

PARISH Old Bolsover

APPLICATION Additional Access and Amendments to the Bridge Improvement Measures (removal of the bridge) on Buttermilk Lane
LOCATION Land Formerly Known as Coalite on North And South Side Of Buttermilk Lane Bolsover
APPLICANT Mrs Sophie Watkin 10 Upper Berkeley Street London W1H 7PE
APPLICATION NO. 18/00178/FUL **FILE NO.** PP-06835124
CASE OFFICER Mr Chris Fridlington
DATE RECEIVED 22nd March 2018

BACKGROUND

This application proposes highway improvements to a length of Buttermilk Lane adjacent to part of a disused industrial site, which was formerly used for the production of the Coalite brand of smokeless fuel. Historically, the site has also been associated with dioxin emissions and pollution of the adjacent Doe Lea river and surrounding farmlands. The former Coalite site closed in 2004 leaving behind a derelict site and a legacy of land contamination issues.

Remediation of the site commenced in November 2016 and the clean-up of the site is part of a wider regeneration scheme including the provision of commercial buildings on land within Bolsover District. The regeneration scheme was granted outline permission in December 2015 (14/00089/OUTEA).

Extract from Masterplan attached to 14/00089/OUTEA



HIGHWAY IMPROVEMENTS

The existing outline planning permission includes consent for highway improvements to Buttermilk Lane (B6418) including replacement of the road bridge over the Doe Lea river, which is currently subject to a weight restriction. The details of this replacement bridge are subject of a separate application (18/00003/DISCON) which is currently pending consideration.

The existing permission also includes consent for highway improvements closer to what reads as the main access to the former Coalite site from Buttermilk Lane but these proposals did not include removing the 'railway bridge' which crosses over the disused railway line (the former Bolsover Branch Line) that passes under Buttermilk Lane.

These proposals included a 'shuttle system' shown on the plan below and it was intended that traffic signals would be used to control traffic flows and alternate the direction of traffic moving over the bridge. Two separate access points to the north of the proposed 'shuttle system' on Buttermilk Lane would then provide improved access to the re-developed site.

'The Shuttle System'

