

MEETING:	PLANNING COMMITTEE
DATE:	4 APRIL 2012
TITLE OF REPORT:	<p>N111900/N - RETROSPECTIVE PLANNING APPLICATION FOR THE RETENTION OF AN EXISTING BUND AND ITS REMODELLING WITH APPROPRIATE ENGINEERING WORKS AND LANDSCAPING OF THE REMODELLED BUND AT PORTHOUSE FARM, TENBURY ROAD, BROMYARD, HEREFORDSHIRE, HR7 4NS</p> <p>For: Ms Harrison per Mr John Cornwell, Oakview House, Station Road, Hook, Hampshire, RG27 9TP</p>

Date Received: 14 July 2011

Ward: Bromyard

Grid Ref: 365269,255285

Expiry Date: 13 October 2011

Local Members: Cllr A Seldon and Cllr JG Lester

1. Introduction

- 1.1 This proposal was initially reported to the Planning Committee on 1 February 2012. That report is appended to this one, as Annex 1, amended to include the update report to the earlier committee. Both this application and the partner housing proposal were deferred to allow Members' concerns relating to noise to be addressed. The results are primarily assessed under the report relating to application reference N/111899/O. To avoid duplication this report will be confined to matters related directly to the bund.
- 1.2 Members had raised questions as to how far the reports submitted by the applicant had considered the potential for noise nuisance to new residents from specific outdoor activities at the Polytec Holden site. These activities include the movement of forklift trucks and their alarm systems, and operational noise from the movement by those trucks of metal stacked stillages (storage cages) in the yard facing the application site. By implication the efficacy of the bund in terms of noise mitigation, and consequently some of the proposed reasons for its retention, also came under scrutiny although not specifically mentioned.

2. Representations

- 2.1 No further representations have been received.

3. Officer's Appraisal

- 3.1 From the start, officers have felt that the primary function of the bund, if retained, should be regarded as a landscape and separation barrier to distance the industrial premises from the allocated housing site. In assessing the proposal, the bund's function as noise mitigation was consistently regarded as secondary, particularly in light of the applicant's stated intention to erect additional fencing. The text of UDP policy H2 is relevant. It supports provision of a 'significant landscape buffer strip to divide the proposed residential development from the existing employment uses'.

- 3.2 The Council commissioned an independent noise investigation to consider the concerns raised by Members. The resulting further noise report, reference RPS (March 2012) JAK6889, is considered in detail under the partner application reference N/111899/O and provided at annex 2 to that application. It concludes that, with the bund as existing but irrespective of its presence, new residents would be unlikely to suffer night-time disturbance if windows were shut (assuming standard double glazing). For open windows, occasional disturbance would be likely, regardless of any physical barriers. However, the report did not find that such occasions would be frequent or sustained. Specialist ventilation for houses closest to the factory was recommended. On that basis, the report takes the view that amenity criteria could be met.
- 3.3 The RPS report recommends a barrier of 6m height to provide effective noise mitigation which would reduce the frequency and magnitude of actual disturbance events. Such a barrier could be either bunding or fencing, or a combination of both. If a full height bund to 6m is not achievable, then appropriate acoustic fencing should be provided.
- 3.4 Officers have studied the RPS report and concluded that a combination of such a fence and retention of the bund as proposed would offer security and landscaping benefits as well as noise mitigation. This would be applicable regardless of any future uses for the vacant land at Porthouse Farm. Such physical measures would be implemented in conjunction with others such as securing agreement with Polytec to replace conventional reversing beepers with modern 'white noise' reversing alarms. The submitted design for remodelling the bund is the result of extensive negotiation, primarily concerned with achieving a more acceptable profile in landscape terms. The RPS report suggests it would make a positive contribution to other noise mitigation, and it would offer visual impact mitigation for the acoustic fence itself, since it is approximately 2 metres higher than the level at the boundary. With planting and vegetation, the bund and fence could be appropriately combined to achieve the required barrier outlined in policy H2.
- 3.5 On balance, officers regard the proposed retention and remodelling of the bund as being capable of beneficial function, and compliance with policies S1, S10, DR2, DR4, DR10, DR11, DR13, W2 and W8. The recommendation therefore remains unchanged following study of the RPS report. The attention of Members is drawn to recommended condition 4 (d) which includes a requirement for full details and specification for all fencing.

RECOMMENDATION

That planning permission be granted subject to the following conditions:

- 1. B01 Development in accordance with the approved plans**
- 2. Within 9 months of the date of this permission, and in any case before the bund remodelling and landscaping development hereby permitted begins, a final Remediation Method Statement for handling the soils and other materials in order to improve the form of the bund shall be submitted to and approved in writing by the local planning authority. The Method Statement shall include the following in particular:**
 - a) Estimated timescales for the start and completion of the work, including any phased working;**
 - b) That all the recommendations made by Pam Brown Associates Ltd in the submitted reports reference 'Phase 1 and Phase 2 Environmental Investigation Porthouse Farm - Landscape Bund 776-06 (May 2011)', and 'PBA.SH.776-06 Additional SI to the bund (3 January 2012)' will be observed in full;**
 - c) That observation of the work in progress shall be made available to the**

