

CONSULTATION FROM NORTH EAST DERBYSHIRE DISTRICT COUNCIL

APPLICATION Outline application for a 660 dwelling scheme with associated ancillary uses, including a Local Centre, a Neighbourhood Equipped Areas of Play (NEAP), a Local Equipped Area of Play (LEAP), a Riverside Park, a Local Habitat Area, two SUDS, footpaths, walkways, cycle paths and landscaping, with details of access (14/00145/OL)

LOCATION Former Coalite Site on the North West and South East sides of Buttermilk Lane Duckmanton Chesterfield

APPLICANT Bolsover Land Limited

APPLICATION NO. 14/00064/NCO

CASE OFFICER C Doy

DATE RECEIVED 21st February 2014

Delegated Application Referred to Committee by: Development Control Manager
Reason: Strategic Cross-boundary Issue; balance of issues.

SITE

Area of the former Coalite Works to the southern side of the River Doe Lea, comprising the former vehicle maintenance workshops, sewage works and fuel stocking yard together with the agricultural land between the A632 and the River Doe Lea.

To the south-eastern end of the site across the River Doe Lea is Snipe Bog and the Bolsover Business Park. The north-eastern area across the River is the former 'batteries' site. Across Buttermilk Lane to the north-west is the Markham south tip now landscaped. The civic amenity site and related industrial development area (scaffolding storage and plot available for development) adjoin to the western corner. Across Chesterfield Road to the south is agricultural land including an intensive pig farm and small solar farm.

Bolsover Castle and Sutton Scarsdale Hall are prominent features in the surrounding landscape.

The River Doe Lea is the District boundary.

The area of the former Coalite Works on the northern side of the River Doe Lea and within Bolsover District is the subject of a planning permission approved in August 2015 by Bolsover District Council, for General Industrial (B2 uses), Warehousing (B8 uses), energy centre, a transport hub, open storage and a museum/visitor centre (14/00089/OUTEA).