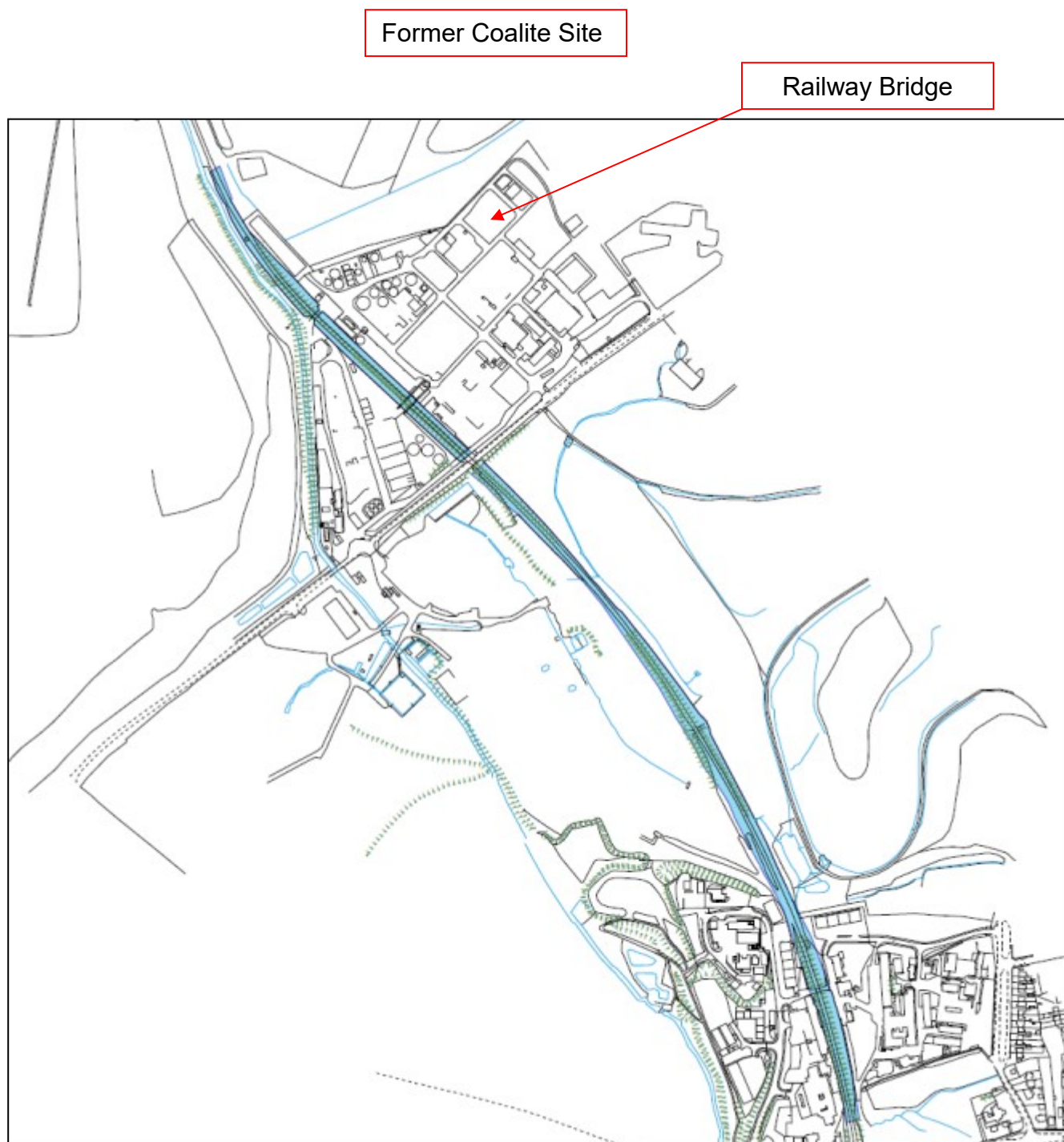


CURRENT PROPOSALS

The current application seeks full planning permission for a revised scheme of highway improvements including the removal of the railway bridge and road widening works to allow

However, this application does not propose the creation of a greenway and the disused railway line has no rights of way along its length at the present time. There are also sections of the line that remain in the ownership of Network Rail as highlighted on the plan below. Therefore, the proposals for the creation of the greenway along the length of the disused railway line are outside of the scope of this application.

Section of Bolsover Branch Line in Network Rail's Ownership



KEY ISSUES

In light of the above conclusions on the scope of this application, it is considered one key issue in the determination of this application is whether the proposed improvements would

prejudice the future delivery of the proposed multi-user route along the former Bolsover Branch Line. However, this does not mean that the applicant is required to provide the necessary infrastructure to deliver a functional greenway or deliver on a preferred option; the applicant is simply required to ensure the greenway can still be delivered some time the future if permission were to be granted for the current application.

The other key issues in the determination of this application are highway safety and the potential impacts of the proposals on biodiversity. In this case, there are local concerns that Buttermilk Lane is unsafe in this location. The proposals will also result in the removal of trees along Buttermilk Lane and disrupt wildlife habitat along the section of the disused railway line within the application site.

AMENDMENTS

This application is a resubmission of a previously withdrawn application and includes an amended red-edged application site to include the proposals for tree removal and provision of the ramps up to Buttermilk Lane, which were not originally included in the previous application. No further revisions have been made to the current application

RELEVANT PLANNING HISTORY

02/00614/LAWEX: Application for Lawful Development Certificate approved November 2003 for various uses, principally B2 (General Industrial Use) but also including elements of B1 (Business Use – headquarters office), C3 (Dwelling houses – caretakers bungalow), agricultural use – land to rear of headquarters office complex) and woodland and marshland.

