

Planning**Growth & Development****Delegated officer report for planning application**

Application no. CDN/22/0742

Date registered valid: 17 October 2022

Proposal: Discharge of conditions 54 (Detailed Remediation Phasing Plan), 57 (Assessment of risks to human health/environmental receptors) and 58 (detailed options appraisal and remediation strategy) attached to planning permission referenced 131895/JO/2021

Address: Coleshill Street, Manchester, M40 8HH

Ward(s): Miles Platting & Newton Heath Ward

Applicant: Mr Christopher Langdon EQUANS Services Ltd & Landcare (East Manchester) Ltd

Agent (if any):

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

Recommendation: Approve

Date of recommendation: 9 May 2023

Application details

Type of application: Approval of condition application

Development type: Notifications

Date of site visit:

Standard consultations:

Printed: 25 October 2022 Expired: 15 November 2022

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

Environmental Health – Initial comments 11.11.2022

Condition 54 - (Appendix VIII of the RS) The treatment area is very close to residents.

Condition 57 - (Section 2 of the remediation strategy) This seems to me to be a summary of a risk assessment and not a detailed risk assessment which is what the condition is asking for
Condition 58 - There are inconsistencies still, especially with regard to the clean cover for gardens which starts at 1000mm then changes to 700mm, they can accept 700mm (600mm subsoil/topsoil over 100mm no dig layer - the validation criteria still is not in line with MCC guidance). Officers have questioned the 1000mm in the draft to which they have had no response.

The applicant has provided more details with regards to odours and carbon disulphide. The officer's main concern is the 80% or less betterment from the treatment. They have it noted down that the EA said a minimum of 85% but ideally more. They believe that this needs more discussion.

Pilot trials are also still on going for less impacted soils (they said in the last meeting that all trials were done).

It has been stated that post remediation gas monitoring will be done across the site, so gas protection measures are still to be confirmed but the RS allows for CS2. The RS also clearly states the tasks which are for McAuliffe and that E3P will have a full-time site presence.

06.02.2023 – in relation to the updated remediation strategy and human health DQRA (January 2023)

1. The remediation phasing plan in the appendix is still the old one (with the treatment area near to the residents) and not the one shown in the last meeting - we need to see the most up to date phasing plan for condition 54
2. Condition 57 - Remediation targets or ALARP have now been proposed instead of betterment. As treatment trials are still ongoing it is still not clear how low is low and if this will be acceptable (i.e. meeting 183(b) of the NPPF - after remediation, as a minimum, land should not be capable of being determined as contaminated land under Part IIA of the Environmental Protection Act 1990). This will need to be looked at further once the additional trials have been completed so officers can see how low the levels can get (if the targets cannot be achieved).
3. Condition 57 - the inconsistencies with the cover system depth have been corrected (700mm referenced throughout the documents, 150mm topsoil, 450mm subsoil and 100mm break layer). Additional risk assessment has also been provided with regards to the elevated contaminants as well.

10.03.2023- The updated RS seems to be in agreement with the meeting between the EA , Environmental Health officers and E3p in terms of the derivation of site specific remediation criteria and they have also now updated the phasing plan to the latest version too (treatment area away from residents and the whole site handover to the developer at the end). Whilst leaving the EA to interpret the controlled waters aspect, they have resolved the concerns with regards to human health from an Environmental Health perspective , so they are in a position to recommend discharge of conditions 54, 57 and 58 based on this updated report.

Environment Agency 18-01-2023 note and acknowledge that it is intention of the applicant/agent to seek the full effective (all phases) discharge of conditions 54, 57 and 58 attached to amended planning permission 131895/JO/2021.

To inform their position statement below, their Groundwater and Contaminated Land (GWCL) Team undertook a review of the following submissions with regards to matters associated with the protection and enhancement of controlled waters:

- Detailed Remediation and Enabling Works Strategy for the Former Manox Works [inc. Zones 5 & 7] & Associated Appendices – Report Reference: 13-887-R6-2. Version 2 Prepared by e3p Ltd. Dated 12th October 2022.
- Manox Enabling Works Phasing Plans – PDF Reference: 22118-MC2906. Prepared by Mc Auliffe Group. No Date.

They note reference to the phasing plan(s) prepared by McAuliffe Group listed above is made with the covering letter (Equans October 2022) and intrinsic link of these plans to the Detailed Remediation and Enabling Works Strategy prepared by E3P Ltd (13-887-R6-2). As a copy of the McAuliffe plans, noted within the covering letter associated with CDN/22/0742 have been supplied to the EA and LPA (email 6th December 2022). They advise that have undertaken a review of these plans to inform their position statement below. However, they raised that a copy of the McAuliffe plan(s) are not yet uploaded to the planning portal for CDN/22/0742 recommended this/these are uploaded as they form part of the evidence basis of any subsequent planning approval granted and are of significance to the EA position outlined below.

