

High Peak Borough Council
Development Control
Municipal Buildings Market Place
Glossop
Derbyshire
SK13 8AF

Our ref: LT/2022/127333/01-L01
Your ref: HPK/2022/0468
Date: 06 December 2022

Dear Sir/Madam

**NEW COMMERCIAL DEVELOPMENT COMPRISING TWO NEW BUILDINGS AND
ASSOCIATED CAR PARKING**

GAS WORKS SITE HORWICH END, NEW ROAD, WHALEY BRIDGE, SK23 7JZ

Environment Agency Position

Flood Risk

We have reviewed the FRA by FLO (ref: 764/Revision_B) and have the following comments. The commentary in section 8.1 of the FRA refers to the EA guidance note on climate change allowances which identifies the proposals as “minor development”. Please note that this reference is in relation to determining allowances on the EA’s previously issued climate change guidance sheet and should not be confused with the definition of minor development in the NPPF PPG. (We no longer issue this local guidance since the update to national climate change guidance on UKCP19 projections for peak river flow allowances of July 2021.) [Paragraph 051](#) of the NPPF PPG outlines what is considered “minor development” in flood risk terms. We would also point out that the applicant appears to be using the local climate change guidance document as an allowance or “freeboard” to add to flood levels for an acceptable floor level. The guidance was intended for basic assessment of risk where climate change enhanced flood levels were not available. For this location modelled levels with climate change allowances have been provided.

However, from review of the levels, we would not raise issue with the proposed development and floor level of 170.0m AOD subject to acceptable compensatory flood plain storage being provided. Proposals for this are set out in appendix G of the FRA. Whilst we have no flood risk related objections to the principles shown, the notes on drawing 385 DR-100 P2 acknowledge “Potential new retaining wall required” adjacent to New Road. From section B-B on the drawing, there appears a considerable amount of material to excavate which could have stability implications for the highway. The sections drawing no. 1695.PL05 also shows this. No information is shown in relation to the form of retaining structure that would be necessary. We recommend your highways engineers comment on this if they have not already done so.

If you are minded to approve the application The proposed development must proceed in strict accordance with this FRA (ref: 764/Revision_B) and the mitigation measures identified as it will form part of any subsequent planning approval. Any proposed changes to the approved FRA and / or the mitigation measures identified will require the submission of a revised FRA as part of an amended planning application.

Advice to LPA- Sequential Test

Environment Agency
Trentside Offices Scarrington Road, West Bridgford, Nottingham, NG2 5FA.
Customer services line: 03708 506 506
www.gov.uk/environment-agency

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The FRA makes reference to the sequential test of NPPF in section 7 of the report. There is no evidence in the FRA that the sequential test has been undertaken for the site. The FRA makes reference to Table 3 of the PPG (now [table 2](#) following the PPG update in August 2022). Please note that compliance with table 2 does not imply that the requirements of the sequential test have been met. Application of the sequential test is ultimately for the LPA to determine. The proposal should be subject to the sequential test of the NPPF as outlined from paragraph 023 of the PPG.

Advice to applicant – Permitting

This development may require a permit under the Environmental Permitting (England and Wales) Regulations 2016 from the Environment Agency for any proposed works or structures, in, under, over or within eight metres of the bank of Randall Carr Brook which, is designated a 'main river'. Some activities are also now [excluded](#) or [exempt](#). A permit is separate to and in addition to any planning permission granted. Further details and guidance are available on the GOV.UK website: <https://www.gov.uk/guidance/flood-risk-activities-environmental-permits>.

Groundwater and Contaminated Land

We have not reviewed all the reports in detail as the information appears to be substantially the same as the reports we saw under LT/2021/126559/01.

With respect to assessing risks to controlled waters we note that the site history includes former gasworks which pose a high risk of contamination being present on site.

The site environmental setting is drift comprising alluvium Secondary A aquifer overlying Pennine Lower Coal Measures Secondary A aquifer bedrock. The site is located within Zone 3 of a Source Protection Zone for a potable groundwater abstraction to the south and 40m east of a Drinking Water Protected Area surface water safeguard zone. Randal Carr Brook (WFD Waterbody GB112069060860) runs through the site and there is also a culverted water course to the east which feeds into the Peak Forest Canal to the north.

Controlled waters are considered to be particularly sensitive in this location due to the Secondary A Aquifer in both drift and solid geological deposits and the presence of Randal Carr Brook on site.

A current desk study report is required in order to demonstrate that the current environmental setting of the site has been characterised.

