

Planning

Growth & Development

Delegated officer report for planning application

Application no. CDN/23/0850

Date registered valid: 3 January 2024

Proposal: Discharge of conditions 10 (site levels) and 18 (canal corridor protection) attached to planning permission referenced 129197/FO/2021.

Address: Former Jacksons Brickworks Site , Ten Acres Lane, Manchester

Ward(s): Miles Platting & Newton Heath Ward

Applicant: Nuvu Development Limited

Agent (if any): Mr John Cooper Deloitte LLP

Case officer: Sue Wills
Tel: 0161 234 4524
Email: sue.wills@manchester.gov.uk

Recommendation: Approve

Date of recommendation: 8 April 2024

Application details

Type of application: Approval of condition application

Development type: Notifications

Date of site visit:

Standard consultations:

Printed: 4 January 2024 Expired: 25 January 2024

Neighbour notifications

No neighbour notifications have been printed and sent.

Site notice

No site notice has been produced

Press advert

No press advert had been published

Departure from Development Plan: No

Environmental Statement: Not required

Description of site/building

Listed building: Not applicable

Conservation area:

Tree Preservation Order:

Description of area

Description of development

Consultations & Notification Responses

Environment Agency 22.01.2024 -

To inform their position statement(s) below, their Groundwater & Contaminated Land (GWCL) Team have reviewed the following current planning portal submissions:

- I. Remediation Options Appraisal and Remediation Strategy. Former Jackson Brickworks, Ten Acres Lane. Revision A. Prepared by Vertase FLI for Nuvu Developments Ltd. Dated November 2023.
- II. II. Appendix B - Pre-Remediation Ground Model. Former Jackson Brickworks, Ten Acres Lane. Revision A. Prepared by Vertase FLI for Nuvu Developments Ltd. Dated November 2023.

It is acknowledged that planning portal submission (II) is Appendix B to submission (I), which is noted as being a remedial strategy report. In relation to submission (I), as per the narrative within the report itself, they note in its scope this reporting submission seeks to

address/discharge several conditional requirements placed upon 129197/FO/2021. Whilst they have no objection in principle to a singular submission/report seeking to address multiple conditional requirements, they note to the attention of the applicant /agent and local planning authority (LPA), that complication may arise should it prove the singular report/submission is unable to sufficiently address all conditional requirements sought via its intended scope.

In light of this, they advise caution should only a partial discharge of the conditions sought as part of CDN/23/0850 via the current submissions made prove to be considered appropriate. Further to the above, noting that submission (I) is a remedial strategy (a requirement governed by condition 7 placed upon 129197/FO/2021), in similar vein to the above they advise that complexity could arise whereby revision to the remedial strategy for 129197/FO/2021 subsequently proves necessary (i.e. upon condition 7 being sought for formal discharge).

Expanding on the above, as per wider recent EA correspondence for discharge applications associated with 129197/FO/2021, they consider the requirement of condition 7 to hold importance to the ability to have confidence in the continued appropriateness of any submissions made wider for pre-commencement conditions whereby the course of action taken is dependent upon the remedial approach to be employed. As example, an alteration in remedial strategy requirements/approach could result in a need to alter final proposed site levels or intended canal protection measures.

In virtue of the above, they would encourage the applicant/developer to first seek the effective discharge condition 7 before seeking the wider discharge of conditions. However, they acknowledge and do not dispute that the planning strategy employed is a matter for decision by the applicant/developer in the first instance.

Environment Agency Position – Condition 10 (Site Levels)

As detailed within the remedial strategy submission (I) (section 2.5.1) they note that the Appendix B / submission (II) outlined above is considered by the applicant's chosen environmental consultant to the primary submission for addressing the discharge requirement(s) of condition 10. In virtue of the above observation and noting that condition 7 (remedial strategy) is not no longer sought for formal discharge as part of CDN/23/0850, for the purpose of their position towards the discharge condition 10 (see set out below), they have considered submission (II) in isolation.