08/00755/OUTEA: Outline application for Industrial (Class B1 and B2) and Distribution Park (Class B8) Application disposed of (withdrawn) by the Local Planning Authorities (BDC and NEDDC) as various remediation issues needed resolution before determination of the application in October 2010.

13/00157/DETDEM Demolition of remaining buildings, structures and tanks by current applicant; approved July 2013.

14/00089/OUTEA Outline application for General Industrial (B2 uses), Warehousing (B8 uses), energy centre, a transport hub, open storage and a museum/visitor centre with details of access (all other matters reserved). The application was accompanied by an Environmental Statement. Approved December 2015.

16/00452/DISCON Discharge of Conditions 3 (Remediation & Phasing Strategy & Odour Management Plan), 4 (Remediation Targets), 6 (Independent Assessor), 8(i) (Remediation Implementation Plan & Method Statements), 8(ii) (Air Quality Management), 8(iii) (Noise & Vibration), 8(iv) (Ecological Management Plan), 19 (Asbestos in Soil Risk Assessment) of planning permission 14/00089/OUTEA for the remediation phase of the development. Conditions generally partially discharged October 2016.

17/00395/VAR – Application to delete condition 11 attached to planning permission

14/00089/OUTEA approved. The original condition required improvements to J.29A of the M1, which are no longer considered to be necessary.

17/00601/FUL – Application seeking full planning permission for highway improvements to Buttermilk Lane withdrawn prior to determination.

18/00002/DISCON - Discharge of Condition 15 (Design Framework) of planning permission 17/00395/VAR currently pending consideration.

18/00003/DISCON - Discharge of conditions 3 (odour assessment) and condition 12 (details of River Doe Lea bridge and Flood Corridor) of application currently pending consideration.

18/00186/DISCON - Discharge of conditions 8(i, ii, iii, iv) (environmental management) of planning application 17/00395/VAR currently pending consideration.

CONSULTATIONS

Bolsover Town Council – No response to date

Bolsover District Council (Environmental Health) – No response to date

Bolsover District Council (Leisure Services) – Objects to the proposals on the basis that the proposed ramp solution is unacceptable and an underpass solution should be agreed.

Bolsover District Council (Regeneration) – No response to date

Derbyshire County Council (Greenways) – No response to date

Network Rail - No observations to make

North East Derbyshire District Council – No response to date

PUBLICITY

The application has been publicised by site notice, press advert and neighbour notification. All interested parties that commented on the previous application (17/00601/FUL) have also been re-consulted. To date, the Council has received 16 letters of objection including representations from Chesterfield Cycle Campaign and a detailed letter submitted on behalf of Ride Bolsover.

The general thrust of many of these letters is that the ramped access is unacceptable for a range of different users and would prejudice the proposed greenway because users would have to cross a dangerous road to continue along the length of the trail. There are also concerns about the previous history of accidents along Buttermilk Lane and concerns that the ramp proposals do not meet the requirements of horse riders, cyclists or pedestrians. Taken together, the letters suggest the only appropriate solution would be the provision of an underpass, which reflects the advice offered by the Council's special project officer on behalf

of Leisure Services.

These representations are published in full on the Council's website.

POLICY

Bolsover District Local Plan

The most relevant saved policies in the 'adopted Local Plan' include:

GEN1: (Minimum requirements for development)

GEN2: (Impact of development on the environment)

ENV5: (Nature conservation interests throughout the District)

In summary, these policies require proper consideration of the potential impacts of development proposals on the local road network and on nature conservation interests throughout the District. They should also be afforded considerable weight in the determination in this application because they are consistent with national planning policies that promote delivery of sustainable development. However, the following policy is no longer relevant:

TRA 2: PROTECTION OF RAIL ROUTES

This policy would normally prevent planning permission being granted for development that would prejudice the re-use of the Bolsover branch line as a railway line. Network Rail have confirmed they are seeking to dispose of the section of line that remains in their ownership because the branch line is now severed from the remainder of the rail network. Therefore, policy TRA2 should be afforded no weight in the determination of this application.

