

## SCHEDULE A: Applications with Recommendation

21/0049

Item No: 07

Date of Committee: 26/03/2021

**Appn Ref No:**  
21/0049

**Applicant:**  
Economic Development.

**Parish:**  
Carlisle

**Agent:**

**Ward:**  
Cathedral & Castle

**Location:** Caldew Riverside (Lower Viaduct) Remediation Works, Carlisle

**Proposal:** Remediation Works To Prepare The Site For Future Development

**Date of Receipt:**  
26/01/2021

**Statutory Expiry Date**  
28/04/2021

**26 Week Determination**

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### REPORT

**Case Officer:** Stephen Daniel

#### 1. Recommendation

- 1.1 It is recommended that this application is approved with conditions.

#### 2. Main Issues

- 2.1 Whether The Proposal Is Acceptable In Principle
- 2.2 Whether The Proposed Remediation Works Would Be Acceptable
- 2.3 Impact On Ecology
- 2.4 Flood Risk
- 2.5 Highway Matters
- 2.6 Other Matters

#### 3. Application Details

##### The Site

- 3.1 The site is located in the centre of Carlisle, adjacent to the River Caldew. It includes the Lower Viaduct Car Park which is a City Council owned pay and display car park (Parcel C) and a vacant site that contains areas of hardstanding together with an area of trees and is enclosed by fencing (Parcel B).

- 3.2 The site is adjoined to the south by the Upper Viaduct Car Park (Parcel A), which sits at a higher level than the Parcel B and is separated from it by an embankment that contains a belt of trees. A footpath/ cycleway lies to the west of the site beyond which lies the River Caldew, with the Viaduct Estate Road adjoining the eastern site boundary. Cumbria Indoor Bowls Club lies directly to the north of the Lower Viaduct Car Park.
- 3.3 The site has a varied industrial history including a gas works (Parcel A), railway sidings (Parcel B and C), and car showrooms (Parcel B).

## **The Proposal**

- 3.4 This proposal is seeking planning permission for the remediation/ enabling works that would be required to facilitate the redevelopment of Parcel C and the majority of Parcel B of the site.
- 3.5 The application is accompanied by a Site Remediation Report, a Preliminary Ecological Report, a Shadow Appropriate Assessment (Under The Habitats Regs) and a Flood Risk Assessment.

## **4. Summary of Representations**

- 4.1 This application has been advertised by means of three site notices and a notification letter sent to one neighbouring property. No verbal or written representations have been made during the consultation period.

## **5. Summary of Consultation Responses**

**Environment Agency:** - no objections subject to conditions (maintain access to flood defences);

**Natural England:** - a detailed Construction Environmental Management Plan should be submitted prior to work commencing on site;

**Cumbria County Council - (Highways & Lead Local Flood Authority):** - no objections;

**Local Environment - Environmental Protection:** - no objections subject to conditions (submission of remediation scheme; implementation of approved remediation scheme; reporting of unexpected contamination);

**Northern Gas Networks:** - no objections;

**Cumbria County Council - (Archaeological Services):** - no objections;

**United Utilities:** - no objections subject to conditions (foul and surface water draining on separate systems; details of surface water drainage scheme).