- Council's Environmental Health Officer on request;
- d) A site diary to be established and retained by the applicant, to be made available for inspection by the local planning authority at reasonable times, in which plastic, metal, cement, wire and all other deleterious materials encountered will be recorded along with details of their removal and responsible disposal;
 - e) Provision for specialist advice to be made available and promptly sought, should any unexpected contamination be encountered during the works, and contingency plans for dealing with any such unsuspected contamination encountered at the site but not previously identified;
 - f) That, in the absence of historic evidence being available, any further sampling deemed to be required should be undertaken to a specified appropriate testing suite, to include heavy metals, pH, speciated TPH, PAH and asbestos screen, plus any other suspected substances, to the written satisfaction of the Council's Environmental Health Officer ;
 - g) An estimation of the likely volume and type of any additional soils that will be required to complete the remodelling as approved, and where that additional material will be obtained from;
 - h) That any further soil to be imported shall be tested for fitness for purpose and its source thoroughly investigated and analysed with regard to its composition and any likely contamination; the results to be recorded and retained;
 - i) A scheme of reporting to ensure any imported material is the same as that tested at source;
 - j) Provision for validated documentation to be submitted in writing to the local planning authority within two months following completion of the works, to verify that completion including final soil depths and the source/s of any imported soils used in the bund remodelling;
 - k) Provision for tool-box talks with contractors, and review of the above Method Statement as necessary, and the means of reporting any revision to the local planning authority.

The remodelling and remedial work hereby permitted shall be undertaken in accordance with the approved details and within the timescales specified unless otherwise agreed in writing in advance by the local planning authority.

Reason: To prevent pollution, to secure the function of the bund as a noise and spatial barrier and to ensure a satisfactory form of development in compliance with policies S1, S10, DR2, DR4, DR10, DR11, DR13, W2 and W8 of the Herefordshire Unitary Development Plan.

3. Within 9 months of the date of this permission, and in any case before the bund remodelling and landscaping development hereby permitted begins, a final Working Method Statement, and a plan, shall be submitted to and approved in writing by the local planning authority. The details and plan shall include the following, having regard to the submitted 'Soil Management Strategy' (Illman Young, May 2011) and the Remediation Method Statement as approved under condition 2:
- a) Soil handling methodology to recommended quality standards including soil stripping and separation;
 - b) Arrangements and a location plan for the temporary storage or stockpiling of bund material during the remodelling work;
 - c) The means of providing for and storing any additional material including final topsoil for finishing the bund;
 - d) Location plan, area and enclosure arrangements for any temporary compound for storage, materials, equipment, facilities and/or vehicles;

- e) Arrangements and timetabling for removal of temporary storage, equipment, compound, enclosure, facilities and any other paraphernalia associated with the work hereby permitted, on completion of the scheme.

The details shall be implemented as approved unless otherwise agreed in writing in advance by the local planning authority.

Reason: To protect local amenity, to secure the function of the bund as a noise and spatial barrier and to ensure site safety, proper soil handling and storage and site tidiness during the works, in accordance with policies S1, S2, S10, DR2, DR4, DR10, DR11, DR13, W2 and W8 of the Herefordshire Unitary Development Plan.

- 4. Within 9 months of the date of this permission, and in any case before the bund remodelling and landscaping development hereby permitted begins, a finalised Landscaping and Ecology Scheme shall be submitted to and approved in writing by the local planning authority having regard to the recommendations made on page 15 of the submitted Ecological Appraisal (Richard Tofts Ecology, March 2010). The following shall be included in particular:

- a) The appointment of a named suitably qualified and experienced ecologist to oversee the scheme, and to advise in particular on how to deal with any Japanese Knotweed rhizomes that may be encountered;
- b) Provision and timetabling for supplementary ecological surveys immediately prior to starting the remodelling work, notably to establish the presence or absence of nesting birds or any European Protected Species such as badgers, bats, reptiles or flora, and mitigation measures as a contingency for any such protected species being found to be present;
- c) Adequate protection measures for all trees and hedges identified for retention, in accordance with BS 5837:2005 Trees in Relation to Construction;
- d) Illustrative details of the type, specification, extent, design, height, and colour of all fencing and/or boundary treatments, including access gates and any acoustic fencing.

The scheme shall be implemented in accordance with the approved details in conjunction with the approved landscape masterplan unless otherwise agreed in writing in advance by the local planning authority.

Reason: To improve the visual and ecological amenity of the area, to contribute to noise mitigation and separation of the site from existing industrial premises, to protect wildlife, and to comply with PPS9, the NERC Act and policies S2, DR1, DR13, LA5, LA6, NC1, of the Herefordshire Unitary Development Plan, having regard to the Wildlife and Countryside Act 1981 (as amended).