Bolsover District Publication Local Plan

The most relevant policies in the 'emerging Local Plan' include:

SS7: Coalite Priority Regeneration Area

ITCR9: Local Transport Improvement Schemes

These policies set out the Council's aspirations for the creation of a multi-user track on the line of the disused railway line, which was formerly the Bolsover branch line. These policies should be afforded some weight because the emerging Local Plan now has Regulation 19 status because it is now out for public consultation prior to examination in public.

Other Guidance

East Derbyshire Greenways Strategy (1998)

This document shows the Bolsover Branch Line as a Tertiary Route (Route Partially Developed), which would be part of a proposed Staveley, Markham, Bolsover, Hardwick, Pleasley link.

Derbyshire Key Cycle Network (2017)

This document shows the Bolsover Branch Line as a proposed section of a 'Bolsover Loop' that links to the Archaeological Way.

National Planning Policy Framework

The most relevant national policies in the 'Framework' include Paragraphs 32 and 35: Promoting sustainable transport, which should be taken into account as relevant planning considerations.

Paragraph 32 of the Framework requires all development proposals to be provided with a safe and suitable access and for local planning authorities to consider refusing planning permission where development proposals would result in a severe adverse impact on the local road network.

Paragraph 34 of the Framework requires local planning authorities to actively manage patterns of growth to make the fullest possible use of public transport, walking and cycling, and focus significant development in locations which are or can be made sustainable.

ASSESSMENT

Principle

It is considered that the starting point for the determination of this application is recognising that the railway bridge in its current condition is an 'obstacle' that would prevent the regeneration of the former Coalite site coming forward. In this respect, the remediation of the site is clearly in the wider public interest taking into account that public funds were required to close a 'funding gap' to enable the clean-up of the site to commence after more than 10 years of dereliction.

It also has to be recognised that approval has already been granted for highway improvements to the railway bridge that involve a shuttle system that would include traffic lights controlling traffic flows. However, the current proposals offer a 'better solution' that would allow traffic to flow in both directions and better serve regeneration of the site in line with the aspirations of strategic policy SS7 in the emerging Local Plan. The regeneration of the site would achieve wider public benefits in terms of creating local job opportunities.

Therefore, officers consider the highway improvements proposed in this application to be acceptable in principle taking into account the proposals would help achieve the wider public benefits associated with the remediation and regeneration of the former Coalite site.

Highway Safety

The current proposals include removing the railway bridge and carrying out engineering works to backfill the void and to reconstruct the road at a width of 7.3m to tie in with the approved works to the north and south. The local highway authority have no objections to the proposals, subject to conditions, and officers consider that there would be a net gain in

highway safety terms by removing a feature that encourages dangerous driving i.e. the 'dip' after the railway bridge allows a vehicle to leave the ground if the vehicle is driven at sufficient speed and this type of driving has already resulted in at least one fatal road traffic accident at this location.

The removal of the bridge and the alterations to Buttermilk Lane will also allow for the provision of an additional access into the site at a location where satisfactory levels of visibility could not have been achieved with the bridge in place. The local highway authority are also satisfied that this new access would be safe and suitable. Therefore, the proposals do not give rise to any concerns on highway safety grounds but there remains significant local concerns about the potential road crossing linked to the proposals for a multi-user trail along the line of the disused railway track.

However, whilst it is considered these concerns are understandable, they are partly vested in concerns about the current situation rather than taking into account these proposals actually provide 'betterment' by improving road safety. From a planning perspective, these concerns are also offset and outweighed by the fact that the local highway authority have no objections to a road crossing for a multi-user trail in this location.

Therefore, there are no planning grounds to refuse planning permission for this application on highway safety grounds and in all other respects, there is no realistic likelihood that the current proposals would result in an adverse impact on the local road network. The current proposals would actually improve the safe and efficient movement of traffic along Buttermilk Lane compared to the current situation and the previously approved 'shuttle system'.

