

Added congestion

Overwhelming local opposition

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**TAG**

Gridlock on the bridge again

Does this look like brownfield to you?

**TAG - THORP ARCH TRADING ESTATE ACTION GROUP  
OBJECTION TO PLANNING APPLICATION 16/05226/OT**

Contact: Peter Locke, Chairman. 14 Thorp Arch Park, Thorp Arch, LS23 7AN

## VOLUME 9

# VIABILITY and DELIVERABILITY

**Objection to Planning Application 16/05266 for 874 dwellings etc.**

**Volume 9**

**Objection on the grounds that there is insufficient information to be sure about Viability and Deliverability - however indications are that the application will fail these criteria once full information is available.**

**1. Preamble:**

With no access to any of the applicant's cost data, planning obligations - Draft Heads of Terms (Section 106 agreements) or CIL information, it is not possible to make any sensible financial analysis. What is possible is to ask the many questions which need resolution in order to make such a financial judgement.

It is clear that this development would be complicated and expensive. Many of the issues, which have significant cost implications, have not been investigated or firm proposals put forward. Under these circumstances it is impossible for LCC to assess whether the development would be capable of producing the financial returns necessary for any developer to undertake the project, with sufficient certainty of an adequate profit.

The NPPF makes it clear that deliverability and viability are essential parts of the planning process, and that granting of planning permission has an automatic implication that the scheme is deliverable. There are 8 mentions of deliverability in the NPPF, examples of which come in paragraph 173:

*Ensuring viability and deliverability.*

*173. Pursuing sustainable development requires careful attention to viability and costs in plan-making and decision-taking. **Plans should be deliverable.** Therefore, the sites and the scale of development identified in the plan should not be subject to such a scale of obligations and policy burdens that their ability to be developed viably is threatened. To ensure viability, the costs of any requirements likely to be applied to development, such as requirements for affordable housing, standards, infrastructure contributions or other requirements should, **when taking account of the normal cost of development and mitigation, provide competitive returns to a willing land owner and willing developer to enable the development to be deliverable.***

Until the proposals are better defined, and costed, then LCC are not in a position to determine the application.

Furthermore, due to the fact that certain information is not available on: decontamination; viability and the provision of the planning benefits such as percentage of affordable housing; the primary school; buses (as considered below); the public consultation which has been carried out so far is not sound and any decision made at this stage would be open to challenge. Without this information, it is NOT possible to conclude that the development proposed would be sustainable and currently, neither the public (including the local parish councils and TAG) nor LCC are in a position to weigh up sufficiently the planning merits of the case.

## **2. Information required to assess the viability/deliverability:**

### **2.01 Contamination:**

All the evidence on the types of contamination likely to be encountered on former ROF sites indicates that, until a full physical site survey is conducted, the remediation required and associated costs cannot be accurately defined (see TAG objection, volume 7, Contamination).

The scale of unexpected costs was brought up in a letter from a Mr Mike Heaps (sent in objection to the previous application 13/03061). He was involved in development of a similar ROF site at Blackburn.

The relevant extract from that letter is:

*“Several years ago I acted on behalf of British Aerospace in the disposal of ROF Blackburn, a sister site to ROF Thorp Arch, being located in a similar isolated location and carrying out the same ammunition manufacturing and assembly functions during and after the Second World War.*

*The site had received planning consent from Blackburn Council based only on a desktop contamination report which suggested that it was unlikely that there were any major contamination problems.*

*However, when the sale was agreed the purchasers carried out a more detailed intrusive investigation and found that the contamination was severe and comprised many forms of explosives, toxins and, varieties of dangerous forms of asbestos. Much of this was in and under the existing buildings and bunds or buried on site.*

*As a result part of the site had to be closed immediately due to the danger to the existing working population and other areas were deemed undevelopable as they were too dangerous to deal with at an affordable cost.*

*In the remaining areas the contaminants could not be taken off site and had to be gathered together to form a large mound and then capped.*

*The overall result was that a much smaller area of the site was developed. The abnormal development costs were much higher and anticipated and the eventual land value plummeted.”*

Mr Heaps is happy for us to attach the full text of his letter which remains relevant. It is appendix 1.