- 5. In the first available planting season following completion of the bund remodelling in accordance with the approved plans, schemes, timescales and details, the final landscaping, seeding and planting of the remodelled bund shall be undertaken in accordance with the following submitted documents unless otherwise agreed in writing in advance by the local planning authority:

- a) Annotated plan reference 2912/10 Rev B, Feb11 'Landscape Masterplan' received 5 December 2011;
- b) Annotated plan reference 2912/16 Rev A Mar11 'Detailed planting of bund' received 5 December 2011;
- c) Annotated plan reference 2912/18 Rev A, May11 'Landscape management strategy' received 5 December 2011;

All plants shall be maintained for a period of 5 years from the planting date. During

this time, any plants that are removed, die, or are seriously retarded shall be replaced during the next planting season with others of similar sizes and species unless the local planning authority gives its written consent to any variation. If any trees fail more than once they shall continue to be replaced on an annual basis until the end of the 5-year maintenance period.

Reason: To maintain and enhance the visual amenity of the area and to comply with policies S2 and LA6 of the Herefordshire Unitary Development Plan.

6. **No stores or temporary stockpiles of soils or other materials shall be to a height exceeding 3 metres above the previously existing ground level.**

Reason: To protect amenity and ensure safety during the construction period and to comply with policies S2, S10, DR4 and W8 of the Herefordshire Unitary Development Plan.

7. **I16 Restriction of hours during construction**

8. **No deleterious or contaminated material, or any other wastes, shall be removed from the application site unless it is transported in sealed or securely covered vehicles and taken to an approved premises licensed for the handling of such material.**

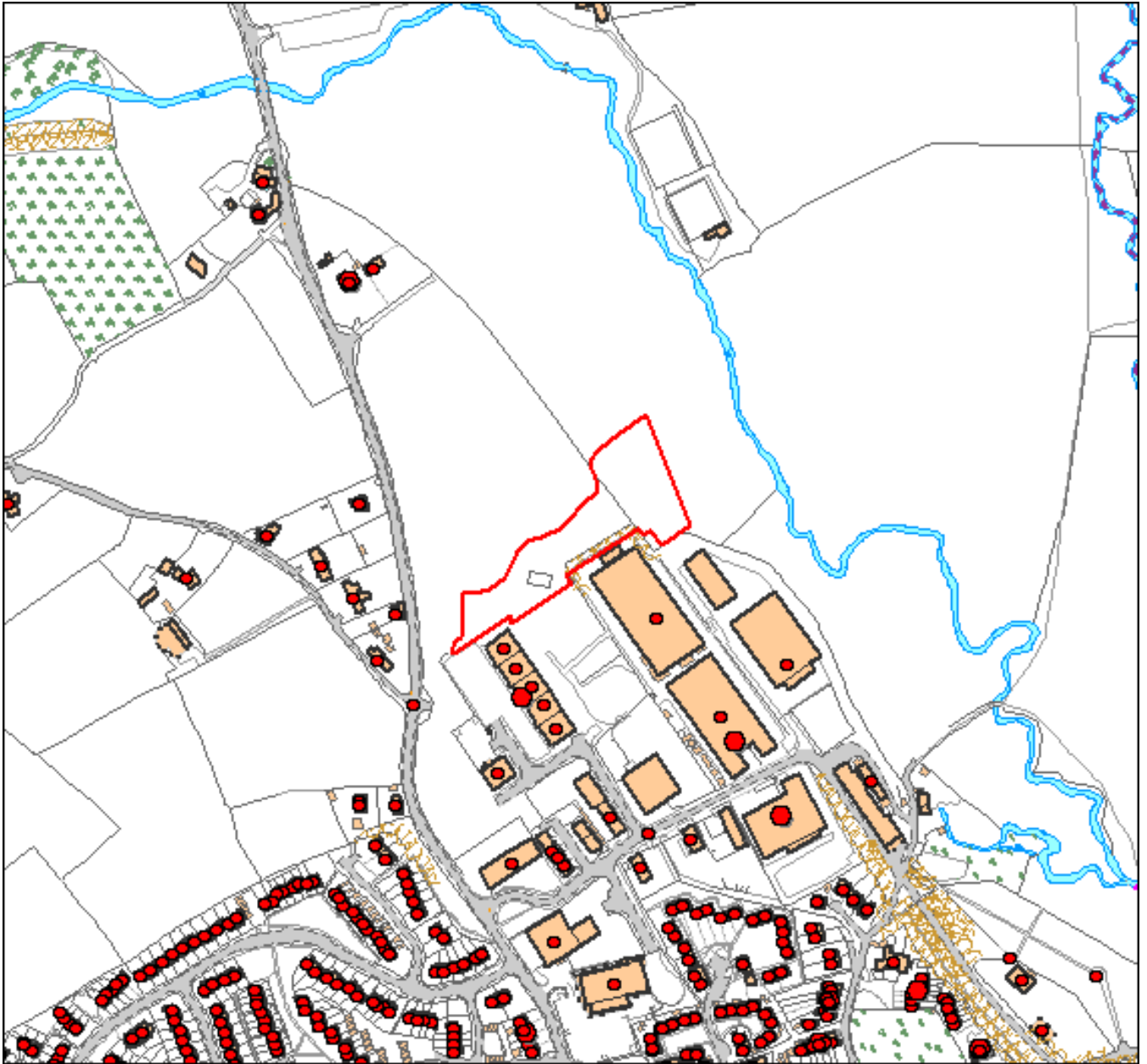
Reason: In the interests of road safety, to prevent pollution, and to ensure the responsible disposal of unsuitable materials that may be encountered during the course of the remodelling work to the bund, in accordance with policies S2, S10, DR1, DR4, DR11, T8 and W3 of the Herefordshire Unitary Development Plan.

