

Planning Committee

Wednesday 28 April 2021

Late Observations Schedule

Schedule Items

<u>Item</u>	<u>App No</u>	<u>Observations</u>
1	20/0357	<p>The late observations come from 4 sources and so are listed in the order below with each observation followed by an officer response, with a further officer clarification provided to summarise the implications at the end of this document.</p> <ol style="list-style-type: none">1) MP Letter2) Newton Resident Association 19 April3) Newton Resident Association 27 April4) Additional Local Resident Comments5) Applicant Clarification

Representation 1 – MP Letter

Representation

The letter is dated 22 April and was received in the planning office on 27 April. It includes an email which seems to be from the Newton Resident Association which repeats comments which are covered elsewhere in this Late Observations Schedule, but the specific comments made by Mark Menzies MP are:

- a) That the proposal asks for the conditions placed on the site by the Secretary of State to be removed, and that this is entirely unacceptable.
- b) That the Secretary of State imposed these conditions to ensure that the site would be developed legally and safely, and the MP is now concerned that this is not the case for residents on the site and those around it
- c) To loosen or remove those conditions would be inappropriate and send a message that planning conditions do not need to be adhered to in Fylde
- d) He expresses concern that the timeframe allowed for objections to the application to be made is inadequate
- e) He asks that the concerns are put to members of the Planning Committee

Officer Comments

With reference to the numbering system used above the officer comments are as follows:

- a) The proposal does not ask for any of the conditions to be removed, rather it asks that the contamination remediation works are undertaken in a different manner to that previously accepted, with all other conditions retained.
- b) Whilst this is clearly the MP's opinion, the officer recommendation, based on advice received from the Environment Agency and the council's Environmental Protection Team, is that the revised controls provide appropriate protection for both future residents of the site itself and existing neighbouring residents
- c) As point a), the conditions are not being loosened or remove

- d) The application was received in May 2020 and attracted comments from the Newton Resident Association, Parish Council and others. These highlighted a number of areas where they felt the proposal was deficient, and these were helpful to officers' in securing clarifications over those areas as is set out in the report. Accordingly, the proposal has been subject to the statutory consultation process, and that process has attracted comments which have been incorporated in the scheme now presented to Committee.
- e) As provided in this schedule

Representation 2 - Newton Resident Association 19 April

Representation

The 19 April correspondence is included here in full for reference:

"Our 4 immediate concerns are:

1) The following is required:

- a) The perimeter bund was created during the initial site clearance activities and a central waste mound was created following subsequent excavations and clearance work on the site, and therefore is likely to contain hazardous waste (as cyanide together with chrysotile and amosite asbestos has been found on the site due to prior use). In order for this material to be disposed of via the correct landfill route it must be effectively characterised. To date the bunds and mounds have not been characterised, therefore from an environmental and safety standpoint we request it is appropriately sampled prior to disposal.*
- b) An effective management plan must be put in place for any hazardous materials identified and followed by the persons handling removing the waste in compliance with the appropriate HSE guidelines for the materials. The applicant does not appear to have documented the need for a management plan.*
- c) The transportation of both hazardous and non-hazardous waste from the site to the appropriate licenced landfill site(s) must be carried out by a contractor with a waste carriers licence. This needs to be performed as defined in Statutory guidance the 'Waste duty of care: code of practice'. Evidence of correct disposal must be obtained.*
- d) We request that the Environmental Health Officer and Planning Enforcement Officer from FBC provide the necessary rigorous oversight, to ensure that these points together with all the other requirements of the remediation plan are effectively implemented and not discharged in an inappropriate manner.*

2) How will the correct boundary lines be established and agreed with adjoining neighbours? Residents previously expressed concerns when the bund at the rear of the site was created.

3) Is a new or amended site plan required? The previous plan stated "ex grassed bund" - residents would like to know what this would be replaced with.

4) Correspondence from the EA on 20 August 2018 to the NRA solicitor regarding a proposed Package Treatment solution for foul drainage, stated...

"Following the site visit on 17 May 2018 and inspection of the proposed receiving water, the Officer is of the opinion that the discharge will not meet the requirements of current General Binding Rules. This is chiefly because continuous adequate flow in the watercourse cannot be guaranteed throughout the year.

A legal discharge of sewage may be possible through an Environmental Permit should someone wish to apply. To date we have not received such an application, and we cannot predict the outcome of that. We have been in contact with applicant and informed them of this position.”