The site investigation and remedial strategy reports are now in excess of 7 years old and are therefore the site characterisation data is not considered to be representative of current site conditions. Controlled waters risk assessment will also require updating as the previous reports were produced before the Water Framework Directive (Standards and Classification) Directions (England and Wales) 2015 came into force.

Review of the Interpretative Site Investigation Report, New Road Whaley Bridge, RSK, January 2015 noted that:

- The site boundary for the current planning application is smaller than the site boundary shown in this report.
- Groundwater flow has been found to be to the north/northwest in accordance

with Randall Carr Brook and surface water levels indicate that shallow groundwater is in continuity with the brook.

- Elevated concentrations of cyanide, ammonium, PAHs, and TPH have been found in soil and groundwater. Oily sheen was noted on groundwater. DNAPL/LNAPL contamination is potentially present on site due to the former gasworks land use.
- Pollutant linkages with respect to controlled waters have been identified for on and off-site sources with pathways to the underlying Secondary A aquifers and Randal Carr Brook.
- The controlled waters risk assessment requires updating in accordance with the Environmental Quality Standards set out in the Water Framework Direction (Standards and Classification) Directions (England and Wales) 2015.

Review of the Outline Remedial Strategy, Whaley Bridge, RSK, March 2015 noted that:

- The remedial strategy will require updating with current site investigation data and a controlled waters risk assessment in line with current standards.
- Contamination associated with gasworks land use has been identified in soil and shallow groundwater on the site.
- Pollutant linkages to controlled waters have been identified as likely to be occurring.
- The report proposes the risks to groundwater to be addressed by localised excavation of spent oxide. No remedial options and remedial strategy have been provided for other contaminants of concern due to the report stating that active remediation is likely to be unwarranted and benefits gained are unlikely to outweigh the costs. This position requires updating in accordance with current standards and a remedial options appraisal including a cost benefit analysis is required in order to support such an approach.
- It is noted that impacted groundwater may continue to migrate onto the site from the adjacent off-site gasworks which are upgradient of this site.

Please provide updated site investigation reports, controlled waters risk assessment and remedial strategy in accordance with:

- Follow the risk management framework provided in [Land Contamination: Risk Management](#), when dealing with land affected by contamination
- Refer to our [Guiding principles for land contamination](#) for the type of information that we require in order to assess risks to controlled waters from the site - the local authority can advise on risk to other receptors, such as human health
- Consider using the [National Quality Mark Scheme for Land Contamination Management](#) which involves the use of competent persons to ensure that land contamination risks are appropriately managed
- Refer to the [contaminated land](#) pages on gov.uk for more information

Based on the information received we consider this site to pose a risk to controlled waters and recommend the following conditions:

Development on land affected by contamination

The previous use of the proposed development site as gasworks presents a high risk of contamination that could be mobilised during construction to pollute controlled waters. Controlled waters are particularly sensitive in this location because the proposed development site is:

- within source protection zone 3
- Randal Carr Brook Water Framework Directive Waterbody is present on site
- located upon a secondary aquifer A, 40m east of a Safeguard Zone.

The application's site investigation reports demonstrates that it will be possible to manage the risks posed to controlled waters by this development. Further detailed information will however be required before built development is undertaken. We believe that it would place an unreasonable burden on the developer to ask for more detailed information prior to the granting of planning permission but respect that this is a decision for the local planning authority.

In light of the above, the proposed development will be acceptable if a planning condition is included requiring the submission of a remediation strategy. This should be carried out by a competent person in line with paragraph 183 of the National Planning Policy Framework.

Without these conditions we would object to the proposal in line with paragraph 174 of the National Planning Policy Framework because it cannot be guaranteed that the development will not be put at unacceptable risk from, or be adversely affected by, unacceptable levels of water pollution.

Condition

No development approved by this planning permission shall commence until a remediation strategy to deal with the risks associated with contamination of the site in respect of the development hereby permitted, has been submitted to, and approved in writing by, the local planning authority. This strategy will include the following components:

1. A current preliminary risk assessment which has identified:
 - all previous uses
 - potential contaminants associated with those uses
 - a conceptual model of the site indicating sources, pathways and receptors
 - potentially unacceptable risks arising from contamination at the site
2. A current site investigation scheme, based on (1) to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off-site.
3. The results of the site investigation and the detailed risk assessment referred to in (2) and, based on these, a current options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken.
4. A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in the remediation strategy in (3) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

Any changes to these components require the written consent of the local planning authority. The scheme shall be implemented as approved.

Reason(s)

To protect groundwater quality in the underlying Secondary A aquifers and surface water quality in Randal Carr Brook.