### **2.02 Physical Site Surveys.**

Once again, there is lack of a complete proposal. Discussions are continuing between LCC and the applicant. If LCC allow a phased approach (which TAG strongly believe to be inappropriate - see TAG volume 7), and only require an initial

full site survey **after** outline planning application (which was what was being considered for the previous application 13/03061), then TAG expect that the physical surveys would comprise:

1. An initial full physical site survey, analysis, and revision to the outline planning application if necessary.
2. More detailed physical surveys and analysis for each of the proposed three stages of development. Again these could involve redesign of the scheme.

Note that even when the physical surveys have been undertaken, they can only find areas of diffuse contamination which are large. The possibility of small areas (with dimensions less than the spacing of the test holes) of contamination - either spillages or deliberate burials - will remain. So even the surveys do not remove all contamination risks, both safety and financial.

The costs of these surveys are not defined. The initial physical survey alone is currently anticipated by the applicant to involve around 450 trial holes/pits, and a full analysis of material from each. The subsequent phased surveys are as yet totally undefined, but also likely to be extensive. These are all up-front costs before development, and would be incurred with the known risk of encountering expensive further decontamination requirements, beyond those already envisaged. Any redesigns which are shown to be necessary could involve large costs, and possibly reduction of housing numbers. Is there any indication that a developer would be prepared to take on this expenditure, which is undoubtedly large, probably in the order of £1 million or more, with all the risks involved?

### **2.03 Complete v partial redevelopment of the site?**

Currently, without the submission of full site surveys, there is insufficient evidence submitted to know which elements of the proposal would be truly deliverable. If the decontamination costs are as high as expected, then this could lead to the developer cherry-picking the higher value land use elements of the scheme over the lower ones - namely the school and shops. What mechanisms (which a developer would be commercially happy to sign up to) can be put in place at the planning approval stage, to ensure that the lower land uses are delivered throughout the build, rather than being left to the end of the development? How has LCC assessed this and how will both Officers and Members be confident that a sustainable scheme can be comprehensively delivered?

### **2.04 Decontamination:**

Once again, the full details of what will be required is unclear. The exact areas to be 'scraped', and to what depth, are unknown. The burning ground limits, where extensive contamination is to be expected, are not defined. The depth of contamination there is unknown. The same applies to the railway sidings areas.

There will certainly be some 'hot-spot' material requiring off-site disposal to a licenced hazardous waste disposal facility. The Stanger report indicated a volume of 4,000 m<sup>3</sup> from the group 1 area alone. Such disposal is very expensive.

The applicant persists in claiming they can sort the scrape material to remove contamination. How, and at what cost, is again unclear.

However, TAG do not believe that sorting is a feasible approach, otherwise it would have been adopted by BAE in their decontamination of several other ROF sites. Instead BAE mound the scraped material on site and cap it. This in turn requires importation of topsoil (or compost to create topsoil when mixed on site) to replace scraped material. The volumes involved are very large, a 'guesstimate' might be 400,000 tonnes (see volume 7). Topsoil importation can cost £15 per tonne. So dealing with the scrape material and its replacement could cost many millions of pounds sterling.

The lost site area which would be required for the 'mound' will also require a redesign of the site layout, and potential loss of further building plots.

## **2.05 Highways:**

Despite the applicant's claims that the local network can handle the extra traffic from the proposal with only minimal works at some junctions, the current reality of congestion at Thorp Arch bridge, and at the roundabout on the LAR (local access road) by the A1, show clearly that extensive mitigation would be required. That is, if any practical forms of mitigation can be put forward. No practical mitigation scheme has yet been put forward.

