

**DERBYSHIRE COUNTY COUNCIL**

**REGULATORY – PLANNING COMMITTEE**

**7 October 2019**

Report of the Executive Director – Economy, Transport and Environment

**1 PROPOSED RECLAMATION, CUT AND FILL OF THE FORMER  
WHITWELL COLLIERY SITE TO FACILITATE MIXED-USE  
REDEVELOPMENT OF THE SITE, TOGETHER WITH  
LANDSCAPING, ECOLOGY AND DRAINAGE  
APPLICANT: THE WELBECK ESTATES COMPANY LIMITED  
CODE NO: CM5/0818/42**

**5.255.22**

(1) **Purpose of Report** To enable the Committee to determine whether the period to be required by condition for commencement of this reclamation development should be extended from three to five years together with the imposition of a further condition linking the reclamation with implementation of a housing development of the same site which is subject to an outline application for permission which has been recommended for approval by Bolsover District Council's Planning Committee.

(2) **Information and Analysis** On 8 July 2019, Members passed a resolution in favour of granting planning permission for the proposed reclamation, cut and fill of the Whitwell Colliery site to facilitate mixed-use redevelopment of the site, together with landscaping, ecology and drainage, subject to the applicant first entering into a legal agreement and planning conditions substantially in accordance with those presented at the Regulatory – Planning Committee in July.

The Section 106 agreement has not yet been finalised and permission for the development, although approved in principle, as referred to above, has not yet been issued. This application is coming before Committee again now because a significant change from the draft condition for commencement under that approval has been requested by the applicant.

Members' attention is also drawn to a connected application for permission, to Bolsover District Council, to construct up to 450 dwellings on the site. This housing development should be considered as enabling development which would fund the mineral site reclamation.

Since the resolution to grant permission by Committee on 8 July 2019, negotiations have been taking place between the County Council, as the Mineral Planning Authority (MPA) and the applicant, as landowner, to agree

the terms of the Section 106 agreement and to finalise the draft planning conditions presented at Committee.

Condition 1 of the draft planning conditions relates to the implementation period for development to commence. Although in July 2019 the applicant's agent had sought an extension of the standard time period for commencement of the development from three to five years, officers at this time had insufficient information to justify recommending this.

Further information has since been provided on behalf of the applicant (2 September 2019) relating to the timescales for discharging the requirements of draft pre-commencement conditions, along with other comments relating to conditions proposed. Officers consider the proposed change to Condition 1 requires Committee approval because what is now proposed for Condition 1 is substantially different.

### **Planning Considerations**

Section 91 of the Town and Country Planning Act 1990 requires that developments granted planning permission should commence within a period of three years from the date of permission being granted, unless the planning authority concerned prescribes to a different commencement period, longer or shorter, depending on the specifics of the proposed development.

Complicating factors, particularly at the pre-commencement and commencement stages, are frequently cited as reasons for extensions of this type and officers are of the view that sufficient evidence of this has been submitted in the present case to justify a recommendation in favour of the variation.

Planning Guidance encourages the imposition of shorter commencement periods in order to encourage developments to come forward in a timely fashion. However, it also acknowledges that complex developments may require longer and planning authorities are encouraged to take reasonable steps to accommodate the needs of developers and to take into account, among other matters, the economic uncertainties of development.

It is incumbent, however, on the applicant to justify a departure from the standard three year commencement period on a case by case basis.

In July 2019, officers considered it appropriate to retain the statutory three year commencement period given:

- i) that the restoration of this site is long overdue and further delay would be considered inappropriate; and
- ii) that the applicant provided insufficient information to justify departure from the normal commencement period.

From the further information from the applicant that was submitted on 2 September 2019, relating to the complexity of the development and the economic uncertainties surrounding its implementation, officers now accept that, provided additional assurances are provided, the mineral restoration will proceed alongside the housing development and is not allowed to languish uncommenced, while the profit-generating element of the overall scheme is carried forward. The variation can now be supported.

