

DELEGATED REPORT

Report by Tom Beirne	Date of report: 04/01/2024	Ref: 70252/FUL
Registration: 22/11/2023	LDFC: 14/12/2023	Expiry Date: 17/01/2024
Site Visit: 12/12/2023	Site Notice: N/A	Press Date: N/A
Objections: 0	Con Area:	Adv Type: N/A
Reason for Delay:		EIA: NA
N/A		Dec Level: DEL
		Stat Class: MIDW

Proposal: Variation of condition no. 12 of planning permission 66958 (final part of condition):- existing wording "the approved works shall be implemented to the satisfaction of the Local Planning Authority before the development is first occupied."
Proposed wording :-"The approved works shall be implemented to the satisfaction of the Local Planning Authority before the occupation of the final (fourth) dwelling, or, in the event that the approved development as a whole is not completed by 31st January 2026, by that date (whichever is the sooner of those dates)"

Location: Windacre Works, Mather Road, Bury, BL9 6RB

Description

The application relates to the site of the former industrial works site, now demolished, located on the east side of Mather Road, a narrow vehicular track that is unmade in parts and forms a Public Right of Way (Byway No.30). The adopted part of Mather Road finishes just before the site at the southern end.

Immediately to the north is Windacre House, a children's nursery. On the south side is overgrown land which has outline approval for 24no. apartments. To the east of the site is a lodge and to the west, across Mather Road, are the rear gardens of detached residential properties on Cornfield Close.

The original approval 66958 was for four detached dwellings across the site, facing Mather Road. The houses would be set back from the road with parking forecourts to the front and gardens at the rear.

This variation of condition application relates to condition 12, a highways condition requiring certain highway works to be completed prior to first occupation. The applicant request a change to the wording to allow some flexibility with regard occupation.

The proposed wording is suggested as follows :-

"The approved works shall be implemented to the satisfaction of the Local Planning Authority before the occupation of the final (fourth) dwelling, or, in the event that the approved development as a whole is not completed by 31st January 2026, by that date (whichever is the sooner of those dates)"

Relevant Planning History

58133 - Outline application for demolition of the existing buildings and redevelopment of the site for residential development including means of access (All other Matters Reserved) - Approve with Conditions 21/01/2015

58994 - Prior Notification for the proposed erection of an agricultural building for the storage of agricultural equipment and machinery - Prior Approval Required and Granted 31/07/2015

61196 - Outline application for residential development of 3 storey apartment scheme comprising of 24 no. units (all matters reserved) - Approve with Conditions 28/03/2018

63056 - Outline application for demolition of existing mill and erection of 4 no. dwellings with

details of access, landscaping, layout and scale (appearance reserved matters) - Approve with Conditions 12/10/2018

64651 - Residential development - No.4 dwellings with formation of access and highway works. - Approve with Conditions 20/05/2020

66958 - Variation of condition 2 following approval of planning permission 64651- increase in internal floor levels, steps to front and new rear and side dormers - Approve with Conditions 19/07/2021

Publicity

Immediate neighbours notified by letter dated 23/11/2023. No objections received.

Statutory/Non-Statutory Consultations

Traffic Section - No objection.

Pre-start Conditions - N/A

Unitary Development Plan and Policies

OL5/2	Development in River Valleys
NPPF	National Planning Policy Framework
EN7	Pollution Control
EN7/3	Water Pollution
EC2/2	Employment Land and Premises
H1/2	Further Housing Development
H2/1	The Form of New Residential Development
H2/2	The Layout of New Residential Development
EN7/3	Water Pollution
HT2/4	Car Parking and New Development
EN1/2	Townscape and Built Design
EN7/1	Atmospheric Pollution
EN5/1	New Development and Flood Risk
HT2/4	Car Parking and New Development
HT6/2	Pedestrian/Vehicular Conflict
RT3/4	Recreational Routes

Issues and Analysis

The following report includes analysis of the merits of the application against the relevant policies of both the National Planning Policy Framework (NPPF) and the adopted Bury Unitary Development Plan (UDP) together with other relevant material planning considerations, including relevant policies in the emerging Places for Everyone Joint Development Plan.