PROPOSAL

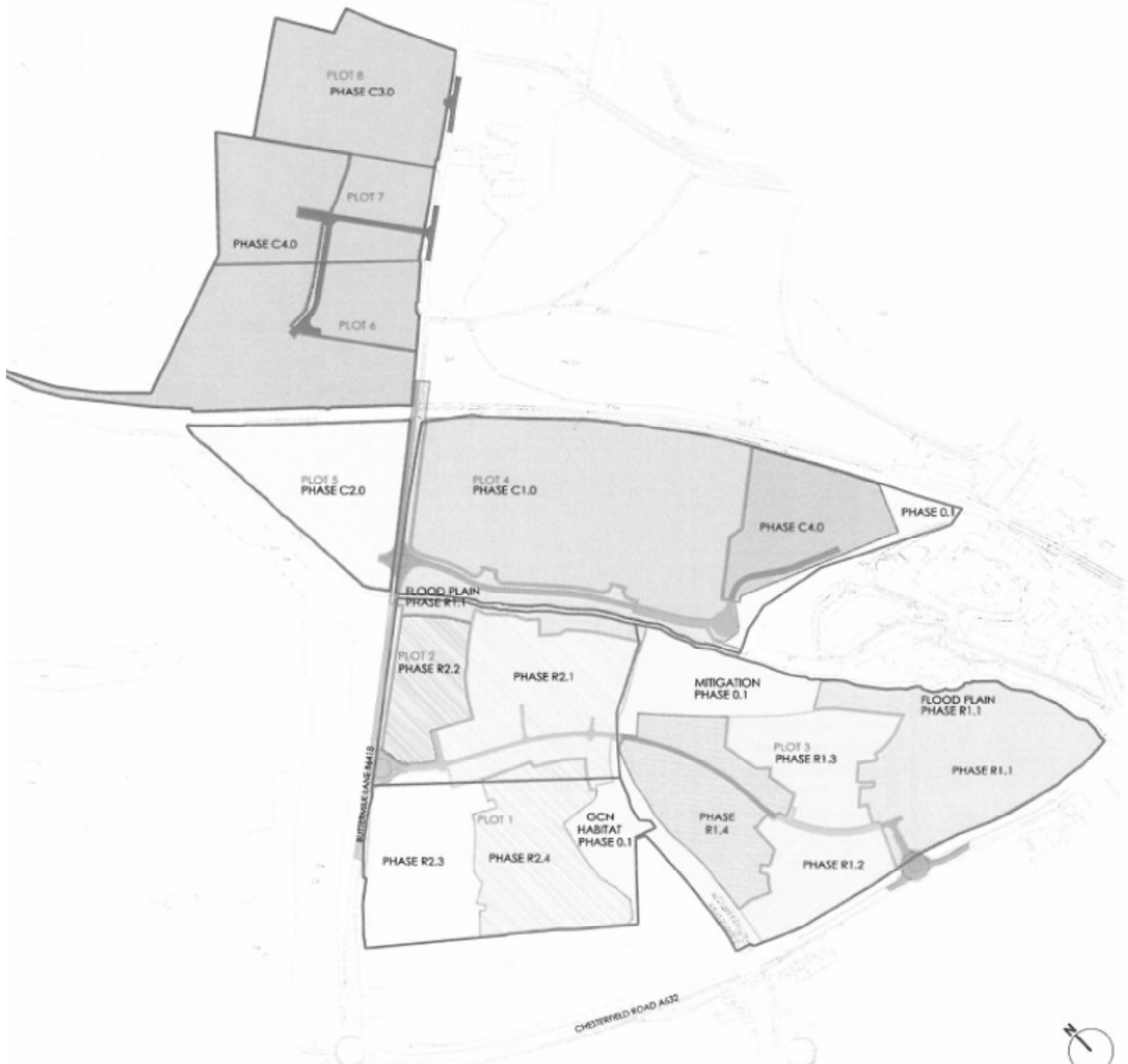
This is a consultation from North East Derbyshire District Council as neighbouring planning authority. The Council is entitled to make representation on the application to be determined by NEDDC.

The proposal is an outline application for residential development (up to 660 dwellings with a local centre) with related play areas, riverside park, footpaths, cycle paths, etc. on the former Coalite Works site off Buttermilk Lane and agricultural land between the A632 and the river Doe Lea.

Access would be from new roundabouts on the A632 and on Buttermilk Lane.

The application includes an indicative masterplan showing a mix of house types, areas of landscaping, open space, etc. The plan below shows the relationship between the two elements (note illustrative layout of the housing element has changed as shown on next figure).

Note: “R” phase is residential; “C” phase is commercial development





AMENDMENTS

A remediation and phasing strategy, and an odour assessment, have also been submitted. Revised illustrative masterplan for residential development- reduced housing numbers from 795 to 660; 1.8ha land reserved for a school. Also no residential development to start before remediation of all the former Coalite Land is completed.

A revised confidential financial viability assessment has been submitted as part of the application taking account of the reduced housing numbers and phasing.

HISTORY

08/00755/OUTEA Industrial and Distribution Park (Goodman and Alvaro) on site of Coalite Works (no built development on agricultural land). Joint application to BDC and NEDDC. Application withdrawn October 2010.

CONSULTATIONS

Carried out by NEDDC except the following local consultation responses:

Historic England (formerly English Heritage): copy of response to NEDDC submitted: development will affect the setting of Bolsover Castle; the loss of a greenfield agricultural site will erode the historic rural setting of the Castle which was designed to capture wide and framed

views across the Doe Lea Valley for the Terrace Range and the Little Castle. This will cause "less than substantial harm" to the significance which Bolsover Castle derives from its setting. The statutory requirement to have special regard to the desirability of preserving listed buildings, their setting and any features of special interest must be taken into account; less than substantial harm does not equate to acceptable harm - any level of harm requires 'clear and convincing' justification with the public benefit associated with the proposal weighed against the harm (National Planning Policy Framework para 134). English Heritage believe that, on balance, the harm caused to the setting of Bolsover Castle by the proposed development can be justified by the wider public benefits associated with the wider decontamination and redevelopment of the Coalite site. English Heritage understands that this scheme is not financially viable without the residential development. In light of the important link between the justification for this development and the wider redevelopment of the Coalite site they believe it is essential that a robust legal agreement is attached to any consent given ensuring that one cannot be developed without the other. Do not believe that the development of the site could be justified without the wider redevelopment of the Coalite site. 18.03.14