On the basis of submission (II), they have no objection, in principle, to the discharge of condition 10. However, note the following observations in association with this position statement:

- The written wording of condition 10 requires the submission of cross-sections showing existing and proposed site levels. Whilst from the details provided with submission (II) it possible to determine existing and proposed site levels of the development site, in the strictest sense of the conditions wording, no cross-sections have been provided as part of current formal submission(s).
- Noting that condition 7 (remedial strategy) has not yet been discharged, they consider a potential risk exists that finished site levels may be required to be revised/re-visited to ensure accordance with the remedial strategy intended to be employed can be achieved.

Environment Agency Position – Condition 18 (Canal Corridor Protection)

Based on the information provided within submission (I) outlined above, they are unable to recommend the discharge of condition 18 attached to planning permission 129197/FO/2021. Insufficient information has been provided to determine the appropriateness of the intended protection strategy. Expanding on the above position statement, whilst it acknowledged that the temporary surface water drainage strategy presented as part of the submission (II) would act to direct site surface water discharge away from the Rochdale Canal and that this surface water discharge system may prove appropriate for conveyance of discharging clean uncontaminated

surface water (reflecting the EA position to the discharge of condition 14 provided under EA letter SO/2023/123768/01-L01), insufficient information has been provided to determine the appropriateness of this strategy for offering continued and effective protection to Rochdale Canal. Present uncertainty regarding the appropriateness of the temporary surface water drainage strategy for conveying all surface water flows notwithstanding (see EA commentary for condition 14), they consider during the development process (e.g. material movements) it is possible that disruption to the intended surface drainage system could occur. Insufficient details have currently been provided as to this potential risk of disruption would be effectively managed over the course of site enabling works. Finally, as per wider EA commentary above, they note for the consideration of the applicant/developer that the final remedial strategy/approach employed for the purpose of 129197/FO/2021 could potentially result in a requirement for modification to any proposed canal protection measures intended.

Further comments 23.02.2024 - Having spoken to officers due to wider pre-existing work commitments, unfortunately it will not be possible for the EA to provide a further full formal review position response/letter to this latest submission before COP 27th (following internal guidance this requiring officers to undertake full technical review). On this basis, they request confirmation if an EA response letter, post the 27th is still required as this will fall post your identified determination date.

The above said, to try and offer as best assistance as possible to the LPA, their initial review thoughts/comments which are planning focused are set out below. However, as per the above statement, the EA's specialist for groundwater and contaminated land will need to make comments, so the comments below should not be considered by MCC to represent an EA formal position statement and representation for CDN/23/0850.

Introduction 1.0

It is suggested by Vertase FLI, but not confirmed in writing, that there is a very low likelihood of their being potential below ground connectivity to the Rochdale Canal and therefore canal protection measures required will be limited to those controlling potential above ground interaction risk (i.e. surface water run-off). Arguably this perception should be confirmed in writing by Vertase FLI / the developer for clarity of their assessment. However, only limited details are currently provided to support this suggestion, direct reference to relevant previous ground investigation and risk assessment reporting is not made. The LPA will need to take a perspective if the level of detail provided is sufficient... although arguably in its written wording Condition 18 does not require an assessment and justification of what canal protection measures are required.

Section 2.1.2

Section 2.1.2 of the report states "*the management of temporary surface water shall be undertaken in accordance with the temporary surface water drainage prepared to address Condition 14 of Planning permission 129197/FO/2021..*". This creates a reliance upon the condition 14 submission which has not yet been approved and which the EA has previously raised concerns regarding the appropriateness of the surface water drainage strategy due to ongoing uncertainty over site remediation/preparatory requirements. UU consultation on condition 14 is advised as the drainage proposal would connect to their system. Wider, as per previous EA review commentary, we hold concern on the ability to determine the appropriateness of surface water drainage requirements for the proposed development site prior to development of an accepted/confirmed remedial strategy for the development site. Without confidence on the remedial strategy to be enacted, noting that permission 129197/FO/2021 is concerned singularly with remedial and preparation of the site, a tangible risk exists of the site surface water drainage requirements needing to change in response.

Bullet 3 of section 2.1.2 refers to '*treatment and disposal via consented discharge*'. The factual accuracy of this statement is uncertain, based on the current condition 14 submission this would require connection to UU sewer. Whether a trade effluent consent has been granted is unknown. A wider general question is whether UU willing to grant a trade effluent consent prior to remedial strategy discharge as the present insinuation is current surface water strategy seeks to address all surface water arisings including those arising from site remedial efforts.

