

Committee Report

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| 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

being removed. The application is assessed in this report based on the submitted plans.

1.7 There appears to be one point indicated on levels plans that would increase in height in excess of 1.15m. This is at the lowest point at the south western corner of the site, and levels would increase by 1.865m.

1.8 This application does not propose to change the use of the site, but instead the physical removal of buildings on site and engineering operations to raise land levels with clean soil.

1.9 RELEVANT PLANNING HISTORY

247/83 - Formation of a new vehicular access - Granted 29.04.1983

2.0 Consultation Responses:

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|--------------------|-------------------------|
| Coal Authority | Informative recommended |
| Environment Agency | Object to application |

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 representation has been received, querying what measures would be in place to avoid mud on Durham Road from vehicles leaving the site.

4.0 Policies:

NPPG National Planning Practice Guidance

NPPF National Planning Policy Framework

CS14 Wellbeing and Health

CS15 Place Making

CS17 Flood Risk and Waste Management

CS18 Green Infrastructure/Natural Environment

MSGP14 Mitigating Impact on Transport Network

MSGP15 Transport Aspects of Design of Development

MSGP17 Residential Amenity

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

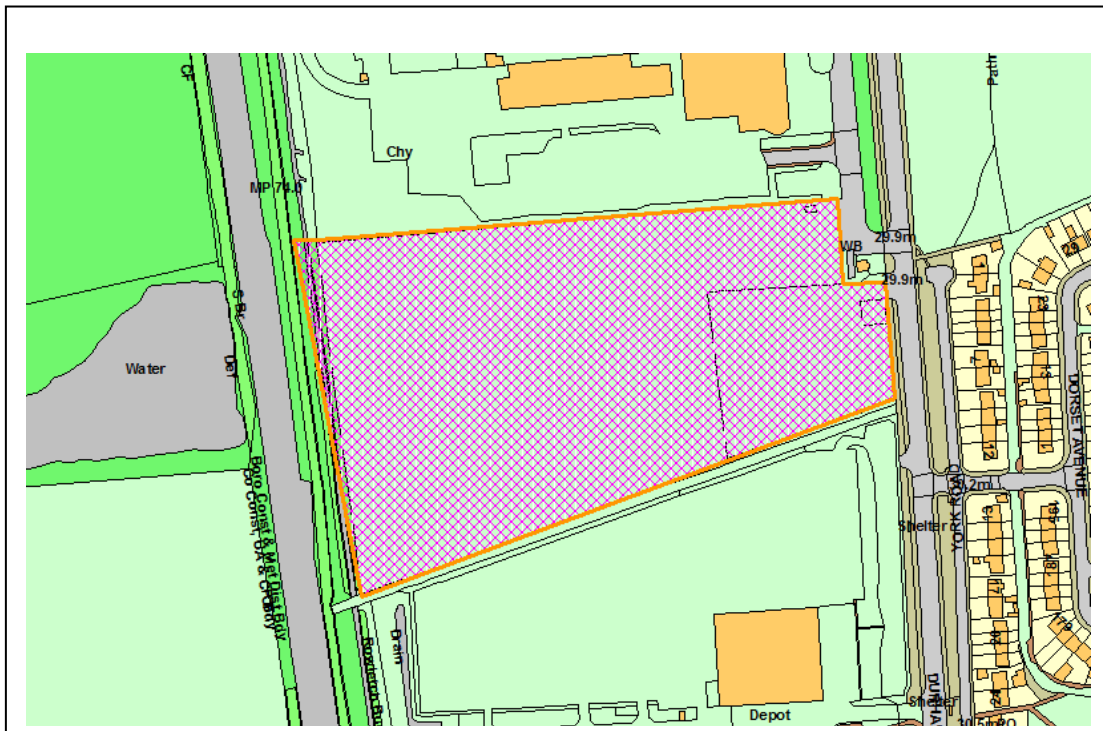
The application does not adequately assess the flood risks posed by the development and does not demonstrate that flood risk would not be increased elsewhere as a result of the development. The proposal for major development does not incorporate sustainable drainage systems and there is no clear evidence 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.

2

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 is not designed to combine safeguarding land for flood management with green infrastructure enhancements benefiting biodiversity, water quality and landscape. This is contrary to the aims and requirements of the NPPF and policies CS18, MSGP31, MSGP36 and MSGP37 of the Local Plan.

3

Insufficient information has been submitted with the application to allow the Local Planning Authority to be satisfied that the proposed works could be carried out without resulting in unacceptable harm to highway safety. This is contrary to the aims and requirements of the National Planning Policy Framework and policies CS13, MSGP14 and MSG15 of the Local Plan.



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