Comments on additional information: the harm to the setting of the Castle can only be justified if the de-contamination and redevelopment of the site is legally secured- it would be unacceptable to have harm to the setting without the public benefits being delivered and we would not support the proposal without this security.30/4/15

Comments on revised scheme: Essentially the position remains the same- there is less than substantial harm to the setting of the Castle complex but reiterate that this harm can only be justified by the wider public benefits associated with the de-contamination of the Coalite site and its appropriate redevelopment. It is essential that these benefits are legally secured so that residential development is not carried out without the delivery of the wider public benefits. 26/2/16

BDC Leisure Services: Although the application site is located within North East Derbyshire District, the development (795 dwellings, approximately 1,900 additional residents) will impact most heavily (particularly on schools, shopping and recreational facilities) on Bolsover, the nearest town to the development. Mitigation of the impact of the development on Bolsover needs to be a material consideration. There is a lack of pedestrian and cycle path linkages to surrounding areas i.e. Bolsover and Markham Vale. Opportunity to provide a greenway link between the Stockley Trail and Poolsbrook Country Park and the Trans-Pennine Trail. The proposed pedestrian bridge across the River to connect the residential areas with the industrial areas should accommodate cyclists. Proposed improvements to Buttermilk Lane are not cycle friendly. 17.04.14

Old Bolsover Town Council: Actively support the development providing the contamination on the site is thoroughly cleared. 08.04.14

Conservation Officer (BDC): The effect upon Bolsover Castle and its setting must be of primary concern. In particular the residential development proposed for the green field, which lies adjacent to Chesterfield Road. This field is highly visible through the stone archway that leads to the viewing platform at Bolsover Castle. The stone arch acts as a frame to the agricultural fields in the distance. If this field were to be developed it would have a negative impact upon the views from the castle and impact upon the character of the castle as one approached through the archway. The development in this field would also merge Bolsover settlement with Duckmanton, at present when viewed from the Castle the two settlements are

easily identifiable as separate, this development would merge the built environment. The environmental statement (10.39), states "...the public benefits of the proposed development outweigh the potential harm identified to the affected heritage assets". It is difficult to accept that the impact on the Castle is less than significant. Weighing the public benefit against heritage harm can only be properly assessed when the impact assessment has been corrected. A detailed analysis is required. The impacts not only on the Castle as a grade 1 Listed Building, but also as a scheduled Ancient Monument and grade 1 Historic Park & Garden also need to be considered.

There is general agreement that it is highly desirable to see the 'Coalite' site re-developed, but the fact that the site was used for industrial purposes before is not in itself justification to allow development at any cost. The reason for developing the green field site is presented as the only viable way to develop the 'Coalite' site, because of the cost of cleaning the site. A financial report to support this claim should be provided before full consideration can be given to the proposal.

It is disappointing that an overall design brief has not been prepared for the site which clearly identifies the design rationale and sets parameters for development (similar to the Markham Vale framework).

The proposed development as it stands has an adverse visual impact on the setting of a number of significant heritage assets. The mitigation scheme as proposed is not sufficient to override the concerns over the long-term effect on the landscape. A full assessment of the impact on the setting of the heritage assets; along with proof of financial necessity to develop the green field site, should be provided before further consideration or negotiation, and any further exploration of design is undertaken. 18.12.14

BDC Planning Policy: Detail comments on revised scheme which concludes:

From an assessment of this proposal, it is considered that the proposal is now able to demonstrate that it can sufficiently resolve the contamination issues on the site, particularly within Bolsover District, and potentially form a sufficiently sustainable development.