Condition 54 Detailed Phasing Plan

For matters associated with the protection of controlled waters, in principle, they are satisfied with the phasing strategy which has been presented with the McAuliffe produced phasing plans(s) and welcome the intention to undertake a full remediation of the total development site area prior to the commencement of the further built-form development. However, whilst they are satisfied, in principle, with phasing methodology presented, they advise that the LPA withhold from formally discharging this condition given its inherent linkage to the requirements of conditions 57 (detailed risk assessment) and 58 (detailed remedial options strategy) – see EA position set out below.

Whilst from the reporting/information accessible/available to the EA they do not anticipate that material change to the current remediation phasing/plan strategy will be required, it cannot be confirmed that the associated remedial strategy which largely dictates the phasing plans sequencing will be approved. However, they note and acknowledge that final decision regarding this matter is for the LPA determination.

Condition 57 (Detailed Risk Assessment) and Condition 58 (Detailed Remedial Strategy)

As submitted, they are unable to recommend the discharge of conditions 57 and 58 attached to planning permission.

In summarising the subsequent 'technical feedback' sections of this letter below, as submitted, insufficient assessment and narrative has provided to enable the EA to support the progression of the development against current overall remedial betterment target presented (~80% betterment) with the E3p reporting.

In the first instance, they advise the developer that further consideration should be given as to whether a further betterment (beyond ~80%), via the current remediation methodology, is achievable (e.g. a further additional uplift may be observed when gross-contaminated materials (not suitable for re-use) are removed from considerations). In the instance that further notable positive betterment cannot be achieved (following further assessment/evaluation), then the EA advise comprehensive justification (e.g. a cost-benefit analysis) will need to be provided sufficient narrative as to why a lesser betterment target (e.g. ~80%) should be deemed acceptable and discharge of relevant conditions enabled.

Regarding the matter of 'lesser betterment acceptance' detailed above, the EA note that this relates, in part, to matters associated with development viability and consideration against the wider sub-elements of 'sustainable development' (social and economic). At this current juncture, they advise that final determination regarding such matters (viability) will need to be made by the LPA will need to be made in the first instance as matters regarding fall outside of the direct planning remit of the EA. However, in such an instance, they will seek to provide assessment and review narrative to assist in any such determinations.

Should the LPA be minded to approved, as submitted, the discharge of any conditions sought under CDN/22/0742 contrary to the EA's recommendations (outlined above) then we ask that they are notified in advance and provided the opportunity to make further representation.

In association with the EA's position statement(s) outlined above, they provided detailed technical review feedback from their GWCL Team which acts as the rationale for the determinations reached, which is set out below.

For the purpose of transparency between all parties of significance, expediting proceedings and in virtue of reporting submission being public domain, the EA are providing this detailed technical feedback as part of this formal response letter.

EA GWCL Technical Feedback –Condition 57 (Detailed Risk Assessment) and Condition 58 (Detailed Remedial Options Appraisal and Remedial Strategy) Detailed Remediation and Enabling Works Strategy

The submission of a detailed remediation and enabling works strategy following on from the submission of supplementary site investigation (dated November 2022) and consideration to wider ground investigations to date shows that 'Zones 5 and 7' have separate land contamination issues than those of the main Manox development site. The E3p report (13-887-R6-2) provides summary of the land contamination conditions for the three development zones which comprise the development site with the presence of organic, semi-organic and inorganic contaminants identified; derived from former industrial land uses of the development site (particularly prevalent across the former 'Manox' development zone area in particular).

Studying the phasing plan (ref: 22118-MC2906) submitted for condition 54, the EA understand that there has now been a decision made to progress the a full comprehensive 'site wide' remediation rather than seek to undertake a partial phased remediation of the development zones. The EA welcome this approach and concur that this simplification of delivery strategy will be beneficial to the process of site remediation and associated environmental permitting determination.

The E3p report identifies that the adverse concentrations of contamination identified as present, in the solid and liquid form, underpin the requirement for remediation and other control measures for the development site (protection of sensitive environment receptors and public protection).

Currently, for note, the presence of Carbon Disulphide has not been identified and its likely use/manufacture has been discounted based on previous reporting observations.