Consequently, officers consider that the proposals comply with the requirements of saved Local Plan policies GEN1 and GEN2 and national planning policies in the Framework because the proposals would improve road safety and the operation of the local road network whilst providing a safe and suitable access to development on the former Coalite site.

Wildlife

The current proposals will result in the removal of roadside trees along Buttermilk Lane to facilitate widening the road. The proposals also give rise to potential disturbance to bats and birds insofar as the railway bridge might provide roosting habitat and the removal of vegetation along the disused railway line to facilitate creation of the ramped access to Buttermilk Lane.

However, whilst the roadside trees have some value because they obscure views of the former Coalite site to a certain extent and some of the trees are reaching maturity, they are not protected by a tree preservation order and do not have any special ecological interest.

Therefore, it is unfortunate these trees will need to be removed if planning permission is granted for the current application but their loss is justified by the benefits of allowing the highway improvements to go ahead. Their loss would also be offset by a scheme of replacement planting that can be secured by way of a planning condition but the trees should be removed outside of the main bird nesting season (March - July) to avoid any other impacts on wildlife interests.

Similarly, the vegetation along the disused railway line should be removed outside of the main bird nesting season but the types of species along the railway line are generally self-seeding pioneer species that do not have any particular ecological value but would provide a potential habitat for other flora and fauna. However, the regeneration of the former Coalite site includes proposals for a substantial amount of green infrastructure that would offset concerns about the loss of a 'green corridor' and ensure the regeneration proposals, taken as a whole, would achieve a net gain in bio-diversity terms. Therefore, there are no overriding objections to this aspect of the proposals also noting that a similar loss of potential habitat would occur if a green way was to be created along the disused railway line.

Finally, the railway bridge has some potential to provide habitat for bats but when the bridge has been assessed previously; it did not support bat roosts. It was also found that bat activity along the railway line was generally low, with bats preferring the route provided by the Doe Lea river for foraging and commuting. Taking into account, there have been no significant changes since that survey work was undertaken, it is unlikely that the bridge would host roosting bats given that the nature of the bridge means it would appear to provide sub-optimal habitat for bats in any event. Therefore, it is appropriate in this case to rely on the provisions of the Wildlife Act, which would prevent any works taking place without appropriate mitigation in the unlikely event that bats were found to be present during the construction phase of the proposed development.

It is therefore considered the proposals would not have unacceptable adverse impact on wildlife with regard to saved Local Plan policy ENV5, subject to appropriate planning conditions and informatives. Furthermore, the proposals also need to be considered in the wider context of the proposed regeneration of the site, which will deliver a net gain in biodiversity. The net benefits of the wider regeneration of the site serves to further offset and outweigh any adverse impacts arising from the loss of the roadside trees, the railway bridge, and vegetation along the disused railway line.

Proposed Greenway

The main objection to the current proposals in representations on the application is the absence of an underpass to facilitate the proposed use of the disused railway line as a multi-user trail. In representations made on behalf of Ride Bolsover and by the Council's special project officer, a large amount of technical detail has also been provided which explains why the proposed ramp and crossing points would not meet 'best practice' standards and how and why an underpass could and should be provided.

However, it must also be recognised that this application does not seek planning permission for a multi-user track or infrastructure to support the proposed greenway. Equally, to avoid conflict with the emerging Local Plan, the application must not prejudice the aspirations to provide a multi-user track along the Bolsover branch line but this does not mean that the applicant is required to provide the necessary infrastructure to deliver a functional greenway or deliver on a preferred option. Therefore, much of what has been said in representations falls outside the scope of this application when also taking into account there is no immediate prospect of the proposed greenway being delivered at this time because of land ownership issues, amongst other things.

Nonetheless, Derbyshire County Council (who would be most likely to take forward the proposed greenway along that Bolsover Branch Line) have no objections to the proposals to provide a ramped access to Buttermilk Lane and, as noted above, have not expressed any objections to the principle of a road crossing in this location on highway safety grounds. The County Council's position therefore weighs heavily against insisting on the underpass proposed in representations as a condition of granting planning permission for the current application.

