3 2TB
Ward:	Birtley
Proposal:	Removal of containers and ceasing of all activities on site, and importing of a minimum of 1.15m depth of clean soil across the site (additional information received 08.08.2022)
Recommendation:	REFUSE
Application Type	Full Application

1.0 The Application:

1.1 DESCRIPTION OF SITE

The site is land west of Durham Road in Birtley, south of O'Brien demolition and north of the Motorpoint site. Rowletch Burn runs along the western boundary of the site.

1.2 The western parcel of land is vacant previously developed land. The eastern portion of the site is predominantly hardstanding used for storage purposes. At the time of officer site visit there were storage containers separating the two parcels of land.

1.3 Submitted levels plans indicate that the eastern part of the site is approximately 2.8m higher than the lowest point marked at the south west of the site.

1.4 The site is within the Birtley Main Employment Area.

1.5 DESCRIPTION OF APPLICATION

The application proposes the removal of containers and ceasing of all activities on site, and importing of a minimum of 1.15m depth of clean soil across the site.

1.6 Whilst the covering letter initially states that ground levels across the site would remain as existing, subsequently submitted levels plans show that the proposal would result in levels on site increasing by 1.15m, indicating that the clean soil would be placed on top of the existing land, rather than any existing

MSGP18 Noise

MSGP20 Land Contamination/Stability

MSGP24 Design Quality

MSGP29 Flood Risk Management

MSGP30 Water Quality/River Environments

MSGP31 Green Infrastructure/Flood Management

MSGP32 Maintain/Protect/Enhance Green Infrast.

MSGP36 Woodland, Trees and Hedgerows

MSGP37 Biodiversity and Geodiversity

5.0 Assessment of the Proposal:

5.1 The key considerations to be taken into account when assessing this planning application are the impact the proposal will have flood risk, ecology, highway safety, ground conditions and amenity.

5.2 STRATEGIC HOUSING LAND AVAILABILITY ASSESSMENT

The site was considered in terms of its suitability for housing by the full 2017 Strategic Housing Land Availability Assessment (SHLAA). Issues/concerns relating to ecology and flood risk were summarised in 2017 as follows:

...entire site supports ecological connectivity. A mosaic of priority habitats including an area of 'original' unimproved species rich grassland which has never been subject to any form of built development/disturbance. Supports a range of statutorily protected and priority species. Requirement for ecological mitigation/compensation is likely to have profound implications for the developable area of the site and/or viability.

High risk (flood zone 3a - 23% of the site) and medium risk (flood zone 2) of fluvial flooding from Rowletch Burn, would be difficult to pass Sequential Test. Ordinary watercourse. Significant risk from surface water flooding and within Critical Drainage Area and sewer flooding on Durham Road. Provides wetland habitat and acts as storage for excess surface water runoff. The Surface Water Management Plan recommends that this green space should be used to store excess surface water from the surrounding area.

5.3 The site is also considered in the 2023 SHLAA update and references clearance works on site:

...was of considerable ecological value but this has been lost due to recent works. Ecological connectivity. High risk (flood zone 3a - 23%) and medium risk (flood zone 2) of fluvial flooding from Rowletch Burn, would be difficult to

pass Sequential Test. Ordinary watercourse. Significant risk from surface water flooding and within Critical Drainage Area and sewer flooding on Durham Road. Previously acted as storage for excess surface water runoff. The Surface Water Management Plan recommends that this green space should be used to store excess surface water from the surrounding area. Not clear if this still applies pending investigation. Application to cover it with topsoil May 2022 [this current application under consideration] pending decision but significant work has been carried out. Traffic, noise levels and surrounding uses also potentially problematic. In allocated Main Employment Area.

5.4 Whilst this current planning application is not for housing but rather only removal of containers and importing of clean soil, the Council's strategic comments above provide very helpful context in terms of the awareness of issues on site and policy position.

5.5 FLOOD RISK

Paragraph 167 of the NPPF states:

When determining any planning applications, local planning authorities should ensure that flood risk is not increased elsewhere. Where appropriate, applications should be supported by a site-specific flood-risk assessment. Development should only be allowed in areas at risk of flooding where, in the light of this assessment (and the sequential and exception tests, as applicable) it can be demonstrated that:

(a) within the site, the most vulnerable development is located in areas of lowest flood risk, unless there are overriding reasons to prefer a different location;

(b) the development is appropriately flood resistant and resilient such that, in the event of a flood, it could be quickly brought back into use without significant refurbishment;

(c) it incorporates sustainable drainage systems, unless there is clear evidence that this would be inappropriate;

(d) any residual risk can be safely managed; and

(e) safe access and escape routes are included where appropriate, as part of an agreed emergency plan.

5.6 Additionally, paragraph 169 of the NPPF states:

Major developments should incorporate sustainable drainage systems unless there is clear evidence that this would be inappropriate. The systems used should:

(a) take account of advice from the lead local flood authority;

(b) have appropriate proposed minimum operational standards;

(c) have maintenance arrangements in place to ensure an acceptable standard of operation for the lifetime of the development; and

(d) where possible, provide multifunctional benefits.

5.7 The western part of the site is within flood zones 2 and 3, and the whole site is within the Local Authority defined critical drainage area. Rowletch Burn, an open watercourse, runs along the western boundary of the site.

5.8 The site is within the River Team catchment. The River Team is a failing water body under the Water Framework Directive. Supporting text in MSGP states that:

"it is important that new development within these catchments within 200m of a watercourse consider opportunities to improve river morphology, river water quality and the capacity of surface waters to support wildlife"

5.9 This specific site is referenced in policy MSGP31, which requires protection from incompatible development, a design to combine safeguarding land for flood management with green infrastructure enhancements benefiting biodiversity, water quality and landscape and, where appropriate, provision of new public access.

5.10 A Flood Risk Assessment (FRA) document has been submitted with the application. The Environment Agency, a statutory consultee, have objected to the proposal, commenting that the submitted FRA does not comply with the requirements for site-specific flood risk assessments, as set out in paragraphs 20 to 21 of the Flood Risk and Coastal Change Planning Practice Guidance (PPG) and its site-specific flood risk assessment checklist.

5.11 The Environment Agency therefore comment that the FRA does not adequately assess the flood risks posed by the development, and in particular, the FRA fails to take the impacts of climate change into account, specifically:

- Different climate change allowances have been used to assess future flood risk than those advised in 'Flood risk assessments: climate change allowances', without adequate justification. The Tyne Management Catchment peak river flow allowances should be used at central allowance.

- Flood risk mitigation measures to address flood risk for the lifetime of the development included in the design are inadequate because they would not make the development resilient to the flood levels for 1 in 100 event plus climate change. As such, the development proposes inadequate flood storage compensation based on climate change allowance

5.12 In addition to the objection from the Environment Agency, the Lead Local Flood Authority (LLFA) have also raised concerns with the application:

- 5.13 NPPF paragraph 167 above refers to sequential and exception tests as potentially being required to justify appropriateness of development in a particular location, in relation to flood risk. Paragraph 161-162 of the NPPF set out the approach in relation to sequential tests and when these would be needed:

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All plans should apply a sequential, risk-based approach to the location of development - taking into account all sources of flood risk and the current and future impacts of climate change - so as to avoid, where possible, flood risk to people and property. They should do this, and manage any residual risk, by:

(a) applying the sequential test and then, if necessary, the exception test as set out below;

(b) safeguarding land from development that is required, or likely to be required, for current or future flood management;

(c) using opportunities provided by new development and improvements in green and other infrastructure to reduce the causes and impacts of flooding, (making as much use as possible of natural flood management techniques as part of an integrated approach to flood risk management); and

(d) where climate change is expected to increase flood risk so that some existing development may not be sustainable in the long-term, seeking opportunities to relocate development, including housing, to more sustainable locations.

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The aim of the sequential test is to steer new development to areas with the lowest risk of flooding from any source. Development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. The strategic flood risk assessment will provide the basis for applying this test. The sequential approach should be used in areas known to be at risk now or in the future from any form of flooding.

- 5.14 The above SHLAA summary and MSGP allocations and policies take these paragraphs into account.
- 5.15 The application is for land raising/engineering operations and it is likely that the conclusion of a sequential test applied for just the land raising would be to consider the test as passed given that the same works (to provide clean soil on a certain site) could not be undertaken at another 'reasonably available' site.
- 5.16 Whilst documents submitted with the application refer to the proposed works as enabling potential future residential use of the site, this formal application is only for engineering operations and the vulnerability of a use on site that could

be potentially subject of a future planning application is not relevant in this case. Such an application would be assessed on its own merits.

- 5.17 However, in relation to the flood risk posed by the proposed works in this application, the site is specifically identified as a flood management area under MSGP31 (cited above) and part of the western portion of the site (along Rowletch Burn) is allocated as Strategic Green Infrastructure under MSGP32, which states:

Development will be required to maintain and protect existing green infrastructure assets and where appropriate contribute towards the delivery of new and/or enhanced green infrastructure assets by:

1) Ensuring development proposals which could adversely affect green infrastructure assets demonstrate:

a. that alternative provision is made which maintains or creates new green infrastructure assets; or
b. the benefits would outweigh any harm.

3) Contributing to off-site provision where on-site provision of green infrastructure is not possible.

4) Prioritising improvements within Opportunity Areas in the Strategic Green Infrastructure Network, as identified on the Policies Map, and addressing gaps in the network

- 5.18 In terms of the above policy requirements, the western part of the site has recently been cleared of landscaping (the eastern part being mainly hardstanding) and this application does not propose any measures to create new green infrastructure. That said, given the proposal is for land raising and no further development on site, if the application was recommended to be granted, this could be subject to conditions for the provision of green infrastructure assets on site.

- 5.19 Further, as above, policy MSGP31 requires protection of this specific site (amongst others) from incompatible development, and the main message in MSGP31 is that if it can be demonstrated that development on the site is compatible, then it must be designed to combine safeguarding land for flood management with green infrastructure enhancements benefiting biodiversity, water quality and landscape and, where appropriate, providing new public access.

- 5.20 The details submitted with the proposal do not address the compatibility of the proposed development, nor the requirement for a combined design approach of flood management with green infrastructure enhancements specified in MSGP31.

- 5.21 In terms of the detail that has been provided, the submitted FRA assumes a flood level on the basis of the lowest ground level along the western site

boundary. However, the land beyond the western site boundary continues to rise as part of the railway embankment. Therefore, the determination of flood level is not appropriate/adequate and further assessment would be required.

- 5.22 Compensatory flood plain capacity would need to be assessed on a level for level basis to demonstrate that at each level the volume lost by development proposals is re-provided. This approach has not been followed in the FRA, which simply provides an overall volume comparison. The proposed site levels plan would need to be updated to reflect where compensatory floodplain capacity would be provided and to better describe level changes along boundaries. The FRA refers to climate change allowance for river flow from 2016, but these were updated by the Environment Agency in 2021. The risk of surface water flooding at the site location is also inadequate, and a more detailed assessment would be required as surface water flood velocity maps show surface water run-on to the site from offsite sources.
- 5.23 Additionally, the proposal includes adjustment of ground levels but there are no details of new formal drainage in the submission documents. The FRA refers to a future sewer diversion but states that would be part of a different future planning application. The proposed change in ground levels would directly affect how surface water runoff is routed across the site, and the application is also for major development based on site area. As such, as in the above policy requirements, the development would need to make provision for SuDS.
- 5.24 The management of surface water is intrinsically related to the risk of flooding at the site. However, the use of SuDS and any other mitigation measures to account for the change in surface water runoff patterns within the site, and for the changes to surface water overland flows from offsite sources crossing the site resulting from the changes in ground levels, is not adequately addressed in the submission.
- 5.25 As such, it is considered that the application does not adequately assess the flood risks posed by the development and does not demonstrate that flood risk would not be increased elsewhere as a result of the development. The proposal also fails to demonstrate compliance with the requirements of policy MSGP31. Therefore, the application is recommended to be refused for these reasons.
- 5.26 Additionally, in the presence of an objection from the Environment Agency, which has not been resolved, if the LPA were to recommend granting the planning application, under the Town and Country Planning (Consultation) (England) Direction 2021, there would need to be consultation with the Secretary of State before the application could be determined.
- 5.27 **ECOLOGY**
The site is not located within or adjacent a designated nature conservation site or wildlife corridor. The site and the adjoining Rowletch Burn and East Coast Main Line are likely to support ecological connectivity. Subject to the implementation of appropriate measures, especially through the requirements

of policies MSGP31 and MSGP32, the proposed development would be unlikely to have a significant adverse impact on designated sites and ecological connectivity.

- 5.28 However, habitats within, immediately adjacent and in close proximity of the site, including the Rowletch Burn located along the western boundary, have the potential to support statutorily protected and priority/notable species (S41 NERC Act Species of principal importance and Durham Biodiversity Action Plan priority species). The adjacent East Coast Main Line should not be viewed as being impermeable to the movement of species and is likely, in some respects, to support ecological connectivity.
- 5.29 Until recently and prior to the undertaking of comprehensive vegetation clearance and regrading works, the majority of the site, approx. 3ha extending eastwards from the Rowletch Burn, is known to have supported an extensive area of high-quality habitat including species rich grassland, wetland and scattered scrub (S41 NERC Habitats of principal importance and Durham Biodiversity Action Plan priority habitats).
- 5.30 Current National Planning Guidance states:
- The existing biodiversity value of a development site will need to be assessed at the point that planning permission is applied for. It may also be relevant to consider whether any deliberate harm to this biodiversity value has taken place in the recent past, and if so whether there are grounds for this to be discounted in assessing the underlying value of the site (and so whether a proposal would achieve a genuine gain).*
- [Natural Environment: Paragraph 026 Reference ID 8-026-20190721]
- 5.31 This is consistent with British Standards BS8683 and BS42020:2013.
- 5.32 Aerial data shows comprehensive clearance works to have taken place between June 2019 and February 2020 and for subsequent continued clearance of the site.
- 5.33 The proposal would need to clearly demonstrate genuine biodiversity net gain. In this case, in accordance with current guidance and standards, the proposal would need to be based on the condition of the site before it was cleared.
- 5.34 A Preliminary Ecological Appraisal (January 2021) has been submitted with the application. The Appraisal itself refers to the site as being recently cleared and recommends landscape planting, but the submitted details do not address this further. No detail relating to a biodiversity net gain assessment has been submitted.
- 5.35 MSGP31 cited above also requires for this site that development is designed to combine safeguarding land for flood management with green infrastructure enhancements benefiting biodiversity, water quality and landscape.

- 5.36 It is considered that the proposal fundamentally fails to assess and adequately address the ecological impact of the works on site, fails to demonstrate that the proposal would deliver genuine biodiversity net gain, and fails to demonstrate compliance with the requirements of MSGP31.
- 5.37 This is contrary to the aims and requirements of the NPPF and policies CS18, MSGP31, MSGP36 and MSGP37 of the Local Plan, and the application is recommended to be refused for this reason.
- 5.38 **HIGHWAY SAFETY**
The application site is located with access onto Durham Road and proposes the importation of a significant amount of soil. The application does not include specific information in respect of movements associated with the importation, including the period of time the import would occur over, where the material is likely to come from (haul routes), the assessment of potential impacts on the local network and measures to ensure debris is not transferred onto the highway.
- 5.39 Whilst in some cases these details could be required by planning conditions, it is considered that in this case, given the amount of material and associated movements that would be required to import this, this detail would need to be provided as part of the application. This would be to allow officers to be able to fully assess the potential impact on the public highway and the necessity, appropriateness and proportionality of any conditions required if the application was recommended to be granted.
- 5.40 As such, it is considered that insufficient information has been submitted with the application to allow officers to be satisfied that the proposal would not cause unacceptable harm to highway safety, contrary to the NPPF and policies CS13, MSGP14 and MSGP15 of the Local Plan.
- 5.41 **GROUND CONDITIONS**
The site is located on potentially contaminated land based on previous historic use. Reports relating to an intrusive site investigation have been submitted with the application and whilst the proposal is for 1.15m of clean soil on the site, the submitted information does not include details of a specific remediation strategy. As such, if the application was recommended to be granted, conditions would need to be imposed to require final details of a remediation strategy and verification of the effectiveness of the strategy.
- 5.42 Part of the site is within a Coal Authority defined high risk area and the Coal Authority have commented that whilst a Phase II Geo-Environmental report has been submitted in support of the planning application, which correctly identifies that a coal seam outcrop of workable thickness is present within the site, it does not provide a detailed assessment of the potential risk posed by possible unrecorded mine workings associated with this seam.
- 5.43 However, the proposal would entail the cessation of all existing activities on site and the importation of soil. No buildings or a new use of the site is proposed. On this basis, the Coal Authority do not consider that further

information is required in this case, and instead recommend that if the application is granted, an informative be attached to the decision notice.

5.44 Subject to conditions, the proposal would comply with the aims and requirements of the NPPF and policies CS14 and MSGP20 of the Local Plan.

5.45 **AMENITY**

The nature of the site is industrial, and it is considered that the proposal to remove containers and place clean soil on the land would not result in an unacceptable impact on visual or residential amenity.

5.46 If the application was recommended to be granted, a condition could control the hours of works.

5.47 Subject to condition, the proposal would comply with the aims and requirements of the NPPF and policies CS14, CS15, MSGP17, MSGP18 and MSGP24 of the Local Plan.

6.0 CONCLUSION

6.1 Taking all the relevant issues into account it is considered that the proposal would result in an unacceptable impact on flood risk and ecology, and would not deliver biodiversity net gain. It is also considered that insufficient information has been submitted with the application to allow officers to be satisfied that the proposal would not cause unacceptable harm to highway safety. Therefore, it is considered that the application would not comply with the NPPF and policies CS13, CS17, CS18, MSGP14, MSGP15, MSGP29, MSGP30, MSGP31, MSGP36 and MSGP37.

