

Application No: 22/4863N

Location: Bombardier Transportation, WEST STREET, CREWE, CW1 3JB

Proposal: The demolition of the existing industrial buildings and structures (including the boundary wall along West Street) and the construction of 263 dwellings comprising 24 apartments and 239 houses, together with other associated works, including the provision of public open space, the laying out of roads and footways (with two new accesses from West Street), and hard and soft landscaping. Resubmission of application 18/0079N.

## **CONSULTATIONS:**

### **Legal Advice (Kings Counsel appointed by the Council):**

Whether it is appropriate to review the original s106 agreement and viability of the site is a matter of judgement which is ultimately down to the decision maker. Such an approach would be adopting a 'wide' approach to the consideration of the application. The advice comments that an Inspector at appeal may take a different and 'narrower' view.

There are considered to be flaws in the approach to the viability appraisal taken by both the developers and the Council's valuers. However, the key issue with the viability is that Countryside Properties owned part of the site and were then engaged by another company PRS REIT (who owned the other part of the site) to build the private sector rented properties. To test the viability position Counsel asked that the Council's consultant to value the development at the date of the Design & Build Contract [with PRS REIT] and at today, with what was considered a true reflection of viability. Both show that the contract price does not reflect market value and that the contributions sought are, thus, viable. As such it is considered that there are no viability reasons why a contribution cannot be sought.

**Education:** As set out in the officer's report, a sum of some £67,000 has already been received towards Education, however this is well below the policy requirement of £600,968.21 (minus the £67,000.00) already paid. In more recent discussions they have identified a particular area of need with regards to SEN (Special Educational Need) and they state:

*"There is a shortage of SEN places in Cheshire East and at present over 47% of pupils are educated outside of the borough, at great expense to the council. A new SEN school (Spring field, Crewe) is being built, which will deliver up to 80 places. An overall budget of £7,131,609.00 has been agreed at committee. There are still 60 places yet to be funded for this scheme, therefore the contribution of £136,500.00 would be attributed to here."*

**Highways:** In reference to recent discussions on the provision of electric vehicle (EV) charging, Highways have suggested that a pot of money could be provided that residents could apply for or would be available to install chargers on the public highway, either on site (once the roads are adopted by the Council) or within the local area.

## **REPRESENTATIONS:**

As set out in the officer's report a letter was received from residents as the report was being finalised. This raised a number of points which are considered in the Key Issues below.

The applicant has also responded in writing to these points and their comments are also included in the sections below.

## **KEY ISSUES:**

### **Flooding issues**

Residents have seen the comments from the Lead Local Flood Authority (LLFA) made recently and expressed concerns about the measures installed on the site. As set out in the officer's report these matters are being discussed with the LLFA, but that the flood risk strategy was signed off – and the relevant condition discharged, at the time of the original planning application on this site. Since this time, requirements have changed, but it is not considered appropriate to revisit this matter as the development met the requirements of the time. Members will need to be updated verbally on this matter when discussions on the LLFA are finalised.

The applicant has highlighted that the measures installed met all the requirements:

*“The site drainage system was required at the time to be designed to accommodate a 1 in 100 year storm plus 30% climate change. We have undertaken an as built survey to confirm the current capacity of the depression following the amendments to the slopes to alleviate the concerns of residents. This has confirmed that the current volume of the basin has the capacity to accommodate 1 in 100 year storm event plus 90% climate change, which is double what is required by the EA.”*

### **Building regulations**

Residents are asking whether the development meets certain Building Regulations requirements. As set out in the officer's report, the requirements are assessed at the time and cannot be applied retrospectively.

### **Section 106 Requirements**

The requirements of the previous application and the recommendations with this application are clearly set out in this report.

### **Verification of Clean Cover System in Gardens**

Residents are concerned about whether clean cover systems have been applied consistently across the site, and raised an example where a resident has found old building material at a depth of some 200mm when the cover system was to be some 600mm deep.

The general approach to the site is set out in the officer's report and both the Council and Countryside have worked together to ensure the required standards are met.