Therefore, given the Council's desire to see the remediation of one of the few remaining large scale brownfield sites in the District, a decision to approve the application as it now stands would be acceptable from a policy perspective. 17/3/16

Environmental Health: Have been involved in discussions with the Developers and their consultants. The remediation strategy has changed considerably since the original application documents were submitted and some of the information submitted was considered to be conflicting. We are aware that the remediation works will be subject to an Environmental Permit which will be regulated by the Environment Agency but we need to be mindful of the length of time that these works will take to be completed and the potential issues relating to nuisance and affect on amenity to the local community, both during the development phase and afterwards. One of the most fundamental constraints on this development is the odorous nature of the contaminants and the need to control this adequately throughout the life of the redevelopment and to ensure that the amenity of the future residents is not significantly affected after the development. The developer has offered reassurance that they feel that they can achieve the level of remediation required but have not carried out any formal trials to demonstrate that this remediation is feasible so this strategy does carry some element of risk for them.

If planning permission is to be granted, then we would like to put forward conditions. 18.03.15

DCC Policy response to NEDDC: development is in principle broadly in line with the

sustainability, economic development and housing policies of the NPPF as it provides a mixed use development of residential, retail, service and leisure facilities in an urban extension within reasonable accessibility of retail, service, leisure and health and educational facilities and employment opportunities. A coordinated approach between the two Councils is needed to resolve how much residential development contributes to the respective housing needs. Not the most natural extension to Bolsover but has good accessibility to the town (and its associated facilities) by public transport and car; less accessible by walking due to distance. Would have a negative impact on the landscape and landscape character of the immediate area and the setting of Bolsover Castle. Should provide a sizeable amount of affordable housing but will need to take account of viability in the level sought. No need to reserve the NEDDC land for employment in terms of supply issues. Note affected by HS2 in south western corner. The remediation and phasing proposals are of significant concern; there is potential for the first phase residential development to be completed without completion of the remediation. Viability costs need careful consideration. The remediation should be completed before any residential development is started to ensure whole development including employment in Bolsover is delivered.

No response received from Strategic Housing Manager.

PUBLICITY

Carried out by NEDDC. One response received by Bolsover DC objecting on the grounds that the scheme severely impacts on the setting of Bolsover Castle and Bolsover town by urbanising the green fields in the strategic gap between settlements.

POLICY

To be assessed by NEDDC. Implications for BDC discussed below

Planning (Listed Buildings and Conservation Areas) Act 1990

S66(1) – “In considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority or, as the case may be, the Secretary of State shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses”

ASSESSMENT

This is a consultation from North East Derbyshire District Council on an application for residential development (up to 660 dwellings) with associated facilities and infrastructure adjoining the District Boundary and forming land associated with the former Coalite Works. This includes the former coal stocking yard, the vehicle maintenance depot, water treatment works and an area of land in agricultural use between the A632, River Doe Lea and the former railway opposite the Leaholme Estate. The residential site area is 28ha.

The remaining area of the former Coalite Works which is within Bolsover District has been granted planning permission for B2 (General Industrial) & B8 (Storage or distribution) uses, a transport hub and energy centre. The two applications have been conceived as one development and indeed share common documents including an Environmental Statement, Master Plan and remediation and phasing strategy for the whole development.

The changes to the proposal, with the remediation having to be completed before the housing

development can start, simplifies the issues for the Council to consider. Effectively the case for the housing development now rests on it being enabling development (since no houses will be delivered within 5 years; the 5 year supply argument no longer applies). The main issues in respect of this development in NEDDC from the Bolsover perspective therefore are: (i) is the impact on the setting of Bolsover Castle complex and other heritage assets justified to secure the remediation of the former Coalite; and (ii) Is the proposal sustainable, or is any shortfall justified in relation to the remediation of the site. Overall do the benefits of the scheme outweigh the impacts on a balance of the issues?