9. **I43 No burning of material/substances**

10. **F14 Removal of Permitted Development Rights**

INFORMATIVES:

1. **Due to the site's known former uses, there is a possibility of unforeseen contamination at the site. In the event of unexpected contamination being discovered, the applicant is advised to seek specialist professional advice in such circumstances. This should be reflected in the required Method Statement outlined above.**
2. **Any waste produced as part of this development must be disposed of in accordance with all relevant waste management legislation. All waste volumes should be minimised and excavated materials should be kept within the site for re-use/recycling.**
3. **HN01 Mud on highway**
4. **Developers should incorporate pollution prevention measures to protect ground and surface waters. Guidance is available from the Environment Agency at www.environment-agency.gov.uk/business.**
5. **N11C General**
6. **N15 Reason(s) for the Grant of Planning Permission**



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APPLICATION NO: DMN/111900/N

SITE ADDRESS : PORTHOUSE FARM, TENBURY ROAD, BROMYARD, HEREFORDSHIRE, HR7 4NS

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Annex 1

MEETING:	PLANNING COMMITTEE
DATE:	1 February 2012
TITLE OF REPORT:	<p>N111900/N - RETROSPECTIVE PLANNING APPLICATION FOR THE RETENTION OF AN EXISTING BUND AND ITS REMODELLING WITH APPROPRIATE ENGINEERING WORKS AND LANDSCAPING OF THE REMODELLED BUND. AT PORTHOUSE FARM, TENBURY ROAD, BROMYARD, HEREFORDSHIRE, HR7 4NS</p> <p>For: Ms Harrison per Mr John Cornwell, Oakview House, Station Road, Hook, Hampshire, RG27 9TP</p>

1. Site Description and Proposal

1.1 The proposal site of approximately 1 hectare lies on the north side of Bromyard, 500 metres from the town centre, and situated between the Porthouse industrial estate and the remaining open land comprising the former Porthouse Farm. On the site's western side is the B4214 Tenbury Road. To the east is it bounded by the former railway, beyond which the land slopes down to the River Frome and its flood plain.

Background

1.2 The area known as Porthouse Farm comprises approximately 3.9 hectares of former agricultural land forming a triangular tongue of land extending from the northern limit of Bromyard town. Past agricultural activity included poultry and pig units, most of which have been demolished leaving the remains of hardstandings. It has lain vacant for many years. Beyond the southern end of the application site some of the former farmland has been redeveloped over the last few decades with industrial units. Established businesses include a car parts manufacturer, Royal Mail sorting office, and a skip hire transfer station with associated aggregate supplies and haulage yard. Some of these business premises back onto the current northern residential limit of Bromyard town.

1.3 Projects have been proposed at various times to develop the remainder of Porthouse Farm, including 'live-work units' but to date none has progressed to implementation. At some stage in recent years a substantial bund was created along the southern boundary of the vacant area without the benefit of planning permission.

1.4 The current scale of the bund development is estimated as follows: approximately 205 metres in length with a variable width of 13-18 metres. Levels vary, but the height is generally 4-5 metres, from approximately 113m AOD at the northern lower edge up to 118m AOD on the top. The slope is steeply graded along the northern side with a gradient of roughly 40%. On

the south side of the bund (adjoining the industrial units) the adjoining land level is higher and the bund appears as a much lower bank from that upper viewpoint.

- 1.5 The application includes the statement (paragraph 2.1 of the submitted supporting statement) that 'The majority of the site is comprised of an existing bund that was constructed around 2000, and is unauthorised and without the benefit of a formal planning consent.' This has formed the basis of the consideration of this application.
- 1.6 The application goes on to state that preliminary investigations found the bund to contain 'predominantly natural soils, with a range of other materials including concrete, stone, timber, plastic and tarmac, though in levels not considered deleterious'. The findings of the submitted investigation report have been taken into account, along with subsequent further details in assessing the merits of the proposal.