Although no costing or sectional details have been provided with the submitted application, the applicant also states that to provide a multi-user track under a bridge would require lowering the existing level of the disused railway line giving rise to drainage issues. Taken together, this means that the costs and ongoing liability associated with providing and maintaining an underpass including providing a drainage solution are not viable in the context of the development proposals and not viable from the perspective of the County Council if they were to take on the proposed greenway, which is the most likely outcome if the greenway is to be delivered.

In addition, whilst it is said in representations that public money has been received by the developer and this should mean the developer provides an underpass in the wider public interest: the 'public money' referred to was gap funding that has been used for its intended purpose to facilitate remediation of the site, which is otherwise considered to be of overriding public importance. It is therefore not considered reasonable to require the developer to provide an underpass when taking into account public funds do not exist to pay for its provision and the County Council are also satisfied the ramps proposed in this application would safeguard the route of the proposed greenway in accordance with the aspirations of the emerging Local Plan.

Therefore, the County Council's position adds weight to an officer conclusion that the current proposals do not otherwise conflict with national planning policy that requires this Council to actively manage patterns of growth to make the fullest possible use of public transport, walking and cycling, and focus significant development in locations which are or can be made sustainable. In particular, officers consider that the ramp solution provides for access to the proposed greenway including for people with a disability in a location that will promote opportunities to use the multi-user trail in accordance with national policy over and above what may be achieved by the proposed underpass solution.

Consequently, the absence of any proposals for an underpass in this case does not constitute a sustainable reason for refusal of the current application. However, officers consider that the conditions suggested by the local highway authority should be attached to any permission for the current application to ensure that the proposed ramps would meet the required standards in terms of width, gradient and landing strips for a multi-user trail, as far as is practicable.

Other Relevant Considerations

From the above sections of this report, it is considered that the current application adequately addresses the key issues in the determination of this application namely whether the proposed improvements would prejudice the future delivery of the proposed multi-user route

along the former Bolsover Branch Line, highway safety and the potential impacts of the proposals on biodiversity.

In this case, there are no other relevant planning considerations that would otherwise indicate planning permission should be refused for the current application given that the current proposals would have no other impacts on the local area that have not already been considered when outline planning permission was granted for the wider regeneration of the former Coalite site. However, it is also reasonable to conclude that by virtue of the location of the application site, the proposals would not be unneighbourly or have any significant impact on any designated or non-designated heritage assets including above and below-ground archaeology.

The proposals would also not generate any additional traffic beyond what would be anticipated from the regeneration proposals and would not give rise to any further issues around land contamination because the current proposals would be carried out within the existing schedule of remediation. The landscape and visual impact of the proposals would also be minimal in the context of the wider regeneration of the former Coalite site but in isolation, replacement tree planting as proposed earlier in this report would mitigate for the loss of the existing roadside trees.

Finally, reference has been made to HS2 but the application site is not within the safeguarded area for the high speed line and the mitigation for the HS2 proposals is a matter to be considered separately as the proposals for the high speed line are progressed. Therefore, no weight can be attached to the potential impact of the HS2 proposals in the determination of this application one way or another.

Conclusions

It is therefore concluded that there are no other planning considerations that indicate planning permission for the current application, which for the above reasons and subject to appropriate planning conditions, meets the requirements of saved Local Plan policies and national planning policies in the Framework and accords with the aspirations set out in the emerging Local Plan for a proposed greenway along the former Bolsover Branch Line. Accordingly, the current application is recommended for conditional approval.

Human Rights

Any human rights issues have been considered and addressed in the preparation of this report.

EIA Screening Opinion

The development is not Schedule I development but does comprise urban development as described in column one of Schedule II of the EIA Regulations 2017. The application site is not located in a sensitive location for the purpose of these regulations and the development does not exceed the thresholds set out in column 2 of Schedule II. Therefore, the proposed development is not EIA development in its own right.

