

Report to Planning Committee

11 May 2022

Application Reference	DC/21/66125
Application Received	16 September 2021
Application Description	Proposed industrial/warehousing development (use classes B2/ B8) together with associated access, servicing, parking and landscaping.
Application Address	Newcomen Drive Open Space Newcomen Drive Tipton
Applicant	Mr J Kelly
Ward	Tipton Green
Contact Officer	William Stevens William_stevens@sandwell.gov.uk

1 Recommendations

1.1 That, subsequent to ratification by Council of the departure from housing, the signing of a Section 106 regarding ecology protection, and no objections from the Birmingham Wildlife Trust, Highways and Public Health (Noise), planning permission is granted subject to conditions relating to:

- (i) External materials as per submission;
- (ii) Hard and soft landscaping;
- (iii) Finished floor levels;
- (iv) Boundary treatment (including any retaining walls);




- (v) Electric vehicle charging points;
- (vi) Construction management plan (including dust management, hours of construction, wheel cleaning etc as well as additional requirements of the Canal and River Trust);
- (vii) Travel Plan implementation;
- (viii) Low NOx boilers;
- (ix) Ground contamination and gas monitoring with mitigation measures;
- (x) Coal mining investigation and mitigation measures;
- (xi) Risk assessment and method statement (Canal and River Trust);
- (xii) Drainage and SUDS;
- (xiii) CCTV;
- (xiv) Details of proposed external lighting;
- (xv) Desk top based archaeological survey;
- (xvi) Ecological survey and mitigation measures;
- (xvii) Noise mitigation measures;
- (xviii) Jobs and apprentices;
- (xix) Culvert investigation/diversion/protection; and
- (xx) 10% renewable energy provision.

2 Reasons for Recommendations

- 2.1 The proposal brings forward a site that has remained undeveloped for a good number of years and which has been used for fly tipping in the past. The proposal would create jobs and bring investment into the local area.

3 How does this deliver objectives of the Corporate Plan?

	A strong and inclusive economy
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4 Context

- 4.1 At your meeting in March the application was differed for further information and discussions. These are ongoing, and members will be



verbally updated. This application is being reported to Planning Committee because the proposed use is a departure from the council's development plan and objections have also been received.

- 4.2 To assist members with site context, links to several Google Map images are provided below:

[Aerial View](#)

[Street View](#)

[View from Newcomen Drive](#)

5 Key Considerations

- 5.1 The site is allocated for housing and if members were to approve the application, it would have to be considered by Council for ratification.
- 5.2 The material planning considerations which are relevant to this application are: -

Government policy (NPPF)
Proposals in the Development Plan
Planning history (including appeal decisions)
Loss of light and/or outlook
Overshadowing
Public visual amenity
Overbearing nature of proposal
Traffic generation
Contamination by a previous use
Noise and disturbance from the scheme
Nature conservation and loss of ecological habitats
Loss of trees
Flood risk



6. The Application Site

- 6.1 The application site is an area of green space sandwiched between industrial units to the west and residential properties to the east. Access to the site would remain as it is now, through Coneygree Road.

7. Planning History

- 7.1 The site has a history of applications being approved; from residential uses to industrial purposes. However, the land has been vacant for a significant period with no development taking place on the site.
- 7.2 The relevant planning applications are as follows:

DA/18345	Infilling of site to plans R/C/BQ/1 & 2.	Grant permission subject to conditions 14/02/1985
BCS0315	Residential development, landscaping and woodland planting and relocated and improved football pitch and clubroom.	Grant Outline Permission with Conditions 07/10/1988
BCS0585	Residential development, landscaping and woodland planting; relocated and improved football pitch and clubroom.	Grant Conditional Reserved Matters 19/06/1989
BCS0827	General industrial and associated open storage/car parking.	Non-Determination 25/11/1992



BCS0828	General industrial and associated open storage/car parking.	Non-Determination 25/11/1992
BCS3553	Recycling and waste transfer station	Withdrawn 23/03/1998
DC/08/49278	Demolition of industrial units to enable vehicular access into the site, regrading of the site and stabilisation of the old mine workings, residential development of up to 300 dwellings comprising access alterations onto Coneygre Road and Burnt Tree Road and erection of a landscaped acoustic bund (outline application).	Appeal Allowed 23/04/2009
DC/12/54472	Renewal of extant planning permission DC/08/49278: Demolition of industrial units to enable vehicular access into the site, re-grading of the site and stabilisation of the old mine workings, residential development of up to 300 dwellings comprising access alterations onto Coneygre Road and Burnt Tree Road and erection of a landscaped acoustic bund (outline application).	Not determined



DC/21/65676	Screening opinion for proposed industrial and warehouse units with associated access and works.	EIA not required 26/05/2021

7.3 The council has also dealt with two enforcement cases on the site regarding issues with the boundary wall and untidy land (GS/13/9065 and GS/19/10965 respectively). Whilst those issues have been addressed, a further complaint (case GS/21/11567) has recently been received for untidy land.

