

Planning

Growth & Development

Delegated officer report for planning application

Application no. CDN/22/0879

Date registered valid: 5 December 2022

Proposal: Discharge of condition 5a (ground conditions) attached to planning permission referenced 133759/FO/2022

Address: Land To The North Of Lawton Street, New Smithfield Market, Manchester

Ward(s): Clayton & Openshaw Ward

Applicant: E&E Barton Estate Ltd & Khanjra International Foods Ltd

Agent (if any): Mr Thomas Relph Russell WBHO

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

Recommendation: Approve

Date of recommendation: 20.02.2023

Application details

Type of application: Approval of condition application

Development type: Notifications

Date of site visit:

Standard consultations:

Printed: 15 December 2022

Expired: 5 January 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:

Tree Preservation Order:

Description of area

Description of development

Consultations & Notification Responses

Environmental Health 16.02.2023 – advised they had examined the E3P Remediation and Enabling Works Strategy, Ref:12-757-R4-5 Dated November 2022 (which states that the updated version 5 is due to "*Geotech clarification*") , but this does not appear to have addressed their comments regarding version 4 of the strategy (Ref: 12-757-R4-4 Dated July 2022) and Ground Gas Addendum Report (Ref:12-757-R5-1 Dated July 2022).

The outstanding matters are set out below .

- The email from Russell Homes states that the pre-1978 substation(referred to in the E3P report as an area requiring further investigation for PCB analysis) is to be retained in the completed scheme. The Remediation Strategy (RS) should be updated with this point

and clarification is required as to whether PCB analysis is required in the area surrounding the substation.

- In relation to the data in Table 3.1: Analysis - Hotspot Validation Samples Validation sampling as per proposed RE-8 at 5m centres is required.
- In relation to the Delineation, Excavation, Treatment and Disposal of any as of yet Unknown Visual and Olfactory Hydrocarbon-Impacted Material (RE-9): Where PID determines the need for lab analysis, validation sampling as per proposed RE-8 at 5m centres is required .
- In regard to the installation of cover system to unsurfaced areas to address identified human health risks. Proposed sampling frequencies for imported and reused materials are accepted. However , the proposed 300mm clean cover thickness for landscaped areas is not accepted; as per MCC's guidance, the minimum total depth for fill materials (including any break layer) within areas of soft landscaping is 450mm.
- In relation to Figure 2.1 Asbestos Risk Mitigation Conceptual Site Model, the CSM/RS should be revised with respect to the following 2 points and, in due course, the MMP QP should undertake a risk assessment in order to be satisfied that the material is suitable for reuse on site, and include these details in the EWVR.
 - a. 450mm cover system required in soft landscaped areas.
 - b. The Environment Agency (the waste regulator) have advised us that, where volumes and percentages of asbestos in materials are below the Hazardous Waste threshold (0.1%), then this material may be reused on site under low risk areas such as roadways, or solidified in concrete for deeper foundations. They advised that the material should be covered by high vis plastic cover (or similar) and recorded in site deeds to prevent harm to any future site workers, and the material should be situated below the dig level for any utilities.
- In relation to the email from Russell Homes comment regarding invasive plants on page 24 , however the RS includes a relevant section on page 24 , the RS recommendations should be followed and duly reported to the LPA.
- Ground gas monitoring suggests that the site can be classified as CS1, and that gas protection measures will not be required due to the fact the elevated ground gas concentrations identified are not below the proposed structures and that the site will undergo a Made Ground turnover resulting in anthropogenic material being removed. The gas analyser calibration certificate relevant for the monitoring periods is required before comments can be made regarding this point.

Due to the above outstanding issues related to ground contamination issues, no part of the standard contaminated condition can currently be recommended for discharge, however the requirement to submit a PRA has been satisfied by the E3P Phase I Geoenvironmental Site Assessment (Ref:12-757-R3-1 Dated July 2020) submitted with the application.

Updated comments 18.01.2023 in bold below

- The email from Russell Homes states that the pre-1978 substation(referred to in the E3P report as an area requiring further investigation for PCB analysis) is to be retained in the completed scheme. The Remediation Strategy (RS) should be updated with this point and clarification is required as to whether PCB analysis is required in the area surrounding the substation.
Confirmed/Accepted: Soils on the boundary of the site adjacent to the current electricity substation to be assessed for PCBs.
- In relation to the data in Table 3.1: Analysis - Hotspot Validation Samples Validation sampling as per proposed RE-8 at 5m centres is required.
Amended/Accepted.

