

Consultation Response from: KC Environmental Health (Pollution & Noise Control)
2020/92800 - Land at Pennine View/Pheasant Drive, Birstall, Batley WF17 9LT
Demolition of existing warehouse and workshop unit and the erection of 3 units with reconfigured access, boundary treatment, landscaping and associated works
Date Responded:
08 Jan 2021

Responding Officer:
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Natalie Heaney (Contaminated Land)
Richard Hume

Responding Ref:
WK/202026299

In our two previous responses both dated 15 Oct 2020 we recommended a variety of conditions. Since then some additional information has been received which related to some of the conditions that we previously recommended. The recommended conditions below supersede all our previous recommended conditions.

Air Quality

In our original response we considered the development would be classified as having a Major impact on air quality in accordance with West Yorkshire Low Emissions Strategy (WYLES) and recommended a condition requiring an Air Quality Impact Assessment. An Air Quality Assessment by Redmore Environmental (Ref: 4137r1) (dated: 8th December 2020) has now been submitted in support of the application. The report provides a review of existing air quality and considers the impact of the proposed development on local air quality during both the construction and operational phases.

For the construction phase dust generating activities were assessed in accordance with the Institute of Air Quality Management (IAQM) – Guidance on the Assessment of Dust from Demolition and Construction V1.1 2016 methodology. The report concludes that fugitive dust emissions generated by demolition, earthworks, construction and trackout activities are predicted to be not significant, assuming that good practice dust control measures are implemented as detailed in Table 17 – Fugitive Dust Emission Mitigation Measures (page 26) of the report.

For the operational phase a screening assessment was undertaken using the criteria contained in the IAQM – Land-Use Planning & Development Control: Planning for Air Quality guidance to determine the potential of the number of trips generated by the development to affect air quality. The net change in traffic flow as a result of the development was provided by Vectos the Transport Consultants for the project and is predicted to be 160 total daily trips 53 of which are predicted to be HDV movements. The report concludes that this is predicted to be not significant as it does not exceed the AADT HDV flows by 100 on any link. However, as the development is classified as major and in accordance with the WYLES guidance a damage cost calculation has been provided in order to determine the amount (value) of mitigation required to offset the detrimental impact that the development will have on air quality. The calculation was undertaken using the most recent damage costs released by DEFRA in July 2020 and provides a five-year exposure value to the sum of £15,968. A number of mitigation measures have been suggested based on this sum and these have been listed in section 5.4.9 Mitigation (page 31) of the report in addition to a breakdown of costs which have been provided in Table 21 Mitigation Measures and Associated Costs.

I agree with the methodology and conclusions of the report. Recommended revised conditions are provided below.

Contaminated Land

In our previous response dated 15th October 2020, a Phase 1 Preliminary Risk Assessment by Terra97 Ltd dated 9th April 2020 (ref: C20315P) was assessed and it identified the potential for contaminated land at the proposed site. We agreed with the report findings and recommended contaminated land conditions to cover the next phases of development (CLC2-5, CLC7).

Since then, further documents have been submitted in support of the application:

- Letter from P4 Planning dated 26th Nov 2020
- Phase 2 Ground Investigation Report by Terra 97 dated 14th Aug 2020 (ref: C20315G 1.0)
- Phase 2 Ground Investigation Report by Terra 97 dated 13th Nov 2020 (ref: C20315G 1.1)
- Remediation Method Statement by Terra 97 dated 18th Nov 2020 (ref: C20315RMS)

I have read the reports submitted. The reports include geo-technical information, which is outside the remit of Environmental Health, this consultation response therefore only relates to the land contamination aspects of the report.

The Phase 2 reports detail the intrusive investigation undertaken at the site. Chemical analysis of the soils sampled found the soils to be generally uncontaminated i.e. below the generic assessment criteria for the proposed commercial use. However, the boreholes identified widespread evidence of coal workings at the site, such as voids, broken ground and loss or poor flush. This indicates Adwalton Black Bed workings exist beneath the site.

Ground gas and groundwater monitoring took place over 4 visits, 12th May, 28th May, 28th June and 12th July 2020. The report concluded that a maximum carbon dioxide concentration of 5.8% v/v and a maximum flow rate of 0.4 l/h gave a gas screening value of 0.002 l/h, therefore, the site should be assigned as Characteristic Situation 1. The report also discusses changing the CS as the 'carbon dioxide concentrations have exceeded 5% v/v on two occasions.' However, the discussion considers that due to the low vulnerability end-use, consistently very low or below the limit of detection flow rate and that monitoring was undertaken during low pressure and falling pressure, the CS1 should remain the classification at the site.