Statement of Decision Process

The Council's officers have worked positively and pro-actively with the applicant to work addressing concerns raised in respect of the previous application, which was withdrawn prior to determination.

RECOMMENDATION

The current application be APPROVED subject to the following conditions:

1. The development shall be carried out within a period of three years from the date of this decision.
2. The development hereby permitted shall be carried out in complete accordance with Drawing No. VC0125 Revision A subject to the following conditions:
3. No development shall take place until detailed drawings of a planting scheme which includes the number, size, species and position of trees and shrubs shall be submitted to and approved in writing by the local planning authority. Thereafter, the approved planting scheme shall be carried out within one planting season of completing the development. If any trees are removed or found to be dying, severely damaged or diseased within 5 years of being planted then they must be replaced with trees of a similar size and species within one planting season.
4. No development shall take place until a construction management plan or construction method statement has been submitted to and been approved in writing by the Local Planning Authority. The approved plan / statement shall be adhered to throughout the construction period. The statement shall provide for the storage of plant and materials, site accommodation, loading, unloading of goods' vehicles, parking of site operatives' and visitors' vehicles, routes for construction traffic, hours of operation, method of prevention of debris being carried onto highway and any proposed temporary traffic restrictions.
5. No development shall take place until a detailed design for the removal of the bridge and backfill of the void, layout, construction, drainage and lighting of the new road have been submitted and approved in writing by the Local Planning Authority in consultation with the County Highway Authority. For the avoidance of doubt, the applicant will need to enter into an Agreement with Derbyshire County Council under Section 278/72 of the Highways Act 1980.
6. Prior to being taken into use, the new access shall be laid out in accordance with application drawings VC0125/011 & 012, having a 7.3m carriageway, 2 x 2m footways, 12m radii and visibility sightlines of 4.5m x 160m in each direction. The area in advance of the sightlines shall be levelled, constructed as highway and not be included in any plot or other sub-division of the site.

INFORMATIVES

Highways

- a) Pursuant to Section 278 of the Highways Act 1980 and the provisions of the Traffic Management Act 2004, no works may commence within the limits of the public highway without the formal written Agreement of the County Council as Highway Authority. It must be ensured that public transport services in the vicinity of the site are not adversely affected by the development works. The appellant should be aware that this will be the subject of separate approval. Advice regarding the technical, legal, administrative and financial processes involved in Section 278 Agreements may be obtained from the Economy, Transport and Environment Department at County Hall, Matlock. The applicant is advised to allow at least 12 weeks in any programme of works to obtain a Section 278 Agreement.
- b) Construction works are likely to require Traffic Management. Advice regarding procedures should be sought from Derbyshire County Council's Traffic Management section (01629 538686). All road closure and temporary traffic signal applications will have to be submitted via the County Councils web-site; relevant forms are available via the following link -
http://www.derbyshire.gov.uk/transport_roads/roads_traffic/roadworks/default.asp

Wildlife

- a) When the development hereby permitted is carried out, any person on site must avoid taking, damaging or destroying the nest of any wild bird while it is being built or used, and avoid taking or destroying the egg of any wild bird. These would be offences (with certain exceptions) under the Wildlife and Countryside Act 1981, the Habitats Regulations 1994 and the Countryside and Rights of Way Act 2000. It is therefore recommended that any removal of habitat and/or works affecting trees should be carried out outside of the bird-nesting season (March to July) or under the supervision of a suitably qualified ecologist.
- b) When the development hereby permitted is commenced, any person on site must not intentionally kill, injure or take a bat, or intentionally or recklessly damage, destroy or block access to any structure or place that a bat uses for shelter. These would be offences under the Wildlife and Countryside Act 1981, the Habitats Regulations 1994 and the Countryside and Rights of Way Act 2000. Therefore, it is advised that works must stop immediately if bats are found to be present at any stage of the development and a suitably qualified ecologist should be instructed to advise on the appropriate action to take including advising whether a European Protected Species Licence is required prior to works re-commencing.

Site Location Plan

