

DC/18/62046

<p>Mr Mark Satchwell Sandwell MBC Sandwell Council House Freeth Street Oldbury B69 3DE</p>	<p><b>Construction of new cemetery including: site remediation, widening of existing access off Powke Lane; office building and operational yard, parking, CCTV, lighting, landscaping and associated works.</b> Powke Lane Open Space R/o 55-91 (odds) Powke Lane Rowley Regis</p>
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**Date Valid Application Received 20th July 2018**

**1. Recommendations**

Subject to the Canal and Rivers Trust and the Wildlife Trust removing their objections, and authorisation by Full Council, approval is recommended subject to:

- i) Drainage details/SUDS plan/implementation
- ii) Training/Job opportunities plan/implementation
- iii) Coal Authority site investigation/remedial measures/implementation
- iv) All burials in the cemetery shall be: a minimum of 50m from a potable groundwater supply source, a minimum 30m from a water course or spring, a minimum of 10m distance from field drains, no burial into standing water and the base of the graves must be above the local water table
- v) A revised lighting scheme taking into account the wildlife corridor, and ensuring that there is no light spillage onto neighbouring properties,
- vi) Noise details of any fixed plant equipment
- vii) Construction/site preparation limited to Monday to Friday 08:00 to 18:00 hours, Saturdays 09:00 to 16:00 hours, no construction/site preparation activities on Sundays and Bank Holidays, including deliveries to the site
- viii) No burning of waste during the site clearance, site works and construction stages,
- ix) A dust mitigation management plan should be provided and

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- retained as such.
- x) A detailed landscaping scheme to include details of tree loss plan with replacement, and identify species of plants to be used with the SUD,
  - xi) Opening times as per the application,
  - xii) Landscaping and Ecological Management plan submitted, agreed and implemented ,
  - xiii) A Construction and Ecological Management Plan submitted, agreed and implemented,
  - xiv) A SINC Management Plan to those areas within the site, submitted, agreed and implemented

## **2. Observations**

At your last Committee, Members resolved to visit the site. The application has been reported to your Committee due to the number of objections received and that the proposal is a departure from the development plan in that the land proposed for development has an open space allocation.

### **Site Surrounding**

The application site forms part of Powke Lane Public Open Space provision and in particular the area of open space behind 55-91 Powke Lane, Rowley Regis. The area is a mixture of residential properties to the south and east, the canal network to the west with industrial properties to the north. To the far east of the site (on the opposite side of Powke Lane) is Rowley Regis Crematorium.

### **Planning History**

During the late 1970's the site was reclaimed from derelict land to public open space and is now allocated as such within the Council's adopted local plan.

### **Current Application**

The current application is to change the use of part of Powke Lane open space to a cemetery. This will include site remediation works, widening of the existing access off Powke Lane, erection of an office building with toilets and operational yard, creation of

a car park. Further associated works including CCTV, lighting, and landscaping are proposed.

The office and toilet building would measure 7.0m (W), a depth of 5.3m, with a maximum height of 2.7m.

The applicant proposes to allow access to the cemetery seven days per week (including Bank Holidays) during the following times/months:

October till March: 09:00 hours till 16:30 hours, and

April till September: 09:00 hours till 19:00 hours.

## **Publicity**

The application has been publicised by extensive neighbour notification letters along with site notices around the outside of the site (and further along Powke Lane and Higgs Field Crescent, Rowley Regis), and by press notice. Statutory and non-statutory consultations have also been undertaken.