To ensure that the development does not contribute to, and is not put at unacceptable risk from or adversely affected by, unacceptable levels of water pollution in line with paragraph 174 of the National Planning Policy Framework.

Condition - Verification report

Prior to any part of the permitted development being occupied/brought into use, a verification report demonstrating the completion of works set out in the approved remediation strategy and the effectiveness of the remediation shall be submitted to, and approved in writing, by the local planning authority. The report shall include results of sampling and monitoring carried out in accordance with the approved verification plan to demonstrate that the site remediation criteria have been met.

Reason(s)

To protect groundwater quality in the underlying Secondary A aquifers and surface water quality in Randal Carr Brook.

To ensure that the site does not pose any further risk to the water environment by demonstrating that the requirements of the approved verification plan have been met and that remediation of the site is complete. This is in line with paragraph 174 of the National Planning Policy Framework.

Condition - Previously Unidentified Contamination

If, during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the local planning authority) shall be carried out until a remediation strategy detailing how this contamination will be dealt with has been submitted to, and approved in writing by, the local planning authority. The remediation strategy shall be implemented as approved.

Reason(s)

To protect groundwater quality in the underlying Secondary A aquifers and surface water quality in Randal Carr Brook

To ensure that the development does not contribute to, and is not put at unacceptable risk from or adversely affected by, unacceptable levels of water pollution from previously unidentified contamination sources at the development site. This is in line with paragraph 174 of the National Planning Policy Framework.

Condition - SuDS Infiltration of surface water into ground

No drainage systems for the infiltration of surface water to the ground are permitted other than with the written consent of the local planning authority. Any proposals for such systems must be supported by an assessment of the risks to controlled waters. The development shall be carried out in accordance with the approved details.

Reason(s)

To protect groundwater quality in the underlying Secondary A aquifers and surface water quality in Randal Carr Brook

To ensure that the development does not contribute to, and is not put at unacceptable

risk from or adversely affected by, unacceptable levels of water pollution caused by mobilised contaminants. This is in line with paragraph 174 of the National Planning Policy Framework.

Condition - Piling/boreholes/tunnel shafts/ground source heating and cooling systems– lack of information – details to be agreed

Piling/ground source heating and cooling systems using penetrative methods shall not be carried out other than with the written consent of the local planning authority. The development shall be carried out in accordance with the approved details.

Reason(s)

To protect groundwater quality in the underlying Secondary A aquifers and surface water quality in Randal Carr Brook

To ensure that the proposed development, does not harm groundwater resources in line with paragraph 174 of the National Planning Policy Framework.

Advice to Applicant/LPA – Waste on Site

The CL:AIRE Definition of Waste: Development Industry Code of Practice (version 2) provides operators with a framework for determining whether or not excavated material arising from site during remediation and/or land development works is waste or has ceased to be waste. Under the Code of Practice:

- excavated materials that are recovered via a treatment operation can be reused on-site providing they are treated to a standard such that they are fit for purpose and unlikely to cause pollution
- treated materials can be transferred between sites as part of a hub and cluster project
- some naturally occurring clean material can be transferred directly between sites

Developers should ensure that all contaminated materials are adequately characterised both chemically and physically, and that the permitting status of any proposed on-site operations are clear. If in doubt, the Environment Agency should be contacted for advice at an early stage to avoid any delays.

We recommend that developers should refer to:

- the [position statement](#) on the Definition of Waste: Development Industry Code of Practice
- The [waste management](#) page on GOV.UK
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Advice to Applicant/LPA - Waste to be taken off-site

Contaminated soil that is (or must be) disposed of is waste. Therefore, its handling, transport, treatment and disposal are subject to waste management legislation, which includes:

- Duty of Care Regulations 1991
- Hazardous Waste (England and Wales) Regulations 2005
- Environmental Permitting (England and Wales) Regulations 2016
- The Waste (England and Wales) Regulations 2011

Developers should ensure that all contaminated materials are adequately characterised both chemically and physically in line with British Standard BS EN 14899:2005 'Characterization of Waste - Sampling of Waste Materials - Framework for the Preparation and Application of a Sampling Plan' and that the permitting status of any proposed treatment or disposal activity is clear. If in doubt, the Environment Agency should be contacted for advice at an early stage to avoid any delays.

If the total quantity of hazardous waste material produced or taken off-site is 500kg or greater in any 12 month period, the developer will need to register with us as a hazardous waste producer. Refer to the [hazardous waste](#) pages on GOV.UK for more information.

Yours faithfully

Miss Katie Hancock
Planning Advisor