The policies of the UDP that have been used to assess this application are considered to be in accordance with the NPPF and as such are material planning considerations. For simplicity, just the UDP Policy will be referred to in the report, unless there is a particular matter to highlight arising from the NPPF where it would otherwise be specifically mentioned.

Equality Act 2010: All planning applications are considered in light of the Equality Act 2010 and associated Public Sector Equality Duty, where the Council is required to have due regard for:

The elimination of discrimination, harassment and victimisation;

The advancement of equality of opportunity between persons who share a relevant protected characteristic and person who do not share it;

The fostering of good relations between persons who share a relevant protected characteristic and person who do not share it; which applies to people from the protected equality groups.

Human Rights: All planning applications are considered against the provisions of the Human Rights Act 1998.

Under Article 6 the applicants (and those third parties who have made representations) have the right to a fair hearing and to this end full consideration will be given to their comments.

Article 8 and Protocol 1 of the First Article confer a right to respect private and family life and a right to the protection of property, ie peaceful enjoyment of one's possessions which could include a person's home, and other land and business assets.

In taking account of the Council policy as set out in the Bury Unitary Development Plan 1997 and all material planning considerations, it is concluded on balance that the rights conferred upon the applicant/ objectors/ residents/ other interested party by Article 8 and Article 1 of the First Protocol may be interfered with, since such interference is in accordance with the law and is justified in the public interest. Any restriction of these rights posed by refusal/ approval of the application is legitimate since it is proportionate to the wider benefits of such a decision, is based upon the merits of the proposal, and falls within the margin of discretion afforded to the Council under the Town & Country Planning Acts.

The Crime and Disorder Act 1998 imposes (without prejudice to any other obligation imposed on it) a duty upon the Council to exercise its functions and have due regard to the likely effect of the exercise of its functions on, and the need to do all that it reasonably can to prevent crime and disorder in its area. In so doing and on making planning decisions under the Town and Country Planning Acts, the material Planning considerations shall have due regard to the provisions of the Crime and Disorder Act 1998 and its implications in the exercise of its functions.

Justification for the change to the wording of the condition (as set out in the supporting statement) - It is not the purpose of this S73 application to change the details of any of the works already approved under the auspices of Condition 12. The Applicant is committed to undertake those. The purpose is to request, for sound operational and logistical reasons, an extent of flexibility in the timeframe for completing the approved off-site highway improvement works.

The rationale for requesting the above variation relates to the extent of movement of heavy construction-related traffic that needs to utilise the section of to-be-improved highway that is the subject of the condition. The condition currently requires those improvement works to be implemented now (or in the very short term) before the first house can be sold and occupied.

The effect of this would be that, while the highway improvement works would be completed, they would subsequently and inevitably be damaged as a result of ongoing heavy construction traffic associated with the building of the next three houses. Such damage (which would be regrettable, but almost certainly unavoidable) would undermine the purpose of the condition, which is to deliver a safe and satisfactory highway in a good condition. It is also worth noting that the condition only requires those works to be carried out once. That being the case, if the improvement works were to be carried out at this early stage (ie now) and then subsequently damaged as a result of ongoing construction works, there is no requirement within the condition that the damage be rectified and the improvement works redone. That scenario rather undermines the purpose of the condition.

Furthermore, because this development is being delivered by a 'small builder' (as opposed to a larger construction team), it is being rolled out on a house by house basis. That is reasonable and not usual. That being the case, as each house nears completion, it will be connected to the utilities on a house by house basis. Given that those utilities are within the road, and in the event that the improvement works to the road were completed at this

stage, it would be necessary for those to be re-completed on 4 separate occasions, which is clearly not sustainable scenario.