Heritage Impact

Councils have a duty under S66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 when considering planning applications which affect a Listed Building or its setting to have special regard to the desirability of preserving the building, or its setting. A recent Court of Appeal decision (“Barnwell”) made it clear that the statutory test must be given great weight when dealing with impacts on listed buildings and their settings. The judgement also indicated that where impacts result in less than substantial harm these still need to be given considerable weight. The judgement also re-iterated that ‘preserving’ means to do no harm. This test is also reflected in the heritage policies of the NPPF.

Essentially there should be a presumption that the harm should not be allowed unless the benefits are of such magnitude as to outweigh that harm.

Accordingly, given this very strong presumption against development which harms the setting of a Listed Building, the Council needs to be satisfied that the benefits from the application are sufficient to outweigh the harm to heritage assets.

The development involves the loss of an important greenfield site which forms part of the setting of Bolsover Castle. The greenfield area in arable agricultural use is on land which forms a small hillside with an eastern facing slope, i.e. towards Bolsover Castle. The top of the hill is marked by an infilled railway cutting with well established planting. The topography and vegetation help to screen and soften the impact of the Coalite coal stocking yard beyond, which is at a lower level than the western side.

The greenfield land is particularly prominent from the Castle. On approach to The Terrace and Little Castle from the main courtyard an archway provides a key viewpoint of the countryside setting of the Castle (giving “visitors a taste of the 17th century landscape” – Historic England response). The field proposed for development is the central feature in this view. Passage through the archway currently gives a rural view and rural character to the Castle’s setting reflecting its historic past; the proposal would change this view to one which is urban in character. The housing would be the central and dominant feature of this view.

Similarly the field is prominent in views from The Terrace, the designed viewing platform at the northern end of The Terrace, and from the windows of the main rooms in the Little Castle, all of which are designed to exploit the views across the Doe Lea valley. The Castle was designed to take advantage of these westwards facing views and to dominate the vale.

Development of the greenfield element of the proposal would change the countryside setting as experienced from the archway, to a setting which is urban in character. Its development would

effectively link the built up area at the bottom of Bolsover Hill with the redevelopment of the brownfield Coalite Works site and Markham Vale reducing the rural landscape element of the Castle's setting as experienced from the other viewpoints. In addition to being an important element of the setting of the Castle the green field provides an important buffer in between built-up areas and potential brownfield redevelopment areas. It will also alter the approaches to the Castle creating a more urbanised approach.

There would therefore be harm to the setting of Bolsover Castle reducing the significance to the Castle which it derives from its setting.

There are no objections, in terms of impact on the setting of Bolsover Castle, to residential development of the brownfield element, indeed such development in those areas, may have less impact on the setting of the Castle than industrial/business use buildings which could reasonably have been anticipated under the current designation within NEDDC.

The Castle is of exceptional national significance, which is reflected in its multiple designations as a Grade 1 Listed Building, Scheduled Ancient Monument, Grade 1 Registered Park and Garden and being within a Conservation Area; it is one of the top 2% of listed buildings in England (Historic England response). Taking this significance into account and the development already present in the vale, in particular Bolsover Business Park (former Bolsover Colliery), the brownfield areas of the former Coalite Works and Markham Vale (former Markham Colliery) it is considered that the harm to the setting of Bolsover Castle will be "less than substantial" in the terms of the National Planning Policy Framework. This still results in the need to apply the "Section 66" duty.

Where a development will lead to "less than substantial harm" to the significance of a designated heritage asset the harm should be weighed against the benefits of the proposal (National Planning Policy Framework policy 134).

In respect of heritage issues the main benefit from the proposal is the remediation of the Coalite site, removing the structures tanks etc which already detract from the setting of the Castle and the neighbouring listed farmhouse. (Other benefits will accrue which are set out below). The residential development is enabling development to finance the remediation costs of the former Coalite Works. To be given weight in the decision the need for cross subsidy and the linkage must be clearly demonstrated and delivered.