## **6. Officer's Report**

## Assessment

- 6.1 Section 70(2) of the Town and Country Planning Act 1990/Section 38(6) of the Planning and Compulsory Purchase Act 2004, requires that an application for planning permission is determined in accordance with the provisions of the Development Plan unless material considerations indicate otherwise.
- 6.2 The relevant planning policies against which the application is required to be assessed are the National Planning Policy Framework (NPPF), the Planning Practice Guidance (PPG) and Policies SP4, SP6, CC4, GI3 and CM5 of the Carlisle District Local Plan 2015-2030.
- 6.3 The proposal raises the following planning issues.
1. Whether The Proposal Is Acceptable In Principle
- 6.4 Policy SP4 (Carlisle City Centre and Caldew Riverside) of the adopted Local Plan states that Caldew Riverside constitutes a significant regeneration opportunity to bring back into beneficial use land for a mix of uses which would complement those found in the City Centre and in doing so aid its overall attractiveness.
- 6.5 This proposal is seeking to undertake remediation works to prepare the site for future development. Any future plans for the site would be considered under subsequent planning applications.
- 6.6 In light of the above, the proposals to prepare the site for future development would be acceptable in principle.
2. Whether The Proposed Remediation Works Would Be Acceptable
- 6.7 Parcel A, which is the former gas works is not included within this planning application. Contamination under Parcel A is substantial, and via migration, mobile fractions of gas works residues have impacted approximately the first third of Parcel B.
- 6.8 Further characterisation of Parcel B and C, is necessary, and a supplementary ground investigation is proposed. This would provide information about the ground conditions for assessment and subsequently help inform the location(s) and degree of remediation required to enable and make the land suitable for any future development. The proposed investigation works also include scope to better delineate the extent of Parcel B that is more seriously affected by migration from the contamination present beneath Parcel A. It would also allow a better understanding of which parts of Parcel B are impacted by contamination associated with suspected former fuel storage tanks.
- 6.9 The level of remediation that would be required to render Parcels B and C suitable for the proposed development would be determined after the next phase of ground investigation. Following on from assessment of the

investigation data, a Remediation Strategy would be prepared for Parcel B and C detailing the work that would be required. The Strategy would be agreed with the regulators prior to implementation.

- 6.10 Based on the current knowledge of the site (historical land use and ground investigation data) the remediation outlined in paragraphs 6.11 and 6.12 below is considered likely for each Parcel.
- 6.11 The remediation of contamination in Parcel C is likely to be mainly the removal of areas (hotspots). The main aspects of the works are detailed below:
- remove car parking infrastructure;
  - undertake remedial works;
  - mark out localised “hotspot” areas identified by the site investigation work / assessment;
  - over-excavate contaminated soils within hotspot areas and undertake verification to confirm that all contamination has been removed from the area. Replace contaminated material with certified clean materials and compact;
  - excavated soils to be removed off site to soils re-cycling facility or permitted landfill;
  - grubbing up and removal of significant old foundations or major obstructions;
  - crush hard materials for planned re-use as capping materials in accordance with a Site Materials Management Plan.
- 6.12 For the majority of Parcel B, the level of remediation is likely to be consistent with that of Parcel C and the aspects of work set out above would apply. However, the southern section of Parcel B, adjacent to the former gas works (Parcel A) is likely to require the following additional remediation:
- removal of two redundant below ground fuel tanks (in south eastern corner). If volumes of hydrocarbon impacted soils are significant, on site treatment could be undertaken;
  - installation of an in-ground barrier;
  - recovery of NAPL (non-aqueous phase liquid e.g. oil and petroleum) from the up-gradient side of the barrier (hence on the Parcel A side) would likely be by skimming pump systems. This would require periodic (1-3 months) maintenance and disposal of recovered NAPL to off-site disposal facility.
- 6.13 Officers in Environmental Health have been consulted on the application. They have no objections to the proposal subject to conditions (submission of remediation scheme; implementation of approved remediation scheme; reporting of unexpected contamination).

### 3. Impact On Ecology

- 6.14 A Preliminary Ecological Report has been submitted with the application. A desk study was undertaken to identify existing information relating to the site and its surroundings. Following on from this, an extended phase 1 habitat

survey was undertaken in November 2020, which comprised a walkover of the land and habitats within and immediately adjacent to the site boundary.