At the time of writing this report 23 different individuals have written in (several objectors have written in more than once) and two petitions totalling over 800 signatures of objection have been received. The reasons for objecting can be summarised as:

- i) The development would result in the loss of greenfield space which has been designated as public open space in the Council's Local Development Plan. The site is important to different users such as joggers, walkers, dog trainers and other recreation activities such as fishing and football. Amended plans should be provided to show extended walk ways for end users;
- ii) The area is a Site of Importance for Nature Conservation (SLINC). The removal of trees and hedges would disturb the existing wildlife, including badgers sets;
- iii) Capping the existing mine shafts would cause substantial noise and vibrations that would impact on the existing wildlife;
- iv) There has been a lack of consultation with local residents;

- v) Highway Safety concerns with users entering the site from a busy road;
- vi) Light pollution from the proposed lights would cause disturbances to residents and existing wildlife;
- vii) Loss of privacy to the rear of residential properties on Powke Lane;
- viii) Concerns over the security of the site in that a 2.0m high paladin mesh fencing would be inadequate;
- ix) The site would become an area for youths to congregate, take drugs, drink etc.;
- x) Who will maintain the public toilets?
- xi) Concerns over the hours of opening of the site and the impact this may have on the quality of life for local residents;
- xii) The close proximity between grieving families and the recreation ground to the south, in particular the baby section;
- xiii) The car park has limited space, and if full, vehicles will be parked outside residential properties leading to friction with residents and
- xiv) The area to the south of the site is earmarked for future cemetery redevelopment and residents would be left with no recreation space.

## **Statutory Consultee Responses**

### Planning Policy

This proposal is on land that is designated in the adopted Site Allocations Development Plan (SAD) as Community Open Space, a Wildlife Corridor, and Site of Importance for Nature Conservation.

The proposal is therefore a departure from the Adopted Plan and should 'not usually be granted' (Revised NPPF para 12). This is because with regards to applications "determination must be

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made in accordance with the plan unless material considerations indicate otherwise”.

With regard to those material considerations, the applicants have shown there is an identified shortage of burial land in the Borough. Other sites and methods have been evaluated for suitability and have been discounted as unsuitable.

In addition an example of minimising the adverse effects of this proposal would be to mitigate the loss of a limited area of the Wildlife Corridor by introducing a sustainable urban drainage basin south of the proposed carpark linking into the canal arm, which will allow new marginal and aquatic species and wetland species to be introduced at this location. Similarly, measures to mitigate and compensate for tree loss are proposed.

Furthermore, the part of the site with the most valuable nature conservation value, namely the Site of Importance for Nature Conservation (SINC) falls outside the area to be significantly changed. Measures to enhance the nature conservation value of the SINC are proposed through thinning of trees to allow more light and introducing a management regime.

Where possible, the proposal has complied with other policies and proposals in the adopted plan. For example, the existing pedestrian access across the site will be preserved, whether the proposed cemetery is open or closed, providing access across the proposed site to the canal, and across Totnal Bridge to Wrights Lane. (BCCS TRAN4). Compensatory measures to enhance the existing footpaths across the site and the wider area are proposed in line with BCCS ENV6 Open Space, Sport and Recreation.

This aids sustainability goals in terms of walking choices, as does the provision of Electric Vehicle charging points to be provided in the car park under the Air Quality SPD.

The Sustainable Urban Drainage System (SUDS) provision complies with BCCS ENV5 as well as enhancing the wildlife habitat under BCCS ENV1.

In consultation with the Wildlife Trust it is proposed to enhance the canal corridor by clearance of undesirable vegetation, additional planting of native understory herbs and shrubs and herbs, and wildflower / bulb planting to the grass edges. This

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aligns with BCCS ENV4 Canals *to protect & enhance its nature conservation value.*

### Employment and Skills officer

It is recommended that a condition is placed on any approval requesting job training opportunities. Details of which have been forwarded to the applicant.

### Public Rights of Way Officer

The public right of way will remain open. The submitted Design and Access Statements states that access to this right of way will be retained after works for the cemetery have taken place and will not require diversion.

### Highways.

The proposed parking space numbers, and sizes are satisfactory.