Evidence, in the form of a revised viability assessment, has now been provided (11th March 2016) of the remediation costs of the commercial areas to show that the residential development is needed as 'enabling' development. The formal response of the District Valuer is awaited, but he has verbally indicated that the case has been made but he is, at the time of writing the report testing the details and will provide NEDDC with a written response shortly. This assessment and balance is based on the likely acceptance of the evidence submitted; if that changes then an update report will be provided. The negotiated amended to the phasing (that the remediation must be completed before any part of the residential development occurs) has altered the projected cash flow (receipts from the sale of houses cannot fund the remediation work) and therefore the applicant needs to secure funding to undertake the remediation.

Historic England has stated that if the enabling need in relation to the remediation is

established, and the completion of the remediation can be secured by condition or legal agreement before the residential development starts, then they consider that the harm can be outweighed by the benefits. This is a judgement, but the advice of Historic England is accepted as a reasonable balance and on the current evidence the harm to the Castle, and other heritage assets, is outweighed by the benefit of remediation.

Remediation/phasing/relationship to BDC application

A Phasing and Remediation Strategy has been submitted, but has been amended. Now the applicant has agreed to no residential development commencing until the remediation is complete on the whole of the former Coalite site (expected to be about 56 months).

The remediation takes the form of digging out contaminated soils in batches and placing them in bunds (in area phase5) for bio-remediation (bacterial action) to remove contaminants and then replacing the remediated soils on the site. The effectiveness of this is dependent upon temperature and the action of the bacteria. Also it is intended to suspend excavation work and the turning of the soils in the bunds when the wind is in the wrong direction, as contained in an Odour Management Plan). The timetable submitted is dependent upon the remediation for each batch being completed as predicted with an overall timetable of 56 months.

**Note: Phase 1 Demolition of all above ground structures and removal of hard surfaces and vegetation;
Phase 4- Carpet Strip and Hotspot Area**



The revised phasing that no residential development will start until the remediation of the whole

site is complete addresses previous concerns about the new housing development having the potential to stop remediation continuing.

Principle of Housing.

The combined development (i.e. the housing and the commercial applications taken together) constitutes a strategic matter as it straddles the District Boundary. As part of the preparation of the new Local Plan for Bolsover District, an approach will be made to North East Derbyshire District Council to jointly consider assumptions about availability, suitability, and the likely economic viability of the site to meet identified need for housing and employment land over the plan period.

The proposal represents a strategic urban extension to Bolsover Town along the A632. It is considered reasonable to assume that a significant part of the infrastructure demand could or will fall upon Bolsover District rather than North East Derbyshire District, particularly as the nearest settlements of Long Duckmanton (in North East Derbyshire) and Duckmanton (in Chesterfield) are beyond the M1, (e.g. over 2000m to Duckmanton Primary School, 1500m to New Bolsover Primary School) with Bolsover being the nearest service centre (1800m to town centre).

The development now makes provision for a school site, in accordance with the request from DCC Education, and for on-site recreation facilities. There is also land shown allocated for a small service centre (no details on how it will be delivered- but it is an outline application). The amendments have gone some way to addressing the poor performance of the original scheme. Until recently there was no request from the CCG/NHS for any contribution to health facilities. It is understood that the recent request has not been accompanied by any justification of need. Bolsover Council does not have a policy in relation to health contributions currently.

As a consequence of the changed strategy the housing development will not start to be delivered until after at least 5years. Consequently the demand on infrastructure will not arise for some considerable time. Clearly circumstances could change significantly in the interim. Currently NEDDC are seeking a review mechanism within the S106 Agreement to enable reconsideration of the infrastructure requirements nearer the time the demand will begin and how the current offer might be distributed differently to better meet demands at that time. This is reasonable and to be supported. As some of the demands are likely to be on infrastructure in Bolsover it would be beneficial if the agreement allowed for an input from this Council on the review.