The EA welcome the decision for the specialist remediation contractors to develop a procedure should, if contrary to current assessment, this type of contamination be identified and associated remedial actions required. The EA recommend that this is made a part of the remediation implementation plan that is adopted and applied by the on-site specialist contractor.

In connection with the above and more generally, they note the presence and requirement of condition 66 (unsuspected contamination) attached to associated planning permission 131895/JO/2021.

Zones 5 & 7

In relation to Zones 5 & 7, they largely agree with the determination reached that these two parcels of land have not been subject to same degree of historic industrial land uses and that the presence of raise land contamination concentrations are likely to be a result of other secondary activities (infilling of the former clay pit and the distribution of made ground). The concentrations of contamination within these areas still pose a risks to controlled water but are less so when compared against the main, former, Manox development zone area. They would like to clarify that whilst Zones 5 & 7 of the development site may not have a recognisable aquifer and that groundwater beneath this spatial extent is likely prevented from vertical migration an underlying clay layer, this is still a groundwater body that is likely to flow with topography. Consequently, in these circumstances, possibility exists of influence and impact from the adjacent main Manox site once remediation of that parcel of land commences and the current possible flow-pathway to the Rochdale Canal is removed or reduced by the installations of sheet-piled wall (see below).

They also would like raise awareness (as previously advised), that flows northwards through the current retaining wall adjacent to the canal have been reported and are known to be adversely impacted by a liquid form of contamination which is discoloured and malodorous.

The EA confirm that the underlying secondary aquifer in the bedrock unit is unlikely to be at

significant risk, but only once the known vertical pathways associated the former mining shaft within Zone 7 have been grouted closed and the more contemporary former investigation boreholes decommissioned (in line relevant EA good practice/guidance). The EA agreed at the subsequent meeting that the remediation of Zones 5 and 7 would likely reflect a 'hot-spot' removal process, in virtue of gross contamination being present.

Remediation Options Appraisal

During collective meeting held on the 6th Dec. 2022, the EA discussed at length the range of potential options for this site and, in particular, the remediation of the main Manox development site area. This matter has been covered in some detail in the E3p (October 2022) report.

Previous ground investigation has introduced a high density of ground investigation points and types across the site, this action has led to a dependable level of understanding and characterisation of the development site. This characterisation shows that the previous industrial, chemical, industry has had immediate adverse impact on the underlying ground and shallow groundwater beneath the main Manox parcel in particular.

The remedial options appraisal which has been report reflects the approach laid out in the Land Contamination: Risk Management (LC:RM) (2021) document. As such the remedial technologies that are presented are likely to represent the best use of available technology without incurrant excessive cost or resource.

None of the methodologies presented appear to represent 'novel' or untried technologies but, as the EA discussed an Environmental Permit(s) for their use will be required ,and deployment on the development to be obtained by the operator(s). The deployment and implementation of chosen technologies will be more straight forwards for Zones 5 and 7 and more complex for the main Manox area – reflecting the contamination types which are present.

The EA's review of this, in light of the included narrative on how to show success of the remediation process in terms of betterment and/or achieve derived targets, identifies that a betterment approach is likely to be adopted and that an 80% betterment (based on the primary chosen remediation option) would be aimed for.

At this time, based on the information that has been provided to date, this is not acceptable to the Environment Agency as it falls short of a standard/betterment they would expect to be achieved, given the final development type, in order that suitable environmental protection measures are enacted.

During their recent collective meeting (6th December 2022), this position was put forward and reiterated that a derived remediation target was the default position, and that if environmental betterment were the preferred option, then a suitably researched and populate cost-benefit analysis would have to be put forwards supporting this lesser remedial target for validation and verification.

Post-meeting, the EA provided to the external project team a number of guidance documents which explained in further detail the cost-benefit analysis process should further exploration of this prove necessary.

During their meeting and arising from previous submissions, the EA further discussed the ongoing presence of an historic tar channel and the presence of a vertical tar chamber.

They concur that further ground investigation at this late stage in the development process would be unlikely to provide the necessary information to meaningfully change the current remediation strategy/methodology and that a better solution would be for the chosen remediation contractor/specialist to adopt a 'watching brief' approach whereby the actual act of site remediation would uncover and delineate the presence of the relic channel and chamber leading to its removal and remediation – all of which would need to be recorded and presented in detail under a cover for validation and verification.

They understand that the process of seeking the necessary environmental permits to

enact the presented remedial strategy is ongoing and can confirm that they have been contacted by their National Permitting Service in this regard to provide a fuller understanding of the site activities, conditions and likely requirements of the permitted activities.