7.0 Recommendation:

That permission be REFUSED for the following reason(s) and that the Service Director of Climate Change, Compliance, Planning and Transport be authorised to add, vary and amend the refusal reasons as necessary:

1

The application does not adequately assess the flood risks posed by the development and does not demonstrate that flood risk would not be increased elsewhere as a result of the development. The proposal for major development does not incorporate sustainable drainage systems and there is no clear evidence submitted with the application to demonstrate that this would be inappropriate. The proposal also does not clearly demonstrate that the works would be compatible development, and is not designed to combine safeguarding land for flood management with green infrastructure enhancements benefiting biodiversity, water quality and landscape, and would not provide new public access. This is contrary to the National Planning Policy Framework, and policies CS17, MSGP29, MSGP30 and MSGP31 of the Local Plan.

Committee Report

Application No:	DC/23/00225/FUL
Case Officer	David Morton
Date Application Valid	30 March 2023
Applicant Site:	J R Adams Transport Land To West Of Long Rigg Road And South Of J R Adams Newcastle Ltd Unit 5 Hannington Works Long Rigg Swalwell NE16 3AS
Ward:	Whickham North
Proposal:	Erection of a building for storage and distribution use (Use Class B8) with associated car parking and office welfare building (amended 27/07/23).
Recommendation:	GRANT
Application Type	Full Application

1.0 The Application:

1.1 DESCRIPTION OF THE SITE

The application site ('the Site') is located within Swalwell, Gateshead. The application site comprises of an existing storage and distribution yard and has been in this use for several years (B8 Use). The application site covers an area of approximately 0.95Ha.

1.2 The application site currently contains a large area of hardstanding and several existing portacabin buildings. Access to the site is achieved via the two existing access points on the northern boundary of the application site. Boundary treatments of the application site comprise of existing heras fencing and mesh security fencing.

1.3 The site is bound by Long Rigg Road to the north.

1.4 To the immediate east is an area of land and hardstanding within the ownership of the Applicant, within storage and distribution use (B8 Use).

1.5 To the south are existing trees and pedestrian footpaths along the River Derwent.

1.6 To the west is storage and distribution land (Use Class B8), within the ownership of the Applicant.

1.7 The site is located immediately adjacent to the Tidal River Derwent Local Wildlife Site (LWS) along the site's northern, western and southern boundaries.

The site is located within a designated Wildlife Corridor and within an Opportunity Area for Strategic Green Infrastructure.

1.8 DESCRIPTION OF THE APPLICATION

The application seeks full planning permission for the construction of a storage and distribution facility along with associated car parking and a welfare/office building on the existing site (Use Class B8). Currently, the site is within storage and distribution use and is actively used for storing pallets and materials (Use Class B8).

1.9 The proposed structure will be constructed primarily using concrete blockwork and feature profiled corrugated iron sheeting for the roofing and external walls. The building will include a steel-faced personnel door and a roller shutter door. Additionally, the site welfare/office building will incorporate uPVC windows.

1.10 Vehicular access to the site will be facilitated through a single existing access point, connecting to Long Rigg Road. Furthermore, a separate cycle and pedestrian access point is planned for the southern side of the site, linking to the existing cycle network which runs along the river's edge just outside of the site.

1.11 The following documents have been submitted by the applicant in support of the application:

- Arboricultural Impact Assessment;
- Ecology Appraisal (including Net Gains Assessment);
- Flood Risk and Drainage Assessment;
- CIL Form
- Phase I Contaminated Land Risk Assessment; and
- Planning Statement.

1.12 PLANNING HISTORY

The relevant planning history of the application site summarised as follows;

- 992/93 - Change of use of former transport business site to storage of re-useable industrial materials. Refused; November 1993.

2.0 Consultation Responses:

Marine Management Organisation	No objection.
Environment Agency	No objection.
Northern Gas Networks	No objection.
National Highways	No objection.
Northumbrian Water	No objection subject to condition(s).
Environment Agency	No objection.

Northumbria Police	No objection.
Tyne and Wear Fire and Rescue	No objection.
Natural England	No objection.

3.0 Representations:

- 3.1 Neighbour notifications were carried out in accordance with the formal procedures introduced in the Town and Country Planning (Development Management Procedure) Order 2015. Publicity has been carried out in the form of letters, a site notice and press notice. No representations have been received.

4.0 Policies:

NPPF National Planning Policy Framework

NPPG National Planning Practice Guidance

AOC2 Metrogreen

CS6 Employment Land

CS14 Wellbeing and Health

CS15 Place Making

CS18 Green Infrastructure/Natural Environment

MSGP15 Transport Aspects of Design of Dev

MSGP17 Residential Amenity

MSGP20 Land Contamination/Stability

MSGP24 Design Quality

MSGP29 Flood Risk Management

MSGP36 Woodland, Trees and Hedgerows

MSGP37 Biodiversity and Geodiversity

GPGSPD Gateshead Placemaking Guide SPG

5.0 Assessment:

- 5.1 The main planning issues in this case are the principle of development and the impact on design, amenity, highways, flood risk, contaminated land, ecology, CIL as well as other any material planning considerations.
- 5.2 PRINCIPLE OF THE DEVELOPMENT
- 5.3 Employment
The existing use of the site falls under storage and distribution (Use Class B8). The proposed development includes a storage and distribution building (Use Class B8) along with associated car parking and an office building. While the local plan does not specifically allocate the site for employment purposes, it aligns with the current B8 use of the site. Furthermore, the proposed office use is deemed ancillary to the primary B8 use.
- 5.4 Therefore, it is concluded that the proposal adheres to the requirements outlined in Policy CS6 of the Local Plan.
- 5.5 MetroGreen
The site falls within the MetroGreen Area of Change, as per Local Plan Policy AOC2. The Council's vision for MetroGreen envisions a sustainable community encompassing homes, recreational facilities, green spaces, transportation improvements, and enhancements to water infrastructure.
- 5.6 Policy AOC2.3 states that proposals submitted before the AAP (Area Action Plan) must demonstrate their alignment with, and contribution to, the broader development objectives of the area, considering relevant supporting evidence.
- 5.7 The preferred spatial option designates the application site as 'white land,' signifying that it's unsuitable for residential development as a result of landowner feedback. On this basis, the proposal is deemed to complement rather than hinder the coordinated phased approach of the wider MetroGreen area, aligning with policy AOC2.
- 5.8 DESIGN
Policy CS15 of the CSUCP places a strong emphasis on development contributing to high-quality and sustainable design, aligning with the unique character and local distinctiveness of the area. Additionally, Policy MSGP24 of MSGP reinforces this objective.
- 5.9 The design and layout of the proposed building are closely tied to its intended function, and it is believed that both the building's design and its overall layout, including the proposed landscaping, are appropriate within the context of the surrounding area.
- 5.10 Taking into account the considerations mentioned above and subject to planning conditions regarding final material choices (Conditions 3 and 4) the development is considered to be acceptable in design/visual amenity terms.
- 5.11 It is considered that the application would deliver a well-considered design that would fully accord with the aims and requirements of the NPPF, Policy CS15

and MSGP24 of the Local Plan for Gateshead and the Gateshead Placemaking SPD.

5.12 HIGHWAYS

While the proposed site usage remains unchanged, the development entails the construction of a building featuring office space and meeting rooms, which is expected to result in increased traffic movements.

5.13 Although the rise in traffic is would be limited, it is necessary for the development to promote sustainable transport options, including access to the cycle route along the River Derwent. Specifics regarding access, gate operations, and the final design and construction must be addressed through planning conditions. Additionally, the development should incorporate secure cycle storage, changing facilities, and lockers for staff.

5.14 The introduction of pedestrian/cycle access and a single vehicular entry point is regarded as favourable modifications to the proposal and constitutes an acceptable means of access. However, it's necessary to remove the easternmost existing vehicular access point.

5.15 In terms of car parking, the provision of 16no. parking spaces is high, however it aligns with the need to reduce indiscriminate on-street parking within the area. Recommendations also include the incorporation of electric vehicle charging points, with details to be finalised through planning conditions.

5.16 In summary, the revised proposals are deemed acceptable, but several aspects need to be controlled through planning conditions, including:

- Final details of the cycle link, encompassing surface materials, gate specifications, access control measures, and an implementation timeline (Conditions 5 and 6).
- Final details and specifications for cycle storage and facilities for staff cyclists within the building, such as showers, changing rooms, and lockers (Conditions 7 and 8).
- Final details of electric vehicle charging facilities (Conditions 9 and 10).
- Submission of a timetable for the closure of the most eastern access (Conditions 29 and 30).

5.17 Subject to the conditions set out above, the development is considered to comply with the requirements of NPPF and Policies CS13 and MSGP15 of the Local Plan for Gateshead.

5.18 AMENITY

The application site is situated within a purely commercial area, absent of any sensitive noise receptors. While there are other commercial operations nearby, it is determined that neither the physical characteristics of the development nor its operational aspects would result in an unacceptable level of impact on neighbouring businesses. However, it is acknowledged that there might be some impact during the construction phase. Consequently, it is deemed

necessary to impose conditions that require the submission of a construction management plan (CMP) (Conditions 11 and 12).

5.19 Based on the above assessment, it is considered that the development is acceptable from an amenity point of view and accords with the aims and objectives of the NPPF, Policies CS14 and MSGP17 of the Local Plan for Gateshead.

5.20 GROUND CONDITIONS

The site has undergone assessment and inspection as part of the Council's Contaminated Land Strategy and is located on land potentially affected by historical contamination from past use. Consequently, a preliminary risk assessment has been submitted as part of the application. The conclusions drawn in this assessment are considered reasonable and proportionate, and subject to specific conditions (Conditions 13 to 16), the development is deemed acceptable in terms of contaminated land considerations.

5.21 Subject to the above conditions, the development is considered to comply with the requirements of Policies CS14 and MSGP20 of the Local Plan for Gateshead.

5.22 FLOOD RISK AND DRAINAGE

The application includes a flood risk and drainage assessment, as required by Policies CS17 and MSGP40 of the Local Plan for Gateshead. This assessment adequately considers various forms of flooding and adheres to the drainage hierarchy, taking water quality into account. While the overall drainage design is deemed acceptable in principle, specific final details will need to be provided, as outlined in conditions (Conditions 17 and 20).

5.23 Subject to the conditions set out above, it is considered that the proposal would comply with the aims and requirements of Policies CS17 and MSGP29 of the Local Plan for Gateshead.

5.24 ECOLOGY

The initial assessment of ecology information acknowledged proposed measures to mitigate potential harm to protected species and invasive plant spread. These measures encompassed precautionary method statements, pre-construction surveys, and bat-friendly lighting. However, it revealed a lack of data confirming measurable net gains for biodiversity, notably concerning riparian habitat enhancement along the River Derwent.

5.25 The BNG Assessment (as originally submitted) didn't employ the watercourse metric or alternative valuation methods for riparian habitats, nor did it explore opportunities to enhance river-adjacent woodlands. However, an updated BNG Assessment verified baseline biodiversity values for on-site and off-site habitats, projecting a 16.26% increase in Habitat units and an 82.07% boost in Hedgerow units, complying with trading rules. The proposal for habitat retention, enhancement, and creation is viewed as suitable, realistic, and aligned with the mitigation hierarchy, contingent upon an appropriate landscaping, management, and maintenance plan.

5.26 Although the watercourse metric was not used, the submission included acceptable proposals for enhancing existing woodlands within 10 meters of the watercourse. These proposals involve actions like removing dumped materials, replacing non-native species with native ones, and addressing fencing issues damaging trees along the western boundary.

5.27 In light of the provided information and the assessment, it is advisable to secure the following measures through planning conditions:

- Construction Environmental Management Plan (Conditions 21 and 22).
- Ecological Lighting Design Strategy (Conditions 23 and 24).
- Soft Landscaping/Habitat Creation/Enhancement Scheme (Conditions 25 and 26).
- Ecological and Landscape Management, Maintenance, and Monitoring Plan (Conditions 27 and 28).

5.28 Subject to the above conditions, it is considered that the development complies with the aims and requirements of the NPPF and Policies CS18, MSGP36 and MSGP37 of the Local Plan for Gateshead.

5.29 COMMUNITY INFRASTRUCTURE LEVY

On 1st January 2017 Gateshead Council became a Community Infrastructure Levy (CIL) Charging Authority. This application has been assessed against the Council's CIL charging schedule and the development is not chargeable development.

6.0 CONCLUSION

6.1 The proposed development would result in the redevelopment of previously developed land and is considered to fully comply with the aims and objectives of the NPPF, and the relevant policies of the Local Plan for Gateshead.

7.0 Recommendation:

That permission be GRANTED subject to the following condition(s) and that the Service Director of Climate Change, Compliance, Planning and Transport be authorised to add, vary and amend the planning conditions as necessary

1

The development shall be carried out in complete accordance with the approved plan(s) as detailed below -

0002985-1111-Proposed Site Plan-P09

0002985-1120-Proposed Landscaping Plan-P09

0002985-1110-P02-Proposed Floor Plan & Roof Plan-P02

0002985-1110-Proposed Floor Plans-P04

0002985-1150-Proposed Elevations-P05

7102 Swalwell BNG R03

JCC22_185_C_01_01_Flood Risk Assessment

JCC22_185_C_02_03_Drainage Strategy

Tree Survey - Arboricultural Implications Assessment

Any material change to the approved plans will require a formal planning application to vary this condition and any non-material change to the plans will require the submission of details and the agreement in writing by the Local Planning Authority prior to any non-material change being made.

Reason

In order to ensure that the development is carried out in complete accordance with the approved plans and any material and non-material alterations to the scheme are properly considered.

2

The development to which this permission relates must be commenced not later than 3 years from the date of this permission.

Reason

To comply with section 91 of the Town and Country Planning Act 1990 as amended by section 51 of the Planning and Compulsory Purchase Act 2004.

3

The development hereby approved shall not progress above damp proof course until an external materials schedule has been submitted to and approved in writing by the Local Planning Authority and (where requested) samples of the materials, colours and finishes to be used on the external surfaces have been made available for inspection on site and subsequently approved in writing by the Local Planning Authority.

Reason

To safeguard the visual amenities of the area in accordance with the NPPF, policies CS15 and MSGP24 of the Local Plan for Gateshead, and the Gateshead Placemaking SPD.

4

The development hereby approved shall be undertaken in accordance with the materials schedule approved at condition 4.

Reason

To safeguard the visual amenities of the area in accordance with the NPPF, policies CS15 and MSGP24 of the Local Plan for Gateshead, and the Gateshead Placemaking SPD.

5

Notwithstanding the approved plans, the development hereby approved shall not be occupied until the final details of the proposed cycle link, including surface materials, gate specifications, access control measures, and an implementation timeline have been submitted to and approved in writing by the Local Planning Authority.

Reason

In the interests of sustainable travel and in order to accord with NPPF and policies CS13 and MSGP15 of the Local Plan for Gateshead.

6

The cycle access approved as part of Condition 5 shall be completed in full accordance with the approved details and timetable for implementation, and shall be retained in accordance with the approved details.

Reason

In the interests of sustainable travel and in order to accord with NPPF and policies CS13 and MSGP15 of the Local Plan for Gateshead.

7

Notwithstanding the approved plans, the development hereby approved shall not be occupied until the final details, including a timetable for implementation, of the proposed cycle storage and facilities for staff cyclists within the building i.e. showers, changing rooms, and lockers have been submitted to and approved in writing by the Local Planning Authority.

Reason

In the interests of sustainable travel and in order to accord with NPPF and policies CS13 and MSGP15 of the Local Plan for Gateshead.

8

The cycle storage and cycle facilities approved as part of Condition 7 shall be completed in full accordance with the approved details and timetable for implementation and shall be retained in accordance with the approved details.

Reason

In the interests of sustainable travel and in order to accord with NPPF and policies CS13 and MSGP15 of the Local Plan for Gateshead.

9

Notwithstanding the approved plans, the development hereby approved shall not be occupied until the final details of the proposed electric vehicle charging facilities, including passive infrastructure and a timetable for implementation, have been submitted to and approved in writing by the Local Planning Authority.

Reason

In the interests of sustainable travel and in order to accord with NPPF and policies CS13 and MSGP15 of the Local Plan for Gateshead.

10

The electric vehicle charging facilities approved as part of Condition 9 shall be completed in full accordance with the approved details and

timetable for implementation and shall be retained in accordance with the approved details.

Reason

In the interests of sustainable travel and in order to accord with NPPF and policies CS13 and MSGP15 of the Local Plan for Gateshead.

11

No development (including demolition) shall commence until a Construction Management Plan (DCMP) has been submitted to and approved in writing by the Local Planning Authority.

The CMP shall include:

- a) a dust and air quality management plan
- b) a noise and vibration management plan
- c) contractor parking
- d) method(s) for limiting debris/dust spill on the highway

All external works and ancillary operations in connection with the demolition and/or construction of the development, including deliveries to the site, shall be carried out only between 0800 hours and 1800 hours on Mondays to Saturdays and at no time on Sundays, Bank Holidays or Public Holidays, unless otherwise approved in writing by the Local Planning Authority.

Any temporary alteration to the working hours set out in this condition shall be submitted as part of the DCMP and approved in writing by the Local Planning Authority.

Reason

In order to avoid nuisance to the occupiers of adjacent properties during the demolition and construction phases of the development in accordance with the NPPF and policies CS14 and MSGP17 of the Local Plan for Gateshead.

Reason for Pre-commencement Condition

This pre commencement condition is required to satisfy the Local Planning Authority that the demolition and construction phases of the development can be carried out in a manner which minimises nuisance to surrounding residents and businesses. This information is fundamental to the development and requires approval prior to development starting on the site as the commencement of demolition and construction works and the manner in which they are undertaken could affect adjacent occupiers.

12

The development shall be implemented in accordance with the Demolition and Construction Management Plan measures approved at condition 11.

Reason

In order to avoid nuisance to the occupiers of adjacent properties during the demolition and construction phases of the development in accordance with the NPPF and policies CS14 and MSGP17 of the Local Plan for Gateshead.

13

Prior to the commencement of development a Site Investigation with a Phase II Detailed Risk Assessment specific to the development hereby approved shall be submitted to and approved in writing by the Local Planning Authority. Where required the Assessment shall include measures and timescales for Remediation, Monitoring and Verification Reports.

Reason

To ensure that any risks from land contamination are minimised in accordance with the NPPF and policies CS14 and MSGP20 of the Local Plan for Gateshead.