The Applicant considers that it is far more logical for the timing of the highway improvement works to be delayed to avoid the above scenarios, and that it would be more sensible to complete the improvement works at a later stage in the construction process when the prospect of damage to the improved road will be negligible. It is for that reason that the suggested revised wording would require the road improvement works to be completed prior to the occupation of the final house. We are mindful that the Council would wish to avoid a scenario whereby the development is only partially completed or stalls for a significant period of time. We suggest that this scenario is unlikely because there would be no good reason for Mr. Balfe to delay or not complete the project, for the obvious reasons that, first, the development will generate a healthy profit income for him and his family, and second, it may prove difficult (and dent values) to be attempting to sell houses whilst part of the site remains as a construction site. For those reasons, there is a clear and obvious incentive to Mr. Balfe to complete the development as a whole in the soonest possible period, and as such we anticipate that long delays are highly unlikely.

However, to mitigate against any such possible delay or stalled construction, we have suggested in the revised wording an alternative 'longstop date' of 31st January 2026 for the completion of the highway improvement works. The rationale for that date reflects the reality of the ongoing construction programme. The construction of House 1 has been occurring for well over a year and is still not quite completed. Mr. Balfe is building out the development in his own right, using his own small in-house construction team. Due to fewer constraints, it is not expected that the completion of the three remaining houses will take quite so long, but nevertheless a realistic timeframe for completing the development (allowing for possible slippage) is up to 3 years. It is for that reason that the longstop date has been suggested at 31st January 2026, which we suggest is a not unreasonable timeframe.

Ultimately, this S73 proposal does not seek to avoid or change any of the requirements or approved details of Condition 12, but simply to delay the improvement works to avoid an unfortunate (and probably inevitable) scenario whereby the works are completed at this early stage and then subsequently damaged, thereby undermining the objective of the condition to deliver a safe and good quality highway at the end of the development to serve not only the residents of the 4 new houses but also the wider users of this part of Mather Road.

Assessment - The points made within the supporting statement are considered reasonable and valid and without any objection from the Traffic Team, it is recommended that the proposed wording for a revised condition 12 is accepted. It is not considered that the changes to the wording would have any impact on any other issues relating to the scheme.

Previously Discharged and Part Discharged conditions - The conditions applied to the original planning consent that have been discharged have been omitted from the decision notice. Those conditions that have been part discharged have been amended to reflect this.

Statement in accordance with Article 35(2) Town and Country Planning (Development Management Procedure) (England) (Amendment) Order 2015

The proposal complies with the development plan and would improve the economic, social and environmental conditions of the area. It therefore comprises sustainable development and the Local Planning Authority worked proactively and positively to issue the decision without delay. The Local Planning Authority has therefore implemented the requirement in Paragraph 38 of the National Planning Policy Framework.

Recommendation: Approve with Conditions

Conditions and Reasons:

- 1 The development must be begun not later than three years beginning with the date of this permission.
Reason. Required to be imposed by Section 91 Town & Country Planning Act 1990.
- 2 This decision relates to the drawings 101.P.PR.01, 02, 05, 06, 07, 08, 09 and 10 and the development shall not be carried out except in accordance with the drawings hereby approved.
Reason. For the avoidance of doubt and to ensure a satisfactory standard of design pursuant to the policies of the Bury Unitary Development Plan listed.
- 3 The external finishing materials to be used in the external elevations, boundary treatment and hardstandings shall be as previously approved (under application ref 66958). Only the approved materials shall be used for the construction of the development.
Reason. In the interests of visual amenity and to ensure a satisfactory development pursuant to UDP Policy EN1/2 Townscape and Built Design.
- 5 Following the provisions of Condition 4 of application ref 66958, where remediation is required, the approved Remediation Strategy must be carried out to the satisfaction of the Local Planning Authority within agreed timescales;
 - A Site Verification Report detailing the actions taken and conclusions at each stage of the remediation works, including substantiating evidence. 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.
 - The report shall be submitted to and approved in writing by the Local Planning Authority prior to the development being brought into use.Reason. To secure the satisfactory development of the site in terms of human health, controlled waters and the wider environment and pursuant to National Planning Policy Framework Section 11 - Conserving and enhancing the natural environment.
- 6 Any soil or soil forming materials brought to site for use in garden areas, soft landscaping, filling and level raising shall be tested for contamination and suitability for use on site. Proposals for contamination testing including testing schedules, sampling frequencies and allowable contaminant concentrations (as determined by appropriate risk assessment) and source material information shall be submitted to and approved in writing by the Local Planning Authority prior to any soil or soil forming materials being brought onto site, and;
The approved contamination testing shall then be carried out and validity evidence (soil descriptions, laboratory certificates, photographs etc) submitted to and approved in writing by the Local Planning Authority prior to the development being brought into use.
Reason. To secure the satisfactory development of the site in terms of human health, controlled waters and the wider environment and pursuant to National Planning Policy Framework Section 15 - Conserving and enhancing the natural environment.
- 7 All instances of contamination encountered during the development works which do not form part of an approved Remediation Strategy shall be reported to the Local Planning Authority (LPA) immediately and the following shall be carried out where appropriate:
 - Any further investigation, risk assessment, remedial and / or protective works shall be carried out to agreed timescales and be approved by the LPA in writing;
 - A Site Verification Report detailing the conclusions and actions taken at each

stage of the works including validation works shall be submitted to, and approved in writing by, the LPA prior to the development being brought into use.

Reason. To secure the satisfactory development of the site in terms of human health and the wider environment and pursuant to National Planning Policy Framework Section 15 - Conserving and enhancing the natural environment.

- 8 The landscaping scheme, approved under planning reference 66958, shall be implemented not later than 12 months from the date the buildings are first occupied or within the first available tree planting season, and any trees or shrubs removed, dying or becoming severely damaged or becoming severely diseased within five years of planting shall be replaced by trees or shrubs of a similar size or species to those originally required to be planted.

Reason. To secure the satisfactory development of the site and in the interests of visual amenity pursuant to Policies H2/2 - The Layout of New Residential Development, EN1/2 - Townscape and Built Design and chapter 15 - Conserving and enhancing the natural environment of the NPPF.

- 9 The surface water drainage scheme, approved under planning reference 66958, which shall ensure that there is no infiltration of surface water drainage into the ground where contamination is suspected and based on the hierarchy of drainage options in the National Planning Practice Guidance with evidence of an assessment of the site conditions, shall be completed in accordance with the approved details. The surface water drainage scheme must be in accordance with the Non-Statutory Technical Standards for Sustainable Drainage Systems (March 2015) or any subsequent replacement national standards. In the event of surface water draining to the public surface water sewer, the pass forward flow rate to the public sewer must be restricted to 20 l/s.

Reason: Information not submitted at application stage to ensure a satisfactory means of drainage, promote sustainable development and to manage the risk of flooding and pollution pursuant to Policy EN5/1 - New Development and Flood Risk and Policy EN7/5 - Waste Water Management of the Bury Unitary Development Plan and Section 10 of the National Planning Policy Framework.

- 12 Notwithstanding the details indicated on approved plan reference CB6-02/C, a programme of works with details of the following (to be agreed on site where appropriate) shall be submitted to and agreed in writing by the Local Planning Authority:

- Existing conditions survey of the carriageway abutting the site in the event that subsequent remedial works are required following construction of the development;
- Formation of the proposed site access onto Mather Road/Public Right of Way No. 20, Bury;
- Construction of the new footway, build-outs, bollards and boundary walls adjacent to Mather Road/Public Right of Way No. 20, Bury, incorporating all necessary accommodation works required to tie into existing footways and carriageways;
- Provision of all drainage remedial works on Mather Road, including an ACO drain to an appropriate specification for use in the carriageway;
- Provision of visibility splays in accordance with the standards in Manual for Streets at the back edge of the footway and at the junctions of the proposed site accesses with Mather Road, with no obstructions above the height of 0.6m within them, including all necessary alterations to the boundary wall details submitted;
- Foundation details for all boundary walls;
- A scheme for improvement of the surface of Mather Road between the existing limits of adoption to the south of No. 101 Mather Road to the northerly site boundary.