Section 2.3

Section 2.3.1 states that "*Any existing redundant drains and other connections / preferential pathways to the canal shall be identified, traced and decommissioned within the Site boundary at the commencement of the remediation works. Any drains that are blocked off at the Site boundary shall be surveyed for inclusion on an as-built drawing in the final completion report*".... Condition 18 requires that (as verbatim) 'Any existing drains identified on the site should be blocked off prior the remediation of the site'. Is the statement by Vertase in Section 2.3.1 considered sufficient by the LPA for this element of the conditional requirement?

Section 2.5

Section 2.5.2 states that "*the management of dust and windblow debris shall be undertaken in accordance with the Construction Management Plan (CMP) and Construction Environmental Management Plan (CEMP) prepared to address Condition 3 and Condition 4 of Planning Permission 129197/FO/2021*". It is noted that CDN/23/0783 under which the CMP/CEMP was submitted has been withdrawn. Therefore, there is arguably a risk of this section of the report becoming invalid should alternative measures be subsequently approved as part of final condition 3 and 4 submission(s) made.

In virtue of the written wording of condition 18, is the general listing of actions which will be taken to manage dust and windblow debris considered sufficient by the LPA i.e. is full details of the measures to be taken something which the LPA views something rather to be governed by condition 3 instead or are full in-depth details needed now as part of condition 18.

Section 2.8 Potential Disruption

This section will require review by officers to confirm EA technical stance . However, the stated storage capacity of the trench (~800m3) is unquantified against what is the potential amount of surface water to be received and at what rate versus discharge capacity. This may only become possible to determine accurately upon an understanding of the site remedial approach being finalised.

Section 3.1.3

The remedial strategy for condition 7 attached to 129197/FO/2021 has not yet been determined. Review is still ongoing under discharge of conditions application.

Section 3.1.4

Justification provided is only valid in the instance that the remedial strategy for the development site is accepted i.e. clean cover cap and hard standing.

Section 3.1.5

Reference is made to the requirement for a permanent surface water drainage system as part of sister application 133700/FO/2022 (built-form development) as a justification towards how canal protection will be achieved overall . The LPA will need to determine whether this 'sister' application/permission is a material consideration to condition discharge requirements associated with 129197/FO/2021 given the 2022 permission is not implemented. If it is deemed

that this is not a material consideration, then reference to the sister application/permission should be omitted.

In summary to the above, their initial perception is that whilst this latest report has been produced by Vertase FLI to enable condition 18 to be assessed in insolation (which they do not dispute), within the reports contents it still makes interlinkage and reliance to documentation/conditions not yet approved. Therefore, they question if it truly possible to draw confident conclusion that the requirements of condition 18 will be satisfied. Finally, the LPA will need to take a view as to whether the level of detail supplied as part of this submission is sufficient in terms of satisfying the requirements of condition 18 and whether the sister application/permission 133700/FO/2022 can be a material consideration for the assessment and determination of condition 18 (see notes above). They would welcome confirmation of the LPA's perspective on these latter matters to help guide any further assessment work undertaken for condition 18 or the wider permission by the EA.

Further comments 04.04.2024

Advise that they have reviewed the following report submitted in support of the discharge of condition 18 (Canal Protection) attached to 129197/FO/2021:

- Former Jacksons Brickworks, Ten Acres Lane – Canal Corridor Protection Measures. Prepared by Vertase FLI. Rev A. Date: 20th February 2024.
- Remediation Options Appraisal and Remediation Strategy. Prepared by Vertase FLI. Rev. A. Date: 30th November 2023.

Environment Agency Position – Condition 18 (Canal Corridor Protection)

They have reviewed the aforementioned reports and based on the information that has been provided to date, and are able to recommend the discharge of condition 18 (canal corridor protection) attached to 129197/FO/2021.