The proposal

- 1.7 The proposal under consideration is to retain the bund as a combined noise and visual impact landscape buffer between the existing industrial area and the adjoining allocated housing site. UDP policy H2 (para 5.4.27) notes the need for a 'significant buffer strip of some 0.8 hectare' for the southern boundary (i.e. this application site). The need for such a buffer is thus embedded in policy, although the nature and exact purpose of it are not specified.
- 1.8 Under this application the bund would be remodelled and landscaped in order to create a more appropriate profile. The scheme as proposed would require some additional material, stated to be available from within the allocated housing site, proposals for which are subject of the separate housing application referenced DMN/111899/O. The two applications are being considered together, but separate applications are necessary because (a) the housing proposal is in Outline only at this stage, (b) the bund application is partly retrospective and therefore cannot be considered in Outline, and (c) the bund is regarded as a 'waste' development due to the possibility of imported material having been incorporated within the bund. This approach enables detailed specialist consideration of the bund rather than as an adjunct to a different proposal.
- 1.9 The remodelling would entail softening the profile of the bund, widening it, reducing the gradients and varying the height so as to produce a more naturalistic appearance. Landscape planting is also proposed, and an area described as a 'SuDS pond' (Sustainable Drainage Scheme) at the eastern end of the bund area, to assist with surface water management. A noticeably wet area exists at that point.
- 1.10 The application as initially submitted included plans showing formal/ornamental planting areas within the bund, along with specific path/cycle ways and play areas. Amended plans were subsequently provided by the applicant omitting the formal design, following negotiations which will be examined in more detail in the officer's appraisal below. Fresh consultations were made on the amended plans.

2. Policies

2.1 National Guidance

PPS1	-	Delivering Sustainable Development
PPS3	-	Housing
PPS4	-	Planning for Sustainable Economic Growth
PPS9	-	Biodiversity and Geological Conservation
PPS10	-	Sustainable Waste Management
PPS23	-	Planning and Pollution Control
PPS25	-	Development and Flood Risk

Further information on the subject of this report is available from Debby Klein on 01432 260136

2.2 Herefordshire Unitary Development Plan

S1	-	Sustainable Development
S2	-	Development Requirements
S4	-	Employment
S6	-	Transport
S7	-	Natural and Historic Heritage
S10	-	Waste
DR2	-	Land Use and Activity
DR4	-	Environment
DR7	-	Flood Risk
DR10	-	Contaminated Land
DR11	-	Soil Quality
DR13	-	Noise
H1	-	Hereford and the Market Towns: settlement boundaries and established residential areas
H2	-	Hereford and the Market Towns: housing land allocations
T8	-	Road hierarchy
LA2	-	Landscape Character
LA3	-	Setting of Settlements
LA5	-	Protection of Trees, Woodlands and Hedgerows
LA6	-	Landscaping Schemes
NC1	-	Biodiversity and Development
RST1	-	Criteria for recreation, sport and tourism development
W2	-	Landfill or landraising
W8	-	Waste disposal for land improvement
W9	-	Reclamation, aftercare and afteruse

2.3 **Other Legislation**

Wildlife and Countryside Act 1981 (as amended)

Natural Environments and Rural Communities Act 2006 ('The NERC Act')

3. **Planning History**

3.1	DMN/111899/O	Outline - 127 dwellings	-	Under consideration
	DMNC2009/2844/O	Outline 175 dwellings (allocated housing site)	-	Withdrawn 10/02/2010
	DMNC2009/0366/N	Retention of bund	-	Withdrawn 24/4/2009
	NC2001/3278/F	12 live/work units at north end of site (allocated housing site)	-	Withdrawn 5/8/2004
	NC2001/1128/O	Mixed use - office/industrial/residential/live-work units	-	Withdrawn 27/12/2001
	NC2001/1123/F	Office/warehouse, access, parking and yard (on adjoining land)	-	Approved 9/7/2001
	MH97/1102	PO Sorting Office (adjoining land)	-	Approved 10/11/1997

Further information on the subject of this report is available from Debby Klein on 01432 260136

MH96/1184	Access/estate road (adjoining land)	-	Approved 5/11/1996
MH95/1204	Industrial development and access (on adjoining land)	-	Approved 28/11/1995
MH90/2194	Mixed industrial/residential/ change of use of farm to commercial etc (allocated housing site)	-	Approved 11/12/1990

4. Consultation Summary

Statutory Consultees

- 4.1 Environment Agency: No objection; the bund is located in flood zone 1 (low risk) and will have no detrimental effect on flooding in the area. We have no comments to make with regard to contaminated land but you are advised to seek the advice of the Environmental Health Officer. Notes added relating to the movement and disposal of wastes under relevant legislation.
- 4.2 River Lugg Internal Drainage Board: The site lies partly within the Board's operational area. The proposal will have no effect on the Board's operational interests or watercourses in its control.

Internal Council Advice

- 4.3 Traffic Manager: No highway implications
- 4.4 Team Manager (Air, Land and Water Protection): The Environmental Health Officer comments on the submitted report 'Phase 1 and Phase 2 Environmental Investigation Porthouse Farm - Landscape Bund 776-06' (Pam Brown Associates Ltd May 2011). Analysis did not identify any compound levels above guideline values with regard to any of the contaminants for which testing was undertaken. Trial pitting was limited and some uncertainty remains as to the nature and quality of some of the materials; further information should be provided, including on whether asbestos fibres have been considered as a potential source of contamination. Plastic, metal, wire and other materials encountered should be removed and responsibly disposed of; any further soil to be imported must be tested for fitness for purpose at source. Validated documentation will be required in due course to verify the final depth and source of any imported soils used in the bund remodelling. In conclusion, further information is required to address outstanding uncertainties. Specialist advice should be sought, should any unexpected contamination be encountered during the works. Condition recommended, to secure adequate soil management, quality verification and fitness for purpose. [Please note: this is discussed in more detail in the Officer's Appraisal below].
- 4.5 Public Rights of Way Officer: No objection
- 4.6 Drainage Adviser: no objections
- 4.7 Parks Countryside and Leisure Development Manager: The Council would not wish to adopt the bund for future maintenance but we need clarity as to maintenance and ownership responsibilities. A long-term management plan would be required, to include tree health and safety surveys. Clarity is also needed regarding maintenance and ownership of the proposed SUDS (balancing pond).