### Environmental Health

No objections have been raised subject to the following conditions being attached to any approval:

- Noise details of any fixed plant equipment
- Construction/site preparation limited to Monday to Friday 08:00 to 18:00 hours, Saturdays 09:00 to 16:00 hours, no construction/site preparation activities on Sundays and Bank Holidays, including deliveries to the site
- Lighting plan ensuring that there is no light spillage onto neighbouring properties,
- No burning of waste during the site clearance, site works and construction stages,
- A dust mitigation management plan should be provided and retained as such.

### The Coal Authority

The Coal Authority records indicate that there are 8 mine entries within the site, or within 20m of the planning boundary. The built development aspects of the proposal have been designed around these coal mining hazards. To safeguard future users of

the site, the Coal Authority recommends that their standard site investigation/remedial measures condition be attached to any approval.

### Severn Trent Water

No objections, subject to the standard drainage conditions being attached to any approval.

### The Wildlife Trust

The Wildlife Trust in principle oppose this development however, they state that the Black Country Core Strategy policy ENV1 (Nature Conservation) states such development may be permitted if impacts are fully mitigated. The master plan has been designed to ensure the proposed site is placed on the area of lowest ecological value while ensuring a further enhancement of retained habitat and habitat creation is undertaken within the development and surrounding area.

In addition to habitat creation and enhancement detail the following requirements should be placed and controlled via planning conditions:

- The Waterfall Lane SINC and Potential Sites of Importance (PSI) should be surveyed and assessed against the SINC criteria to determine whether the site still fits the criteria of a SINC and to determine the correct management practices to enhance and maintain existing and retained habitats present on site;
- Creation of green infrastructure within the Waterfall Lane SINC and PSI which should be multifunctional; delivering biodiversity, amenity, and aesthetic benefits; to include education and interpretation boards for the habitats and species found on site and improvements to the existing public access on to site;
- To ensure avoidance of direct and indirect effects to the surrounding habitat and provide compensation for the loss of SINC and PSI area within the non-statutory site, they would require that areas based outside the development footprint should be placed under active management, prescribed within a landscape and ecological management plan, to be controlled via a planning condition and agreed

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by the Wildlife Trust / Local Planning Authority ecologist. The management plan will be based on survey findings from an update site walkover and assessment of the SINC and be in accordance with the SINC citation;

- A Landscape and Ecological Management plan should be produced and agreed by the Wildlife Trust / Local Planning Authority ecologist, detailing management practices to be undertaken on the retained, newly created and enhanced areas of habitat within the site; and
- A Construction and Ecological Management plan should be produced and agreed by the Wildlife Trust / Local Planning Authority ecologist; detailing the precautionary working methods for protected and priority species and the protection of retained habitats during site enabling works and construction.

Due to the proximity of the site to the Dudley Canal No.2 wildlife corridor and the canal feeder present within the site the drainage strategy devised for the planning application should include an appropriate pollution prevention strategy to ensure the risk of pollution from run-off during and post construction and changes to the status of hydrology within the canal feeder, that feeds into Dudley Canal, is prevented.

The applicant acknowledges the above and agrees to the imposition of these conditions on any approval.

### **Phase 1 Habitat Survey**

Both reports are based on a Phase 1 habitat survey undertaken in July 2016; as such the baseline data used within both reports are now currently 2 years old. Due to the time elapsed there is potential that significant changes could have occurred on site, which could alter the findings stated within the Ecological Appraisal and the baseline biodiversity value calculated within the Biodiversity Unit Calculations and Recommendation report.

Therefore, we would request an update site walkover was undertaken to ensure that no significant changes have occurred on site.

The applicant has agreed to carry out the above but have stated that this can only commence within a specific time of the year.

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Contact has been made with the Wildlife trust to request if this can be conditioned accordingly. Members will be verbally updated.

### **Protected / Priority Species**

The Phase 1 habitat survey and Ecological Appraisal report, undertaken by RSK Environment, recommended that reptile surveys are undertaken to determine the presence/absence of reptiles on site and inform mitigation, if required.