Environmental Health are hoping to visit this property in question to see if there are any individual circumstances in this case, and Members will need to be updated accordingly.

### **Concerns Over the Validity of the Last Soil Sample**

The applicant has confirmed the following:

The topsoil in the garden in question has been discussed between Countryside Partnerships and the Council's Environmental Health Officer (EHO). It was agreed to obtain an additional sample of the topsoil in this garden at the EHO's request. On the day the developers consultant attended the property, the topsoil was being removed by the resident, to be replaced with hardstanding. This hardstanding will break any potential pollutant pathways (soil ingestion and dermal contact) from the underlying Made Ground soils (which are also overlain by the chemically validated subsoil, further breaking any potential pollutant pathways). As such it was agreed with CEC that no sample needed to be submitted for analysis from the removed topsoil from this garden, and no assessment of the removed soils was required.

Should any residual topsoil remain, there is no concern regarding human health, as any potential exposure pathways from any potential elevated concentrations of determinands will be broken by the installed hardstanding.

The applicant's consultant confirmed that a single sample from the stockpile was taken, however, it was not sent for analysis on the basis it had been removed. All samples submitted for analysis between 2017 and 2023 have been taken by geo-environmental consultants. The exception to this is the most recent topsoil samples taken from Plot 30, which were obtained by another consultancy. No samples submitted for analysis and utilised in the chemical validation of soils during the remediation and enabling works have been taken or provided by any Countryside Partnerships staff members.

### **Enhanced Scrutiny of Public Open Space (POS) Usability**

Residents are concerned about the usability of the central area of POS within the site, and what it's function actual is – POS or flood storage. Again, this is touched on in the Officer's report, this area performs both functions, POS and flood storage at times of significant rainfall, as the original area would have done in the previous application.

The only change to the approved layout has been to excavate further at one end of the site to form a lower depression. Whilst this is not ideal making a more undulating area of POS, the depression is not considered significant, and during recent visits to the site since the works have been complete – following periods of very heavy rain, no significant standing water has been observed. The applicant has confirmed the space is designed to be dual purpose and conforms to the advice on SUDS design.

### **Concerns Over Imposition of Restrictions on Permitted Development Rights Without Consultation**

Environmental Protection are concerned that should residents in the future want to extend their properties they could interfere with the measures installed to prevent contamination (membranes/vents etc) and that this would not be regulated if a planning application were not required. As such they recommended that permitted development rights – for extensions, be removed.

Residents are concerned this has not been mentioned before and was not a requirement of the original permission.

The removal of permitted development rights will often be considered unreasonable unless there is clear justification which satisfies the legal tests for applying such conditions. The comments from the Environmental Protection team are noted however it is notable that it was not required on the previous application, but more importantly such matters are covered under other legislation – in this case, Building Regulations. Where there is other legislation outside of the Planning Acts it would be unreasonable to impose such a condition.

### **Viability/Section 106 Contributions**

As highlighted in the main report, the viability issue has been an unusual and complex matter resulting in two differing legal opinions over the reasonableness in 're-opening' the s106 and viability issue from the previous permission.

As set out above, the legal advice to the Council is that the development is viable and can make a further contribution to Section 106 requirements (in addition to the £100,000 already secured). The reasonableness of the ask in the light the legal advice does however have to be noted, so the scope of the contribution has to be tempered to a compromise position and one that also meet the necessary CIL Regulations.

In this case it is considered reasonable to seek for the development to meet the most pressing Educational need, that of Special Educational Need (SEN) and for a contribution towards Electric Vehicle Charging either on site if that proves to be feasible, or within the local area of some £25,000 the equivalent of some 2 or 3 installations. If that money is not spent within a 3 year period, it should be allocated to Primary Education.

### **CONCLUSION**

The application be recommended for Approval as per the main report but with the additional s106 legal agreement requirements to secure:

Special Education Need (SEN)  
£136,500.00

Contribution towards EV charging on site or in the local area to be made available for 3 years, but if not spent to go to Primary Education £25,000

And the deletion of Condition 12 (Removal of PD Rights)