Reason For Pre Commencement Condition

This pre commencement condition is required as it may not be possible to carry out the site investigations works after development has commenced.

14

Prior to the commencement of development hereby approved, where remediation is identified under condition 13 a detailed Remediation Strategy to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural environment shall be submitted to and approved in writing by the Local Planning Authority.

The Remediation Strategy (including timescales for implementation) shall detail objectives, methodology and procedures of the proposed remediation works.

Reason

To ensure that any risks from land contamination are minimised in accordance with the NPPF and policies CS14 and MSGP20 of the Local Plan for Gateshead.

Reason For Pre Commencement Condition

This pre commencement condition is required as it may not be possible to carry out the site investigations and remediation works after development has commenced.

15

The remediation works detailed in the Remediation Strategy approved under Condition shall be wholly undertaken within the timescales set out within the approved strategy.

Reason

To ensure that any risks from land contamination are minimised in accordance with the NPPF and policies CS14 and MSGP20 of the Local Plan for Gateshead.

16

Following completion of the remediation measures approved under condition 14 a verification report that demonstrates the effectiveness of the remediation carried out must be submitted to and approved in writing by the Local Planning Authority, prior to the occupation of the new buildings hereby approved.

Reason

To ensure that any risks from land contamination are minimised in accordance with the NPPF and policies CS14 and MSGP20 of the Local Plan for Gateshead.

17

Prior to commencement of any drainage works a final detailed drainage scheme shall be submitted to and approved by the Local Planning Authority. The drainage scheme shall include;

- a) a final drainage plan;
- b) supporting drainage calculations;
- c) site specific cross sections through all key drainage components (sewers, permeable paving);
- d) details demonstrating how runoff from all areas will receive an appropriate level of treatment in line with the Simple Index Approach of The SuDS Manual;
- e) details of drainage outfalls with evidence of agreement / consent from appropriate stakeholders (NWL, EA, Adjacent Landowners);
- f) Updated Biodiversity Net Gain Assessment including completed Watercourse Metric for the development, incorporating final detailed drainage scheme and demonstrating the proposed delivery of a net gain in biodiversity as a result of the development (including drainage proposals); and
- g) a timetable for implementation.

Reason

To prevent the increased risk of flooding and to demonstrate that the final detailed drainage design follows the philosophy of the approved drainage strategy and best practice guidance, and to ensure the development achieves measurable biodiversity net gain and improves the local and natural environment in accordance with the NPPF, and policies CS17, CS18, MSGP29, MSGP31 and MSGP37 of the Local Plan for Gateshead.

18

The detailed drainage scheme approved under condition 17 shall be constructed in full accordance with the approved details and timescales for implementation.

Reason

To prevent the increased risk of flooding and to demonstrate that the final detailed drainage design follows the philosophy of the approved drainage strategy and best practice guidance in accordance the NPPF, and policies CS17 and MSGP29 of the Local Plan for Gateshead.

19

Prior to first occupation of the development hereby approved a Drainage Maintenance Plan (DMP) shall be submitted to and approved in writing by the Local Planning Authority. The DMP shall include a site plan identifying ownership and responsibility for all drainage components including permeable paving, separator, river outfall structure and non-return valve together with a maintenance schedule and inspection checklist. The DMP shall identify any drainage components that may require replacement within the lifetime of development and a strategy for their renewal.

Reason

To prevent the increased risk of flooding and to demonstrate that the final detailed drainage design follows the philosophy of the approved drainage strategy and best practice guidance in accordance the NPPF, and policies CS17 and MSGP29 of the Local Plan for Gateshead.

20

The approved drainage scheme shall be maintained in full accordance with DMP approved under condition 19 for the lifetime of the development.

Reason

To prevent the increased risk of flooding and to demonstrate that the final detailed drainage design follows the philosophy of the approved drainage strategy and best practice guidance in accordance the NPPF, and policies CS17 and MSGP29 of the Local Plan for Gateshead.

21

No development shall take place until a construction environmental management plan (CEMP: Biodiversity) (prepared in consultation with a Suitably Qualified Ecologist (SQE)) has been submitted to and approved in writing by the local planning authority. The CEMP (Biodiversity) shall include the following;

- a) Risk assessment of potentially damaging construction activities.
- b) Identification of "biodiversity protection zones" e.g. tree protection zones in accordance with BS5837-2012 'Trees in relation to construction';
- c) Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction

(may be provided as a set of method statements e.g. invasive species method statement, amphibian method statement, measures to protect hedgehog and nesting birds during construction.

- d) The location and timing of sensitive works to avoid harm to biodiversity features e.g. avoidance of vegetation clearance/works during the nesting bird season (March to September inclusive).
- e) Any times during construction when specialist ecologists need to be present on site to oversee works.
- f) Responsible persons and lines of communication.
- g) The role and responsibilities on site of an ecological clerk of works (ECoW) or similarly competent person.
- h) Use of protective fences, exclusion barriers and warning signs where appropriate.

Reason

To avoid / minimise harm to retained habitats, ecological features and protected/priority species during the site clearance and construction phases of the development in accordance with the NPPF, and policies CS18, MSGP31 and MSGP37 of the Local Plan for Gateshead.

Reason For Pre Commencement Condition

This pre commencement condition is required as all development works need to be undertaken with an approved CEMP.

22

All site clearance and construction works shall take place in strict accordance with the CEMP approved under Condition 21, unless otherwise approved in writing by the LPA.

Reason

To avoid / minimise harm to retained habitats, ecological features and protected/priority species during the site clearance and construction phases of the development in accordance with the NPPF, and policies CS18, MSGP31 and MSGP37 of the Local Plan for Gateshead.

23

No external lighting shall be provided until an external lighting strategy for the development has been submitted to and approved in writing by the Local Planning Authority. The strategy shall:

- a) Identify those areas/features on site or adjacent to site that are particularly sensitive for bats and that are likely to cause disturbance in or around their resting places (including any bat roost features installed as part of the proposals) or along important routes used to access key areas of their territory, for example, for foraging; and
- b) Show how and where external lighting will be installed (through the provision of appropriate lighting contour plans and technical specifications) so that it can be clearly demonstrated that areas

to be lit will not disturb or prevent the above species using their territory or having access to their breeding sites and resting places.

Reason

To avoid adverse impacts on sensitive ecological receptors including protected and priority species in accordance with the NPPF, and policies CS18, MSGP31 and MSGP37 of the Local Plan for Gateshead.

24

All external lighting shall be installed in accordance with the specifications and locations set out in the approved strategy at condition 23.

Reason

To avoid adverse impacts on sensitive ecological receptors including protected and priority species in accordance with the NPPF, and policies CS18, MSGP31 and MSGP37 of the Local Plan for Gateshead.

25

Notwithstanding the approved details, the development shall not progress beyond the damp course until full details of the soft landscaping and areas of habitat creation/enhancement listed in the onsite and offsite habitat creation/enhancement sections of the submitted biodiversity net gain assessment (as updated to discharge Condition 17, including a completed Watercourse Metric), including planting specifications, timescales for implementation and a maintenance schedule, have been submitted to and approved in writing by the local planning authority.

Reason

To ensure the development achieves measurable biodiversity net gain and improves the local and natural environment in accordance with the NPPF, and policies CS18, MSGP31 and MSGP37 of the Local Plan for Gateshead.

26

The soft landscaping and habitat creation scheme, approved under condition 25, shall be implemented, and maintained in full accordance with the approved details and timetable for implementation.

Reason

To ensure the development achieves measurable biodiversity net gain and improves the local and natural environment in accordance with the NPPF, and policies CS18, MSGP31 and MSGP37 of the Local Plan for Gateshead.

27

Prior to the first use of the development hereby approved, a detailed Ecological and Landscape Management, Maintenance and Monitoring Plan, which includes arrangements to address any defects/issues

adversely impacting the biodiversity value and function of the soft landscaping and/or habitats provided on/off site, shall be submitted to and approved in writing by the Local Planning Authority.

Reason

To ensure the landscaping and habitats are appropriately maintained and achieve their required BNG condition scores in accordance with the NPPF, and policies CS18, MSGP31 and MSGP37 of the Local Plan for Gateshead.

28

The Ecological and Landscape Management, Maintenance and Monitoring Plan, approved under Conditions 27, shall be implemented in full for the lifetime of the development.

Reason

To ensure the landscaping and habitats are appropriately maintained and achieve their required BNG condition scores in accordance with the NPPF, and policies CS18, MSGP31 and MSGP37 of the Local Plan for Gateshead.

29

Prior to the first occupation of the development hereby approved, a timetable for the closure and making good of the easternmost existing vehicular site access shown on submitted plan Site Layout Plan - Existing (0002985-1011-P01), shall be submitted to and approved in writing by the Local Planning Authority.

Reason

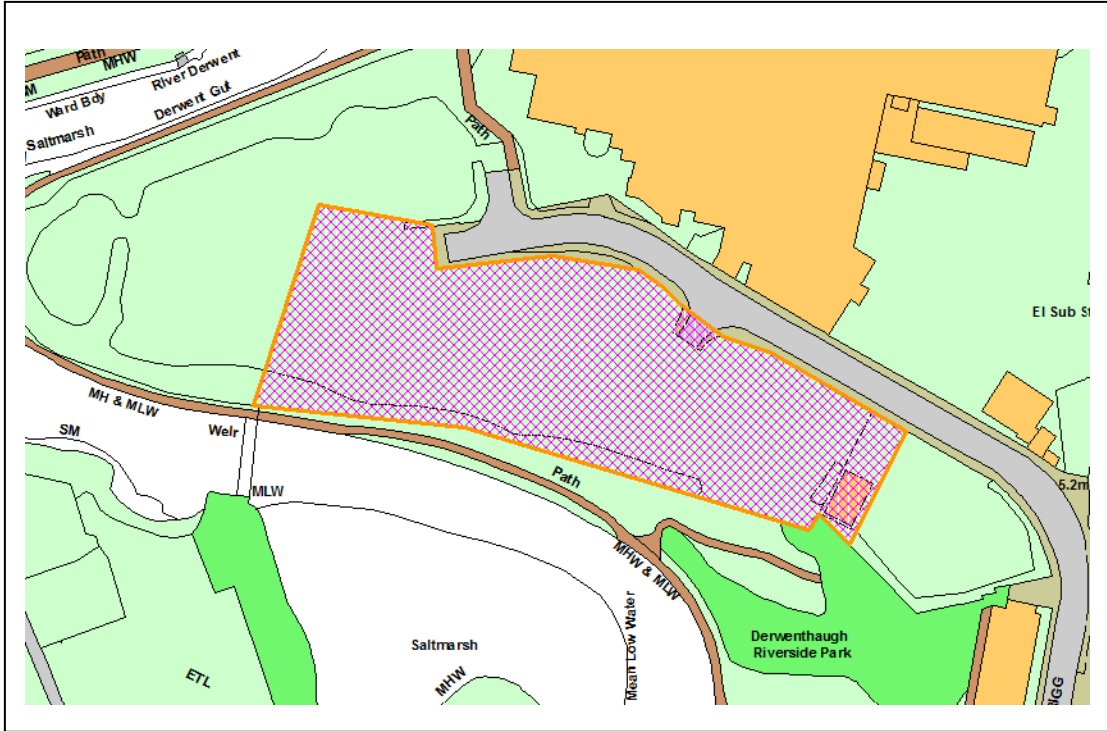
In the interests of highway safety and in order to accord with NPPF and policies CS13 and MSGP15 of the Local Plan for Gateshead.

30

The closure and making good of the easternmost existing vehicular access shall be undertaken in accordance with approved plan 0002985-1111-Proposed Site Plan-P09 and the timetable for implementation approved under Condition 29.

Reason

In the interests of highway safety and in order to accord with NPPF and policies CS13 and MSGP15 of the Local Plan for Gateshead.



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Committee Report

Application No:	DC/23/00420/FUL
Case Officer	Joanne Munton
Date Application Valid	16 June 2023
Applicant	EG Group Limited
Site:	Land To The North Of Team Valley Retail World Junction Of Dukesway And Tenth Avenue West Gateshead NE11 0BD
Ward:	Lamesley
Proposal:	Demolition of building and the erection of 1no. Petrol Filling Station and ancillary unit, 1no. Drive-Thru Coffee Shop, circulatory routes, associated car parking, landscaping, and other works (resubmission) (additional information received 01.09.2023).
Recommendation:	REFUSE
Application Type	Full Application

1.0 The Application:**1.1 DESCRIPTION OF SITE**

The application site is L-shaped and is situated at the junction of Tenth Avenue West and Dukesway, opposite Team Valley Retail World, within Team Valley Trading Estate.

- 1.2 Part of the site was previously used as a petrol filling station but has since been cleared and is currently used by a hand car wash business at the western end. The remainder of the site was formerly occupied by Minorities Peugeot car dealership but the previous buildings have all been removed from the site which is now vacant. Land levels at the site are relatively level. There are two existing vehicle access points to the application site, one off Dukesway and one off Tenth Avenue West.

1.3 DESCRIPTION OF APPLICATION

The application proposes demolition of the existing building and the erection of a Petrol Filling Station and ancillary unit, a Drive-Thru Coffee Shop, circulatory routes, associated car parking, landscaping, and other works.

- 1.4 The main western square of the site is proposed to be developed and the smaller eastern square shaped portion is indicated as planting.
- 1.5 The Drive-Thru Coffee Shop would be situated at the north western end, with a dedicated car parking area to the north east.
- 1.6 The Petrol Filling Station and associated forecourt would be positioned fairly centrally within the site, with Electric Vehicle Charging provided to the west

and car wash bays to the east. The floor plan for this building shows a 'food to go' area and provision for two ATMs.

1.7 RELEVANT PLANNING HISTORY

DC/22/01014/FUL - Demolition of building and the erection of 1no. Petrol Filling Station and ancillary unit, 1no. Drive-Thru Coffee Shop, circulatory routes, associated car parking, landscaping, and other works - Withdrawn

DC/11/00934/OUT - Outline application for erection of two cafe/restaurant/coffee shop units with associated parking and drive-thru facilities (use classes A1/ A3/ A5) - Granted 25.01.2012

DC/08/00531/FUL - Redevelopment of site involving demolition of existing buildings and erection of two-storey health club and sports store with associated access, parking and landscaping - Refused 05.11.2008

DC/07/00580/COU - Change of use from petrol filling station to drive through manual car wash/valet facility (amended 05/07/07) - Granted 07.08.2007

DC/07/00579/ADV - Display of 1 fascia sign size 3600mm x 2100mm on south elevation of shop building and 1 fascia sign size 3500mm x 750mm on west elevation, 2 fascia signs size 3500mm x 750mm on north and south sides of canopy over forecourt, 1 freestanding postmounted entrance/information sign on verge area at entrance to proposed car wash and 1 freestanding postmounted exit sign on verge area at exit - Temporary Consent Granted 11.06.2007

DC/04/01598/CPL - CERTIFICATE OF LAWFULNESS: Proposed use of car showroom, seven office rooms and attached WC's (measuring 621sqm (6684sqft)) for retail purposes (use class A1) - Use considered to be Lawful

DC/04/00743/CPL - CERTIFICATE OF LAWFULNESS: Use of site for retail purposes (use class A1) - Use considered to be Unlawful

DC/03/01125/CPE - CERTIFICATE OF LAWFULNESS FOR EXISTING USE: Use of premises as car sales room - Use considered to be Unlawful

2.0 Consultation Responses:

Northumbria Police	Advice provided
Tyne And Wear Fire And Rescue Service	No objection
Coal Authority	Conditions recommended
National Highways	No objection

3.0 Representations:

3.1 Neighbour notifications were carried out in accordance with formal procedures introduced in the Town and Country Planning (Development Management Procedure) Order 2015.

3.2 One letter of support has been received.

4.0 Policies:

NPPG National Planning Practice Guidance

NPPF National Planning Policy Framework

CS6 Employment Land

CS7 Retail and Centres

CS14 Wellbeing and Health

CS15 Place Making

CS17 Flood Risk and Waste Management

CS18 Green Infrastructure/Natural Environment

MSGP1 Employment Land Supply

MSGP2 Key Employment Areas

MSGP4 Loss of Employment Land

MSGP15 Transport Aspects of Design of Dev

MSGP17 Residential Amenity

MSGP18 Noise

MSGP19 Air Quality

MSGP20 Land Contamination/Stability

MSGP24 Design Quality

MSGP29 Flood Risk Management

MSGP30 Water Quality/River Environments

MSGP36 Woodland, Trees and Hedgerows

MSGP37 Biodiversity and Geodiversity

5.0 Assessment of the Proposal:

5.1 The key considerations to be taken into account when assessing this planning application are the principle of the proposal, and the impact the proposal would have on Amenity, Highway Safety, Ecology, Flood Risk, and Ground Conditions.

5.2 EMPLOYMENT LAND

The site is in the Team Valley Trading Estate Key Employment Area, where under Policy MSGP2 development and change of use proposals for B1 (updated to Use Class E(g)), B2 and B8 uses, and other business activities that complement industrial areas will be permitted.

5.3 MSGP2 specifically focuses advanced manufacturing, engineering, and the low carbon and renewable technology sectors at Team Valley Trading Estate.

5.4 Policy MSGP4 does not permit development or change of use proposals for uses other than those set out in MSGP2 unless it can be demonstrated that:

a) The site is not currently occupied, and there is evidence of unsuccessful marketing for employment use at local market rental levels in accordance with the requirements set out in Appendix 2, over a continuous period of at least 30 months, and;

b) The proposed use would not negatively affect the activities of other businesses within the Key Employment Area, and;

c) The proposed use would not detract from the industrial character of the Key Employment Area, and;

d) The proposed development would not prejudice the future development of employment uses in the area, and;

e) The proposed development would not adversely affect the availability of a sufficient variety and quantity of employment land / premises necessary to accommodate short-term growth within the Key Employment Area.

5.5 The planning statement submitted with the application makes no reference to how the proposal would address the requirements of MSGP4. The site is not vacant and is currently occupied by an operating car wash facility and was previously used as a petrol station. Therefore, the proposal fails to demonstrate compliance with MSGP4 in the first instance under point (a) above.