In the previous application, an extra lane was proposed on the bridge over the A1, feeding the roundabout mentioned above. This was provisionally costed at £1m. However experience on the A1 widening project make this estimate appear very low. Even an extra lane would be unlikely to resolve the congestion at this junction, once the additional vehicle movements from the SAP sites HG2-19 (already under construction) and HG2-226 for a total of 1245 houses, which would both feed a significant volume of traffic onto the LAR at that point, have been factored in.

Yet again, the detail of any practical solutions is absent, but the likely costs will run into £ millions.

## **2.06 Single form entry primary school:**

This school is part of the planning application. However there is no information available to TAG on construction costs, operating costs, or when it will open. If the applicant is to bear any of these costs, then to assess the financial viability of the scheme the levels of such costs and their timing is essential information.

Page 58 of the submitted Planning Statement refers, in the heads of terms, to the delivery of a new primary school. It is unclear from the information provided as to whether the developer is providing purely the site and a sum of money for the Education Department to construct a school. Or, is the developer proposing to construct the school? No information appears to have been provided to cost this out. Again, the high costs of decontaminating the site have to be defined at this stage as they could severely impact the deliverability of the school. The provision of a school is, of course, one of the key elements in ensuring that a sustainable development could be brought forward.

## **2.07 Ecology:**

The conflicting requirements of the 'scrape' (to make the site safe) and preservation of the valuable ecology, have to our knowledge not yet been resolved. The applicant is suggesting that many of the trees within the areas requiring a scrape may be preserved. Once again, how, and at what cost, is undefined. It could be considerable.

## **2.08 Public transport:**

In practice, this means buses, as there are no convenient railway stations. The consultation responses from Travelwise and the West Yorkshire Combined Authority, make it clear that the current level of bus service does not meet Core Strategy requirements. The bus stops are also remote from the site. Just to bring the 770/771 service through the site would require an extra bus (annual cost £150k). This would result in longer journey times, but no improvement to frequency. At what point in the development of the site would this extra bus arrive? Until it arrived, the service bus-stops would be too far away for residents to use. Resident's travel patterns would become crystallised. Once the on-site service started, for how long would it be subsidised by the applicant? What would happen once the subsidy was withdrawn?

What provision would be made for secondary school travel, or primary pupils going to other schools than that on site? With only 30 minute services by the 770/771 in either direction, all pupils wanting to use the bus would wish to use the same time of service. This same service is used by Wetherby resident pupils attending Boston Spa school, and Boston Spa residents going to Wetherby. These school run times are normally the only 770/771 services observed to be busy. Could the one suitably-timed bus in each direction cope with the numbers? Would dedicated school buses be required? If so, would the applicant be required to pay, and for how long?

## **2.09 EIA:**

The EIA appears to primarily be based on the impacts of a housing development. Little account is made of the proposed primary school or care home elements of the scheme. The Non-Technical Summary document mentions the school and care home under the proposals heading only. No other consideration is given to the environmental impacts of these parts of the proposal in terms of socio-economic factors, traffic and transport factors (including future access by car and or bus), and air quality. So this document is therefore incomplete.

## **2.10 On-site facilities:**

The applicant claims that the site will have medical and convenience store premises, as well as 5 small <400m<sup>2</sup> retail units. At what stage would these be constructed / occupied? The size of the development, even when complete, does not meet normal retail minimum catchment numbers. As with the buses, until the facilities are operational, any residents will be establishing their own alternatives. At what point do the premises get functional? Is the applicant proposing to subsidise them to bring occupation forward, or even to create any occupation at all? What costs are involved? Will they ever be functional?

A phasing plan for the whole site should be provided prior to the application being considered.

## **2.11 Affordable housing:**

The policy for the Outer North East is for housing schemes to provide 35% affordable properties. Because of the affluent character of the area, this is normally achievable.