- 6.15 The site sits approximately 5m above the River Caldew's high-water line at all points and a flood defence wall forms a significant barrier between Parcel B and the river. The limited nature of the proposed works (site investigation to inform remediation) at this stage do not suggest there would be any impacts to the River Caldew or the flood defence wall, hence no impacts to the River Eden SAC or River Eden and Tributaries SSSI are anticipated.
- 6.16 Based on the locality and the nature of the proposed works, it is not considered that any notable flora, invertebrates, badger, otter and water vole would be significantly affected by the proposed works.
- 6.17 The habitats within and adjacent to the site have the potential to support common amphibians, breeding birds and foraging and commuting bats, with some limited potential for roosting bats within the woodland, scattered trees and flood defence wall. There is a low likelihood that hedgehog may be present on site.
- 6.18 If trees require removal or works adjacent to trees or woodland is required to facilitate the proposed works, it is recommended that a BS5837:2012 tree survey is undertaken to assess the arboricultural value of the site.
- 6.19 The previous ecology survey recommended that an isolated stand of Japanese Knotweed situated within the site was eradicated. This stand was not recorded during the recent survey. The survey was, however, undertaken at a sub-optimal time for identifying vegetation and it is recommended that precautions are still taken in this area. Furthermore, Indian Balsam is widespread along the River Caldew and may also be present within the site. It is recommended that an Invasive Non-native Species Protocol document should be produced prior to the commencement of works, detailing the containment, control and removal of any invasive species present within the site.
- 6.20 There is limited potential for common amphibians and hedgehogs to be present on site. It is anticipated that their presence would be limited to piles of rubble, logs or brash that provide refuge for such species. It is recommended that the proposed works avoid such areas and features and if their removal is required it is recommended that this is undertaken by hand to allow animals to disperse.
- 6.21 To avoid the potential disturbance or entrapment of amphibians or hedgehogs (and other small mammals) it is recommended that any excavations within the site are not left open overnight unless a suitable access and egress point (in the form of a roughened plank or mammal ladder) is provided. Excavations should be inspected every morning prior to works commencing for any animals that have entered overnight and become trapped and / or have tunnelled within the structure. If a trapped animal is encountered, works should be stopped in that area and the advice of an ecologist should be sought.

- 6.22 The main breeding season for most UK bird species runs from March to August (inclusive), therefore it is recommended that any vegetation clearance works are undertaken outside of this time period. If any trees or scrub vegetation within the site are to be removed between March to August, a nesting bird check should precede the start of the works. It should be undertaken by a suitably qualified ecologist no more than 48 hours prior to the works being undertaken. If an active nest is found during the check, a protection zone should be put in place around the nest and it must remain in situ until the chicks within the nest have fledged.
- 6.23 Due to the limited scope of the proposed works (site investigation to inform remediation), it is not proportionate to recommend enhancements for biodiversity at this stage. However, should further development works be proposed then enhancements for biodiversity and specifically biodiversity net gain calculations should be considered.
- 6.24 A Shadow Appropriate Assessment under the Habitats Regulations has also been submitted with the application. Assessment under Regulation 63 of the Habitats Regulations is required in this instance, since the application site lies in close proximity to the River Caldw, which forms part of the River Eden SAC.
- 6.25 Mitigation is expected to be required to ensure that there is no adverse impact on the integrity of the SAC. The following mitigation measures would be implemented:
- works are separated from the SAC by the existing flood defence wall thus it is not necessary to segregate the works from the SAC with a visual barrier;
  - impacts during remediation works would be controlled through strict adherence to a project-specific Construction Environmental Management Plan (CEMP) that would be developed using best practice techniques but also a suite of bespoke control measures such as avoidance/minimisation of illumination from sensitive construction areas and scheduling potentially disruptive works to avoid sensitive periods for specific species/species groups (i.e. night-time working would be avoided to minimise impacts on nocturnal animals such as otter);
  - all site works would be carried out in accordance with best environmental working practices to ensure adequate pollution control measures are implemented during construction and operation with monitoring to ensure their effectiveness;
  - no groundwater extraction is envisaged. However, if groundwater enters the excavated areas, the water would be removed by pumping or discharge before refilling to avoid water spilling out across site and into the River Caldw. Sandbags would also be used around areas to soak up any excess water;
  - short-term airborne pollution resulting from site vehicle emissions and dust would be controlled through best practice measures such as wetting, if dictated by very dry weather conditions. Any operations with a high potential for dust production would be fully enclosed;
  - chemicals and hazardous materials would be stored in accordance with the

relevant Environment Agency pollution prevention guidance, which would prevent discharges into the surrounding environment, thereby protecting surrounding habitats;

- appropriate measures would be taken to avoid the spread of invasive and non-native plants.