5.6 Notwithstanding this, no evidence of unsuccessful marketing for employment use over 30 months has been submitted with the application. This policy requirement puts the onus on the applicant/landowner to actively market the site, and the comment at paragraph 5.25 of the Applicant's statement that no contact has been received from external parties seeking to buy or lease the

site is not the same as active marketing, as clearly set out in MSGP4, and Appendix 2 of the MSGP. The provisions of MSGP4 are required to be fully and comprehensively addressed, and no evidence to support this has been submitted with the application.

5.7 MSGP4 also includes clause 3:

Exceptions may be made for development and change of use proposals that seek to:

a) Provide complementary supporting retail/food and drink uses (A1, A2, A3, A4 and A5), creches, nurseries and gyms, with internal floor area of no more than 200sqm, where it can be demonstrated that there is a local need arising from workers at the Employment Area that cannot be satisfied by existing nearby facilities, and where the proposal would not negatively affect the activities of nearby businesses operating within B1, B2 or B8 uses

b) Provide non-residential education or training centres, where providing such a facility within the Employment Area would be compatible with the activities of nearby businesses and there is an operational need for locating there.

5.8 The proposal cannot be considered under the exception of complementary supporting retail/food and drink uses because the floorspace of the petrol filling station building would be greater than 200sqm, and no conclusive evidence has been submitted with the application to demonstrate that there is local need for either of the proposed uses that cannot be satisfied by existing facilities.

5.9 Furthermore, the Team Valley estate is generally considered to provide an attractive location for B-use development, and notwithstanding site-specific factors, the Council considers that sites within Team Valley have a realistic prospect of being occupied by businesses operating in the B-use classes and has had a number of approaches from B-use businesses looking for this size of site.

5.10 Although it is widely acknowledged that access to food and drink/retail uses can make an important contribution to the attractiveness of large industrial areas, most of the uses proposed in this application are already available at the adjacent Retail World site (for the avoidance of doubt, the application site is not within the boundary of Retail World). There is an Osprey EV Charging Station on the opposite side of Tenth Avenue, within the car park closest to Dunelm (formerly Mothercare), and units within Retail World also include food/drinks offers at Costa Coffee, McDonald's and Bell's restaurant, and groceries at Marks and Spencer Simply Food.

5.11 Other sites in Team Valley, including Sainsbury's, Enterprise House, and Maingate also provide food/drink and retail facilities. Officers are not aware of any evidence to suggest the facilities that are provided at these locations is incapable of meeting the need for such uses generated by workers at Team Valley. There are several nearby petrol filling stations in the local area,

including one less than ½ mile east of this site at Sainsbury's, north of Maingate and on the A167 at Harlow Green.

- 5.12 The previously permitted scheme under DC/11/00934/OUT is considered of only limited relevance and carries little weight given the passage of time, the planning policy context at the time of determination, the evidence of need supplied with that application, that is missing from the current submission and the subsequent granting of planning permission for a similar scheme within Retail World for uses concluded to be complementary.
- 5.13 The statement submitted with the application refers to comments made in the Gateshead Employment Land Review (2018) regarding the site. It is noted that the review ultimately recommends that this site is retained in the allocated employment area, and comments that "Any future proposals for alternative uses at this site should be assessed against relevant Local Plan policies including those which seek to protect allocated employment land", which has been carried out above.
- 5.14 It is also worth noting that the applicant states in their planning statement that the proposal is employment development, which is incorrect. As the same 2018 Employment Land Review clarifies:
- This ELR considers employment land in relation to uses that fall within the B-class uses: B1(a) office, B1(b) research and development, B1(c) light industry, B2 general industry and B8 storage and distribution. Other uses can contribute towards provision of employment opportunities, but land requirements for those uses are considered elsewhere within Gateshead's Local Plan (eg. within evidence and policies relating to the provision of retail and community facilities). Although the need for employment land has taken into account economic (jobs growth) projections, the requirement for 'employment floorspace' relates only to jobs growth likely to be provided by growth in businesses operating within the B use classes.*
- 5.15 The Key Employment Area allocation provides a specific type of environment for compatible uses.
- 5.16 Similarly, policies MSGP1 and 2 and Appendix 2 of MSGP are clear that employment land constitutes land for use as B1(updated to Use Class E(g)), B2 and B8 uses. The main uses proposed in this planning application are Petrol Filling Station (Sui Generis) and Drive-Thru Coffee Shop (Class E).
- 5.17 The applicant has provided a written response to the concerns raised, however, officers still consider that the development proposed would be unacceptable in principle.
- 5.18 The applicant considers that the proposed site is not ideal for re-utilisation due to the presence of Petrol Filling Station infrastructure and other constraints, and that they have established there is demand for the services proposed, but this does not address the clear requirements of MSGP2 and MSGP4.

- 5.19 As such, the submission fails to accord with the very clear requirements of specific Team Valley Key Employment Area policies, and it is considered that, in principle, fundamentally the proposal would prejudice and cause harm to the designated Key Employment Area, contrary to the aims and requirements of the NPPF and policies CS6, MSGP2 and MSGP4 of the Local Plan, and the application is recommended to be refused for this reason.
- 5.20 **RETAIL POLICY**
The NPPF defines retail development, including drive-throughs, as a main town centre use. Neither the proposed site, nor the adjacent Retail World are recognised centres in the retail hierarchy, as set out in Local Plan policy CS7.
- 5.21 Paragraph 87 of the NPPF states that:
- Local planning authorities should apply a sequential test to planning applications for main town centre uses which are neither in an existing centre nor in accordance with an up-to-date plan. Main town centre uses should be located in town centres, then in edge of centre locations; and only if suitable sites are not available (or expected to become available within a reasonable period) should out of centre sites be considered.*
- 5.22 Local Plan policy CS7 reflects this.
- 5.23 The planning statement submitted with the application includes a section commenting on the availability, suitability and viability of in-centre sites/premises within Low Fell and Wrekenton centres, which are closest to the proposal site. This concludes that there were no available units within either centre which could support the proposed use as a drive-thru, due to the need for vehicular access and circulation around the development.
- 5.24 It is considered that this is a proportionate approach and satisfies the aims and requirements of the NPPF and policy CS7 of the Local Plan.
- 5.25 **ECOLOGY**
The application site is not located within or immediately adjacent a designated nature conservation site or wildlife corridor, and no significant adverse impacts on any such features is anticipated.
- 5.26 The eastern extent of the site (>0.85ha) supports an area of contiguous semi-natural habitat to the north and west of existing off-site buildings. The western portion of the site is dominated by hardstanding incorporating a single building and areas of amenity grassland and shrub planting.
- 5.27 The Preliminary Ecological Appraisal (PEA) submitted with the application assigns an area of 0.78ha as constituting 'Open habitat mosaic over previously developed land', with the remaining areas of semi-natural habitat (besides the small areas of modified grassland associated with the building and hardstanding) as 'Mixed scrub'.

5.28 The UK Biodiversity Action Plan Priority Habitat Description for Open Mosaic Habitats on Previously Developed Land (OMHPDL) (From: UK Biodiversity Action Plan; Priority Habitat Descriptions. BRIG (ed. Ant Maddock) 2008.) states:

'3.3 One of the principal reasons for the habitat being a priority is its importance for invertebrates. Many have very precise requirements for habitat 'niches' within their landscape. As well as areas of bare ground and food plants, these may be for sheltered places at various times of the year, or for rough vegetation or cover at others. At any particular site, features such as scrub may be essential to maintain the invertebrate value of the main habitat. Therefore, scattered scrub (up to 10-15% cover) may be present and adds to the conservation value of the site. Other communities or habitats might also be present (e.g. reed swamp, open water), but early successional communities should comprise the majority of the area.'

5.29 Given that the presence of the scrub within the site is approximately 10% of the semi-natural habitats on site (0.09 ha mixed scrub/0.87 ha semi-natural habitats x 100 = 10.34%), a PEA of the site previously carried out in 2017 considered the semi-natural habitats on site to meet the criteria for OMHPDL. It is therefore considered that the submitted PEA does not accurately represent the baseline value of the site in terms of the extent of OMHPDL, which should be considered to cover the seminatural habitats on site excluding the modified grassland (i.e. 0.87ha).

5.30 The submitted PEA assesses the OMHPDL within the site as being of 'Poor' condition. Condition assessment tables have not been submitted, nor has any detailed methodology or evidence of how the condition assessments were undertaken (e.g. including but not limited to: quadrat locations and species lists, mapping of invasive species cover), based on the 'Urban' condition assessment table associated with the Defra metric 3.1.

5.31 Paragraph 3.14 of the submitted PEA states:

'Overall, the habitat was considered to fail criterion 1, 3 and 4a with grassland ecotones [a transitional area of vegetation between two different plant communities] accounting for over 80% of the habitat area, the cover of invasive species exceeding 5% and no pools present. The habitat was considered to pass criterion 2, which specifies the presence of a diverse range of flowering plant species, although some areas are relatively species-poor.'

5.32 Core criterion 1 of the Urban Habitat Type condition assessment tables is:

'Vegetation structure is varied, providing opportunities for insects, birds and bats to live and breed. A single ecotone (i.e. scrub, grassland, herbs) should not account for more than 80% of the total habitat area.'

5.33 The scrub habitats incorporating approximately 10% of the semi-natural habitats should be included within the OMHPDL classification. In addition to

this, the description of the OMHPDL within the submitted PEA demonstrates that a varied vegetation structure is present. It is therefore considered that the OMHPDL within the site more than adequately meets criteria 1.

- 5.34 Core criterion 2 of the Urban Habitat Type condition assessment tables is:
- 'There is a diverse range of flowering plant species, providing nectar sources for insects. These species may be either native, or non-native but beneficial to wildlife.'
- 5.35 Officers agree that the OMHPDL on site meets criterion 2.
- 5.36 Core criterion 3 of the Urban Habitat Type condition assessment tables is:
- 'Invasive non-native species (Schedule 9 of WCA) cover less than 5% of total vegetated area.'
- 5.37 No evidence has been provided of the proportion of cover of invasive non-native species exceeding 5% of the total area of OMHPDL (i.e. covering 0.0435 ha).
- 5.38 Paragraph 3.9 of the submitted PEA refers to 'A linear strip along the northern boundary' where 'non native shrubs are frequent, with cherry laurel (*Prunus laurocerasus*), *Pyracantha* spp. and various cotoneasters, including frequent Schedule 9 wall cotoneaster (*Cotoneaster horizontalis*), which was noted spreading across the level ground.'
- 5.39 Even if this entire linear strip along the northern boundary were invasive non-native species this would constitute a total of 210sqm. However, the area is described as being 'characterised by areas of hard ground, including tarmac, gravel and exposed stoney earth, supporting early successional plant communities.'
- 5.40 It is therefore unclear how the OMHPDL can be considered to fail criterion 3. In the absence of evidence clearly demonstrating otherwise, it is considered that the entire area of OMHPDL within the site is of at least 'Moderate' condition.
- 5.41 Additionally, areas of the site that are free of non-native plant species (which appears to be the majority of the site besides a linear strip at the site's northern boundary and some areas of scrub when they are included within OMHPDL) can be considered to be of 'Good' condition.
- 5.42 It is considered that the mapped non-native Hedgerow, although not described within the submitted PEA, may be more appropriately mapped as Urban - Introduced shrub rather than a linear feature.
- 5.43 The Excel version of the Biodiversity Metric 3.1 that would be used to calculate the change in biodiversity value of the site was not originally submitted with the application, but has since been provided.

- 5.44 However, based on the detail that has been submitted with the application, it is considered that delivering a net gain (or even no net loss) in biodiversity within the site boundary would not be possible.
- 5.45 Additional commentary from the applicant notes that offsite BNG compensation is proposed. In principle, this could be ultimately secured through a legal agreement. However, no specific proposals for the provision of Biodiversity Net Gain for this particular case have been submitted, and no condition assessment information, to amend the baseline habitat assessments and propose additional habitat enhancements that could be provided on site, has been submitted.
- 5.46 In terms of Priority/Notable Invertebrates, the aforementioned 2017 PEA also noted the site could support uncommon invertebrates and advised invertebrate surveys would allow taxa [unit of classification] of conservation interest to be identified and appropriate mitigation or compensation to be included in the development scheme.
- 5.47 The application is not supported by an appropriate level of ecological survey and assessment to determine the presence/likely absence and value of the site for priority invertebrates (butterflies).
- 5.48 Paragraph 5.15 of the submitted PEA states:

'The OHMPDL provides valuable habitat for invertebrates it should be assumed that Species of Principle Importance (SPI) grayling butterfly, wall butterfly and dingy skipper are present on site. As such, the enhancement of retained areas of OMHPDL will target the retention and creation of invertebrate friendly habitats'.
- 5.49 It is therefore clear that the accurate assessment of the biodiversity value of the pre-development habitats, as well as an appropriate level of survey and assessment to determine the presence/likely absence of priority invertebrates, is key to the application of the mitigation hierarchy in respect to invertebrates within the site and the capacity for the on-site habitat retention/enhancement to adequately mitigate for the proposed extensive loss of habitats. Unmitigated, removal of suitable habitats on site would result in a loss of invertebrate habitat at both a site and local level.
- 5.50 It is agreed that it has been assumed within the submitted PEA that SPI including grayling, wall and dingy skipper are present on site. However, given that the biodiversity value of the pre-development habitats are not considered to have been accurately assessed, officers consider that it is also the case that their value for invertebrates (in the absence of appropriate survey to determine the presence/absence/population size of notable/priority invertebrates) has not been accurately assessed.
- 5.51 In terms of the proposed post-development habitat plan, this is based on the pre-development habitats being of 'poor' condition, which as discussed above

is not considered by officers to be accurate. The requirement for habitats to be maintained at the stated condition for a minimum of 30 years and a mechanism for the delivery and security of the habitat enhancement has not been detailed. Whilst maintenance and management measures could be required by planning condition, the proposed habitat plan would need to be considered reasonably able to achieve net gain in the first instance.

- 5.52 The submitted PEA does correctly identify the requirement for any retained/enhanced area of OMHPDL to be fenced to prevent public access to limit potential disturbance and damaging activities such as fly tipping and burning of material on site.
- 5.53 Other habitats provided on site include areas of other neutral grassland, and it is considered that these areas should be retained as OMHPDL wherever possible given that this habitat type is likely to involve a reduced level of management than even other neutral grassland and provide a more substantial and connected habitat resource for priority invertebrates within the site. Area created as other neutral grassland are more than likely to be maintained as 'Modified grassland' in the long term. Retention of habitats/use of soil/substrates from within the site would be encouraged for the creation of any new areas of OMHPDL within the site.
- 5.54 Additional commentary submitted at a later stage from the applicant states that “the feasibility of increasing the area of OMH in place of ‘other neutral’ grassland will be investigated, in conjunction with the retention of soil/substrates”. However, no further detail regarding this has been provided by the applicant.
- 5.55 Any retention/enhancement/creation of OMHPDL would need to carefully account for the use of areas of scrub/varied sward height to provide ecological functionality equivalent to lost habitats and to provide for species such as priority/notable invertebrates and foraging/nesting birds.
- 5.56 Based on the above assessment, the proposed development would result in the comprehensive loss of existing habitats and their associated interest. The proposed landscaping scheme, apart from the retained area of OMHPDL, is largely restricted to the site boundaries and comprises narrow linear strips of fragmented amenity shrub planting, native tree/shrub planting and sown wildflower grassland situated immediately adjacent access roads and circulation areas.
- 5.57 Given the significant officer concern as to whether there is any scope to enhance the retained OMHPDL (already considered to be of at least Moderate, possibly Good condition), it is unclear whether the submitted landscaping proposals would allow for the site to support viable populations of priority butterfly species including dingy skipper (recorded in 2022 circa 500m southeast of the proposed development site), grayling or wall.

- 5.58 Furthermore, it is considered that the proposed onsite post development habitats would not be capable of achieving/maintaining their projected habitat condition scores for a minimum 30 years (a requirement of BNG).
- 5.59 As such, the development is considered to be unacceptable in terms of impact on ecology. The proposal is not in accordance with the mitigation hierarchy and has the potential/is likely to result in an unacceptable residual adverse impact on national and local priority habitat and species and would result in a net loss of biodiversity.
- 5.60 This is contrary to the aims and requirements of the NPPF and policies CS18 and MSGP36 and MSGP37 of the Local Plan, and the application is recommended to be refused for this reason.
- 5.61 FLOOD RISK
The application site is in Flood Zone 1 and Critical Drainage Area as identified by the LPA.

- 5.62 Paragraph 167 of the NPPF states:

When determining any planning applications, local planning authorities should ensure that flood risk is not increased elsewhere. Where appropriate, applications should be supported by a site-specific flood-risk assessment. Development should only be allowed in areas at risk of flooding where, in the light of this assessment (and the sequential and exception tests, as applicable) it can be demonstrated that:

(a) within the site, the most vulnerable development is located in areas of lowest flood risk, unless there are overriding reasons to prefer a different location;

(b) the development is appropriately flood resistant and resilient such that, in the event of a flood, it could be quickly brought back into use without significant refurbishment;

(c) it incorporates sustainable drainage systems, unless there is clear evidence that this would be inappropriate;

(d) any residual risk can be safely managed; and

(e) safe access and escape routes are included where appropriate, as part of an agreed emergency plan.

- 5.63 Additionally, paragraph 169 of the NPPF states:

Major developments should incorporate sustainable drainage systems unless there is clear evidence that this would be inappropriate. The systems used should:

(a) take account of advice from the lead local flood authority;

(b) have appropriate proposed minimum operational standards;

(c) have maintenance arrangements in place to ensure an acceptable standard of operation for the lifetime of the development; and

(d) where possible, provide multifunctional benefits.