Remediation & Validation Criteria (inc. McAuliffe Stabilisation/Solidification Treatability Report)

The EA have reviewed this report, and note that Appendix IV of the above report includes a table of generic validation criteria for the protection of human health for low rise residential end use.

Whilst the Environment Agency does not have any direct influence on these values, they are mindful that many of these dry weight values would not meet a derived dry weight value calculated value (Level 1; RTM P20) for the protection of controlled waters.

Reuse of soils in this circumstance should reflect the need to preserve public protection as well as the need for the protection of controlled waters.

As they discussed at their meeting in December 2022, they are aware and comfortable with the use of solidification and stabilisation work as a reliable remediation technology.

They are aware that this technology works to bind then lock into the stabilised matrix contaminants of concern over a prolonged period of time such that the risks are manageable or removed. It is their understanding that this form of technology works best on inorganic and semi-organic contamination (in concert with the control of acidity (pH)) but has lesser success on organic contamination over a longer period of time.

Evidence of this they consider shown in table 3a, 3b, 4a and 4b. This is understandably one of the drivers for the consideration of 80% betterment rather than the use of defined, calculated remedial targets but, as is shown in tables 4a and 4b (mix 5 and mix14 respectively), after the 64day testing cycle there is evidence which shows a gradual increase in tank test concentrations for Cyanide rather than a reduction.

In virtue of the above observation (tank test increase), they would welcome additional narrative on how this matter/issue can be overcome and the stabilisation and solidification shown to be effective and successful with the range of contaminants of concern that the wider development site presents.

Dec. 2022 Discussion – Rochdale Canal 'Barrier Wall'

As well as the discussion involving the submissions the EA had reviewed to that point / time in proceedings, the EA contributed to discussions about the proposed canal wall improvements. They pointed to former discussions and a topic specific workshop held in Nov. 2020 whereby their expectations regarding the barrier/cut-off wall to be implemented adjacent to the canal were shared.

The EA highlighted to the design team at that time, and on this occasion, that they did not consider a standard interlocking sheet pile wall to be fully impermeable.

As such, the EA discussed the need to either a) remediate to a standard that suitably reduced the overall contaminant loading behind the sheet-pile wall (such that mobilisation of existing contamination was greatly reduced) or b) ensure the design of the sheet-piled wall would be sufficient (with suitable justifying evidence) to remove the long-term possibility of mobile contamination (as is currently observed) from continuing to enter into the Rochdale Canal.

The EA acknowledge that the improvement and upgrading of the actual canal wall itself is not, strictly, a conditional / development requirement, but the removal of pollutant linkages is a matter for their consideration. Current evidence is that a significant contaminant linkage does exist, that this is allowing adversely impacted materials to enter the adjacent surface water body (Rochdale Canal) and if therefore considering this suitable remedial action is required.

Finally, in terms of potentially discharge outstanding relevant planning conditions with

the aim of facilitating commencement on site, they agree that the submissions to date have led to the discharge of some of those conditions and that this most recent submission continues to move the site forwards with regard to future discharge of other conditions

Further comments 05.05.2023 - Further to the EA's prior consultation / correspondence (see EA letter SO/2022/122619/01) for CDN/22/0742 in which they identified provisional acceptability of the detailed remedial phasing plan submitted but raised concern regarding the contents of reporting submitted for conditions 57 and 58 intrinsically linked, the EA acknowledge that the applicant has now made the following revised reporting submission for which EA consultation/position is being requested by the Local Planning Authority (LPA) :

- Remediation an Enabling Works Strategy – Former Manox Works, Coleshill Street, Miles Platting, Manchester. Prepared by e3p Ltd. Report Reference: 13-887-R6-4. Dated February 2023.

The EA note for the attention of the LPA that the detailed remedial phasing plan subject of their prior provisional acceptance is encapsulated within Appendix XIII of the above revised reporting submission.

The EA further advise that to inform their updated position statement set out below, their Groundwater and Contaminated Land (GWCL) Team has undertaken a review of the revised report submission detailed above with regards to matters associated with the protection and enhancement of controlled waters. They EA also recommend that separate consultation and position is also sought from your Environmental Health department on this latest revised reporting submission prior to final determination CDN/22/0742.

Environment Agency Position (Updated) – Condition 54 (Phasing Plan), 57 (Risk Assessment) and 58 (Detailed Remedial Strategy)

Based upon the reporting submission detailed above, as submitted, the EA have no objection in principle to the discharge of conditions 54, 57 and 58 attached to planning permission 131895/JO/2021 for matters associated with the protection and enhancement of controlled waters only.