8. Application Details

- 8.1 The applicant proposes to create a new service road from the existing industrial estate, creating five new industrial/warehousing units, (use classes B2/ B8) together with associated access, servicing, parking and landscaping.
- 8.2 Units 1 and 2 (nearest to the residential units in Newcomen Drive at 47m) would be 11m high, whereas Unit 5 would stand at 15.6m high and be over 90m from the nearest property in Lindley Avenue.
- 8.3 Access to and operation of the units would be 24/7. In total 270 parking spaces will be available and space for 27 cycles.

9. Publicity

- 9.1 The application has been publicised by 71 neighbour notification letters, site notice and press notice. A total of eight objections have been received along with a 155-signature petition against the proposal.



9.2 Objections

Objections have been received on the following grounds:

- i) Concerns over noise given the proximity of the development to residential units, combined with the new metro line bordering the site;
- ii) The proposal is allocated for residential use and not industrial;
- iii) Light pollution from the proposed development would disturb residents' sleep during the night;
- iv) The development would increase traffic in the local area;
- v) The development would increase pollution in the area;
- vi) Concerns over potential poisonous gases on site given the use was a former tar pit;
- vii) The proposed development will impact on the local environment, forcing existing wildlife to move from the site whilst the site is treated and developed and further removal of greenery in Tipton;
- viii) Not all residents in the area have been notified of the application;
- ix) The introduction of a walkway from Newcomen Drive may introduce security issues to local residents and increase anti-social behaviour and criminal offences; and
- x) The proposed development will potentially increase flooding in the area.

Immaterial objections have been raised including promises from developers (of Newcomen Drive housing estate) that nothing will be built on this land when the residents brought the houses on Newcomen Drive, and that the development will impact on the resale value of residential properties.

9.3 Responses to objections

I respond to the objector's comments in turn:

- (i) Public Health comments awaited. Members will be verbally updated.



- (ii) The site is allocated for residential use. Despite this, the site remains undeveloped with no indication that the land will come forward for residential use. Given the on-going complaints received over the condition of the site (point 7.4) the scheme would provide jobs and investment into the area.
- (iii) The proposed development is a significant distance away from residential properties and bound by mature vegetation. Whilst it is extremely unlikely that residents would be disturbed by light pollution, a condition can be attached to any approval ensuring details of a lighting scheme.
- (iv) Comments from the council's Highways department will be verbally reported.
- (v) The council's Public Health team has raised no objections and suggested conditions such as vehicle charging points to lessen any impact.
- (vi) Before any development takes place, a detailed site investigation would need to occur, and mitigation measures agreed to ensure the users of the site and local residents remain safe.
- (vii) The existing vegetation on the boundary of the site would remain and additional planting provided. However, it is important that during the construction phase, wildlife disturbance is kept to a minimum. Therefore, further comments from the Wildlife Trust are pending.
- (viii) 71 individual addresses were sent a letter, as well as site notices posted, and the application publicised in the local newspaper.
- (ix) No walkway is proposed and in between the development and the landscaping border with Newcomen Drive will be a 4m high acoustic fence providing additional security and screening.



- (x) Issues over drainage and sustainable drainage systems can be addressed via condition.

10. Consultee responses

10.1 Planning and Transportation Policy

The site of the proposed development is allocated for housing; therefore, the proposed industrial development would be a departure from the development plan allocation, under Black Country Core Strategy (BCCS) policies DEL2, EMP1 and EMP4 (see 12.1).

According to policy EMP4 of the BCCS, the council should have a supply of 70 hectares of readily available employment land. The council has a short fall and the proposed development would go some way help fill this gap.

Taking the above into account there are no policy issues with the proposed industrial/warehouse development of the site, and no objections to the departure.

10.2 Highways

Further information has been requested and members will be verbally updated.