- 5.64 The application proposes to discharge surface water to the existing 300mm diameter public surface water sewer located within Dukesway to the west of site.
- 5.65 However, a hierarchical approach to drainage components should be followed with source control measures such as green roofs, permeable paving, etc used in preference to traditional piped systems to maximise potential multifunctional benefits and flood resilience.
- 5.66 Runoff from all areas should be managed using SuDS to remove pollutants in line with the Simple Index Approach of The SuDS Manual.
- 5.67 A drainage model would need to be prepared for a proposed drainage system to confirm that under normal use flooding will not occur for 1in30yr (plus climate change) rainfall events and that flooding for 1in100year (plus climate change) rainfall events could be managed safely on site. A separate assessment to determine how overland flow would be routed through the site in the absence of a functional drainage system would need to be prepared based on the proposed site finished ground levels and features. This would need to demonstrate that where there is the potential for accumulation of flow that it can be safely accommodated.
- 5.68 The applicant has provided a written response to the concerns raised, however, officers still consider that the development as proposed would result in an unacceptable impact on flood risk.
- 5.69 In relation to peak run-off, where local standard 6 is followed, 1in1 year and 1in100 year rates can be used if it can be demonstrated that there is volume control (ie. no increase in 1in100 year 6hr volume), otherwise a qbar rate would need to be applied for all return period events. Applying 6l/s for all events, as proposed in this application, does not comply with either of these scenarios.
- 5.70 In terms of SuDS hierarchy and Water Quality, officers consider that there are reasonable and realistic opportunities to include features on site. Permeable paving could be used across parking bays and access routes alongside parking bays could fall towards these, allowing runoff to shed onto and drain through the permeable paving allowing treatment. Some hard landscaping areas could instead be used as rain gardens and the soft landscaped buffer at the perimeter of the site has the potential to incorporate swales, bioretention or other ground level SuDS features to allow treatment of runoff, subject to

levels. Use of rainwater harvesting, and green roofs are considered to be appropriate for this form of development but are not included in the design.

- 5.71 Additionally, the level of detail of proposed finished levels is insufficient to be able to clearly demonstrate exceedance (for when the drainage system is not operating as designed due to a greater rainfall intensity, blockage, etc).
- 5.72 As such, it is considered that the proposal would result in an unacceptable impact on flood risk, which is contrary to the aims and requirements of the NPPF and policies CS17 and MSGP29 and MSGP30 of the Local Plan, and the application is recommended to be refused for this reason.
- 5.73 **HIGHWAY SAFETY AND PARKING**
The Transport Assessment submitted with the application provides adequate detail in respect to the baseline modelling scenario and the recorded queues observed in the survey carried out. Evidence from other similar developments has also been provided in respect to the levels of pass-by, diverted and new trips. The provision of improved pedestrian and cyclist connections are considered to be more appropriate than improvements to the network to mitigate potential minor impacts upon capacity, which may only address a theoretical modelling result.
- 5.74 Improvements to off-site pedestrian and cyclist access to the site have been included in the proposed layout. A 3m shared use path is shown along the majority of the boundary of the application site, and this would need to be extended along the full boundary to Dukesway to provide for the maximum extent of improved access around the site. This could be secured by condition if the application was recommended to be granted.
- 5.75 The proposal indicates the provision of parallel crossings on Dukesway and Tenth Avenue West, although the indicative proposals would require further design work to conform to the requirements of such crossing points. Dropped kerbs for cyclists are proposed to be provided on Dukesway and Tenth Avenue West, albeit the one at Dukesway would require relocation to cater for the extended shared use cycleway/footway north on Dukesway (as above). This could also be secured by condition if the application was recommended to be granted.
- 5.76 An internal crossing point is proposed at the Dukesway access, which is considered acceptable based on the evidence submitted with the application and given this is an existing access and an alternative provision within the site. However, a dropped kerb crossing point would need to be provided within the extent of the adopted highway. This could be secured by condition if the application was recommended to be granted.
- 5.77 It is considered that the proposed internal layout would provide improved direct connectivity within the site and would be acceptable.
- 5.78 It is considered that the level of vehicle and cycle parking proposed on site is acceptable. Details for short stay cycle parking are provided with the

submission, and a conditions requiring final details of secure and weatherproof cycle parking for staff could be required by condition if the application was recommended to be granted.

- 5.79 Vehicle swept path analysis of the delivery vehicles for the proposal have been submitted with the application, which demonstrate that deliveries and servicing of the two elements of the development could be undertaken without impacting on the operation and safety of the highway. However, there are concerns that the internal operation of the development would be impacted by the servicing movements: for the Petrol Filling Station element the tanker would require both sides of the internal carriageway and therefore would be in conflict with other vehicles using the site. In order to avoid conflict with parked vehicles, a tanker leaving the refilling area would need to make a sharp turn and it would therefore be better for these spaces to be closed off during a delivery. For the coffee shop element, deliveries are intended to take place in front of the disabled parking bays, blocking access to these spaces and potentially access to the drive thru area.
- 5.80 As such, it is considered that a full shut down of each part of the site could be required to facilitate safe internal movements for deliveries, or alternative delivery solutions provided, which would require submission of full details for review and where appropriate subsequent approval in writing. A condition could be imposed requiring a final Servicing Management Plan to be submitted, if the application was recommended to be granted.
- 5.81 Conditions could also secure timing of availability of parking spaces, details of how surface water from the vehicle access road and the pedestrian/cyclists connections would be intercepted before entering the public highway, and a demolition and construction management plan.
- 5.82 Subject to conditions, the proposal would not result in an unacceptable impact on highway safety and would comply with the aims and requirements of the NPPF and policies CS13 and MSGP15 of the Local Plan.
- 5.83 AMENITY
The site is located in a Key Employment Area in Team Valley and is not near to residential receptors.
- 5.84 The proposal does not raise concerns relating to air quality impact or noise emissions. However, if the application was recommended to be granted, conditions could secure hours of operation, waste bins to be lidded (detering pests), and suitable ventilation and extraction to minimise as best possible odours to adjacent businesses. Any exhausts/vents/chimneys would need to be sited as far from neighbouring businesses as best practicable.
- 5.85 In terms of external appearance, the design would be typical of this type of development, and if the application was recommended to be granted, final details/samples of materials would be recommended to be required by condition.

5.86 Subject to conditions, the proposal would comply with the aims and requirements of policies CS14, CS15, MSGP17, MSGP18 and MSGP24 of the Local Plan.

5.87 **GROUND CONDITIONS**

The eastern part of the site is in a Coal Authority defined high risk area. The Coal Authority agree with the recommendations of the submitted assessment, and if the application was recommended to be granted, conditions could secure the submission of a report of further site investigations relating to coal legacy, remediation scheme where required, the implementation of approved remediation measures and the submission of verification report(s) demonstrating their effectiveness.

5.88 The site is also situated on land that is potentially contaminated based on previous and current uses. Details submitted with the application sufficiently demonstrate that remediation in relation to contaminated land is not required in this case.

5.89 Subject to conditions, the proposal would comply with the aims and requirements of policies CS14 and MSGP20 of the Local Plan.

5.90 **OTHER MATTERS**

The proposed floor plan for the petrol filling station includes a 'food to go' counter. If the application was recommended to be granted, a condition would be recommended to control the sale of hot food for consumption away from either of the proposed buildings. This would be necessary to ensure compliance with Local Plan policy CS14 and the Hot Food Takeaway SPD..

5.91 **COMMUNITY INFRASTRUCTURE LEVY (CIL)**

On 1st January 2017 Gateshead Council became a Community Infrastructure Levy (CIL) Charging Authority. This proposal has been assessed against the Council's CIL charging schedule and is not CIL chargeable.

6.0 CONCLUSION

6.1 Taking all the relevant issues into account, it is considered that the proposal is not acceptable in principle (in terms of the site being within allocated employment land). The development is also considered to be unacceptable in terms of flood risk and the impact on ecology.

6.2 Therefore, it is considered that the proposal would not comply with the aims and requirements of the NPPF and relevant policies in the Local Plan, and it is recommended that planning permission should be refused.

7.0 Recommendation:

That permission be REFUSED for the following reason(s) and that the Service Director of Climate Change, Compliance, Planning and Transport be authorised to add, vary and amend the refusal reasons as necessary:

1

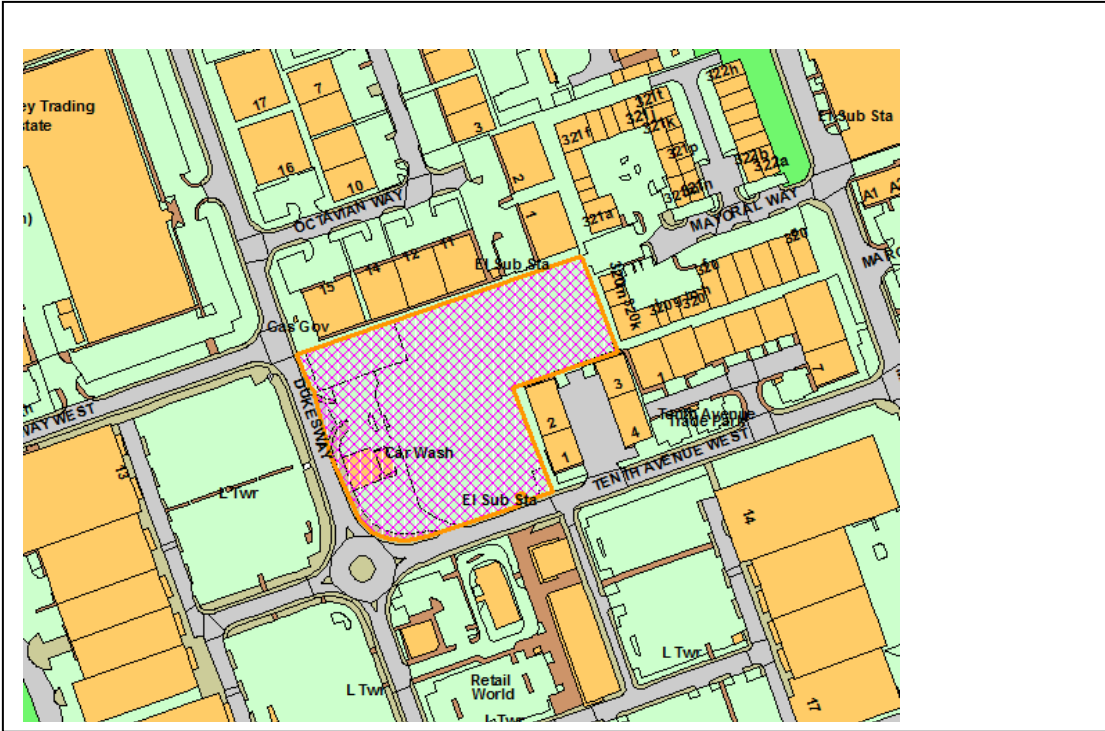
The proposal fails to accord with the requirements of specific Team Valley Key Employment Area policies, and it is considered that, in principle, the proposal would prejudice and cause harm to the designated Key Employment Area, contrary to the aims and requirements of the NPPF and policies CS6, MSGP2 and MSGP4 of the Local Plan.

2

The development proposed would result in an unacceptable impact on ecology. The proposal is not in accordance with the mitigation hierarchy and would result in an unacceptable residual adverse impact on national and local priority habitat and species and would not result in a net gain of biodiversity. This is contrary to the aims and requirements of the NPPF and policies CS18 and MSGP36 and MSGP37 of the Local Plan.

3

The proposal for major development does not incorporate sustainable drainage systems and there is no clear evidence submitted with the application to demonstrate that this would be inappropriate. The application also fails to clearly demonstrate that that flood risk would not be increased elsewhere, nor can the Local Planning Authority be satisfied that the proposed development would not have an unacceptable impact on flood risk, contrary to the National Planning Policy Framework, and policies CS17, MSGP29 and MSGP30 of the Local Plan.



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REPORT TO PLANNING AND DEVELOPMENT COMMITTEE

04th October 2023

TITLE OF REPORT: Enforcement Team Activity

REPORT OF: Anneliese Hutchinson, Service Director – Climate Change, Compliance, Planning and Transport

Purpose of the Report

- To advise the Committee of the activity of the Enforcement Team since the last Committee meeting.

Background

- The Enforcement team deal with proactive and reactive investigations in relation to Planning, Highway and Waste related matters.

Recommendations

- It is recommended that the Committee note the report.

Within the date range commencing 23.08.2023 and ending 19.09.23 the enforcement team has received 142 new service requests. The enforcement team currently has 680 cases under investigation.

TYPE OF SERVICE REQUEST	NEW SERVICE REQUESTS RECEIVED	CASES ALLOCATED TO OFFICER	CASES RESOLVED	UNDER INVESTIGATION	PENDING PROSECUTIONS
Planning	30	8	29	275	0
Empty/vacant properties & sites	3	3	2	87	0
Highways	33	16	18	173	0
Abandoned vehicles	41	30	35	11	0

Waste investigations	35	37	19	134	2
TOTALS	142	94	103	680	2

COURT HEARINGS
No court hearings have occurred in this period.



**REPORT TO PLANNING AND DEVELOPMENT
COMMITTEE**

04th October 2023

TITLE OF REPORT: Enforcement Action

REPORT OF: Anneliese Hutchinson, Service Director – Climate Change, Compliance, Planning and Transport

Purpose of the Report

1. To advise the Committee of the progress of enforcement action previously authorised by the Committee.

Background

2. The properties, which are the subject of enforcement action and their current status, are set out in Appendix 2.

Recommendations

3. It is recommended that the Committee note the report.

1. FINANCIAL IMPLICATIONS

Nil.

2. RISK MANAGEMENT IMPLICATIONS

Nil.

3. HUMAN RESOURCES IMPLICATIONS

Nil.

4. EQUALITY AND DIVERSITY IMPLICATIONS

Nil

5. CRIME AND DISORDER IMPLICATIONS

Nil.

6. SUSTAINABILITY IMPLICATIONS

Nil.

7. HUMAN RIGHTS IMPLICATIONS

The Human Rights Act states a person is entitled to the peaceful enjoyment of his possessions. However, this does not impair the right of the state to enforce such laws, as it deems necessary to control the use of property and land in accordance with the general interest.

8. WARD IMPLICATIONS

Birtley, Bridges, Blaydon, Pelaw & Heworth, Chowdene, Crawcrook & Greenside, Ryton, Crookhill and Stella, Chopwell and Rowlands Gill, Wardley & Leam Lane, Windy Nook And Whitehills, Winlaton and High Spen, Whickham North, Whickham South and Sunnyside, Lobley Hill and Bensham. Lamesley, Dunston Hill and Whickham East and Low Fell.

9. BACKGROUND INFORMATION

Nil.

APPENDIX 2

Item Number	Site	Ward	Alleged Breach of Planning Control	Date Approval given for Enforcement Action	Date Served	Date Notice comes into Force	End of Compliance Period	Case History	Current Update	
Page 57	1.	Blaydon Quarry Lead Road, Gateshead	Crawcrook and Greenside	Breach of Planning Conditions	22 nd May 2019	24 th May 2019	28 th June 2019	28 th December 2019	<p>Blaydon Quarry is in breach of several planning conditions. A Notice has been served in relation to condition 23 to require installation of a drainage system. The Council has designed an acceptable scheme to be installed in the interests of surface water drainage and to enable the safe and successful restoration of the site.</p> <p>A site visit was undertaken on the 4th June 2019, where drainage works had commenced. Officers are working closely with the Operator of the quarry to ensure compliance.</p> <p>A discharge of condition application has been submitted in relation to condition 23 for the Council to assess.</p> <p>An appeal has been submitted in relation to the enforcement notice.</p> <p>04.05.2023 – Site meeting took place with owner, Environment Agency, Planning, Enforcement and consultant on 03.05.23.</p> <p>Agreed on action that is required by owner to ensure compliance and required timescales.</p> <p>26.07.2023 - Development Management have three outstanding discharge of conditions applications which they are looking to determine week commencing 31st July 2023. Once the applications have been determined we will be in a better position to review what conditions remain outstanding and consider appropriate next steps.</p>	<p>20.09.2023 – It remains that Development Management have three outstanding discharge of conditions applications which are in the process of being determined and are also seeking advice from consultees on the acceptability of the submitted details to assist in the determination of these applications.</p> <p>Once the applications have been determined we will be in a better position to review what conditions remain outstanding and consider appropriate next steps.</p> <p>Ongoing monitoring in place to ensure the works continue and conditions are met.</p>
	2.	Blaydon Quarry Lead Road, Gateshead	Crawcrook and Greenside	Breach of Planning Conditions	22 nd May 2019	24 th May 2019	28 th June 2019	28 th October 2019	<p>Blaydon Quarry is in breach of several planning conditions. A Notice has been served in relation to condition 24 to require installation of the previously approved drainage system on the southern boundary, in the interests of surface water drainage and to enable the safe and successful restoration of the site.</p>	<p>20.09.2023 – It remains that Development Management have three outstanding discharge of conditions applications which are in the process of being determined and are also seeking advice from consultees on the</p>

Item Number	Site	Ward	Alleged Breach of Planning Control	Date Approval given for Enforcement Action	Date Served	Date Notice comes into Force	End of Compliance Period	Case History	Current Update
								<p>A discharge of condition application has been submitted in relation to condition 24 for the Council to assess.</p> <p>An appeal has been submitted in relation to the enforcement notice.</p> <p>Wardell Armstrong on behalf of the Operator has withdrawn the Enforcement Appeal.</p> <p>February 2023 - Development management have engaged a minerals and landfill specialist consultant to consider the current planning status of this development and determine an appropriate course of action should further enforcement activity be required.</p> <p>04.05.2023 – Site meeting took place with owner, Environment Agency, Planning, Enforcement and consultant on 03.05.23.</p> <p>Agreed on action that is required by owner to ensure compliance and required timescales.</p>	<p>acceptability of the submitted details to assist in the determination of these applications.</p> <p>Once the applications have been determined we will be in a better position to review what conditions remain outstanding and consider appropriate next steps.</p> <p>Ongoing monitoring in place to ensure the works continue and conditions are met.</p>
3.	81 Dunston Road, Gateshead NE11 9EH	Dunston and Teams	Untidy Land	25 th July 2019	25 th July 2019	22 nd August 2019	03 rd October 2019	<p>Complaints have been received regarding the condition of the property which is considered to have a detrimental impact on the visual amenity of the area. A Notice has been issued pursuant to section 215 of the Town and Country Planning Act requiring the hedge be cut, all boarding removed from windows and the windows and frames made good. It also required that all the guttering and down pipes be re attached to the building.</p> <p>Update 08.02.2023 - Building work has commenced at the rear of the property. Old kitchen has been demolished in preparation for the new development. Gable wall is being repointed.</p>	20.09.2023 – Good progress being made with refurbishment of the property. Ongoing monitoring to ensure works continue to a good standard and at reasonable pace.
4.	Dynamix Albany Road Gateshead	Bridges	Unauthorised change of use	13 th October 2020	13 th October 2020	17 th November 2020	18 th May 2021	<p>Complaints have been received regarding the change of use from a vacant warehouse to a mixed use comprising skate park, residential planning unit and storage of building and scrap materials therefore, an Enforcement Notice has</p>	20.09.2023 - Site operator has now removed most items stored externally. Further site visit on 27.09.2023 September has been arranged and it is likely that full compliance will

Item Number	Site	Ward	Alleged Breach of Planning Control	Date Approval given for Enforcement Action	Date Served	Date Notice comes into Force	End of Compliance Period	Case History	Current Update
								<p>been issued requiring the unauthorised use of the land to cease and all materials and vehicles be removed from the land</p> <p>The occupier of the site has appealed the notice to the planning inspectorate</p> <p>The Appeal has been determined and the Notice has been upheld.</p> <p>Section 330 Notices have been served to determine interests in land by all parties known to be involved with the site. This information will be used as the basis for further enforcement action.</p> <p>Notices have not been responded to and are being pursued.</p> <p>Site visit took place in March with landowner's agent in attendance. No works have been undertaken by the site leaseholder to comply with the notice and further unauthorised uses on site were identified. The landowner has confirmed that use rights were not to extend beyond 31st March 2023. Agreed with the landowner that the unauthorised uses taking place on the land and in the buildings must cease and the site must be fully cleared not later than 31st May 2023. Ongoing monitoring to ensure compliance.</p>	have been achieved. If this is the case, then this item will be removed from the report.
5.	Dynamix Albany Road Gateshead	Bridges	Untidy Land	27 th August 2021	27 th August 2021	27 th September 2021	27 th December 2021	<p>Complaints have been received regarding the condition of the land. A Notice has been issued pursuant to section 215 of the Town and Country Planning Act requiring all waste be removed from the land, the mounds of rubble be removed to ground level and all the graffiti cleaned from the building.</p> <p>Section 330 Notices have been served to determine interests in land by all parties known to be involved with the site. This information will be used as the basis for further enforcement action.</p> <p>Notices have not been responded to and are being pursued.</p> <p>Site visit took place in March with</p>	20.09.2023 - Site operator has now removed most items stored externally. Further site visit on 27.09.2023 September has been arranged and it is likely that full compliance will have been achieved. If this is the case, then this item will be removed from the report.