- 6.26 The Shadow Appropriate Assessment has concluded that the proposed development would not have any likely significant effects on the River Eden SAC, either alone or in combination with other plans or project. This is due to an absence of pathways for potential impacts and/ or because the proposed mitigation measures set out above would negate any potential impacts. It is proposed that these mitigation measures along with construction and environmental management measures for site investigation and subsequent remediation works are detailed within a project-specific CEMP. It is also proposed that works do not proceed until the CEMP has been submitted to and approved in writing by the Local Planning Authority.
- 6.27 Natural England has been consulted on the application. It has confirmed that it has no objections to the proposal subject to the submission of a detailed CEMP prior to works commencing on site, detailing mitigation required to protect the adjacent River Caldew, which is designated as part of the River Eden & Tributaries SSSI and River Eden Special Area of Conservation (SAC).

#### 4. Flood Risk

- 6.28 The application is accompanied by a Flood Risk Assessment (FRA). Most of the development site falls within Flood Zone 3 but benefits from flood defences. The site, therefore, has a high probability of flooding without the defences, which protect the area against a river flood with a 1% chance of happening each year, or a flood from the sea with a 0.5% chance if happening each year.
- 6.29 The remediation work would not impact on the long-term flood risk of the site as no built structures are planned at this time other than remediation measures that would be agreed as part of the remediation strategy. During the remediation works a site welfare unit would be in position for the duration of the works. It is expected that the works would be undertaken and completed within 3-5 months.
- 6.30 The FRA states that:
- any temporary structures including the site welfare units would be anchored down;
  - any temporary structures would be located adjacent to the Viaduct Estate Road and away from the Caldew River;
  - materials would not be stock piled on site during the works;
  - all waste would be removed from site;
  - in the event of imminent flooding, equipment would be removed from site in good time;
  - ground levels would not be altered during the remediation of the site;

- an area of land with an approximate width of 7m from the flood defence wall would be maintained so that the Environment Agency can gain access to the flood defences;
- a Site Flood Plan including access and evacuation procedures would be in place and adhered to if flooding is imminent during the works period;
- the works programme would include a link to the Environment Agency flood warning system to ensure that early warning is received;
- if excavation is required during the works, material would be placed back into the voids to the existing ground level.

- 6.31 The Environment Agency has been consulted on the application and has confirmed that it has no objections to the proposals. It has reviewed the FRA and is satisfied that it is appropriate to the nature and scale of the proposed development. The proposed development would, however, only meet the NPPF policy to avoid flood risk to people and property if a condition is included in the permission to require the submission of a scheme to ensure access to, and maintenance of, existing flood defences.

## 5. Highway Matters

- 6.32 The site currently has a number of existing access points onto Viaduct Estate Road. Within the application it is stated that the access and egress points are to utilise the existing access points onto the Viaduct Estate Road with no new access points being created. Bearing in mind the existing use of the Lower Viaduct site, the proposal would not lead to an increase in vehicular traffic to and from the site. The Highway Authority, therefore, has no objections to the proposal.

## 6. Other Matters

- 6.33 United Utilities has requested conditions are added to the permission to deal with foul and surface water drainage. Given that the application is merely seeking to remediate the site and no drainage works are planned these conditions are not necessary.

## Conclusion

- 6.34 The proposed remediation works would be acceptable and they would not have adverse impact on any protected species, on the River Caldey, on flood risk or on the highway network. In all aspects, the proposal is considered to be compliant with the relevant policies in the adopted Local Plan.