Further to the above, subject to all wider pre-commencement conditions being addressed to the satisfaction the planning authority, provided strict adherence to the remedial strategy outlined with the e3p Ltd report (13-887-R6-4 - February 2023) is achieved by the developer/applicant, they have no objection in principle to the commencement of works on-site (as per the phasing plan detailed within Appendix XIII). Please refer to our 'Note to LPA – Condition 62 Remedial Verification Plan', for further explanation of the reasoning for this determination.

Canals and Rivers Trust - The remediation and enabling strategy seems to be very thorough and considers the canal, which is the primary receptor to contamination from the site. It is noted under RE7 that all existing drains and conduits to the canal would be identified and sealed, also all perched waters on site would be dealt with. Furthermore, under RE8, this notes the materials between the existing retaining wall which forms the boundary to the Canal (and will be being removed) presents a potential pollutant linkage to the canal due to leaching. The steps to deal with this have been set out and would appear to be acceptable.

The Canal impact section plan seems to confirm visual leakage through the boundary wall of the canal. The plan on page 4 of that document shows that a sheet pile retaining structure would installed along the entire northern boundary with the canal. There is a further label noting materials between the sheet pile and former retaining wall would be removed. Materials on the canal side of the new sheet pile wall to be clean natural. The proposed sheet pile wall would act as a containment / tanking for the site.

Clearly a detailed design of the retaining wall/piling would be helpful to understand the depth of which the sheet pile wall will be constructed. The current plan of '1m into the clay materials ' may not be suitable to retain contaminants. The plan should be respective to the depth of the canal bed and should be annotated to state that the bottom if it would be below the canal bed level. The plan on page 4 of the canal impact section plans should be amended prior to the condition begin discharged .

They note that the decision notice contains separate **conditions** in relation to the sheet piling/retaining wall to be provided along the boundary with the canal and foundation details. It will be important that the design of this sheet piling /retaining wall is robust and is of sufficient depth to contain the known contaminants on the site.

Commented [SW1]:

It would also be crucial that the canal is protected during the works and during the construction of the retaining wall / sheeting piling. The trust advise that they look forward to reviewing the Construction Environmental Management Plan(CEMP) in due course (condition no.6).

Subject to the above plan being updated in relation to the depth of the retaining structure , the Trust consider that the conditions can be discharged, pending the submission of the details of the piling /retaining wall under condition no.20 ; foundation details of the development under condition 21, and the method statement of works next to the canal as required by condition no.32 .

The Coal Authority - The application site does fall within the defined Development High Risk Area. However, on the basis that the conditions are not specifically relevant to coal mining issues, the Coal Authority has no comments to make.

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:

Article 35 Declaration

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

54) Condition no. 54 (Detailed Remediation Phasing Plan).

The Detailed Remediation and Enabling Works Strategy, Former Manox Works, ref: 13-887-R6-4 dated February 2023 received 28th February 2023 and Sheet Pile Wall Performance Specification document and plans by E3P dated 22nd March 2023 have been examined and are considered to be acceptable. On the basis that the development is fully implemented in accordance with the approved Detailed Remediation and Enabling Works ref: 13-887-R6-4 dated February 2023 and Sheet Pile Wall Performance Specification document and plans by E3P dated 22nd March 2023 condition no.54 is discharged.

57) Condition no.57 (Assessment of risks to human health/environmental receptors)

The Detailed Remediation and Enabling Works Strategy, Former Manox Works, ref: 13-887-R6-4 dated February 2023 received 28th February 2023 and Sheet Pile Wall Performance Specification document and plans by E3P dated 22nd March 2023 have been examined and are considered to be acceptable. On the basis that the development is fully implemented in accordance with the approved Detailed Remediation and Enabling Works ref: 13-887-R6-4 dated February 2023 and Sheet Pile Wall Performance Specification document and plans by E3P dated 22nd March 2023 condition no.57 is discharged.

58) Condition no.58 (Detailed options appraisal and remediation strategy)

The Detailed Remediation and Enabling Works Strategy, Former Manox Works, ref: 13-887-R6-4 dated February 2023 received 28th February 2023 and Sheet Pile Wall Performance Specification document and plans by E3P dated 22nd March 2023 have been examined and are considered to be acceptable. On the basis that the development is fully implemented in accordance with the approved Detailed Remediation and Enabling Works ref: 13-887-R6-4 dated February 2023 and Sheet Pile Wall Performance Specification document and plans by E3P dated 22nd March 2023 condition no.58 is discharged.

Environmental Health
Environment Agency
The Coal Authority
Canal & River Trust

Appendix 2 – Planning constraints

[illegible]