Item Number	Site	Ward	Alleged Breach of Planning Control	Date Approval given for Enforcement Action	Date Served	Date Notice comes into Force	End of Compliance Period	Case History	Current Update
								landowner's agent in attendance. No works have been undertaken by the site leaseholder to comply with the notice and further unauthorised uses on site were identified. The landowner has confirmed that use rights were not to extend beyond 31st March 2023. Agreed with the landowner that the unauthorised uses taking place on the land and in the buildings must cease and the site must be fully cleared not later than 31st May 2023. Ongoing monitoring to ensure compliance.	
6.	Kwik Save, High Street, Felling	Felling	Building and land in ruinous and dilapidated condition	27 th April 2022	27 th April 2022	18 th May 2022	5 th September 2022	<p>Complaints have been received regarding the condition of the property and the adjoining land. The site has been subject to a number of arson attacks, fly tipping and other anti-social behaviour. A Notice has been issued pursuant to section 79 (1) of the Building Act 1984 requiring the recipient to either carry out such works of restoration or carry out demolition and remove the resultant rubbish or other materials from the site as specified in the notice. This has been the subject of an appeal. Work is ongoing with Northumbria Police and Tyne and Wear Fire & Rescue service to expedite a resolution. Construction services have also been requested to provide a method statement and costings for demolition, should the local authority be required to undertake works in default. –</p> <p>Works progressing to determine costs of demolition and consideration being given to issuing community protection warning in conjunction with TWFRS and Northumbria Police</p> <p>Construction services instructed to progress to tendering stage for demolition.</p> <p>On 12.05.2023 Representatives of the Council, Northumbria Police and Tyne and Wear Fire and Rescue Service met on site to examine the condition of the building and consider further opportunities to restrict access and minimise the impact of ongoing ASB. Work is ongoing to provide a legal remedy.</p>	20.08.2023 – Work is continuing to progress demolition costs and methodology by construction services. Appeal hearing of Community Protection Notice due to take place later today. Committee will be updated on outcome in next report. Legal pursuing remedies to lack of compliance and Monitoring is continuing to minimise the impact of site as far as is possible.

Item Number	Site	Ward	Alleged Breach of Planning Control	Date Approval given for Enforcement Action	Date Served	Date Notice comes into Force	End of Compliance Period	Case History	Current Update
								A community protection warning notice was served on the landowner requiring him to take a number of steps in the interim period to prevent or minimise the opportunities for anti-social behaviour on site. This wasn't complied with	
7.	Jack and Jo's Nursery Garden, Middle Hedgefield Farm, Blaydon on Tyne, NE21 4NN	Ryton, Crookhill and Stella	Without planning permission, the erection of a timber building to provide café with associated raised deck, canopy and smoking shelter and the installation of access railings and steps	22 nd May 2023	24 th May 2023	28 th June 2023	28 th October 2023 - removal of all structures 28 th November 2023 - removal of all resultant debris	<p>Complaints were received regarding the erection of an unauthorised building for use as a café.</p> <p>A retrospective planning application was submitted. It was refused on 28.2.22.</p> <p>An appeal was submitted to the Planning Inspectorate in relation to the planning refusal. The appeal was dismissed.</p> <p>An amended scheme/application was submitted to the Council on 14.10.22 and refused by Committee on 17.5.23.</p> <p>As two applications have been refused and giving weight to the appeal dismissed by the Planning Inspectorate it was considered expedient to take enforcement action and an Enforcement Notice has been served.</p> <p>The notice requires the removal of the unauthorised structures (café building, raised deck, smoking shelter, canopy and steps).</p>	20.09.2023 – Appeal has been lodged with the planning inspectorate. Start date of the appeal process is 17.07.2023 and is to be heard by way of written representations. Closing date for representations of 28.08.2023, which has now passed. Notice is suspended until the outcome of the appeal is determined. No further information has yet been provided by the planning inspectorate.
8.	31 Cromer Avenue Gateshead NE9 6UL	Chowdene	Untidy Land	31 st May 2023	31 st May 2023	31 st May 2023	28 th June 2023 – cut back all weeds, brambles, bushes, shrubs and long grass. 12 th July 2023 – Remove all resultant rubbish and debris	<p>Complaints have been received regarding the condition of the rear garden of the property. The property has been vacant for several years. The owner has failed to take reasonable steps to maintain the vegetation within the premises in such a manner to prevent detriment to the amenity of the area and the quality of life of others in the locality. Notices have been issued pursuant to section 43 of the Anti Social Behaviour, Crime and Policing Act 2014 on the landowner requiring certain steps to be taken to prevent nuisance or detriment to the amenity of others.</p>	20.09.2023 – The recipient of the notice has not appealed to the Magistrates Court and is therefore in contravention of the notice. Legal advice is being obtained which is still awaited as to further enforcement options available including prosecution and work in default. Ongoing monitoring in place but no compliance as yet.

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**REPORT TO PLANNING AND
DEVELOPMENT COMMITTEE**

04th October 2023

TITLE OF REPORT: Planning Enforcement Appeals

REPORT OF: Anneliese Hutchinson, Service Director - Climate Change, Compliance, Planning and Transport

Purpose of the Report

1. To advise the Committee of new appeals against enforcement action received and to report the decisions of the Planning Inspectorate received during the report period.

New Appeals

2. There have been **no new** appeals received since an update was last provided to committee.

Appeal Decisions

3. There have been **no** appeal decisions received since the last Committee.
4. Details of outstanding appeals can be found in **Appendix 2**

Recommendations

5. It is recommended that the Committee note the report.

CONTACT: Elaine Rudman extension 3911

FINANCIAL IMPLICATIONS

Nil

RISK MANAGEMENT IMPLICATIONS

Nil

HUMAN RESOURCES IMPLICATIONS

Nil

EQUALITY AND DIVERSITY IMPLICATIONS

Nil

CRIME AND DISORDER IMPLICATIONS

Nil

SUSTAINABILITY IMPLICATIONS

Nil

HUMAN RIGHTS IMPLICATIONS

The subject matter of the report touches upon two human rights issues:
the right of an individual to a fair trial and the right to peaceful enjoyment of property

As far as the first issue is concerned the planning enforcement appeal regime is outside of the Council's control being administered by the Planning Inspectorate.

WARD IMPLICATIONS –

Low Fell

BACKGROUND INFORMATION

Appeal Decision

Outstanding Enforcement Appeal Cases

Further details have been provided by the planning inspectorate with regard to the following appeal, since committee were last updated.

APPELLANT	REASON FOR NOTICE	HOW APPEAL IS TO BE CONSIDERED
<p>Jack and Jo's Nursery Garden, Middle Hedgefield Farm, Blaydon on Tyne, NE21 4NN</p>	<p>Without planning permission, the erection of a timber building to provide café with associated raised deck, canopy and smoking shelter and the installation of access railings and steps</p>	<p>The appeal(s) will proceed on ground(s) (a), (f) as set out at Section 174(2) of the 1990 Act.</p> <p>The planning inspectorate has confirmed the start date of the appeal as 17 July 2023. The appeal is to be heard through the written representation's procedure.</p> <p>The appeal reference is APP/H4505/C/23/3324826. Any representations are to be received by the planning inspector no later than 28 August 2023. Guidance on making representations can be found in the following link Taking part in a planning, listed building or enforcement appeal - GOV.UK (www.gov.uk)</p>
<p>OM Properties Investment Company Limited, The Pantiles, Gartree Road, Oadby, Leicester, LE2 2FB</p>	<p>Community Protection Notice Served under the provisions of the Anti-social Behaviour Crime and Policing Act 2014 to prevent the detrimental effect the conduct of the owner is having on the quality of life of those in the locality in relation to the lack of management of the former Kwik Save premises and adjoining land at 57 High Street, Felling, Tyne and Wear, NE10 9LU. The building has been significantly fire damaged, is subject to regular arson attempts, unauthorised</p>	<p>Appeal has been lodged with Gateshead Magistrates Court. Hearing scheduled for 2pm 20th September 2023 at South Tyneside magistrates Court.</p>

	<p>access, anti-social behaviour and is in a dangerous condition. The adjoining land is used for fly tipping regularly. The building and the site impacts significantly upon policing, fire service and local authority resources as well as neighbouring/adjoining businesses and local residents.</p>	
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TITLE OF REPORT: Planning Appeals

REPORT OF: Anneliese Hutchinson, Service Director, Climate Change, Compliance, Planning and Transport

Purpose of the Report

1. To advise the Committee of new appeals received and to report the decisions of the Secretary of State received during the report period.

New Appeals

2. There have been **no** new appeals lodged since the last committee.

Appeal Decisions

3. There have been **four** new appeal decisions received since the last Committee:

DC/22/00900/FUL - The Cottage, 18 Talbot Terrace, Birtley, DH3 2PQ
Erection of canopy over front entrance and glass balustrade around front boundary to create seating/waiting area, including alterations to stepped frontage (part retrospective).

This was a delegated decision refused on 13 December 2022
Appeal dismissed 7 September 2023

DC/22/01187/FUL - Jack And Jo's Nursery Garden, Middle Hedgefield Farm, Stella Road, Ryton, Gateshead NE21 4NN

Retention of timber café building (retrospective) incorporating external alterations to building and removal of canopy to west elevation, raised deck to front (north) elevation and smoking shelter to east elevation. Alterations to car parking, erection of gate to control use of eastern access and new landscaping (resubmission of DC/21/00916/FUL) (additional information submitted 15.05.2023 and 16.05.2023).

This was a committee decision refused on 24 May 2023
Appeal withdrawn 18 September 2023

DC/23/00157/FUL - Site West Of Worley Avenue / South Of Earls Drive
Earls Drive (Opposite Numbers 50-60), Low Fell, Gateshead, NE9 6AA

Use as residential amenity and garden land with construction of a driveway and a single residential outbuilding / garage for the storage of vehicles and residential paraphernalia, with the felling of 8 trees, the replacement planting of 8 trees and new boundary hedgerow.

This was a committee decision refused on 19 May 2023
Appeal dismissed 15 September 2023

DC/23/00331/HHA - 12 Long Bank, Gateshead, NE9 7HE
Retrospective planning permission to Remove and replace rear garden boundary 15-metre-long, 1.5-metre-high timber fence with an incorporated double gate and posts with a 15-metre-long timber fence, at 1.8 metre high, with an incorporated single gate and posts.

This is an appeal against non-determination.
Appeal allowed 13 September 2023

Appeal Costs

4. There have been **no** appeal cost decisions.

Outstanding Appeals

5. Details of outstanding appeals can be found in **Appendix 3**.

Recommendation

6. It is recommended that the Committee note the report

Contact: Emma Lucas Ext: 3747

FINANCIAL IMPLICATIONS

Nil

RISK MANAGEMENT IMPLICATIONS

Nil

HUMAN RESOURCES IMPLICATIONS

Nil

EQUALITY AND DIVERSITY IMPLICATIONS

Nil

CRIME AND DISORDER IMPLICATIONS

Nil

SUSTAINABILITY IMPLICATIONS

Nil

HUMAN RIGHTS IMPLICATIONS

The subject matter of the report touches upon two human rights issues:

The right of an individual to a fair trial; and
The right to peaceful enjoyment of property

As far as the first issue is concerned the planning appeal regime is outside of the Council's control being administered by the First Secretary of State. The Committee will have addressed the second issue as part of the development control process.

WARD IMPLICATIONS

Various wards have decisions affecting them in Appendix 3.

BACKGROUND INFORMATION

Start letters and decision letters from the Planning Inspectorate

APPENDIX 3

OUTSTANDING APPEALS

Planning Application No	Appeal Site (Ward)	Subject	Appeal Type	Appeal Status
DC/22/00900/FUL	The Cottage 18 Talbot Terrace Birtley Central Birtley Gateshead DH3 2PQ	Erection of canopy over front entrance and glass balustrade around front boundary to create seating/waiting area, including alterations to stepped frontage (part retrospective).	Written	Appeal dismissed
DC/22/01187/FUL	Jack And Jo's Nursery Garden Middle Hedgefield Farm Stella Road Ryton Gateshead NE21 4NN	Retention of timber café building (retrospective) incorporating external alterations to building and removal of canopy to west elevation, raised deck to front (north) elevation and smoking shelter to east elevation. Alterations to car parking, erection of gate to control use of eastern access and new landscaping (resubmission of DC/21/00916/FUL) (additional information submitted 15.05.2023 and 16.05.2023).	N/A	Appeal withdrawn
DC/22/01226/FUL	Land To The Rear Of 2 Ashfield Road Newcastle Upon Tyne NE16 4PL	Erection of Dutch Bungalow on land to the rear of 2 Ashfield Road with access from Whaggs Lane.	Written	Appeal in Progress

DC/22/01392/CDPA	The Glasses Factory, 32 Wesley Court, Blaydon, NE21 5BT	DETERMINATION OF PRIOR APPROVAL: Conversion of first floor commercial unit to create 4 flats - mix of 1 and 2 bed.	Written	Appeal in Progress
DC/23/00148/ODPA	Shoefayre Ltd 4 Wesley Court Blaydon NE21 5BT	DETERMINATION OF PRIOR APPROVAL: Conversion of vacant first floor Class E premises to C3 residential (2no. 1 bedroom flats).	Written	Appeal in Progress
DC/23/00157/FUL	Site West Of Worley Avenue / South Of Earls Drive Earls Drive (Opposite Numbers 50-60) Low Fell Gateshead Borough NE9 6AA	Use as residential amenity and garden land with construction of a driveway and a single residential outbuilding / garage for the storage of vehicles and residential paraphernalia, with the felling of 8 trees, the replacement planting of 8 trees and new boundary hedgerow.	Written	Appeal dismissed
DC/23/00331/HHA	12 Long Bank Gateshead NE9 7HE	Retrospective planning permission to Remove and replace rear garden boundary 15-metre-long, 1.5-metre-high timber fence with an incorporated double gate and posts with a 15-metre-long timber fence, at 1.8 metre high, with an incorporated single gate and posts.	Written	Appeal allowed



The Planning Inspectorate

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www.gov.uk/planning-inspectorate

Your Ref: AL-JACKJO-CAFE-PINS-FPP2-2023.07

Our Ref: APP/H4505/W/23/3326916

Dr Anton Lang
Anton Lang Planning Services Limited
52 Cleveland Gardens
High Heaton
NEWCASTLE UPON TYNE
NE7 7QH

18 September 2023

Dear Dr Lang,

Town and Country Planning Act 1990
Appeal by JACK & JO'S NURSERY
Site Address: Middle Hedgefield Farm, Stella Road, RYTON, BLAYDON-ON-TYNE,
GATESHEAD BOROUGH, NE21 4NN

Thank you for your Planning Appeal received on 30 July 2023.

Where a relevant enforcement notice has been served on the site, appeals must reach us within 28 days of either:

- i. the date of the local planning authority's notice of the decision or the expiry of the period which the local planning authority had to determine the application, where the enforcement notice is served before the application is submitted;
- ii. the date of the local planning authority's notice of the decision or the expiry of the period which the local planning authority had to determine the application, where the enforcement notice is served before the decision on the application is reached or the determination period has expired; or
- iii. the date the enforcement notice is served, where the enforcement notice is served after the decision or expiry of the period which the local planning authority has to reach a decision on the application, unless the effect would be to extend the period beyond the usual time limit for cases not involving an enforcement notice.

As we received this appeal(s) after the time limit, we are unable to take any action on it.

I am sending a copy of this letter to the local planning authority.