- In relation to the Delineation, Excavation, Treatment and Disposal of any as of yet Unknown Visual and Olfactory Hydrocarbon-Impacted Material (RE-9): Where PID determines the need for lab analysis, validation sampling as per proposed RE-8 at 5m centres is required **.Amended/Accepted**
- In regard to the installation of cover system to unsurfaced areas to address identified human health risks. Proposed sampling frequencies for imported and reused materials are accepted. However, the proposed 300mm clean cover thickness for landscaped areas is not accepted; as per MCC's guidance, the minimum total depth for fill materials (including any break layer) within areas of soft landscaping is 450mm.
Report amendment to "Material is to be placed in layers not exceeding 450 mm" not accepted - this thickness is a minimum.
- In relation to Figure 2.1 Asbestos Risk Mitigation Conceptual Site Model, the CSM/RS should be revised with respect to the following 2 points and, in due course, the MMP QP should undertake a risk assessment in order to be satisfied that the material is suitable for reuse on site, and include these details in the EWVR.
 - a. 450mm cover system required in soft landscaped areas.
 - b. The Environment Agency (the waste regulator) have advised us that, where volumes and percentages of asbestos in materials are below the Hazardous Waste threshold (0.1%), then this material may be reused on site under low risk areas such as roadways, or solidified in concrete for deeper foundations. They advised that the material should be covered by high vis plastic cover (or similar) and recorded in site deeds to prevent harm to any future site workers, and the material should be situated below the dig level for any utilities.
Amended/Accepted.
- In relation to the email from Russell Homes comment regarding invasive plants on page 24, however the RS includes a relevant section on page 24, the RS recommendations should be followed and duly reported to the LPA. **To be reported in validation report in due course.**
- Ground gas monitoring suggests that the site can be classified as CS1, and that gas protection measures will not be required due to the fact the elevated ground gas concentrations identified are not below the proposed structures and that the site will undergo a Made Ground turnover resulting in anthropogenic material being removed. The gas analyser calibration certificate relevant for the monitoring periods is required before comments can be made regarding this point.
Remains outstanding: the certificates provided do not cover the monitoring periods.

Updated comments 03.02.2023

The report says "...prior to being overlain by a **450mm** cover system" (rather than 150mm as per the agent's comment) which is acceptable, however the gas analyser calibration certificate relevant for the monitoring periods remains outstanding.

Updated comments 09.02.2023

The calibration certificates have been examined, but the dates do not match up with the monitoring rounds.

From the addendum gas monitoring reports they monitored between the following dates
10 October to 6 November 2018 - no calibration certificate
27 May to 28 August 2020 - calibration certificate provided dated 27 May 2020
3 February to 7 March 2022 - no calibration certificate (2022 certificates dated October and November, after the monitoring rounds)

The applicant needs to provide the certificates to confirm that the equipment was calibrated for the 2018 and 2022 rounds before part a) of the condition can be discharged.

Updated comments 17.02.2023.

Condition no.5a can be discharged.

Environment Agency 30.12.2022.

Advise they are unable to support the discharge of the condition as the information within this report shows that there is land contamination present, and that remediation is required. The site is located above a Principal Aquifer which the Environment Agency consider to be controlled waters. There is insufficient information in the report to gauge whether the works proposed will be sufficient or whether more extensive work is required to ensure the aquifer remains protected.

Updated comments 13.02.2023

Have reviewed the Remediation and Enabling Works Strategy by e3p Ltd dated January 2023 (Reference:12-757-R4-8) and the previous submissions made, and are able to recommend that part a of condition 5 can be discharged.

Further evidence will be required to discharge part b of condition 5, as set out in the condition itself.

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 5a Ground conditions

The content of the reports and data referred to below has been examined , and is considered to be acceptable.

- Ground Gas Addendum Report ref: 12-757-R5-1 (July 2022) and 2 no. Gas Monitor Calibration Information received 5th January 2023
- Email from planning agent dated 20th January 2023 regarding the depth of cover system and top soil.
- Remediation and enabling works strategy ref: 12-757-R4-8 dated January 2023 Version 8 received 20th January 2023;
- 3 no. Gas Monitor calibration certificates received 6th February 2023
- 3 no. Gas Monitor calibration certificates received 16th February 2023.

On the basis that the development is implemented in accordance content of the reports and data referenced above condition no.5a is discharged.

Appendix 1 – List of consultees & neighbours notified

Environmental Health
Environment Agency

Appendix 2 – Planning constraints

[illegible]