The Phase 2 report concludes by recommending that a remediation strategy and materials management plan will be produced and, coal drilling and grouting works will be completed. The appendices include laboratory data, gas monitoring data sheets and waste classification reports.

The Remediation Method Statement by Terra 97 dated 18th Nov 2020 (ref: C20315RMS) provides an outline of the remediation works to be carried out. Briefly, these include removal of all on-site storage tanks and removal of grossly hydrocarbon impacted soils on the site. Principally, the method of tank inerting is discussed. Firstly, the report details that tanks that have not been treated will be treated to make inert. Several methods are provided as options, but none are identified as the chosen method. Then tank removal is discussed. The report details that danger notices will be displayed, and no smoking or naked lights will be allowed in the near vicinity. Care will be taken to prevent hydrocarbons or hydrocarbon contaminated water to enter drainage or watercourses. This will be aided by a protective membrane placed across

the site where tanks and associated materials are located before removal. Tanks will then be loaded onto a wagon for removal.

The report then details the excavation, removal and validation of grossly hydrocarbon impacted soils. Soils immediately below the tank base will be chased out and the material for disposal will be placed on a bunded polythene layer until chemical analysis. Samples will be taken for analysis from the sides and base of the excavation on a 5m grid before being infilled with backfill material.

Additionally, the report details information relating to the verification proposals and relevant contingency measures in the event of unexpected contamination.

Comments

There are several issues with the Phase 2 report submitted. For clarity these are identified point-by-point below:

(1) The calculated GSV does not consider the maximum steady flow rate of -2.1 l/h from TWS6 monitoring well on the 2nd visit (28th May 2020). Assuming that a negative flow can reverse to a positive flow of the same magnitude, then this should be considered in the GSV calculations at the site. This would result in a worse-possible GSV of 0.1218 l/h, or a worse-feasible GSV of 0.1092 l/h, both of which are CS2.

(2) With the above point in mind, it is considered in the report not to increase the site classification from CS1 to CS2 as carbon dioxide concentrations were only above 5% v/v on two occasions. Yet the data provided shows three instances of carbon dioxide exceeding 5% v/v (5.8%, 5.5% and 5.2% v/v), one further instance where the concentration was 5% v/v and two where concentrations are near the threshold (4.8 % v/v). Paired with a credible source of ground gas (shallow mine workings), in our opinion these results strongly indicate the site should be characterised as CS2, not CS1.

(3) The report does not discuss the oxygen concentrations observed. The minimum oxygen concentration recorded was 0.4 % v/v. The maximum was 20.7% v/v. The report must provide a discussion on possible causes and effects of oxygen depletion and flux on carbon dioxide concentrations at the proposed development.

(4) As evidence of shallow mine workings were found, it is arguable that four visits over two months are insufficient to characterise the gas regime of the site with a high degree of confidence given the higher gas source potential compared to the end-use following Table 5.5a and Table 5.5b of CIRIA C665 guidance. The gas monitoring frequency and period were not justified in the report. Either a justification for the monitoring period or further monitoring must be provided.

(5) In the appendices it is noted in the laboratory data sheets that several samples were handed over for analysis in incorrect sampling containers. BS 10175:2011+A2:2017 guidance states that the type of sample containers should be considered for field investigations and that care should be taken to ensure that sample containers do not cause contamination or loss of contaminants due to adsorption or volatilization. It is unclear from the report what sample containers were used and if these would have a detrimental effect on the results presented.

Further information is necessary on the type of containers used for samples and whether the deviation impacted the reliability of the results.

(6) The report states that the soils at the site are non-hazardous from a waste aspect. However, several of the samples tested on the HazWasteOnline software was identified as hazardous so it is unclear how this conclusion was ascertained.

There are issues with the Phase III report submitted. These are identified point-by-point below:

(1) The report states that samples will be taken at the side and base of the excavations from where the tanks were situated and then sent for analysis. However, the report fails to include any screening criteria which they will be assessed against. These should be included in a Phase III report.

(2) The report includes an option appraisal for tank inerting, including but not limited to nitrogen gas, dry ice and water fill. However, the report also states, 'The actual method which is used will be determined closer to the time of remediation and will be agreed with the PLO.' The actual method to be employed should be indicated at the Phase III stage.

Because the submitted report are considered to be unacceptable our original recommendation for contaminated land conditions should remain unchanged.