The complete correspondence and context of the above was in an email from the NRA copied to Mr Stell and Mr Evans on 22 March 2019.

The applicant continues to propose a Package treatment plant but does not appear to have requested an Environmental Permit.

Without an approved solution for foul drainage, a detailed relevant remediation plan cannot be formulated. Therefore this remediation plan should not be allowed.”

Officer Comments

To assist Members in the points raised by the 19 April representation the following comments are provided with reference to their numbering system.

1a) The agenda report explains that the intention is to remove the central bunds off site as set out in the applicant's latest proposals and secured through condition 13 and verified through condition 14. Clarification on the intended treatment of the perimeter bund has been sought as set out below and it is to be removed.

1b) The report indicates that the work on site will be undertaken following appropriate risk assessments and with appropriate PPE. This is a matter that is within the remit of the HSE and this is reinforced through condition 13 with reference to the applicant's stated intention.

1c) The movement and disposal of contaminated waste is regulated by the Environment Agency through their permitting regime and so the applicant will need to comply with this in the same way that any developer does. The encapsulation of contamination on site will reduce the need to transport contaminated material off site.

1d) The request for monitoring is noted. Officers do not routinely attend site to monitor activities, but will be available if necessary

2) The boundary of the site is dictated by the land registry deeds to the site and is not a matter that the local planning authority has a role in.

3) This grass bund is the subject of a further clarification with the applicant as noted below and referred to in point 1a above.

4) The Environmental Permit regime is separate legislation to the planning legislation administered by Fylde Council, and so there is no obligation for a permit to be in place in advance of a the grant of planning permission or vice versa. Therefore, the absence of a Permit (if that is the case) does not impact on the council's ability to determine this application.

Representation 3 - Newton Resident Association 27 April

Representation

This representation has been sent to all members of the Planning Committee so is not included in full here but the points raised are summarised as follows:

- a) Condition 14 timescale – This relates to the verification of the contamination remediation works. The approved scheme required that a verification report was submitted prior to any occupation of the site, whereas the proposal in this

application is that this be received no later than 8 weeks following first occupation. The NRA described this as '*a non trivial weakening of the condition which allows occupation together with potential for associated health implications, on land that is agreed to be contaminated prior to any evidence of remediation*'.

- b) Condition 14 enforcement – The NRA refer to the difficulties of enforcing this condition when the site is occupied
- c) Condition 14 bund removal – The NRA highlight that the scheme involves the removal of perimeter bunds, and that there is no knowledge of what these could contain so they suggest that they should be 'characterised' prior to the remediation and disposal plans being agreed.
- d) Foul drainage condition - The NRA quote the EA as stating that this does not meet their binding rules and so a permit is required from the EA. They suggest that this may not be forthcoming. They state that a site remediation scheme can only be approved once an acceptable foul sewage scheme has been agreed
- e) External Works / Landscaping – they highlight that this plan is now incorrect as the removal of the bund means that there is no longer any clarity over the boundary between the site and neighbouring gardens is to be treated
- f) Remaining conditions – The NRA refer to a number of conditions which include a reference "Unless alternative details are agreed by the LPA". They believe that this allows FBC planning to vary these conditions without any further consultation with local residents and other interested parties.
- g) Timescale of decision – The NRA express a view that the council is fast-tracking a decision on this application without allowing local residents and interested parties the time to comment in advance of the Committee meeting
- h) Recommendation - They believe that the application should be refused

Officer Comments

Using the numbers in the comments the officer views are as follows:

- a) Condition 14 timescale – The condition is drafted to reflect the suggestion put forward by the applicant's environmental consultant. On reflection of this point, officers accept that the 'pre-occupation' submission as set out in the original wording of the contamination condition was a more appropriate timescale. As such Committee are recommended to support a revision to condition 14 on the agenda papers to revise the timing of the submission and approval of this report to be prior to any occupation on the site
- b) Condition 14 enforcement – Addressed by point a)
- c) Condition 14 bund removal – The wording of condition 13 as drafted requires that these areas of potentially contaminated material are appropriately removed, and the wording of condition 14 requires that this is verified prior to occupation. This is considered to provide the necessary protection for all and is the scheme that was previously agreed for the remediation of the whole site.
- d) Foul drainage condition - A foul drainage scheme for the site has previously been approved by Fylde Council through the decision on application 17/0062. This scheme proposed the installation of a package treatment plant on the site with a discharge to a watercourse. The EA advised that under the 'general binding rules' if the discharge is not to a watercourse that flows all year then a permit may be required. The need for a permit and the likelihood of one being received is a matter for the applicant and the EA with these obligations being highlighted through the decision on application 17/0062 and to be highlighted through this decision. In the event that an alternative foul drainage solution is required then the wording of condition 11 on the agenda papers is designed to allow that to be the subject of a further 'condition discharge' application to Fylde Council which would be the subject of consultation with the EA prior to its determination. Accordingly officers believe that there is an appropriate mechanism in place to ensure that the developer is aware of the possible need for further consents, and