10.3 Public Health (Air Quality)

No objections have been received and it is recommended that conditions are attached to any approval that include electric vehicle charging points, a dust management plan (part of the construction management plan) to protect local residents during the construction phase of the development, as well as the implementation of the submitted travel plan, and the installation of low NOx boilers.



10.4 Public Health (Contaminated Land)

Contamination reports have been submitted as part of the application which conclude that a watching brief is required by a competent person and if contaminants are found, these are reported to Public Health along with the proposed mitigation measures. Further gas monitoring is also required on site and can be conditioned accordingly.

10.5 Public Health (Air Pollution and Noise)

The conclusion of the noise assessment predicted that for units 1-4, the cumulative impacts (including vehicle movements) would result in noise levels of +2dB in the day time and -1dB at night. For unit 5 it is 0dB above background and -3dB at night. This also assumed that each unit would not exceed their maximum noise output levels used in the assessment as stated above.

Additional mitigation measures will be required if a noise rating level of -5dB at the nearest sensitive properties is to be achieved in respect of all activities on site.

It is recommended that the updated noise assessment is based on a reasonable worst case scenario as otherwise the council cannot be satisfied that the development will not have a significant observed adverse effect on residents.

Therefore, further information has been requested. This information has now been provided and is with colleagues to review. Members will be verbally updated.

10.6 Urban Design

No objection to the proposal.



10.7 **West Midlands Police**

No objections have been received, however recommend conditions that cover security measures like CCTV and external lighting.

10.8 **Network Rail**

No objection.

10.9 **Lead local flood authority**

Additional information has been requested and sent to the lead local flood authority. This can be covered by the standard drainage and sustainable drainage system conditions.

10.10 **Severn Trent**

No objections subject to their standard conditions being attached to any approval.

10.11 **The Coal Authority**

Additional information has been received and the Coal Authority raises no objection subject to suitable site investigation and remediation measures.

10.12 **The Canal and River Trust**

Raise no objections to the development but wish to protect their asset. Therefore, have requested a condition regarding a risk assessment and method statement being submit to and approved that would include vibration monitoring. Other conditions include, landscaping, drainage, contamination, unexpected contamination, construction management plan, details of external lighting, archaeology, and an informative placed on any approval with contact details of who the developer should contact



from the trust. The majority of the above can be incorporated into the council's standard conditions.

10.13 **The Wildlife Trust for Birmingham and the Black Country**

Currently objects, and additional information has been submitted. Further investigations are required, however due to the time of the year, and various issues on the site, i.e. Japanese Knotweed, the applicant has requested this is controlled by condition. Whilst this in theory is acceptable, the applicant is aware that any mitigation measures that fall within the build zone of the development may mean the scheme cannot be built as proposed, and as a result a further application would need to be submitted to reflect the changes needed.

The applicant has also agreed to a Section 106 in terms of protecting measures for the sites ecology. Members will be verbally updated.

11. **National Planning Policy**

- 11.1 National Planning Policy Framework promotes sustainable development but states that local circumstances should be taken into account to reflect the character, needs and opportunities for each area.

12. **Local Planning Policy**

- 12.1 The following policies of the council's development plan are relevant:

ENV3: Design Quality

ENV5: Flood Risk, Sustainable Drainage System and Urban Heat Island Effect

ENV7: Renewable Energy

ENV8: Air Quality

TRAN2: Managing Transport Impacts of New Development

DEL2: Managing the Balance between Employment Land and Housing

EMP1: Providing for Economic Growth and Jobs

EMP4: Canals



SAD H1: Housing Allocations

SAD EOS9: Urban Design Principles

SAD EOS10: Design Quality and Environmental Standards

- 12.2 The site of the proposed development is allocated for residential use, therefore SAD policy H1 is applicable. However, no residential uses are proposed, and the development is classed as a departure from the development plan (refer to viability issues below).
- 12.3 BCCS policy DEL2 states that proposals for new employment development in areas of housing growth will be resisted where it is not consistent with housing led regeneration of the area. It has been over ten years since the adoption of the BCCS and the site remains undeveloped for housing and is unlikely to come forward due to viability issues.
- 12.4 BCCS policy EMP1 aims to provide land for at least 75,000 industrial and warehouse jobs in the Black Country by 2026. For this, there needs to be a ready supply of available land at any one time. Under BCCS Policy EMP4, Sandwell should have 70ha of available employment land available at any one time (the council currently has 23ha). The borough has been well under this level of provision since the adoption of the BCCS in 2011, therefore the proposed industrial development of the site would be welcome as this would bring forward new industrial development that would add to the existing stock of employment land.
- 12.5 Under SAD EOS 10 the design of industrial developments should be of a high standard and should consider the design principles set out in SAD EOS 9 and will be required to pay particular attention to materials and landscaping, pollution and noise control, environmental impact on the site and surrounding area, including wildlife habitats.
- 12.6 Part of the site forms part of a wider wildlife corridor, therefore BCCS policy ENV1 is applicable, guidance set out this this policy states that the movement of wildlife within the Black Country through linear habitat such as wildlife corridors are not impeded by development. When a full planning application is submitted adequate information must be submitted setting



out proposed mitigation measures, so that the movement of wildlife through the site is not adversely affected by the development.

- 12.7 Another part of the site is bordered by the Birmingham Canal, therefore BCCS policy ENV4 is applicable, under this policy all development proposals likely to affect the canal network; must protect and enhance its nature conservation value, protect its visual amenity.
- 12.8 The proposed development will have to give regard to both BCCS policy ENV5 relating to the incorporation of sustainable drainage systems to assist with reducing the impact of flooding and surface water run-off.
- 12.9 As the development will be for over 1,000 sqm of new industrial space, BCCS policy ENV7 will be applicable. The guidance under this policy states all industrial developments of 1,000 sqm or more must incorporate the generation of energy from renewable sources sufficient to off-set at least 10% of the estimated residual energy demand.
- 12.10 The proposed development would have to give regard to the guidance contained in BCCS policy ENV8 and the Air Quality SPD.

13. Material Considerations

- 13.1 National and local planning policy considerations have been referred to above in sections 11 and 12. With regards to the other material considerations, these are highlighted below:

13.2 Proposals in the Development Plan

The proposal is contrary to the council's development plan; however, the site has remained vacant for a long time, raises viability issues and residential development is unlikely to come forward in the long-term. The proposed development would create jobs in the local area and regenerate the site.



13.3 Planning history

The site has significant planning history and recent enforcement complaints over the untidy condition of the site. This new development should address these issues.

13.4 Loss of light and/or outlook

It is not anticipated that the proposed development would cause any significant loss of light and/or outlook issues to the occupiers of nearby residents given the separation distances and the mature vegetation on the boundary.

13.5 Overshadowing

For the reasons mentioned in 13.4 above, I do not foresee any overshadowing of residential properties.

13.6 Public visual amenity

Given the mature vegetation, the development is unlikely to be seen from nearby residential properties.

13.7 Overbearing nature of proposal

See points 13.4-13.6 above.

13.8 Traffic generation

The council's Highways team has requested additional information and members will be updated accordingly.

13.9 Contamination by a previous use



The combination of the existing contamination of the land and mine shafts is one of the barriers why this site has never been developed previously. However, the applicant is preparing to remediate the site and bring it back into use.

13.10 Noise and disturbance from the scheme

The council's Public Health officers have raised no objections.

13.11 Nature conservation and loss of ecological habitats

See points 10.13 and 13.13.

13.12 Loss of trees

The existing vegetation on the boundary of the site is to remain with additional planting to increase the overall landscaping of the site.

13.13 Flood risk

This can be controlled via condition to prevent any localised flooding.

14 Alternative Options

- 14.1 Refusal of the application is an option if there are material planning reasons for doing so, however the site has been undeveloped for a significant amount of time, and council resources impacted upon by managing fly tipping on the site.

15 Implications

Resources:	When a planning application is refused the applicant has a right of appeal to the Planning Inspectorate, and they can make a claim for costs against the council.
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Legal and Governance:	This application is submitted under the Town and Country Planning Act 1990.
Risk:	None.
Equality:	There are no equality issues arising from this proposal and therefore an equality impact assessment has not been carried out.
Health and Wellbeing:	None
Social Value	The proposal would potential provide jobs for the local area as well as apprenticeships during the construction phase.

16. Appendices

Site Plan

Context Plan

19-103-PA-01 A

19-103-PA-02 A

19-103-PA-03 A

19-103-PA-04 A

19-103-PA-05 A

19-103-PA-06 A

19-103-PA-07 A

19-103-PA-08 A

19-103-PA-09 A

19-103-PA-10 A

19-103-PA-11 A

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