Yours sincerely,

Work Redesign Validation Officer

Work Redesign Validation Officer

<https://www.gov.uk/government/publications/planning-inspectorate-privacy-notice>



Appeal Decision

Site visit made on 4 July 2023

by N Teasdale BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 September 2023

Appeal Ref: APP/H4505/W/23/3320924

The Cottage, 18 Talbot Terrace, Birtley Central, Gateshead DH3 2PQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant full planning permission.
 - The appeal is made by Daniel Boroumand against the decision of Gateshead Metropolitan Borough Council.
 - The application Ref DC/22/00900/FUL, dated 9 August 2022, was refused by notice dated 13 December 2022.
 - The development proposed is described as, '*new signage to front elevation including steel framework and roof over front entrance. Glass balustrade around front boundary to create seating/waiting area*'.
-

Decision

1. The appeal is dismissed.

Procedural Matters

2. The description in the above banner heading has been taken from the original application form. It does however include for new signage to the front elevation and a separate application for advertisement consent has been submitted to the Council under reference DC/22/00901/ADV and subsequently refused. I have determined this appeal on the basis that it relates to the works as set out above excluding for any signage.
3. Some of the works as described above have already been carried out onsite including the canopy over the front entrance and metal framework which is understood to have been erected to support a proposed fascia sign. The appeal before me has therefore been assessed on a part retrospective basis.

Main Issues

4. The main issues are the effect of the proposed development on:
 - The health of the local community;
 - The character and appearance of the host property, including whether it would preserve or enhance the character or appearance of the Birtley Conservation Area (CA) or preserve the setting of the Grade II listed building, former Co-operative; and
 - Highway and pedestrian safety.

Reasons

Health of the local community

5. The appeal site relates to a hot food takeaway located within a commercial setting, occupying a prominent position along a busy high street where there are a number of other town centre uses.
6. Paragraph 92 of the National Planning Policy Framework (the Framework) explains that planning policies and decisions should aim to achieve healthy, inclusive and safe places which amongst other matters, enables and supports healthy lifestyles, especially where this would address identified local health and well-being needs – for example through the provision of safe and accessible green infrastructure, sports facilities, local shops, access to healthier food, allotments and layouts that encourage walking and cycling. Planning Practice Guidance (PPG) also explains that planning can influence the built environment to improve health and reduce obesity and excess weight in local communities.
7. Policy CS14 of the Planning for the future Core Strategy and Urban Core Plan for Gateshead and Newcastle upon Tyne 2010-2030, 2015 (CS) relates to wellbeing and health and explains that this will be maintained and improved by: controlling the location of, and access to, unhealthy eating outlets. The Gateshead Council Supplementary Planning Document, Hot Food Takeaway Supplementary Planning Document, 2015 (SPD) provides further consideration regarding the location and access to such uses. This confirms that the borough of Gateshead currently has a high level of obesity and that the number of hot food takeaways per thousand people is higher than the national average. As a result, a number of planning application considerations are set out with an aim to tackle obesity levels and improve the health of the local community.
8. The SPD would discourage a new hot food takeaway in this specific area owing to the proportion of year 6 pupils that are obese, number of units in the ward and proportion of units in hot food takeaway use in the district centre. Whilst the proposed development would not result in a new hot food takeaway use, the policy and SPD seeks to control not only the location of such uses but access to these uses and thus is considered relevant in this case.
9. The proposed works would increase the capacity of the usable floor space by providing an enclosed seating area within the boundary externally. This would improve the aesthetics of the established premises and overall facilities on offer and thus would appeal to a wider audience. The Framework explains that planning policies and decisions should help create the conditions in which businesses can invest, expand, and adapt with a need to support economic growth and productivity as well as ensuring the vitality of town centres. However, such provision although not a new use would improve the attractiveness of the outlet by providing a larger external seating area in a location where there are strict controls in place regarding such uses and access in the interests of the health of the local community.

10. Lifestyle choices/activity may be different since the Covid 19 pandemic. However, I am not convinced that appealing to a wider audience would encourage the public to extend their walking distance as it cannot be assumed that such customers would be from further afield or would walk to the premises. I have had regard to the appellant's comments regarding wheelchair provision, number of steps provided and glass balustrade. However, such matters would not overcome the harm identified and I am not convinced that such measures would result in more steps given the small-scale nature of the proposals and area of coverage.
11. Although the SPD was adopted in 2015, it is still a material consideration in the determination of this appeal. Additionally, the evidence suggests that a recent survey was undertaken on 5 July 2022 which confirmed that the number of hot food takeaways within Birtley District Shopping Centre is still high, exceeding that permitted within the SPD. As set out above, the proposed development would not result in a new hot food takeaway use. However, it would increase access to the business which could affect the health of the local community and thus would be contrary to the overall focus of the policy and SPD.
12. The menu and clientele of the current occupier might well be aimed towards families rather than students and young children and there are no special offers, discounts, card payment facilities as well as the premises not being open at lunchtimes. However, I am unable to control the operator, clientele, or menu of the unit, all of which could change over time. The evidence is such that the borough of Gateshead currently has a high level of obesity and irrespective of not appealing to young children and students, there is still a clear focus to reduce such levels generally through location and access to such uses.
13. There are benefits of families bonding as well as time spent outdoors. However, by increasing the attractiveness of the premises where food can be eaten in more attractive surrounds, could contribute to the identified high obesity levels.
14. For the above reasons, I conclude that the proposed development would unacceptably affect the health of the local community. It would therefore be contrary to Policy CS14 of the CS and the overall focus of the SPD. For the same reasons, it would also be contrary to the aspirations of the Framework as set out above.

Character and appearance

15. The site lies within the CA and lies adjacent but detached from the Grade II listed former Co-operative buildings located to the south. As such, I have a duty under Section S66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to pay special attention to the desirability of preserving or enhancing the character or appearance of the CA and requires special regard to be had to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. I have also had regard to paragraph 199 of the Framework which states that when considering the impact of a proposed development

on the significance of a designated heritage asset, great weight should be given to the asset's conservation.

16. The CA is noted for its mixture of individual major buildings, often in extensive grounds; single older terraces and a number of infill schemes. The evidence suggests that the late nineteenth/early twentieth century stone and brick buildings along Durham Road, although altered at ground floor level, still possess many of their original architectural details. These buildings, including the former Co-op buildings (which are statutorily listed), contribute to the historic character of the townscape in this part of the area.
17. The appeal property is located along the eastern side of the high street and stands on its own being detached from any other buildings including the listed building to the south. The property extends further back to the rear, but its original form comprises a T shape meaning that the building line of the front elevation is staggered with the main entrance to the building being set back from the remaining elevation and an external open aspect stepped entrance infills this gap. The building is broadly in line with the buildings to the south although the front most part of the elevation and stepped entrance does project further forward. It is however set slightly back from its neighbour to the north.
18. A slate tiled monopitch canopy has been installed over the stepped entrance providing cover for customers. Given, the form of the building and staggered front building line, the canopy element does not project significantly forward of the front most part of the elevation and does not extend further out from its neighbour to the north. Additionally, the height sits at a lower level in relation to the host property with an overall design similar and complementary to that of the main property.
19. That said, the associated structural supports comprise several metal posts which are thick and heavy looking. A number of the posts project further forward from the front of the canopy element and extend a considerable height sitting above the canopy. The posts have resulted in the introduction of an unduly dominant and intrusive feature at this visually prominent site, to the detriment of the appearance of the host property and surrounding street scene which includes the adjacent Grade II listed building. I appreciate that the colour of the frames would be painted grey to match the colour of the windows and door. However, this would not be sufficient to mitigate against the harm identified. The appellant has suggested masking the structural supports. However, I can only consider the submitted plans and such details are not shown. As such, I cannot consider this as part of the appeal.
20. The proposed development would also include for the installation of a glass and stainless-steel balustrade which would be installed above the stepped entrance providing for an enclosed seating area. The existing steps would be reduced in height meaning that the balustrade would sit closer to ground level and would wrap around the front of the building. Whilst such features are not common in the surrounding area, it would not be of a size or scale to dominate the existing building. Additionally, it would be positioned close to ground level and would be contained within the external stepped

entrance area and would therefore remain subordinate to the main property. The use of glass would also help break up its overall mass and as a result, it would not be harmful to the overall appearance of the building and wider street scene. I am also persuaded that the changes proposed to the steps would be an improvement on the existing which are in a deteriorating state.

21. Despite my findings in relation to the canopy element and proposed balustrade, this would not overcome the harm identified in relation to the structural supports. The proposed development would therefore unacceptably harm the character and appearance of the host property and thus would fail to preserve the character or appearance of the CA. It would also fail to preserve the setting of the listed building. This would result in less than substantial harm to the significance of these designated heritage assets.
22. In such scenarios, the Framework explains that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use. I recognise that the proposed development would make the existing steps safer to use and I have had due regard to their present condition. I am also aware of issues regarding wind and cold air. Nevertheless, there is no evidence before me to suggest that such matters could not be achieved by a scheme that would be less harmful to the CA and setting of the nearby listed building.
23. Customers to the takeaway may well use the parking to the rear of the property and visit other high street shops. There would also be some local employment through supervision and cleaning as well as work for local tradesmen. However, given the small-scale nature of the proposals, any benefits associated would be very minor and would not be sufficient to outweigh the harm identified.
24. Overall, it has not been demonstrated that there are sufficient public benefits to outweigh the less than substantial harm to the CA or the setting of the listed building to which I have attached great weight given the requirements of the Framework.
25. The proposed development would therefore be contrary to Policy CS15 of the CS and Policies MSGP24 and MSGP25 of the Site Allocations and Development Management Policies Making Spaces for Growing Places Local Plan Document for Gateshead, 2021 (MSGPLP) which together, amongst other matters, requires development to contribute to good place making through the delivery of high quality and sustainable design, and the conservation and enhancement of the historic environment.
26. The proposed development would not conserve the heritage asset in a manner appropriate to its significance, or positively contribute to local character or distinctiveness in line with the aims of Section 16 of the Framework relating to Conserving and Enhancing the Historic Environment.

Highway and pedestrian safety

27. A narrow lane is located to the direct south of the site providing access to the rear of the premises as well as serving adjacent land uses to the south. Whilst only a snapshot in time, I noted at my site visit that there were several cars parked to the rear and that this area was well used despite it being a dead-end zone. Given the location of the lane to the direct south, pedestrians using the high street cross the lane informally to the front of the appeal property.
28. Currently, vehicles exiting the lane onto the high street have a sufficient level of visibility for approaching vehicles and pedestrians to be able to stop in time without causing severe safety implications. The proposed development would however introduce a glass and stainless-steel balustrade in close proximity to the access lane, in a location close to where pedestrians cross. Even taking into account the transparency element, it would provide for a waiting/seating area which would intensify the use along with steel posts and railings which would obstruct views and increase the impact on highway safety for all road users when exiting the site. It would also present a potential distraction to highway users.
29. The reduction in height of the steps is noted as well as the height of the seating area being lower than the viewing height of someone in a car. However, this would not overcome the issue of visibility as views would still be obstructed by reason of the intensity of use particularly on occasions where customers stand up as well as the presence of steel posts and railings. It would also not overcome the matter of additional distraction.
30. The enclosure of the front area would ensure that the public would access the premises from the pavement only and would avoid the blind corner to the side road. No compelling case has however been submitted to demonstrate that this is currently an issue or that such measures would improve the safety of the public or improve visibility. The appellant refers to road markings and speed measures that could be introduced upon the lane. Such details have not been provided and thus cannot be considered as part of this appeal.
31. Neither the fact that the building is set back, nor the existence of the wide footpath, would overcome the visibility issues, particularly as the point at which pedestrians cross cannot be controlled.
32. For the above reasons, I conclude that the proposed development would unacceptably harm highway and pedestrian safety. As such, it would be contrary to Policy CS13 of the CS and Policy MSGP15 of the MSGPLP which together, amongst other matters, requires development to not have an unacceptable impact on the safe operation of the transport network. For the same reasons, it would also be contrary to the aspirations of the Framework relating to promoting sustainable transport.

Other Matters

33. I am aware of a previous appeal under reference APP/H4505/C/18/3193759 which related to a hot food takeaway nearby. However, that appeal was for

a change of use from A3 to A3 / A5 to allow home delivery which is very different to that of the appeal before me and are therefore not comparable. This previous appeal would not therefore change my findings on the above main issues. Neither would the study referred to by Dr Barry Popkin as details of this are limited to enable me to comment fully and, in any event, would not supersede the findings above or overall aim of the policy and SPD. There is also no compelling case to suggest that the issues associated with levels of obesity are down to the acts of the Council's licensing department.

34. The seating area would allow for a more enjoyable experience for loyal customers of over 40 years and the plans may well be seen as an improvement by family, friends and builders. I am also aware that competition is high particularly during a difficult trading period. However, such matters would not be sufficient to outweigh the harm I have identified.
35. Reference has been made to the signage of other restaurants nearby. As set out earlier, a separate application for advertisement consent has been submitted to the Council under reference DC/22/00901/ADV and subsequently refused. The signage element does not form part of this appeal despite the description of development, and I do not therefore find it necessary for me to consider the matter of signage further. Works that have taken place elsewhere would also not be a reason to justify further development that would be inappropriate for the reasons set out above.
36. A condition could be applied limiting the use of the outside area to protect the amenity of the surrounding area in terms of noise disturbance. I also accept that outlook onto the steel support posts would not be unduly restricted from the first floor of the property given its use as a storage space. However, a lack of harm in such matters are neutral weighing neither for nor against the development.

Conclusion

37. The proposed development would conflict with the development plan when considered as a whole. There are no material considerations, either individually or in combination including the provisions of the Framework, that outweighs the identified harm and associated plan conflict. I conclude that the appeal should therefore be dismissed.

N Teasdale

INSPECTOR

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Appeal Decision

Site visit made on 5 September 2023

by Sarah Manchester BSc MSc PhD MIEnvSc

an Inspector appointed by the Secretary of State

Decision date: 15 September 2023

Appeal Ref: APP/H4505/W/23/3324733

Site west of Worley Avenue / south of Earls Drive (opposite Numbers 50-60), Low Fell, Gateshead NE9 6AA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Wayne Laskey and Mrs Michelle Laskey against the decision of Gateshead Metropolitan Borough Council.
 - The application Ref DC/23/00157/FUL, dated 21 February 2023, was refused by notice dated 19 May 2023.
 - The development proposed is use as residential amenity and garden land with construction of a driveway and a single residential outbuilding / garage for the storage of vehicles and residential paraphernalia, with the felling of 8 trees, the replacement planting of 8 trees and new boundary hedgerow.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. A previous planning application (ref DC/21/00879/FUL) for erection of two dwellinghouses (Use Class C3) with associated accesses, with surrounding gardens, and curtilage areas across remaining parts of site with felling of 5 trees was refused in February 2022 and it was dismissed on appeal (ref APP/H4505/W/22/3294054).
3. Tree Preservation Order TPO (No 213) 2023 relating to land at Allotment Gardens – adjacent to 41 to 46 Worley Avenue Low Fell was made on 17 May 2023. It relates to trees spread across the 3 former strip gardens that include the appeal site and it specifies 2 individual sycamore trees and a tree group comprising 17 trees including sycamore, yew and holly.
4. At the time of my visit, I observed that tall timber fencing has been erected around the appeal site and a large quantity of hardcore has been spread including in the location of the proposed garage and the driveway. However, the application form indicates that the work has not already started. Therefore, while I have taken into account what I saw, I have determined the appeal on the basis of the submitted plans.

Main Issues

5. The main issues are:
 - i) Whether the proposal would preserve or enhance the character or appearance of the Low Fell Conservation Area;
 - ii) Whether the proposal would result in biodiversity net gain; and

- iii) The effects of the proposal on highway safety, with particular regard to visibility splays.

Reasons

Character and appearance

6. The appeal site is a rectangular parcel of land adjacent to Earls Drive and to the rear of the first 3 terraced properties on Glenbrooke Terrace. The site occupies part of 3 historic strip gardens that extend between Glenbrooke Terrace and Worley Avenue. It is in the Low Fell Conservation Area (the CA), which includes buildings and land on the slopes of Gateshead Fell. Low Fell was originally a separate village and, although now a densely developed and predominantly residential suburb of Gateshead, it retains its distinctive areas of homogeneous building form and layout.
7. The Conservation Area Character Statement¹ (the CACS) notes that the area west of Durham Road is strongly influenced by the Victorian terraces of Albert Drive, Earls Drive and Worley Avenue. These are characteristically red brick with stone dressings and slate roofs. Earls Drive and Worley Avenue are also noted for their long narrow leafy gardens bounded by brick walls or privet hedges. The strip gardens, of which the appeal site forms part, run the entire length of Worley Avenue, orientated in the same direction as the long front gardens of those properties and separated from them by a pedestrian access. At the time of my visit, I observed that the mature strip gardens function somewhat as a green oasis where urban sounds recede and are replaced by quietude and bird song.
8. The CACS highlights the important contribution that the mature trees and well established gardens make to the area's special character. In recognition of their positive contribution, there is a presumption against the subdivision of gardens and grounds and against development that would directly or indirectly lead to the loss of trees, hedgerows and shrubs which contribute, now or in the future, to the character of the CA. In this case, the gardens collectively constitute a significant area of green space and their cohesive historic form and visual amenity make a positive contribution to the significance of the CA.
9. The appeal site has been formed by the merging, subdivision and fencing out of the first 3 strip gardens closest to Earls Drive. The internal boundaries separating the gardens have been removed, the ground and understorey have been cleared of vegetation, and hardcore and road planings have been spread across the site. The former roadside boundary hedge has been replaced with a close-boarded fence with gates. Notwithstanding, and as found by the previous Inspector, the tree group within the site, together with vegetation and trees on adjacent plots and elsewhere within the area, make a strong positive contribution to the character and appearance of the area.
10. As with the earlier appeal, the proposal would formalise the merging of the end 3 strip gardens and their broadly east-west bisection, which would be out of character with the length, depth, size and layout of adjacent gardens. The previous Inspector found that the 2 plots in that case would be distinctly and incongruously at odds with the prevailing plot pattern of surrounding streets. While the appeal relates to only 1 of the 2 plots subject of the earlier appeal,

¹ Ref IPA17: Conservation Area Character Statements, Strategies and Policy Guidelines. June 2020.

the proposal would nevertheless be similarly incongruous and it would disrupt the strong established linear form of the strip gardens and the neighbouring terraces. Consequently, the proposal would be a discordant feature that would erode local distinctiveness and sense of place.