Common reptile species are listed under schedule 5 of the Wildlife and Countryside Act 1981 (as amended) making it an offence to intentionally or deliberately kill or injure any individual of such a species. As such a further report/survey is required. Again, a request to the Wildlife Trust to be able to deal with this by condition has been requested.

In addition, as stated within the Ecological Appraisal report, the habitat present on and adjacent to the site offers suitable foraging and commuting habitat for local bat populations. As the proposed work will result in minimal impact for foraging and commuting corridors for bats no further survey work would be required.

However, as the proposed development will result in an increase in lighting within the site area and surrounding habitat. The lighting design and layout plan detailing the proposed lighting can be conditioned to retain dark unlit corridors to reduce or avoid impacts though lighting to commuting routes for local bat populations. I recommend a revised lighting plan is produced in consultation with the Wildlife Trust to take this into consideration the above.

### **Canal and River Trust**

The Trust has reviewed the application but is unable to make a substantive response due to the absence of the following information:

The north west corner of the site is the location of a former canal arm/basin, and therefore it is important to ensure that this is fully sealed from the canal and that the canal itself is hydraulically sealed and does not allow water to pass between the site and the water space below ground level. The supporting information does

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not appear to consider this potential or identify with any certainty the existing situation, rather assuming that the canal will be hydraulically sealed. The information therefore does not provide for any mitigation or other works, should any be necessary. The existing situation should be properly identified, prior to the determination of the application in order that any necessary follow up works can be controlled via the imposition of conditions, if necessary. A request has been made to the Canal and Rivers Trust that this can be conditioned following further information send from the applicant. Members will be verbally updated.

Waterside lighting affects how the waterway corridor is perceived, particularly when viewed from the water, the towpath and neighbouring land, for example waterside lighting can lead to unnecessary reflection, glare and light pollution if it is not carefully designed. The proposed external lighting should not provide flood lighting to the canal corridor to show consideration for bats and other nocturnal species but be directed down and within the site. The light assessment provided only relates to lighting near the access and not within the site itself and this detail should be provided in order that any adjustments or alterations to its design or location can be made prior to the determination of the application.

The biodiversity calculator recommends planting *Calla palustris* in the SUD but the Canal and Rivers Trust would recommended that this plant is not used as it is not native and there is a risk that it could colonise the canal and become invasive. Therefore, request that the planting scheme be amended to use a more appropriate species in its place. Any provisions to increase diversity to include grassland, scrub and woodland bordering the canal would be welcomed. Tree management could be used to improve the diversity of the canal margins by reducing shade, but by planting further back away from the canal to maintain a screen/buffer.

The Trust welcomes the existing link from the towpath and bridge to the cemetery proposed, as it will allow visitors to access the site by means other than road going vehicles and enhancing their wellbeing. The applicant is aware of the above and is working with the Canal and Rivers Trust to agree a scheme that can be conditioned. Members will be verbally updated.

## Environment Agency

They have no objections subject to conditions to protect the existing water courses from contamination from buried bodies.

## Cadent

They have no objection, but have stated that a gas pipe is within the site and the developer should make contact with them if the application is approved. Copies of this and other correspondents have been passed onto the applicant for information/action.

## **Responses to objections**

I address the points raised by objectors in turn;

- i) It is accepted that the proposal is a departure from the Adopted Plan. However there is an accepted need for the Borough to meet its requirements for burial space. The applicants have demonstrated that there are no realistic alternative, and have also shown how the proposal can accommodate other policies of the development plan. Where feasible, mitigation and enhancement measures are proposed.
- ii) The Wildlife Trust has requested further reports and potential mitigation measures to protect the SINC.
- iii) The comments are noted and any remedial works can be conditioned by way of a wildlife management plan,
- iv) The Council has publicised the application by neighbour notification letters, site notices and advertised the application in the local press. It is understood that the applicant has made the plans available for residents to view at the existing crematorium. Due to the number of responses received, I am of the opinion that the consultation process has been carried out sufficiently.
- v) The Council's Highway Safety Officers has raised no objections.
- vi) A condition can be attached to any approval ensuring that there are limited lighting implications to local residents and the wildlife, however; given the opening times proposed,

there would be limited lighting impact which works around sunlight hours.

