

Planning

Growth & Development

Delegated officer report for planning application

Application no. CDN/23/0731

Date registered valid: 27 October 2023

Proposal: Discharge of conditions 5 (site investigation) and 6 (risk assessment) 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: **28th December 2023**

Application details

Type of application: Approval of condition application

Development type: Notifications

Date of site visit:

Standard consultations:

Printed: 7 November 2023 Expired: 28 November 2023

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: Not applicable

Tree Preservation Order: Not applicable

Description of area

Description of development

Consultations & Notification Responses

Environment Agency – 21.12.2023 - note and acknowledge that the intention of this discharge of conditions application is to seek the full discharge of condition 5 (site investigation) and condition 6 (risk assessment) attached to planning permission 129197/FO/2021.

As identifiable from the formal submissions made by the applicant/planning agent, the EA have previously reviewed and provided detailed technical commentary to the applicant's external development team on reporting submissions submitted concerned with the investigation, assessment, and characterisation of site conditions / land contamination. Further to reporting submissions previously reviewed by the EA (refer to letter SO/2020/120757/06-L01 submitted) to aid their position statement below, their Groundwater and Contaminated Land (GWCL) Team

have also further reviewed the following reporting submission, with regards to the protection of controlled waters:

§ Former Jacksons Brickworks, Ten Acres Lane Detailed Quantitative Assessment of Risk (Rev B). Prepared by Vertase FLI. Dated December 2023

Environment Agency Position – CDN/23/0731 / Condition 5 (Site Investigation)

On the basis of the information/reporting that has been collected/submitted for the assessment and characterisation of the Former Jacksons Brickworks site, they advise that they are satisfied that sufficient information has been collected and assessed to date to meet the requirements for condition 5 at this time.

In line with the above, in so far as the protection of controlled waters is concerned, they recommend that condition 5 attached to planning 129197/FO/2021 can be discharged by the Local Planning Authority (LPA) / Manchester City Council.

As identified via wider collective discussion and correspondence between the EA applicant/developer and LPA, additional characterisation of the waste mass present on-site will be required going forwards. However, it is considered that this work is best undertaken during the progression of site works / as the material is excavated and processes as a part of a permitted process. In line with this consideration, we note that as part of any subsequent efforts made to address condition 7 (remedial) attached to 129197/FO/2021 details should be provided by the applicant/developer/their chosen environmental consultation of the further site investigations/delineation exercise to be undertaken to ensure that the proposed development site is able to achieve accordance to relevant national and local land contamination / environmental policy.

Environment Agency Position – CDN/23/0731 / Condition 6 (Risk Assessment)

As outlined above, to inform their determination for condition 6, they have reviewed the submission of the detailed, quantitative, assessment of risk (DQRA) that has been presented/submitted.

They have reviewed this submission to assess the possible risks to controlled waters from the site and the materials which were placed there as a part of an historic waste disposal operation. They recognise the use of the Remedial Target Methodology (RTM) P20 approach to assessing risk. As an EA model, they are aware of the operations of this model as well as the inherent restrictions and limitations of the model and its application.

The model is designed to operate as a back-calculation process and to assess contamination in simple form rather than for more complex contaminant mixtures whose physio-chemical characteristics are frequently too complex for this model process. They acknowledge that the model does have a form of forward-calculation mode, but this is not the primary use of the model. They have a degree of scepticism as to its use in this mode and would recommend that other, more appropriate models (e.g. ConSIM) are used in the future if this is the desired approach to risk assessment.

In virtue of the above, they have therefore reverted to the modelling process that the RTM P20 guidance document recommends rather than relying wholly on the P20 worksheets that accompany and support the assessment process. Having adopted this approach they have applied the results of the ground investigation information to the site-specific conceptual model and applied the RTM P20 methodology.

On the basis that they understand the remedial strategy will aim to target the known sources of contamination in the upper depths of the landfilled materials and that the site was developed on the dilute and disperse principal when filled, they advise they will accept the report (DQRA) that has been put forwards based on their additional work/evaluation.

As such, based on the entirety of their work, they recommend to the local planning authority that condition 6 (risk assessment) attached to planning permission 129197/FO/2021 can be discharged at this time. However, they do so on the understanding that the remediation strategy that is put forwards is sufficiently robust to address the known and identified source of contamination present at site, for the protection of environmental receptors.

If this is not the case, then they will need to reject any remediation strategy submitted as being insufficient and not adequate to address condition 7 attached to planning permission 129197/FO/2021. They additionally make this recommendation on the basis that it was previously agreed that further delineation and materials investigation would be undertaken as a part of the future remedial strategy process not the validation and verification process that is stated in the DQRA report. On this matter, the report is incorrect.

Environmental Health – 23.11.1023

Have looked at the submitted information and are happy to recommend discharge of condition 5 if the additional SI can be covered by another condition (6 or 7). They advise that they are not in the position to recommend discharge of condition 6 as the DQRA is focussed on controlled waters and does not cover human health.

Further comments 19.12.2023 - they have read through the DQRA and the supporting vapour risk assessment (that was hidden in the appendix).

From a human health point of view, they can recommend discharge of condition 6. Some further risk assessment will be required post remediation in terms of ground gas and vapours, but this will be covered by the application for the development phase as it is partly dependant on the proposed foundation design.

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. 5 (site investigation)

The information within the documents referenced below has been examined.

Covering Letter dated 24 October 2023 prepared by Vertase FLI, accompanied by:

- Pre-Application Correspondence dated 26 May 2023
- Combined Phase 1 Phase 2 Ground Investigation Report dated May 2021 prepared by Wardell Armstrong
- Technical Note – Deeper Ground conditions and Laboratory Testing Clarifications ref: LD10587 dated 14th April 2023 prepared by Wardell Armstrong
- Technical Note - Hydrogeological Conceptual Site Model Clarifications ref: LD10587 dated 1st March 2023 prepared by Wardell Armstrong
- Updated Combined Phase 1 Phase 2 Ground Investigation Report ref: LD10385 ref: 001 V1.0 dated October 2022 prepared by Wardell Armstrong
- Detailed Quantitative Assessment of Risk Issue 2 Rev B dated 13 December 2023 prepared by Vertase FLI and received on 14th December 2023

On the basis the development is implemented in full accordance with the details within the documents referenced above, condition no.5 is discharged.

Condition no. 6 (risk assessment)

The Detailed Quantitative Assessment of Risk Issue 2 Rev B dated 13 December 2023 prepared by Vertase FLI and received on 14th December 2023 has been examined and on the basis the development is implemented in full accordance with the details in the Detailed Quantitative Assessment of Risk Issue 2 Rev B dated 13 December 2023, condition no.6 is discharged.

Appendix 1 – List of consultees & neighbours notified

Environmental Health
Environment Agency

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) -

Susceptible to Surf Water Flood (Less) -

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