5. Representations

- 5.1 Bromyard & Winslow Town Council: On the initially submitted plans: a resolution to support this application was defeated. On the amended plans: Bromyard Town Council objects to this unlawful development
- 5.2 Brockhampton Group Parish Council: Objects to both this application and the partner application reference DMN/111899/O on the following grounds: a housing development would be detrimental to existing industries already in place; there is insufficient infrastructure such as traffic capacity and employment for the extra households; concerns about sewerage capacity and additional flood risk; the site is more suited to industrial development than housing; concerns about the unlawful and unregulated/undocumented nature of the bund. No further comments have been received on the amended plans.
- 5.3 One emailed representation of support for both applications on this site was received, on 30 January 2012, which observes that 'a physical barrier between housing and existing industry is desirable.'
- 5.4 The full text of these letters can be inspected at Hereford Customer Services, Franklin House, 4 Commercial Road, Hereford, HR1 2BB and prior to the Committee meeting.

6. Officer's Appraisal

- 6.1 The existence of the unauthorised bund was first brought to officers' attention between 2006 and early 2009. An initial application to retain and remodel it was made on request, under reference DMNC2009/0366/N, but was withdrawn on 24 April 2009. The current proposal is the result of further protracted negotiations which have taken time. This appraisal does not consider the merits of the Outline housing proposal which is being considered separately under reference DMN/111899/O, although officers acknowledge the direct relationship between the two. In particular, the need for buffer space between any future housing and the industrial premises, as outlined in policy H2 of the Herefordshire Unitary Development Plan (UDP), is a material consideration which is discussed below.
- 6.2 The key considerations for this application are:
- Function, form and purpose
 - Composition and suitability of the bund material
 - Waste management and alternatives to retention
 - Landscaping and future use
 - Biodiversity considerations

6.3 Function, form and purpose

The retention and remodelling of the bund is presented by the applicant as having two main functions; providing a physical barrier and noise attenuation buffer between proposed new housing and the established industrial premises to the south. Adopted UDP policy H2 allocates the remaining vacant area at Porthouse Farm for housing. Paragraph 5.4.27 notes in particular the need for a high standard of housing design, a 'significant buffer strip of some 0.8 hectare' for the southern boundary and a requirement for developers to demonstrate that 'the legitimate interests of future residents and existing employers are not prejudiced'. This last point refers to the potential for adverse effects such as noise or fumes from pre-existing industrial premises to affect residential amenity.

- 6.4 UDP policy DR11 allows for the use of surplus soils to be used for landscaping and noise barriers provided proposals would be 'necessary and appropriate to the townscape and landscape character of the locality'. This is further reflected in the requirements of policy W8.

In this instance, the bund is located in an area characterised (at present) by industrial land and derelict farmland. The proposal to remodel and landscape the bund feature seeks to comply with policies DR11 and W8 in the interests of projected future uses. There is no reason to suggest that it would not be capable of compliance.

- 6.5 The applicant has undertaken to put into effect a package of noise mitigation measures, as part of the separate outline housing application (DMN/111899/O), by installing appropriate equipment at source. In particular these would be at the Polytec Holden premises. The Environmental Health Officer has agreed with the applicant's acoustics consultant that the physical reduction of operational noise levels from equipment associated with the factory units could mean that outdoor ground-level noise such as vehicles could become more apparent to new residents, should the housing proposal go ahead. Both have commented that the bund would fulfil a mitigation function in that regard. The retention of the bund would thus contribute to the proposed noise mitigation measures related to the partner housing application. This would include vehicle loading/unloading, movement and yard plant.
- 6.6 The submission also includes a wet area denoted as a 'SUDS' pond, to take surface drainage from the bund and elsewhere. The plans show swale ditches along the bund base, to feed into the dedicated wet area. The initial plans suggested a permanent water body provided with decking and seats round it. However on request for clarification the applicant confirmed that this area would be dry for most of the year, only occasionally holding water for any length of time. The revised plans reflect this correction, now noting the SUDS pond as 'wet grassland' (seeded with an appropriate mix), and removing the recreational/leisure element. Nonetheless, with the SUDS area in place, there would be scope for future landscaping schemes to incorporate surface water management relating to the housing scheme, if approved. As wet grassland, a Biodiversity Action Plan Priority Habitat, this area could also be beneficial to wildlife. The bund site is in an area of low flood risk (zone 1 suitable for any development) and there are no flood concerns or issues, although the SUDS pond area has been noted as frequently marshy from some drainage.
- 6.7 On balance, officers take the view that the bund is capable of providing the necessary landscape and noise buffer area deemed by policy H2 to be necessary in developing the northern sector of Porthouse Farm as allocated for housing.
- 6.8 **Composition and suitability of the bund material**
The nature and suitability of the bund content are material considerations. In particular, there has been concern about materials embedded in the bund, observed during initial visual inspection prior to submission of this application. Construction and demolition waste (including metal, cement, wood, plastic, wire etc) and other items were noted. Investigations were undertaken by the applicant on request, entailing initial test-pitting, analysis and subsequent reporting. Policy DR10 requires a site investigation and risk assessment for such sites, to be followed by 'appropriate remediation and protection measures to an acceptable level'. The Environment Agency has no comments to make on the bund materials, referring back to the Council's Environmental Health Section in this case.
- 6.9 To address the policy requirements, the application includes submitted report 'Phase 1 and Phase 2 Environmental Investigation Porthouse Farm - Landscape Bund 776-06' (May 2011) undertaken by Pam Brown Associates Ltd. The report provides an overview of the development and what is believed to be the origin of the material, primarily from within the farmland or close by. Intrusive investigation (test pitting) was carried out to address uncertainties about the bund's composition. Analysis did not identify any compound levels above guideline values with regard to any of the contaminants for which testing was undertaken. Large fragments of plastics, metals and other materials were encountered and recommended for removal.
- 6.10 The Environmental Health Officer specialising in contaminated land issues accepts that the testing results received did not indicate a risk to human health, or levels of contamination