The approved works shall be implemented to the satisfaction of the Local Planning Authority before the occupation of the final (fourth) dwelling, or, in the event that the

approved development as a whole is not completed by 31st January 2026, by that date (whichever is the sooner of those dates).

Reason. To secure the satisfactory development of the site in terms of highway and fire safety, ensure good highway design, ensure the intervisibility of the users of the site and the adjacent highways and maintain the integrity of the adopted highway, all in the interests of highway safety pursuant to the following Policies of the Bury Unitary Development Plan Policy H2/1 - The Form of New Residential Development, H2/2 - The Layout of New Residential Development, EN1/2 - Townscape and Built Design.

- 13 The 'Construction Traffic Management Plan' (CTMP), as approved under planning reference 6695, shall confirm/provide the following:

- Access route for demolition/construction traffic from the highway network;
- Hours of operation and number of vehicle movements;
- Arrangements for the turning and manoeuvring of vehicles within the curtilage of the site;
- Parking on site or on land within the applicant's control of operatives' and demolition/construction vehicles together with storage on site of demolition/construction materials.
- Measures to ensure that all mud and other loose materials are not carried on the wheels and chassis of any vehicles leaving the site.
- Measures to minimise dust nuisance caused by the operations.

The approved plan shall be adhered to throughout the demolition/construction period and the measures shall be retained and facilities used for the intended purpose for the duration of the demolition/construction period. The areas identified shall not be used for any other purposes other than the turning/parking of vehicles and storage of demolition/construction materials

Reason. To mitigate the impact of the construction traffic generated by the proposed development on the adjacent residential streets and ensure adequate off street car parking provision and materials storage arrangements for the duration of the construction period, in the interests of highway safety pursuant to the following Policies of the Bury Unitary Development Plan Policies, H2/1 - The Form of New Residential Development, H2/2 - The Layout of New Residential Development, EN1/2 - Townscape and Built Design.

- 14 The car parking and turning facilities for each dwelling indicated on approved plan reference CB6-02 Revision B shall be implemented in a permeable material and provided before the dwelling to which they relate are first occupied and the areas used for the manoeuvring of vehicles shall subsequently be maintained free of obstruction at all times.

Reason. To mitigate the discharge of water onto the adjacent adopted highway, minimise the standing and turning movements of vehicles on the highway and ensure adequate off street car parking provision in the interests of road safety.

- 15 Foul and surface water shall be drained on separate systems.

Reason: To secure proper drainage and to manage the risk of flooding and pollution pursuant to Policy EN5/1 - New Development and Flood Risk and Policy EN7/5 - Waste Water Management of the Bury Unitary Development Plan and Section 10 of the National Planning Policy Framework.

- 17 No infiltration of surface water drainage into the ground where adverse concentrations of land contamination are known or suspected to be present is permitted other than with the express written consent of the Local Planning Authority, which may be given for those parts of the site where it has been demonstrated that there is no resultant unacceptable risk to controlled waters. The development shall be carried out in accordance with the approval details.

Reasons. For the future protection of the Water Environment from risks arising from land contamination pursuant to UDP Policy EN7/4 Groundwater Protection.

DELEGATED REPORT

- 18 Before the first occupation of the dwelling (house type 3) adjacent to the southern boundary, the windows on the side/south elevation of that property shall be fitted with obscured glazing to a height of 1.7m above floor level (min obscurity level 3) and shall be permanently retained in that condition thereafter.

Reason. To protect the privacy of adjoining occupiers and to accord with Policy H2/1 The Form of Residential Development.

<u>Case Officer</u>	<u>Date</u>	<u>Sign off Officer</u>	<u>Date</u>
Tom Beirne	04/01/2024	DM	04/01/24