

# TONBRIDGE & MALLING BOROUGH COUNCIL

## AREA 2 PLANNING COMMITTEE

5 March 2014

### Report of the Director of Planning, Housing and Environmental Health

#### Part 1- Public

#### Matters for Information

#### **1 URGENT ITEM OF BUSINESS – IMPLEMENTATION OF PLANNING PERMISSION FOR 171 DWELLINGS AT ISLES QUARRY WEST**

**To update Members on the implementation and monitoring of the development at Isles Quarry West, Borough Green.**

##### **1.1 Introduction**

- 1.1.1 Members will recall that planning permission was granted, on this allocated residential site, after substantial negotiations, a Members' site inspection and consideration at two meetings of this Committee. The planning permission that was granted was subject to a number of key controlling conditions and accompanied by a S106 agreement.
- 1.1.2 Following the conclusion of the necessary post-Committee work to finalise the detailed wording of the planning conditions and the legal agreement, the planning permission was issued and the developer has now commenced work on site. The commencement of works has brought about a number of queries from various parties and in particular it has been drawn to the Council's attention that there are perceived incidents of non-compliance with aspects of the approved scheme. In view of this and the current progress of works it was considered appropriate to draw these matters to the attention of the Committee.
- 1.1.3 It is of course essential that in its investigations of any expressions of concern raised about alleged non-compliance that the Council not only establishes whether a material breach has actually occurred, based on the available facts, but also evaluates any alternative to see if it achieves an acceptable outcome, notwithstanding that this may be different from the approved approach.
- 1.1.4 There are three areas where we have been approached with some element of concern:
- Land contamination
  - Surface and foul water drainage

- Alterations to land form adjoining the 'Hornet Access Road'.

1.1.5 The position set out below is given in light of the advice of a number of technical advisors, either in-house staff and/or external specialists such as the Environment Agency or Southern Water Services.

## 1.2 Land contamination

1.2.1 Concern has been expressed that the approved arrangements for ensuring that the relevant approach to decontamination of the site, to protect groundwater and human health (on occupation) in the long term have not been complied with. The specialist study forming part of the planning submission that deals with analysis of on-site materials and remediation sets out a staged approach to these matters providing details of works, testing and methods of dealing with any unexpected contamination. Following the expressions of concern the Council's specialist contamination scientific officer has reviewed the position and in order to assist in this review we have sought clarification from the developers' specialist team.

1.2.2 We have been given the latest information by Crest:

*"I understand there is some concern over the earthworks operations on site, first I would like to confirm that to date no material has left site. The localised hydrocarbon contamination (hotspots) encountered during the re-profiling of area 1 have been removed as described in section 5.9.1 of the approved earthworks strategy. This excavated material is stored in a bunded stockpile in area 5 with the intention of re-testing to determine its classification for disposal or suitability for re use on site. Samples have been taken from the reprofiled areas and tests are expected to confirm field observations that all the localised hydrocarbon contamination has been removed. Once this has been validated and construction progress permits, we will proceed with one of the capping options set out in section 5.1.1 of the remediation strategy.*

*Some of the reclaimed crushed concrete is currently being used for the road construction in area 1. This has been visually inspected by our contractor's contaminated land specialist and they are happy that there is no evidence of staining or odour, the reuse of this material is covered in section 5.8 of the approved remediation strategy.*

*If you provide me with contact details I would be happy to arrange a site meeting to enable TMBC to have a look around.*

*The contaminated land specialist appointed for the project is 'geo environmental investigations Ltd'*

*I hope this alleviates any concern that we are not complying with the remediation strategy, if we do plan to deviate from the remediation strategy we will of course first seek the necessary approvals from the EHO and EA".*

- 1.2.3 Our scientific officer has assessed this response and concludes that what is described is what would be expected in light of the approved remediation scheme, at this stage in the development process. Arrangements have been made recently to make further visual assessments of the material stored in the stock-pile while the outcomes of the technical testing are awaited. The latest site assessment took place on 25 February.
- 1.2.4 The main findings of current site activities can be summarised as follows: The hydrocarbon impacted soils were all within 1m below ground level and currently 3-4m have been excavated. The contaminated material is currently quarantined on tarmac hard standing covered with an impermeable plastic sheet. This is then surrounded with a clay bund with signs warning of contaminated material. The material has not been disturbed since it was excavated due to heavy rainfall. Clean material is stockpiled separately and is similarly signed as such.
- 1.2.5 As far as procedures on site are concerned, the handling of the contaminated material is limited only to soil sampling which is being conducted by trained professionals wearing appropriate clothing. All excavations are being conducted with the use of excavators. Full chemical suits with hoods are stored on site in case of emergency. A process is in place whereby excavations are always sampled following completion to ensure no contamination remains and sample locations are accurately recorded using sensors to map the locations.
- 1.2.6 Once the weather permits, the contaminated material will be windrowed (laid out in elongated piles) in order to attempt to improve the quality before retesting and classification for offsite disposal. Only if testing proves some of the material is suitable, will it be reused on site. It is a requirement for developments to perform some form of pre-treatment before making the decision to send material to landfill. It is also worth noting that a three stage barrier has been created to prevent silt entering the surface water/drainage system.
- 1.2.7 We were informed that the contractors on site wish to use lime stabilisation on Area 1 to more quickly improve the building platform and allow construction to progress. This appears acceptable but proposals in writing have been requested so that this approach can be verified.
- 1.2.8 It may be that there is some local misperception that substantial amounts of material are to be reclaimed and/or remediated on site. The only material that it is certain will be recovered is the crushed concrete. This is a normal practice where concrete is available, and, for instance, a significant element of road base at Kings Hill is recovered concrete from the runway and perimeter tracks. Dependent on the outcome of the analytical testing mentioned above it may be possible to clean up some material for re-use but it is most likely that the hydrocarbon-affected soils will have to be disposed of off-site to authorised disposal facilities in accordance with a Waste Licence controlled by the EA.