Further information on the subject of this report is available from Debby Klein on 01432 260136

above acceptable levels. However, he commented on limitations of the sampling pit distribution, leaving some uncertainty as to the nature and quality of some of the materials along the top of the bund. He recommended further information be provided, by which the applicant would need to demonstrate an appropriate suite of contaminants analysed, adequate for the likely relevant materials including demolished agricultural buildings, and commensurate with possible uncertainties of provenance and probable future land use. For example, due to the age of the old farm buildings known to have previously existed on site, the applicant should demonstrate that asbestos fibres had been considered as a potential source of contamination.

6.11 Accordingly, further study to widen the scope of investigation on the bund was requested from the applicant, following discussion with the Environmental Health Officer. A further report from Pam Brown Associates Ltd, reference 'PBA.SH.776-06 Additional SI to the bund (3 January 2012)', includes full details of the additional investigations and the testing determinands. It found all results to be 'within guideline values with the exception of two determinands: naphthalene and benzo(a)pyrene, which were marginally elevated in test pits 16 and 21'. The report recommends the precautionary removal of 5 cubic metres of material from these two identified locations under professional supervision to a reputable licensed waste handler. According to the Environmental Health Officer these two substances are associated with ash, being 'commonly encountered on sites and relatively straightforward to remediate'. He accepts the findings of the report and has no concerns provided appropriate safeguards are secured by condition.

6.12 Accordingly a remediation Method Statement would be needed to ensure the following:

- a) That the recommendations made by Pam Brown Associates Ltd in their two reports will be observed in full;
- b) That the plastic, metal, wire and any other deleterious materials encountered would be recorded in a site diary when found, and then removed for responsible disposal;
- c) Provision for specialist advice to be immediately sought and further sampling undertaken, should any unexpected contamination be encountered during the works.
- d) In the absence of historic evidence being available, the sampling suite should include heavy metals, pH, speciated TPH, PAH and asbestos screen, plus any other suspected substances.
- e) That any further soil to be imported shall be tested for fitness for purpose and its source thoroughly investigated and analysed with regard to its composition and any likely contamination;
- f) A scheme of reporting to ensure any imported material is the same as that tested at source;
- g) Validated documentation in due course, to verify the final depths on completion and the source/s of any imported soils used in the bund remodelling.

A condition is therefore recommended to secure the above, including adequate verification and assurances as to fitness for purpose in accordance with UDP policies DR4 and DR10.

6.13 **Waste management and alternatives to retention**

As a precautionary measure the bund material needs to be regarded as a 'waste'. The consideration is whether it would be acceptable to retain it in situ or require its removal. However, it should be borne in mind that removal of the material would give rise to significant transportation and handling of waste. It would probably have to be taken to Hereford or out of county for appropriate disposal. The requirements for further testing would subsist and additional risks might arise, connected with transportation of the material. Removal of the bund would need a full justification as it would be contrary to UDP policies T8, S10, W2, W3, and W8 - chiefly because it would not be regarded as the Best Practical Environmental Option (BPEO), a concept formerly built in to regional policy. BPEO now carries less weight as it has been superseded by the Sustainability Assessment process and the revocation of regional policy, but it remains within the UDP as a valid form of appraisal.