Noise

A letter from P4 Planning dated 26 Nov 2020 (ref: 061-002) requests that noise from vehicle movements is removed from the condition that we previously recommended. It is accepted that noise from this source, in normal circumstances, would be unlikely to be a significant problem. However, if excessively noise vehicles are operated at the site, such as the regular use of loud reverse alarms, loss of amenity may arise. Including vehicle movements in this condition will only relate to vehicle movements within the site boundary and if these are undertaken with reasonable precautions compliance with the condition should not be difficult to achieve. I consider that it is necessary to include noise from vehicle movements in the condition therefore it should remain unchanged.

Electric Vehicle Charging Points

The letter from P4 Planning dated 26 Nov 2020 (ref: 061-002) refers to the provision of standard electric vehicle charging points and three plans which show the ducted infrastructure for these. The Proposed Site Plan by AEW Architects dated 21 Feb 2020 including revision P3 (27/03/20) shows the location of 10 parking spaces where electric vehicle charging points will be provided. The condition relating to the provision of charging points is therefore revised to require the installation of the charging points as proposed.

External Artificial Lighting

The letter from P4 Planning dated 26 Nov 2020 (ref: 061-002) agrees to the lighting condition as a pre-installation condition. Our recommendations regarding this are therefore unchanged.

Recommended Conditions

AQMM Implement agreed Air Quality Mitigation Measures – Condition

Before the development comes into use, the air quality mitigation measures that have been based on the cost damage calculation as detailed in the Air Quality Assessment by Redmore Environmental (Ref: 4137r1) (dated: 8th December 2020) section 5.4.9 Mitigation (page 31) of the report, shall be implemented. After implementation, a verification report detailing a breakdown of costs shall be submitted to the Local Planning Authority. The report shall detail the expenditure of each of the mitigation measures agreed, and this should reflect the total sum of cost damages that have been calculated for the development. The implemented mitigation measures shall be retained thereafter.

Reason: For promoting sustainable development and transport and conserving the natural environment in accordance with parts 2, 9 & 15 of the NPPF and LP20, LP24, LP47 of the Local Plan.

Dust1 Implement agreed Dust Mitigation Scheme – Condition

Before any construction work commences, the mitigation measures to control fugitive dust emissions during the construction phase of the development shall be implemented in accordance with those detailed in the Air Quality Assessment by Redmore Environmental (Ref: 4137r1) (dated: 8th December 2020) Table 17 – Fugitive Dust Emission Mitigation Measures (page 26) of the report and retained for the duration of the construction period.

Reason: To safeguard the amenities of the occupiers of nearby properties in accordance with part 15 of the NPPF and **xxxxx** of the Local Plan

CLC2 Submission of a Phase 2 Intrusive Site Investigation Report - Condition

Groundworks (other than those required for a site investigation report) shall not commence until a Phase II Intrusive Site Investigation Report has been submitted to and approved in writing by the Local Planning Authority.

Reason: To ensure the safe occupation of the site in accordance with Policy LP53 of the Kirklees Local Plan and paragraph nos. 178 and 179 of the National Planning Policy Framework

CLC3 Submission of Remediation Strategy - Condition

Where site remediation is recommended in the Phase II Intrusive Site Investigation Report approved pursuant to condition (CLC2) further groundworks shall not commence until a Remediation Strategy has been submitted to and approved in writing by the Local Planning Authority. The Remediation Strategy shall include a timetable for the implementation and completion of the approved remediation measures.

Reason: To ensure the safe occupation of the site in accordance with Policy LP53 of the Kirklees Local Plan and paragraph nos. 178 and 179 of the National Planning Policy Framework

CLC4 Implementation of the Remediation Strategy - Condition

Remediation of the site shall be carried out and completed in accordance with the Remediation Strategy approved pursuant to condition (CLC3). In the event that remediation is unable to proceed in accordance with the approved Remediation Strategy or contamination not previously considered is identified or encountered on site, all groundworks in the affected

area (except for site investigation works) shall cease immediately and the Local Planning Authority shall be notified in writing within 2 working days. Works shall not recommence until proposed revisions to the Remediation Strategy have been submitted to and approved in writing by the Local Planning Authority. Remediation of the site shall thereafter be carried out in accordance with the approved revised Remediation Strategy.

Reason: To ensure the safe occupation of the site in accordance with Policy LP53 of the Kirklees Local Plan and paragraph nos. 178 and 179 of the National Planning Policy Framework

CLC5 Submission of Validation Report - Condition

Following completion of any measures identified in the approved Remediation Strategy or any approved revised Remediation Strategy a Validation Report shall be submitted to the Local Planning Authority. No part of the site shall be brought into use until such time as the remediation measures have been completed for the site in accordance with the approved Remediation Strategy or the approved revised Remediation Strategy and a Validation Report in respect of those remediation measures has been approved in writing by the Local Planning Authority.