They would advise, however, the EA's response to CDN/24/0060 (SO/2024/123960/01- L01, dated 4th April 2024) has flagged outstanding matters to address under condition 7 (Remediation Options Appraisal and Remediation Strategy). It is noted the matters raised should not affect the proposed remedial sequencing and phasing of works as in Appendix E of the Remediation Options Appraisal and Remediation Strategy (Drawing No. D4744_18 dated 14th November 2023) and, therefore, they consider the proposed canal corridor protection measures presented at this time acceptable, in principle, on this basis.

Please note, the EA has not recommended the discharge of condition 7 attached to 129197/FO/2021 at this time. They would advise if any changes to the final remediation strategy intended to be implemented under condition 7 (Remediation Options Appraisal and Remediation Strategy) directly impacts the canal corridor protection measures as currently proposed (i.e. changes to the temporary site drainage as a result of material movement as part of the remedial works), there is a potential risk a revision of the proposed canal protection measures in the aforementioned report (prepared by Vertase FLI, dated 20th February 2024) may be necessitated.

Additional Information – Condition 10 (Site Levels)

As in their previous response (SO/2024/123858/02-L01, dated 22nd January 2024), whilst the EA raised no objection to the discharge of condition 10 (Site Levels) attached to 129197/FO/2021, they note condition 7 (Remediation Options Appraisal and Remediation Strategy) has not yet been discharged. Therefore, they consider a potential risk exists that finished site levels may be required to be revised / re-visited to ensure accordance with the remedial strategy intended to be employed can be achieved.

Canals and Rivers Trust

23.02.2024 – Condition no.10 – Site levels and cross sections

Plans of the existing and proposed site levels in the form of cross sections have been provided in relation to the altering of the site levels. However, these do not appear to be available for comment. Subject to the canal protection measures to protect the structural integrity of the canal (section 9.7, para 9.7.12), then they consider that these details should be acceptable. It would, however, be useful to have clear plans showing the alteration to the levels in relation to the canal corridor.

Condition no.18 – Canal Protection measures from pollution / contamination

The details would appear to be comprehensive and include:

- how surface water is captured and treated and dealt with to prevent an adverse impact on the canal (section 9.7, para 9.7.8 and appendix E drawing ref: D4744_21)
- management of water levels on the site to prevent water discharge into the canal (section 9.7, para 9.7.7)
- existing drains to be blocked prior to remediation (section 9.7, para 9.7.9)
- buffer zone/sandbags /silt fence or trench to be provided and covering stockpiles and minimising mobilisation during rainfall (section 9.7, para 9.7.6 – propose an earth bund and collection trench – a cross section of this is shown on page 64)
- measures to reduce dust and windblown debris (section 9.7, para 9.7.11)
- mitigation works to safeguard land stability and structural integrity of the canal (section 9.7, para 9.7.12).

They consider that subject to all these measures being put in place then canal infrastructure should be adequately protected.

They would however ask that the contractor ensure that their method statement includes any emergency procedures in the event of detriment being caused to the canal due to the works. Subject to this they consider that the condition can be discharged insofar as it relates to the canal corridor.

Further comments 27.02.2024- Condition no.18 – Canal corridor protection.

The Trust previously responded to this matter in their letter dated 23rd January 2024 and outlined that they considered the condition could be discharged given the range of steps that would be put in place to protect the canal infrastructure. The only comment made was that emergency procedures should also be included, and they welcome that this has now been added at section 2.7. Insofar as the details relate to the canal, they consider the condition can be discharged.

Local Lead Flood Authority - Both conditions 10 and 18, are not specifically related to flood risk management. Therefore, they would have no formal comments to make on this application.

However, it is worth highlighting, section 9.6 (Temporary Surface Water Drainage Strategy) and Drawing D1932_25 included within the “Remediation Options Appraisal and Remediation Strategy Rev A”, have previously been submitted under application no. CDN/23/0816.

MCC LLFA have previously raised significant concerns with the proposed temporary drainage arrangements, and their comments can be found under application no. CDN/23/0816.

Environmental Health – Advise they not comment on the original submission as they noticed the conditions were from the EA. They further advise that given controlled waters/surface waters are not their speciality they will leave the comments to the EA.