11. In contrast to the repeating and uniform appearance of nearby terraced dwellings in their narrow linear plots, the garage would be a substantial detached 1.5 storey building set in a wide and deep rectangular plot. Notwithstanding the external materials, the overly large garage set in its own large garden would be an incongruous feature that would be out of character and poorly related to the surrounding historic environment. The tall roadside boundary fence would be visually obtrusive and out of character in the context of mature hedgerows and walls along Earls Drive. The proposal would disrupt the harmonious character and appearance of the area. It would not be integrated into its surroundings by the adjacent domestic garages that sit behind Glenbrooke Drive, rather it would increase the prominence of the discordant modern utilitarian building group to the detriment of visual amenity.
12. While some of the strip gardens appear to include structures ancillary to residential garden use, the garage and plot would be overly large, out of scale and out of character with the neighbouring strip gardens. The garage would be orientated towards Earls Drive with conspicuous access from that road, and it would be visually and functionally separated from Worley Avenue by the adjacent plot formed from the other half of the merged strip gardens. As a result, the proposal would not have the appearance of an outbuilding in a strip garden ancillary to Worley Terrace.
13. Of the 13 trees scattered through the appeal site, 8 would be felled to facilitate the proposal. The Arboricultural Impact Assessment (the AIA) notes that these are semi- to early- mature sycamore, in fair condition. While they may not have been planted and none of them is individually significant, the trees collectively have a landscape and visual amenity value. By virtue of their height and spread, the trees are an imposing presence in the townscape, not only viewed along Earls Drive but also from elsewhere in the area. The loss of so many large trees would open up the site and diminish its positive contribution to the townscape. In this regard, the Framework emphasizes that trees make an important contribution to the character and quality of urban environments, and can help mitigate climate change.
14. The trees are proposed to be replaced on a 1 to 1 basis by trees in the rear boundary hedge. The replacement trees would be closely spaced along the hedgerow, 3 would be in very close proximity to the rear of the garage and several would be overly close to trees on neighbouring land. The resulting constrained growth forms and regimented linear arrangement to the rear of the site would not have the appearance of a natural tree group. Even at maturity, the proposed more modest tree species would not make the same visual contribution to the visual amenity of the townscape as the existing trees. The proposed hedgerow to the rear of the site would be similarly distant from the road such that it would make little positive contribution to the street scene.
15. While the AIA recommends protection measures during construction, the evidence indicates that the health of the retained trees may already have been compromised. This is because the clearing of vegetation and spreading of unwashed hardcore and planings is likely to have resulted in soil compaction,

- root damage and the leaching of pollutants and contaminants. The Council considers that as a result of the unsympathetic works to date, the remaining trees would be vulnerable to further disturbance within their rooting zones.
16. There is very little detail about the proposed garden or its use, except that it would apparently include an area of lowland meadow. However, the AIA does not appear to comprehensively consider tree and root protection during reinstatement of the garden or the likely pressure on retained and replacement trees from future or neighbouring occupiers. Irrespective, the retained trees, proposed hedge and line of smaller trees to the rear of the site would not mitigate the adverse visual impact arising from the incongruous plot size and shape, loss of trees, and the discordant built form and unsympathetic roadside boundary treatment.
 17. By virtue of its prominent location, the proposal would be readily visible in public views such that the visual harm would be capable of harming the wider character and appearance of the CA. However, while it would fail to preserve the significance of the CA, taking into account the scale of the proposal I find the harm to be less than substantial but nevertheless of considerable importance and weight, in accordance with the National Planning Policy Framework (the Framework).
 18. Paragraph 202 of the Framework advises that the harm should be weighed against the public benefits. In this case, the benefits are stated to include off street car parking and residential storage space and the optimum viable use of vacant and unused land. The garage and storage space would be a private benefit. Given the scale of the proposal, there would be minimal economic benefits during construction. There is little evidence that the proposal would represent the optimum viable use of the residential garden land, taking into account its amenity value and that the CA is an area-based asset.
 19. In the absence of any substantiated public benefit, I conclude that on balance the proposal would fail to preserve the character or appearance of Low Fell Conservation Area. This would fail to satisfy the requirements of the Planning (Listed Buildings and Conservation Areas) Act 1990, paragraph 197 of the Framework and it would conflict with the development plan in relation to the conservation of heritage assets, namely policy MSG25 of Making Spaces for Growing Places Local Plan Document for Gateshead adopted February 2021 (the LP) and policy CS15 of the Core Strategy and Urban Core Plan for Gateshead and Newcastle upon Tyne adopted March 2015 (the CS).
 20. In addition, I conclude that the harm to the character and appearance of the area would conflict with LP Policies MSG24 and MSG36 and CS Policy CS18. These require, among other things, that proposals are compatible with local character, including relationship to townscape, and include high quality landscaping and boundaries, and that they protect and enhance trees, woodland and open spaces. There would also be conflict with the aims and principles of the Gateshead Placemaking Supplementary Planning Document adopted March 2012 (the SPD) and the National Design Guide in relation to well designed places that are well related and integrated into their surroundings and responsive to local history, culture and heritage.

Biodiversity

21. The aerial photographs illustrate that the Worley Avenue strip gardens constitute a large area of well vegetated green space. The gardens meet wider green space to the south and which extends westwards and then northwards adjacent to Deneside Avenue and Earls Drive. The well-connected and contiguous gardens and land will provide habitat for a range of species including breeding birds, foraging bats, invertebrates, amphibians and small mammals such as hedgehogs.
22. The Planning Practice Guidance (the PPG) advises that the information needed to populate the biodiversity net gain (BNG) metric is taken from habitat surveys of the site before development and any related habitat clearance or management. The PPG states that, in assessing the existing biodiversity value of a development site, it may be relevant to consider whether deliberate harm to biodiversity has taken place in the recent past and if so whether there are grounds for this to be discounted in assessing the underlying value of the site (and so whether a proposal would achieve a genuine gain).
23. In this case, except for the sycamore trees, the appeal site had been cleared of vegetation prior to the earlier appeal. At the time of the ecological assessment², the ground was bare earth. The site was subsequently spread with hardcore and road planings, although ground flora is beginning to re-establish. However, prior to their clearance, the strip gardens of which the appeal site forms part had been continuously vegetated. There is little evidence that, in the absence of development proposals, the gardens would have been cleared or spread with hardcore. Therefore, I find that the starting point for the assessment of impacts on biodiversity should be the vegetated gardens, with trees, hedgerows, scrub and bushes, as they existed prior to clearance.
24. The proposal would result in the loss of 8 large trees and the permanent loss of perhaps a third of the area beneath the garage and the driveway. The remaining area is indicated as garden, with a species rich hedgerow incorporating 8 trees to the rear of the site. The replacement trees would be closely spaced to each other, to neighbouring land and trees and to the proposed garage. Consequently, their growth would be constrained and the proposed 1 to 1 replacement planting with smaller tree species would not demonstrably compensate for the loss of mature trees.
25. Details of the garden are sparse, except that the ecological assessment recommends the creation of an area of lowland meadow. However, taking into account the location and the constraints of the site and the management interventions required to successfully establish and then maintain a functioning lowland meadow, I am not persuaded that it would be desirable or even feasible to create this type of habitat. While the species-rich hedgerow might go some way towards offsetting the loss of hedgerows, it is not clear that it would compensate in terms of quantity or quality. Moreover, unless the habitat creation was secured by a planning obligation, there would be little guarantee that the created habitats including the hedgerow to the rear of the site would be appropriately maintained and retained in the longer-term.

² Site at Earl's Drive, Low Fell, Gateshead. Ecological Impact Assessment Report and Biodiversity Net Gain Statement. April 2023.

26. I accept that a planning condition could be imposed requiring details of landscape planting and implementation. However, the proposal fails to demonstrate that the biodiversity value of the site would be maintained, let alone enhanced, as part of the proposal and, for reasons above, I am not satisfied that a condition would be the appropriate mechanism to secure biodiversity mitigation and compensation.
27. Therefore, I conclude that the proposal would not result in BNG. Irrespective that there may be no legislative requirement to deliver BNG, the proposal would conflict with CS Policy CS18 and LP Policies MSG36 and MSG37. These require, among other things, that proposals maintain and enhance green infrastructure assets, in accordance with the mitigation hierarchy and that proposals should provide net gains in biodiversity. It would also conflict with the aims of the Framework in relation to providing net gains for biodiversity.

Highway safety

28. There is currently a close-boarded timber fence, with pedestrian and vehicular gates, along the highway boundary. The submitted plans show a new timber fence to the highway boundary but its height is not indicated and it is not illustrated on the elevation plans. However, the fence would be flush with the rear of the footway and the plans do not illustrate an adequate pedestrian visibility splay to ensure acceptable levels of intervisibility between vehicles leaving the site and vulnerable road users on the footway. While the appellant considers it obvious that a car can enter and exit the site safely as it sits alongside a straight road, the proposal fails to demonstrate that it would minimise the scope for conflict between pedestrians, cyclists and vehicles.
29. I note the suggestion that this could be addressed by the imposition of a planning condition requiring submission of a plan showing the height of the boundary treatment and the visibility splays. The suggested condition wording could be amended to specify the dimensions of the visibility splay and the height of the fence, in order that it was sufficiently precise. However, it has not been demonstrated that an adequate visibility splay could be provided, taking into account the proximity of trees and buildings. In the absence of illustrative plans, it is not possible to fully assess the impact of the proposal on the character and appearance of the CA or trees. Consequently, this is not a matter that could be satisfactorily addressed by condition.
30. Therefore, I conclude that the proposal would not provide adequate visibility splays and it would harm highway safety, with particular regard to users of the footway. It would conflict with CS Policy CS13 and LP Policy MSG15. These require, among other things, that proposals provide safe access and avoid unacceptable impacts on the safe operation of the highway. It would also conflict with the highway safety aims of the Framework.

Other Matters

31. I understand that the strip gardens are not necessarily in the same ownership as the Worley Avenue properties they originally served. In this case, the appellants are not residents of Worley Avenue and the strip gardens forming the appeal site are no longer ancillary to Worley Avenue. However, neither that nor the fact that the strip gardens may already have been divided in terms of land ownership weigh in favour of the proposal.

32. While the appeal site may have been neglected and used for fly tipping and littering in the past there is little evidence that the fencing and clearance of the gardens, which comprised scrub, bushes and foliage, has improved its appearance. Indeed, the appellants state that in its current empty state the appeal site just looks 'odd'. Neither the former or current condition of the site, the latter a result of unsympathetic treatment with little respect for surrounding and historic context, weigh in favour of the scheme.
33. Some of the trees in the appeal site are close to the highway boundary and their roots have, in the past, lifted parts of the footway. I note the suggestion that some tree felling is essential due to their proximity to the footway, to one another and their condition. However, at the time of my visit, the footway was not uneven or unsafe and in any case none of the trees are recommended for felling for any reason other than to facilitate development.
34. The Framework definition of previously developed land, also known as brownfield land, specifically excludes land in built-up areas such as residential gardens and allotments. Policies that promote the use of brownfield land in settlements do not appear directly relevant. The Framework does support the development of under-utilised land, but it recognises that some such land can perform many functions including for wildlife, flood risk mitigation and cooling/shading. It also directs decisions about the efficient use of land to take into account factors such as the desirability of maintaining an area's prevailing character and setting (including residential gardens) and the importance of securing well-designed and attractive places. There are relevant development plan policies and the policies that are most important for determining the application are not out of date. The presumption in favour of sustainable development in paragraph 11 d) of the Framework does not apply. Policies in the Framework do not provide a justification for the proposal.
35. The Council has a rolling programme to prepare Conservation Area Character Appraisals (CACA) and Management Strategies. While these may not be available for Low Fell, nevertheless I am satisfied that the evidence in relation to the CA, including the CACS and the previous Inspector's decision, is sufficiently clear. The absence of a recent CACA for Low Fell does not weigh in favour of the proposal.

Conclusion

36. For the reasons set out above, the proposal would harm the character and appearance of the area, with particular reference to the CA designated heritage asset. The proposal would also fail to maintain and enhance biodiversity and there would be harm to highway safety. As a result, I conclude that the proposal would conflict with the development plan, and there are no material considerations that would outweigh that conflict.
37. Therefore, I conclude that the appeal should be dismissed.

Sarah Manchester

INSPECTOR

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Appeal Decision

Site visit made on 22 August 2023

by A Caines BSc (Hons) MSc TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 September 2023

Appeal Ref: APP/H4505/W/23/3324915

12 Long Bank, Eighton Banks, Gateshead NE9 7HE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Adam King against Gateshead Council.
 - The application Ref DC/23/00331/HHA, is dated 14 April 2023.
 - The development proposed is removal and replacement of an existing rear garden boundary 15 metre long, 1.5 metre high timber fence with an incorporated double gate and posts. To be replaced with a 15 metre long timber fence, at 1.8 metre high, with an incorporated single gate and posts.
-

Decision

1. The appeal is allowed and planning permission is granted for removal and replacement of an existing rear garden boundary 15 metre long, 1.5 metre high timber fence with an incorporated double gate and posts, to be replaced with a 15 metre long timber fence, at 1.8 metre high, with an incorporated single gate and posts, at 12 Long Bank, Eighton Banks, Gateshead NE9 7HE, in accordance with the terms of the application Ref DC/23/00331/HHA, dated 14 April 2023, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan; OA-00-XX-010 Rev A.

Procedural Matters

2. The appeal was submitted on the basis that the planning application was not determined by the Council within the prescribed period. Although the application was initially validated by the Council, the proposal is retrospective and the Council has subsequently queried its validity due to alleged encroachment of the fence beyond the property boundary.
3. I note that the planning application was submitted on the householder application forms and the requisite fee was paid. It was accompanied by a site plan which showed the application site edged in red, together with drawings showing the position and appearance of the proposed fence, and a signed declaration stating that the land to which the application related was within the applicant's ownership. An annotation on the proposed site plan further states that the replacement fence would follow the boundary line.
4. However, having carefully reviewed all of the evidence and visited the site, I cannot be certain that the position of the fence is consistent with the submitted plans. Consequently, I have proceeded to determine the appeal on the basis of

the submitted plans. This means that the proposal before me is explicitly for a replacement fence of 1.8 metres height, in the same position as the previous fence. I am satisfied that a valid application has been made in this respect. Any non-compliance with the submitted plans would be a matter for the Council in the first instance.

Main Issue

5. On the evidence before me and based on my site visit, I consider that the main issue in this appeal is the effect of the development on the character and appearance of the surrounding area.

Reasons

6. The appeal site is an end-of-terrace property located on Long Bank. A private access road runs down the side and rear, serving both the terraced block and other adjacent properties. The majority of front boundary treatments on Long Bank comprise low walls and hedges, but many side and rear boundaries are typically formed by timber fencing of around 1.6-1.8 metres in height.
7. The proposal relates to the replacement of a section of garden fence adjacent to the access road. While a neighbour has suggested that this boundary was originally a stone wall, evidence before me indicates that a timber fence has been present along this boundary for many years, possibly since 2006.
8. The replacement fence would be taller, but not significantly so. Its height and appearance would be in keeping with other garden fencing found in the area, including similar fencing on the eastern side of the access road. Consequently, even though the fence would be visible from Long Bank and neighbouring properties, it would not be a visually intrusive or dominant feature. Furthermore, as the proposal before me would be constructed in the same position as the previous fence, it would not materially affect the use of the access road. A small pedestrian gate would be incorporated into the fence, but the plans clearly show that this would open into the garden. Overall, the effect on the surrounding area would be minimal.
9. I therefore conclude that the development would not harm the character and appearance of the surrounding area. Thus, the proposal complies with Policies CS14 and CS15 of the Core Strategy and Urban Core Plan for Gateshead and Newcastle upon Tyne (2015) (the CS), and Policy MSGP24 of the Making Spaces for Growing Places Local Plan Document for Gateshead (2021) (the LPD), which together seek high quality design that is compatible with local character and distinctiveness. For completeness, I also find no conflict with the highways and residential amenity requirements of CS Policies CS13 and CS14, as well as LPD Policies MSGP15 and MSGP17.

Conditions and Conclusion

10. The standard commencement and approved plans conditions are imposed for certainty. Subject to these conditions, and for the reasons given, I conclude that the appeal should succeed and planning permission should be granted.

A Caines

INSPECTOR



REPORT TO PLANNING AND DEVELOPMENT COMMITTEE

4 October 2023

TITLE OF REPORT: Planning Obligations

REPORT OF: Anneliese Hutchinson, Service Director, Climate Change, Compliance, Planning and Transport

Purpose of the Report

1. To advise the Committee of the completion of Planning Obligations which have previously been authorised.

Background

2. To comply with the report of the District Auditor "Probity in Planning" it was agreed that a progress report should be put before the Committee to enable the provision of planning obligations to be monitored more closely.
3. Since the last Committee there have been **no** new planning obligations.
4. Details of all the planning obligations with outstanding covenants on behalf of developers and those currently being monitored, can be found at Appendix 2 on the Planning Obligations report on the online papers for Planning and Development Committee for 4 October 2023.

Recommendations

4. It is recommended that the Committee note the report.

Contact: Emma Lucas Ext: 3747

1. FINANCIAL IMPLICATIONS

Some Section 106 Agreements require a financial payment when a certain trigger is reached and there is a duty on the Council to utilise the financial payments for the purposes stated and within the timescale stated in the agreement.

2. RISK MANAGEMENT IMPLICATIONS

Nil

3. HUMAN RESOURCES IMPLICATIONS

Nil

4. EQUALITY AND DIVERSITY IMPLICATIONS

Nil

5. CRIME AND DISORDER IMPLICATIONS

Nil

6. SUSTAINABILITY IMPLICATIONS

Nil

7. HUMAN RIGHTS IMPLICATIONS

Nil

8. WARD IMPLICATIONS

Monitoring: Various wards

9. BACKGROUND INFORMATION

The completed Planning Obligations