- vii) The existing woodland buffer would still remain being approximately 25m to 60m to the rear of resident's gardens of Powke Lane.
- viii) The fence would improve the security of the current area whilst still maintaining access to the canal network.
- ix) Youths can currently congregate on the site. The section of open space can be controlled and locked at certain times of the day, CCTV would be provided and a lighting scheme proposed, therefore all adding to the safety and security of local residents.
- x) The toilets will be part of the cemetery use and will be maintained by the operators.
- xi) The site currently can be used 24 hours per day. The opening times for the cemetery, as per the application, would control the impact of the new development on the quality of life of residents.
- xii) This of course is a very sensitive subject. The distance between the baby section and the adjacent recreation site is approximately 55m. This distance should limit any disturbances to grieving families.
- xiii) The Council's Highways Department has raised no objections. It is not unusual for users of the cemeteries to park along the access road in order to maintain their loved ones plots.
- xiv) This would require a further planning application where the cumulative impact on the potential loss of open space would be taken into consideration.

## **Planning Policy and Other Material Considerations**

Paragraph 47 of the NPPF states that planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise.

The proposal is contrary to the Council's development plan and is classed as a departure. A departure from the adopted plan can be agreed if there is a substantial need. In this case, the need for Sandwell to increase its cemetery capacity is a material planning consideration as to why the adopted local plan should be set aside in this instance.

Whilst not Green Belt land the site has similar characteristics and as the site is allocated as open space, it can be argued that the site should remain as such. Paragraph 145 of the adopted National Planning Policy Framework (NPPF) 2018 states:

*A local planning authority should regard the construction of new buildings as inappropriate in the Green Belt. Exceptions to this are:*

*...cemeteries and burial grounds...*

The Black Country Core Strategy policy ENV1 (Nature Conservation) seeks to safeguard nature conservations areas and SLINC by protecting important habitats and geological features where development proposals could negatively impact upon them. However, where, the strategic benefits of a development clearly outweigh the importance of a local nature conservation site, species, habitat or geological feature, damage must be fully mitigated. E.g. by improving wildlife movement or restoring habitats.

The above policy however does state:

*Adequate information must be submitted with planning applications for proposals which may affect any designated site or any important habitat, species or geological feature to ensure that the likely impacts of the proposal can be fully assessed. Without this there will be a presumption against granting permission.*

Habitat reports have been submitted as part of the application, however, the Wildlife Trust has recommended further reports. Members will be updated if these can be conditioned or if the applicant needs to be deferred until a time when these have been undertaken.

## **Conclusion**

This proposal is a departure from the Adopted Plan. However the provision of a new cemetery is an accepted need for the Borough to meet its requirements for burial space. The applicants have demonstrated there is no realistic alternative, and have also shown how the proposal can accommodate other policies of the development plan. In particular, where feasible, mitigation and compensatory and enhancement measures are proposed.

For these reasons, it is considered that this application has demonstrated valid material considerations why the application should not be determined in line with the adopted plan and why policy should be set aside in this case.

I therefore recommend this application for conditional approval.

**3. Relevant History**

DD/05407 - Reclamation of derelict land and redevelopment for playing fields, parks and other open spaces - Deemed approved – 20/09/1977.

**4. Central Government Guidance**

NPPF – Promotes sustainable development

**5. Development Plan Policy**

ENV1 – Nature Conservation

ENV4 – Canals

ENV5 – Flood Risk, Sustainable Drainage Systems and Urban Heat Island

ENV6 – Open Space, Sport and Recreation

TRAN4 – Creating Coherent Networks for Cycling and for Walking

**6. Contact Officer**

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