- 1.2.9 At this stage there appears to be no deviation from the approved methodology. Following the full analytical studies the Council would expect to receive the necessary details of the stored materials and how they are to be utilised or disposed of.
- 1.2.10 The Building Regulations also effect some control over potential for gas intrusion into dwellings. At this site the Building Regulations are dealt with by an Approved Inspector rather than TMBC's team. TMBC therefore has no locus on Building Regulations on this site and is not allowed to enter the site for Building Regulations purposes.
- 1.2.11 At present, while the concerns expressed are understandable, investigations reveal that work executed thus far is proceeding as would be expected and there is no evidence to suggest deviation from an appropriate approach. My officers will, nevertheless, continue to monitor operations and liaise with the developer and his appointed contractors and advisors.

### 1.3 Drainage

1.3.1 As part of the submission of details pursuant to conditions we have received the details of drainage for both surface and foul water. It would appear that the submissions have caused some misapprehensions, which is regrettable because this can lead to dissatisfaction with the project as whole, which would be unfortunate. The arrangements for drainage are as follows:

#### 1.3.2 **Surface water:**

- 48% disposed of by ground infiltration
- 52% via a new public sewer (adopted by SWS) to the River Bourne (this will also need EA consent for dewatering).

1.3.3 **Foul water:** A new foul sewer system (adopted by SWS). The final form of connection to the current SWS system (new requisition sewer or connection to existing in Thong Lane) is still under discussion between SWS and Crest. It will comprise a new pumping station either on site or in Thong Lane. The project also requires/includes the upgrading of the pumping station in the village.

1.3.4 There has been some concern that the 52% of the surface water is to go to the foul sewer. That isn't the case but it could be that some infelicitous wording in the documentation might have encouraged such a view. The drainage layouts show this not to be the case. From a planning viewpoint these details have the agreement of the Environment Agency and Southern Water Services as appropriate.

1.3.5 In accordance with normal practice these outstanding matters will be determined as technical details, submitted pursuant to conditions, under delegated powers.

## 1.4 Alterations to land form

1.4.1 In one of the normal programmed meetings that we hold with developers on larger sites, we were informed that Crest had found it necessary to review the detailed way in which the land at the northern end of the site, adjoining the Hornet access road, is to be supported. It has now been considered necessary by Crest to utilise gabions (steel wire cages filled with rock) in the design in order to provide structural integrity to allow the installation of the necessary acoustic fence.

1.4.2 This arrangement, which is mostly complete, has caused concern to the adjoining landowner and not surprisingly he has approached the Council and has expressed disquiet that the solution is not a desirable one.

1.4.3 The planning position with regard to the land stability aspects of a new development ultimately comes down to the clear statement in the National Planning Policy Framework (NPPF) at paragraph 120. It reads:

*“Where a site is affected by...land stability issues, responsibility for securing a safe development rests with the developer and/or the landowner.”*

This clarifies the position that Crest as the developer and landowner are responsible for ensuring the adequacy of their works in structural terms in relation to the adjoining land and landowner, whilst the Council will have to consider the visual appearance and any other *planning matter* that arises.

1.4.4 Notwithstanding para. 120 of the NPPF we have taken some technical engineering advice on the use of gabions in relation to roads and made an outline assessment of the various details and specifications provided by Crest to the Council and to the adjoining landowner. In summary, such physical features are approved for use in connection with highways structures and accepted, in principle, by the Highways Agency for use as part of supporting structures in highway settings.

1.4.5 The arrangements now show gabions which are indicated in the submitted literature to be certified by the British Board of Agrément with up to a 120 year life (a criterion known to exist in the types of application required by the Highways Agency). It is quite understandable that the adjoining landowner would want confidence in the stability and longevity of the structure, which would apply to any solution employed. These are matters that must be addressed between the two land-owning parties.

1.4.6 A further site inspection is to be undertaken on 4 March so that an absolutely up to date position can be reported.

## **1.5 Conclusions**

- 1.5.1 It is not uncommon, particularly in significant development projects such as this, for aspects of the scheme to change after the initial planning approval which then may require a further approval of amended details. Many of these subsequent details arise from conditions attached to the original planning permission and include matters such as materials, landscaping, lighting, acoustic treatment etc and are technical in nature and will be dealt with in the normal way and determined under delegated powers following appropriate consultations.
- 1.5.2 The implementation of this development has now started following the the long gestation during the planning process. Consequently, it is not surprising that some areas of concern have emerged and some changes are being made. While it may be a breach of planning control to commence development without obtaining approval of the necessary detail, or to carry out development not quite in the fashion approved by the Council, such an eventuality is not, in itself, an illegal act (except where a Listed Building is involved). It can be of considerable frustration if approved details are not adhered to, but the Council is required to give detailed consideration to the implications of any alternative works before deciding its response to any change. Most importantly it is necessary to evaluate the position that we find through our investigations to see how any alternative approach fares when compared to the “datum” established by the grant of permission. Put simply the Council cannot seek termination of alternative works simply because they deviate from the approved scheme.
- 1.5.3 In the case of the matters raised in this report there is no reason for more formal intervention for the reasons set out in the report at this stage. I hope that Members will recognise that there has been a constructive response to locally expressed concerns and that we have been active in investigating those concerns.
- 1.5.4 It will be important to continue to carefully monitor the site (in respect of the matters that are for the LPA to address), be in dialogue with the developer and on-site contractors and respond to queries put to us about the onward progression of the site from local contacts.

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