## 7. Planning History

- 7.1 In January 2016, permission was granted for the demolition of car showrooms and workshops (15/0007/DEM).
- 7.2 In May 2002, outline planning permission was granted for the erection of a foodstore and associated parking, access and infrastructure works



(99/0842). A subsequent Reserved Matters application was approved in June 2009 (07/0857).

**8. Recommendation: Grant Permission**

1. The development shall be begun not later than the expiration of 3 years beginning with the date of the grant of this permission.

**Reason:** In accordance with the provisions of Section 91 of the Town and Country Planning Act 1990 (as amended by Section 51 of the Planning and Compulsory Purchase Act 2004).

2. The development shall be undertaken in strict accordance with the approved documents for this Planning Permission which comprise:

1. the submitted planning application form, received 26th January 2021;
2. Site Location Plan, received 26th January 2021;
3. Site Remediation Report, received 22nd January 2021;
4. Preliminary Ecological Report, received 26th January 2021;
5. Shadow Appropriate Assessment under the Habitats Regulations, received 22nd January 2021;
6. Flood Risk Assessment, received 1st March 2021;
7. the Notice of Decision;
8. any such variation as may subsequently be approved in writing by the Local Planning Authority.

**Reason:** To define the permission.

3. A detailed Construction Environmental Management Plan should be submitted prior to works commencing on site, detailing mitigation required to protect the adjacent River Caldew, which is designated as part of the River Eden & Tributaries SSSI and River Eden Special Area of Conservation (SAC). The development shall then be undertaken in strict accordance with Construction Environmental Management Plan.

**Reason:** To ensure that the proposed development does not have an adverse impact on the River Eden & Tributaries SSSI and River Eden Special Area of Conservation (SAC) in accordance with Policy GI3 of the Carlisle District Local Plan 2015-2030.

4. The proposed remediation works shall be undertaken in strict accordance with the mitigation measures set out in the Preliminary Ecological Report (received 26th January 2021).

**Reason:** To ensure that the proposed development does not have an

adverse impact on protected species or on the River Eden & Tributaries SSSI and River Eden Special Area of Conservation (SAC) in accordance with Policy GI3 of the Carlisle District Local Plan 2015-2030.

5. The development hereby permitted must not be commenced until such time as a scheme to ensure access to and maintenance of existing flood defences has been submitted to, and approved in writing by, the local planning authority. The scheme shall be fully implemented and subsequently maintained, in accordance with the scheme's timing/ phasing arrangements, or within any other period as may subsequently be agreed, in writing, by the local planning authority.

**Reason:** To ensure the structural integrity of the existing flood defences thereby reducing the risk of flooding.

6. No development other than that required to be carried out as part of an approved scheme of remediation shall be commenced until a detailed remediation scheme to bring the site to a condition suitable for the intended use (by removing unacceptable risks to human health, buildings and other property and the natural and historical environment) has been prepared. This is subject to the approval in writing of the Local Planning Authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

**Reason:** To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors.

7. The approved remediation scheme must be carried out in accordance with its terms prior to the commencement of development other than that required to carry out remediation, unless otherwise agreed in writing by the Local Planning Authority. The Local Planning Authority must be given two weeks written notification of commencement of the remediation scheme works.

Following completion of measures identified in the approved remediation scheme, a verification report that demonstrates the effectiveness of the remediation carried out must be produced, and is subject to the approval in writing of the Local Planning Authority.

**Reason:** To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely

without unacceptable risks to workers, neighbours and other offsite receptors

8. In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken and where remediation is necessary a remediation scheme must be prepared, which is subject to the approval in writing of the Local Planning Authority. Further guidance can be found on the Carlisle City Council website “Development of Potentially Contaminated Land and Sensitive End Uses – An Essential Guide For Developers.”

Site investigations should follow the guidance in *BS10175:2011 (or updated version) “Investigation of Potentially Contaminated Sites.- Code of Practice ”*.

Following completion of measures identified in the approved remediation scheme a verification report must be prepared, which is subject to the approval in writing of the Local Planning Authority.

**Reason:** To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors.

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