Highways Services - Condition 18

Highways have no comments to make regarding condition 18. The Structures team have made the following observation: In the document 'Remediation Options Appraisal and Remediation Strategy Report Rev A', dated Nov 2023, in section 9.7.6 there is a drawing (number D4744_21) which indicates an earth bund running parallel and close to the south bank of the canal. They would caution that the effect of this bund on the stability of the canal wall should be investigated.

Issues

Other Legislative Requirements

Equality Act 2010

Section 149 (Public Sector Equality Duty) of the Equality Act 2010 requires due regard to the need to: Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act and; Advance equality of opportunity between persons who share a protected characteristic and persons who do not share it. The Equality Duty does not impose a legal requirement to conduct an Equality Impact Assessment. Compliance with the Equality Duty involves consciously thinking about the aims of the Equality Duty as part of the process of decision-making.

Human Rights Act 1998 considerations

This application needs to be considered against the provisions of the Human Rights Act 1998. Under Article 6, the applicants (and those third parties, including local residents, who have made representations) have a right to a fair hearing and to this end the local planning authority must give full consideration to their comments.

Protocol 1 Article 1, and Article 8 where appropriate, confer(s) a right of respect for a person's home, other land and business assets. In taking account of all material considerations, including Council policy as set out in the Core Strategy and saved policies of the Unitary Development Plan, the Director of Planning, Building Control & Licensing has concluded that some rights conferred by these articles on the applicant(s)/objector(s)/resident(s) and other occupiers and owners of nearby land that might be affected may be interfered with but that that interference is in accordance with the law and justified by being in the public interest and on the basis of the planning merits of the development proposal. She believes that any restriction on these rights posed by the recommendation given is proportionate to the wider benefits of and that such a decision falls within the margin of discretion afforded to the Council under the Town and Country Planning Acts.

Recommendation: Approve

Article 35 Declaration

Condition(s) to be attached to decision for approval OR Reasons for recommendation to refuse

Condition no.10 – Site Levels

10) The contents of the Remediation Options Appraisal and Remediation Strategy. Prepared by Vertase FLI. Rev. A. Date: 30th November 2023, and the Pre-Remediation Ground Model document (Rev A) prepared by Vertase FLI Rev. A November 2023 have been considered solely in relation to site levels, as clarified by plan ref: Proposed vs OGL Cross Sections Plan ref: D1932_32 received 19th February 2024.

On the basis that the development is implemented in accordance with the details shown on plan ref: Proposed vs OGL Cross Sections Plan ref: D1932_32 received 19th February 2024 and details relating solely to site levels in the documents referenced above, condition no.10 is discharged.

Condition18 - Canal corridor protection

18) The contents of the Remediation Options Appraisal and Remediation Strategy. Prepared by Vertase FLI. Rev. A. Date: 30th November 2023, has been considered solely in relation to canal corridor protection measures , together with the Former Jacksons Brickworks, Ten Acres Lane –Canal Corridor Protection Measures. Prepared by Vertase FLI. Rev A. Date: 20th February 2024.

On the basis that the development is implemented in accordance with the Former Jacksons Brickworks, Ten Acres Lane –Canal Corridor Protection Measures, Prepared by Vertase FLI. Rev A. Date: 20th February 2024, and details relating solely to the protection of the canal infrastructure in the document in the Remediation Options Appraisal and Remediation Strategy, Prepared by Vertase FLI. Rev. A. Date: 30th November 2023, condition no.18 is discharged.

Appendix 1 – List of consultees & neighbours notified

Highway Services
Environmental Health
MCC Flood Risk Management
Environment Agency
Canal & River Trust

Appendix 2 – Planning constraints

Article 4 Direction - Removal Of PD Rights Change Of Use From Class C3 To Class C4

Aircraft Safeguarding Zone - Aircraft Safeguarding - Not Affected

Site of Biological Interest - Name: Rochdale Canal, Stott's Lane - Ducie Street Basin

Coal Authority - Development Low Risk - Name: DEVELOPMENT LOW RISK AREA

Historic Landfill Site 250m Buffer -

Susceptible to Surf Water Flood (Less) -

Susceptible to Surf Water Flood (Less) -

Susceptible to Surf Water Flood (Less) -

Susceptible to Surf Water Flood (Less) -

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Susceptible to Surf Water Flood (More) -
Area Team Boundary - Name: NORTH AREA