Reason: To ensure the safe occupation of the site in accordance with Policy LP53 of the Kirklees Local Plan and paragraph nos. 178 and 179 of the National Planning Policy Framework

CLC 7 Contaminated land - Footnote

All contamination reports shall be prepared in accordance with *Model Procedures for the Management of Land Contamination – Contaminated Land report 11* (CLR11), National Planning Policy Framework (NPPF) and the Council's Advice for Development documents or any subsequent revisions of those documents.

NC10 - Noise from Fixed Plant & Equipment - Condition

The combined noise from any fixed mechanical services, external plant and equipment and vehicle movements within the boundary of each unit shall be effectively controlled so that the combined rating level of noise from all such equipment does not exceed 5dB below the background sound level at any time. "Rating level" and "background sound level" are as defined in BS 4142:2014+A1:2019.

Reason: To ensure the proposed development does not cause harmful noise pollution within neighbouring noise sensitive locations, in the interest of amenity, to comply with the aims and objectives of Policies LP24 and LP52 of the Kirklees Local Plan and Chapters 12 and 15 of the National Planning Policy Framework.

EVC1 Electric Vehicle Charging Points – Condition

Before the site is brought into use one Standard Electric Vehicle Charging Point providing a continuous supply of at least 16A (3.5kW) Mode 3 charging via a Type 2 connector shall be installed and operational at the 10 parking spaces allocated for these as shown on the Proposed Site Plan by AEW Architects dated 21 Feb 2020 including revision P3 (27/03/20). The installed charging points shall be retained thereafter.

Reason: In the interest of supporting and encouraging low emission vehicles, in the interest of air quality enhancement, to comply with the aims and objectives of Policies LP24 and LP51

of the Kirklees Local Plan and Chapters 2, 9 and 15 of the National Planning Policy Framework.

LC1 External Artificial Lighting - Condition

Before the installation of external artificial lighting commences a lighting scheme shall be submitted to and approved in writing by the Local Planning Authority. The scheme should include the following information:

- a) The proposed hours of operation of the lighting
- b) The location and specification of all of the luminaires
- c) The proposed design level of maintained average horizontal illuminance for the areas that needs to be illuminated.
- d) The predicted vertical illuminance that will be caused by the proposed lighting when measured at windows of any properties in the vicinity.
- e) The measures that will be taken to minimise or eliminate glare and stray light arising from the use of the lighting that is caused beyond the boundary of the site
- f) The methods of switching and controlling the lighting so that it is only operated at the permitted times and at times when it is required.

The external artificial lighting shall be installed and operated thereafter in accordance with the approved scheme.

Reason: To safeguard the amenities of the occupiers of nearby properties and promote sustainable development in accordance with part 2 and 15 of the NPPF and **xxxxx** of the Local Plan

LF1 Artificial lighting - Footnote

The proposed design levels of illuminance should be shown to be appropriate for the intended use by reference to appropriate guidance. Generally, to minimise problems of glare and stray light from external artificial lighting it should be installed and maintained in accordance with the *“Guidance Notes for the Reduction of Obtrusive Light”* by the Institution of Lighting Professionals: 2011 www.theilp.org.uk. The predicted levels of stray light must not exceed the recommended maximum levels given in Table 2 of this guidance for an Environmental Zone E3.

CSC1 Construction Site Working Times - Condition

Noisy construction related activities shall not take place outside the hours of:

07.30 to 18.30 hours Mondays to Fridays

08.00 to 13.00hours , Saturdays

With no noisy activities on Sundays or Public Holidays

Reason: To safeguard the amenities of the occupiers of nearby properties in accordance with part 15 of the NPPF and **xxxxx** of the Local Plan

CSF1 Construction Sites working times – Footnote

Kirklees Council has powers under Section 60 of the Control of Pollution Act 1974 to control noise from construction sites and may serve a notice imposing requirements on the way in which construction works are to be carried out. It has additional powers under Sections 80 of the Environmental Protection Act 1990 to prevent statutory nuisance including noise, dust, smoke and artificial light and must serve an abatement notice when it is satisfied that a statutory nuisance exists, or is likely to occur or recur. Failure to comply with a notice served

using the above-mentioned legislation would be an offence for which the maximum fine on summary conviction is unlimited.