Also what must be considered in terms of S106 contributions is the exceptional cost of remediation associated with the development. This will affect the ability to meet all potential requests. A balance judgement has to be made. In view of the evidence from the viability work the current offer appears reasonable, but in view of the time lapse between the possible permission and the actual development it is reasonable to review the offer later.

Under the revised viability assessment the applicants are currently offering S106 contributions- the offer is part of the testing currently by the DV. The final offer agreed after testing will be reported on the update. The offer currently includes affordable housing and other contributions to infrastructure as well as the allocation of the school site.

(Note the update will set out the current position on S106 offer, but the Committee at NEDDC could take a different view on how the contributions should be distributed. Bolsover Planning Committee could also make a comment on the offer if it was felt the mix was not considered to meet this Council's priorities).

In respect of green infrastructure an illustrative plan of greenways within the site has been produced. As this is an outline application these are indicative but do illustrate that a network can be designed within the site to improve this element.

The route of the HS2 may impact on the western edge of the development, but is unlikely to affect the overall deliverability of the site.

There are good bus services along Chesterfield Road which may offset the deterrent to walking to the secondary schools and town centre facilities which are up a steep hill.

If permission is granted for housing, it will need to take into account the valid planning permission for employment development (B2 and B8) in Bolsover District, in how the site layout and housing design is developed. This is being addressed through a S106 with NEDDC which will seek to attach a noise condition to the commercial development in Bolsover District (which addresses the concerns of the EHO). This will reflect the noise condition imposed on the Bolsover consent, which addressed noise impacts to the residential properties which already exist close to the commercial site.

Conclusions

The remediation of the former Coalite Works is a challenging problem. The proper clearance and resolution of the problems of pollution of the land and the issues of odour from the site and the reuse for employment purposes are supported and encouraged by all parties. Achieving this should be given due weight in the balance of issues in the decision on this application.

Residential development on the site can be supported provided that it has been demonstrated that it is required to achieve the remediation and that the remediation will be delivered. It is considered that this has now been demonstrated.

The benefits as stated in the application are:

- Remediation of the former Coalite site and removal of unsightly industrial structures;
- Facilitates employment development within Bolsover District;
- S106 contributions
- Highway improvements
- Employment generated during development
- Adds to the supply of housing

Impacts of the development:

- Detriment to the setting of Bolsover Castle complex (substantial weight);
- Large demand on secondary school places which will be unmet by the scheme.
- Temporary odour emissions during remediation work

Whilst some of these benefits may not be realised for many years the most critical part- the

remediation of the site- will be the first benefit to be achieved.

(Other benefits that will arise but are not material to the consideration of the application- but the Government wish to be reported to inform the public about the financial aspects of proposals- will be new homes bonus to NEDDC-if it is still available when the development starts- and the rates payable on all buildings and land in beneficial use).

This is a balanced judgement as to whether the high threshold for preservation of the heritage asset set by S66 is outweighed by the benefits of the remediation of the former Coalite site.

RECOMMENDATION

Inform North East Derbyshire District Council that Bolsover District Council supports the Outline application for a 660 dwelling scheme with associated ancillary uses on land at the former Coalite Works provided that:

- (i) Controls are in place to secure the completion of the remediation as set out in the application before any development other than remediation takes place on the site;
- (ii) The S106 Agreement allows for the potential contributions to infrastructure needs arising in Bolsover District from the development to be used to deliver that infrastructure ;
- (iii) The S106 Agreement has a review mechanism close to the start of the residential development to enable a potential reallocation of contributions to meet identified needs at that time;
- (iv) The review mechanism includes Bolsover District Council, in view of the potential demands on infrastructure in the district that might require mitigation;
- (v) That the layout of the site and design of properties will either take account of the authorised development in Bolsover District on the remainder of the Coalite site or the S106 contains noise controls over the commercial development to avoid undue impacts.
- (vi) The design and layout of the site takes into account the setting of Bolsover Castle and is designed to minimise the impact on that setting.