- 6.14 The above policies allow for land-filling or land-raising subject to certain safeguards and criteria including BPEO principles, that only inert waste may be deposited, that the minimum quantity to achieve the stated purpose should be permitted, and that clearly expressed material planning benefits must outweigh any material planning objections. In this case there is additional support from policy H2 requiring a landscape buffer at this particular site.
- 6.15 Officers take the view that, provided adequate testing and mitigation to ensure the material is safe and fit for purpose are in place, retention on site would be preferable. In particular, if the material were removed there would still be the policy H2 requirement for the provision of a 'significant landscape buffer', should the remainder of Porthouse Farm be approved for housing. The proposals for remodelling would ensure the bund would be capable of a beneficial purpose and offer opportunities for appropriate remedial soil-handling and treatment, in accordance with policies DR10, DR11, W8 and W9 in particular.
- 6.16 **Landscaping and future use**
In its present form the bund is a utilitarian deposit of mixed material. Besides acting as a buffer area as noted above, the bund's proposed remodelling would be designed to reclaim the structure to a more acceptable form in the landscape, in accordance with policies W9 and LA6, and to ensure its capability for supporting planting and seeding to a required standard. The applicant has stated that some additional material would be necessary to complete it, which would be available from within the adjoining site, the subject of the housing scheme proposal.
- 6.17 The initial submission indicated formal ornamental and native planting, and a network of pathways and play areas within the bund area. This was contrary to officer advice, concerns having been raised regarding future responsibility for maintenance and safety/security. Officers felt that the bund, if retained, should have a clear primary function as noise/landscape buffer as outlined above, without general public access. Further, it was felt that recreational use would be inappropriate on the bund. The Principal Parks, Countryside and Leisure Officer supports that view. She has commented that the existence of the bund should not be used as a substitute for obligatory formal and informal play and recreation areas to be provided within the proposed housing scheme. It is unlikely that the Council would wish to commit itself to the cost of maintaining such a site in that form in the future.
- 6.18 The Planning system is also required to take account of the need to deter crime. The inclusion of publicly accessible areas on the bund could lead to anti-social behaviour issues which might affect both the security of the industrial premises and the amenity of any future adjoining housing. For preference the bund should be planted with robust native species for low or no maintenance, and be fenced off to provide a genuine buffer between the potentially conflicting land uses.
- 6.19 Following negotiations with the applicant, revised plans were submitted, removing the references to formal/ornamental planting, play areas, paths and cycleways. Instead, indicative native planting and seeding, and fencing on both sides of the bund, would follow from the remodelling exercise. The role of the SUDS pond would be reduced, and is marked on the fresh plans as 'wet grassland', fed by a swale along the bottom of the bund area. Any final landscaping could be undertaken as a requirement under the Reserved Matters associated with application reference DMN/111899/O.
- 6.20 The Senior Landscape Officer has no objections to the retention of the bund in principle, and welcomes the revised plans which remove the formal planting and recreational elements on the plans as initially submitted. It is accepted that there would be a need for close-boarded fencing for both security and added noise mitigation, the final details of which could be secured through a planning condition.

6.21 Biodiversity considerations

The application includes two reports by Richard Tofts Ecology, comprising 'Ecological Appraisal March 2010' and 'Reptile Survey June 2010'. Both reports are concerned with the entire site and relate more properly to the separate housing proposals. With regard to the latter report, the conclusion is that no evidence of reptiles was found and no further recommendations are made. The Ecological Report includes a series of 11 bullet-point recommendations, some of which are relevant to the bund. No particular concerns have been raised however, and a condition is recommended to secure the recommended measures in accordance with policy NC1

6.22 Conclusion

It is clearly undesirable when any development takes place without the requisite planning permission. However, Government advice is that "... it is not an offence to carry out development without first obtaining any planning permission required for it...", stating further that "While it is clearly unsatisfactory for anyone to carry out development without first obtaining the required planning permission, an enforcement notice should not normally be issued solely to 'regularise' development which is acceptable on its planning merits, but for which permission has not been sought". The expediency of taking enforcement action is therefore an important consideration.

6.23 In visual terms the bund as constructed is not ideal. However, if regraded and landscaped to an appropriate visual appearance as proposed, it would also have two useful functions:

- a) As a visual and separation barrier between the existing industrial buildings and the allocated housing site, as envisaged in the pre-ambles to policy H2 of the Herefordshire Unitary Development Plan 2007; and
- b) As an acoustic barrier.

6.24 Detailed technical matters relating to the deposited material may be adequately dealt with through planning conditions. The testing reports identify some unsuitable materials, and fresh investigations highlight the presence of some items recommended for removal. However there has been no suggestion of a high risk or that remediation would be impractical to achieve. The requirement for a suitable scheme to ensure that any unsuitable material is identified and removed under supervision to a licensed waste handler would ensure the proposal would be capable of compliance. On the other hand, removing the entire bund would create multiple difficulties as to its destination, handling, highway and traffic issues, and including the same methodology for dealing with any contamination concerns that might arise. Herefordshire Unitary Development Plan Policy W8 allows for the use of land for the deposit of suitable inert material where a benefit can be demonstrated.

6.25 On balance officers take the view that the requisite investigative works and recommended planning conditions would secure retention of appropriate material in an improved form. The granting of conditional full planning permission is therefore recommended.

Decision:

Notes:

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Background Papers

Internal departmental consultation replies.