- that an arrangement is in place to allow alternative solutions to be proposed in the event that a Permit is needed and is not forthcoming.
- e) External Works / Landscaping – whilst that is correct it is likely that simple timber fence would be erected using permitted development rights around these boundaries by either landowner, or in joint agreement. An additional condition to require details of this boundary to be agreed and implemented could be imposed if Committee felt it to be appropriate.
 - f) Remaining conditions – The proposed wording is intended to allow for situations, such as those discussed above with regards to foul drainage, to be accommodated in the decision given the time that has passed since the details were first agreed. This wording will not allow for any future informal variation of the conditions themselves, but will allow for a further 'condition discharge' application to be made if needed and is an appropriate practical measure to manage the implementation of a development.
 - g) Timescale of decision – The application has been with the council for a decision for almost 12 months, and has been the subject of extensive consultation, with the additional information provided in direct response to shortcomings that were, in part, identified by the NRA. As such officers are confident that the statutory consultation process has been followed and believe that local residents and interested parties have had a full opportunity to be actively involved in the decision-making process.
 - h) Recommendation - Noted, but officers believe the recommendation is correct, subject to the revisions set out at the end of this Late Observations schedule

Representation 4 - Additional Resident Comments

Representation

Two local residents have provided comments which are summarised as follows:

- a) If the bunds on site are to be removed, as these comprise material that has been scraped off the site then there is a need to sample these to establish the nature of any contaminants prior to their removal from site.
- b) As the bund was designed to provide privacy then what is provided as a replacement for that.
- c) If a 'sewerage treatment package plant' is to be used to deal with the foul water generated on site then this needs to be approved by the Environment Agency, and the resident believes that there are indications that this would not be the case. The developer should provide an alternative solution for this eventuality.

Officer Comments

Using the numbers in the comments the officer views are as follows:

- a) This is covered by draft condition 13 parts c) and d) which require that material is removed off site using the appropriate techniques and safety precautions.
- b) The bund is not of a height that it would provide privacy and so it would always have been the case that a fence would be installed in this location to provide that. This can be erected in that location as permitted development up to a height of 2m.
- c) Condition 11 requires that the approved scheme for foul drainage is implemented but allows for an alternative to be proposed and approved if needed. There is a note suggested on the agenda papers to highlight the permitting regulation requirements.

Representation 5 - Applicant Clarification

The applicant's agent was asked to clarify the intention regarding the 'existing grass bund' that is indicated on the site plan following a query over this raised by the NRA as set out above, and in response he has confirmed that this material is to be removed from site.

Overall Officer Conclusion to Representations

Whilst there are concerns expressed by Mark Menzies MP and the Newton Resident Association over the officer recommendation on the basis that it is said to reduce or weaken the controls that apply to the development, that is not the case. The effect of granting this planning permission would be to establish a planning permission that sits alongside that allowed previously and which would retain the same level of control over the development, and would in the majority of ways simply repeat the controls that are imposed through that planning permission by requiring the implementation of the previously approved details. In effect, the only significant variation from the original permission relates to the method of contamination remediation and verification which is revised to an alternative, but still appropriate methodology, for allowing the site to be safely developed. The process of varying planning conditions is provided for in legislation, namely Sn 73 of the Town and Country Planning Act 1990.

Accordingly the recommendation is unchanged from that set out in the agenda papers, other than it is suggested that the wording of conditions 13 and 14 are amended as follows:

- Condition 13 should be revised to add "*Any mounds of material on site and along the northern boundary of the site shall be removed off site*" as a mechanism to secure these works,
- Condition 14 should be revised to add a reference to verifying that this activity is undertaken using appropriate techniques and disposal locations, and to replace the timing of the receipt of the verification report to be prior to first residential occupation of the site.