The following provides a summary of the informative points made in the applicant's letter, which are accepted to be material planning considerations:

- Different technical approvals are required. These include preparation of the Landscape and Environment Management Plan ("LEMP"); Land Drainage Consent and Construction Management Plan ("CEMP"). These plans and approvals need to be completed and approved prior to commencement.
- Improvements to the existing highway and an accompanying Section 278 agreement are required.
- Agreement with Network Rail concerning boundary treatment with the railway and agreed landforms to prevent surface water run-off onto the railway is required.
- Economic uncertainties, particularly in the context of Brexit, make forward economic planning and financing unusually difficult to forecast and put in place.
- Paragraph 81 of the National Planning Policy Framework (NPPF) imposes a duty on the Local Planning Authority to respond flexibly to economic constraints and other pertinent factors.
- Restoration of legacy mineral sites often throw up unexpected complications and often require third-party involvement and financing.
- The Applicant is willing to provide additional assurances that the development will proceed expeditiously.
- Bolsover District Council has indicated its support for the extended commencement period.

Officers from both Bolsover District Council and Derbyshire County Council continue to liaise with the applicant agent and technical advisors in finalising the planning conditions and legal agreement, pending issue of the decision notice as soon as practicable.

The NPPF encourages authorities to encourage development by adopting a flexible approach where this does not undermine other competing planning goals.

Officers have considered the arguments raised by the applicant and it is accepted that, given site constraints, the potential difficulty of obtaining the Land Drainage Consent, together with the Network Rail agreement, may be significantly time consuming as preliminary issues.

Also, taking into account the need to enter into a Section 278 highway improvement agreement and current economic uncertainties, officers consider that, on balance, it is reasonable to accept the proposed extension of the commencement period provided that an additional sequencing condition is also included within the conditions to the permission to be issued, which mirrors a condition that is understood to have been included in the officer's recommendation for approval of the outline housing application to Bolsover District Council's Planning Committee.

It is assumed that the District Council's Committee is likely to be approving the grant of outline approval of the housing development as has been recommended to its meeting on 25 September 2019.

(3) **Financial Considerations** The correct fee of was received.

(4) **Legal Consideration** This is an application submitted under Part III of the Town and Country Planning Act 1990, which falls to this Authority to determine as the MPA.

I do not consider that there would be any disproportionate impacts on anyone's human rights under the European Convention on Human Rights as a result of this permission being granted subject to the conditions referred to in the Officer's Recommendation.

(5) **Environmental and Health Considerations** As indicated in the report to Committee on 8 July 2019 (Minute No. 38/19 refers).

### **Other Considerations**

In preparing this report the relevance of the following factors has been considered: prevention of crime and disorder, equality and diversity, human resources, property, social value and transport considerations.

(6) **Background Papers** File No. 5.255.22  
As referred to in the report to Committee dated 8 July 2019 and relevant correspondence between the applicant and the MPA Planning and Legal officers, including the letter from P&DG dated 2 September 2019.

(7) **OFFICER'S RECOMMENDATION** That the Committee resolves that the Head of Planning be authorised to **grant** planning permission for the development under planning application code no. CM5/0818/42 subject to those requirements for first entering into a legal agreement and for planning conditions as were contained in the Committee resolution of 8 July 2019, recorded at Minute No. 38/19, except for the condition for commencement being worded as follows:

### **Commencement**

- 1) The development hereby permitted shall be commenced before the expiry of five years from the date of this permission. Written notification of the date of commencement of development shall be sent to the Authority a minimum of seven days of such commencement.

and the inclusion of a condition in respect of the sequence of development substantially in the following form:

### **Sequence of Development**

- 2a) The development hereby approved shall be carried out in sequence as shown on Drawing No. 13.012/24o on Bolsover Permission [ *to be inserted if approved at by BDC* ] starting with the build out of housing on Phase 1A.
- 2b) Phase 1A (residential development) must not commence until Phase 3 of the restoration of the site (as illustrated by Drawing no. 13.012/39f) has been substantially completed in accordance with the requirements of the associated Landscape and Environmental Management Plan.
- 2c) No more than 50% of the houses subsequently granted reserved matters approval on Phase 1A and no more than 25% of the houses subsequently granted reserved matters approval on Phase 1B shall be occupied until Phase 4 of the restoration of the site (as illustrated by Drawing no. 13.012/41b) has been substantially completed in accordance with the requirements of the associated Landscape and Environmental Management Plan.
- 2d) Phases 2A and 2B (residential development) must not commence until Phase 4 of the restoration of the site (as illustrated by Drawing no. 13.012/41b) has been substantially completed in accordance with the requirements of the associated Landscape and Environmental Management Plan.

**Reason:** To ensure the proposed development delivers on the environmental benefits that justified granting outline permission for re-development of the site of the former Whitwell Colliery and for new development on undeveloped land adjacent to the site of the former Whitwell Colliery.

**Mike Ashworth**  
**Executive Director – Economy, Transport and Environment**