However, even before the detailed costings required to evaluate the scheme have been produced, the applicant is already indicating that the financial restraints will require a reduced affordable percentage, as yet undefined. In the previous larger application, the percentage was given as 10%, and that was before many of the

same issues that apply here had been fully evaluated. In TAG's opinion, the level that the current scheme will 'offer' is most unlikely to be forecast as more than 10%, and that level could well diminish once the full cost of the development becomes apparent during development.

### **2.12 S106 and CIL costs:**

TAG have not seen a draft S106 statement. We also do not know the final CIL figure. Both are again likely to incur significant costs.

### **2.13 Financial viability:**

Has a Viability Appraisal been submitted to the LPA? This application cannot be granted permission without such evidence being provided and it should be independently scrutinised and verified.

The scale of costs which this development will require is such that the site is highly unlikely to be a profitable development, even if the affordable housing element is reduced to a level far below the Core Strategy norm for the Outer North East - or even eliminated altogether.

TAG were unable to find any evidence of developer interest in the previous application, and as such it was our belief that, even if planning permission had been granted, no development would have taken place.

The same is true with this application.

Although a developer (St.Congar) is involved in this latest application, it is not clear on what basis. Their website indicates that they undertake **consulting** about development - which we think may be the basis for their current involvement. If they were to act as developers themselves, it is not clear whether they would be able to develop such a large project as this without other development company participation, because of the scale of financing required, and the risks involved. However, no other developers are interested, to our knowledge.

Although the costs of the 'relief' road are no longer involved, this scheme is sharing the remaining costs (as above) over a much smaller number of houses, 874 v. 2000. So the financial viability which appeared strained on the previous application is likely to be equally challenging on this one.

### **3. Summary:**

This application is lacking the information necessary to answer the many significant questions raised above, which all go to the heart of whether the application is viable and deliverable.

Until these questions are answered, the application cannot be determined favourably due to NPPF policy.

# APPENDIX 1

Station House  
Church Causeway  
Thorp Arch  
Wetherby  
LS23 7AJ

20 October 2014

**LETTER OF OBJECTION  
PLANNING APPLICATION 13/03061/OT  
THORP ARCH TRADING ESTATE**

Dear Mr Newbury

I understand that you are considering recommending the approval of the above outline application without a site-wide contamination investigation, apparently because the applicant does not wish to have one carried out.

Should you take this route it is clearly against the recommendation from your own contaminated land team contained in a report to you dated 12/02/2014, which includes the following statements:

- 1 *“Our view all along is that the applicant’s approach is not acceptable, in that they are clearly refusing to carry out a preliminary site-wide investigation ahead of a phased start to development. Our view that this is necessary has been communicated to the applicant’s consultants by Max Rathmell and by Dave Newbury. Yet they disregard our advice.”*
- 2 *“Your proposed conditions reflect the applicant’s stance that they do not wish to carry out this Preliminary site-wide investigation. For the avoidance of doubt the view of the contaminated land team is that permission should not be given on this basis and consequently the CL objects to permission being given on this basis.*

*We are not requiring that the site-wide investigation be carried out ahead of a grant of permission, but the methodology must be submitted and agreed so that its approval can be built into the planning conditions. We would mention that even this approach is a big concession, in a case where contamination is not merely suspected but known the precautionary approach would be to require the full investigation ahead of a grant of permission. This is what the NPPF approach supports [Bradford CC has won an appeal where a developer would not submit the required report; Appeal Ref: APP/WA705/A/13/2204564].*

- 3 *“The applicant is fully aware of our position and by failing to positively respond – and by stalling – hopes that the drive to issue a permission will cause the council to waiver from its duty in this case. The consultant has the ability and the information needed to make the submission required and so we can assume that they have been directed not to do so by the applicant. It would be quite a straight forward matter to make an*

*acceptable submission and they have certainly had enough time to do so."*

It is widely accepted that because of the history of the site it very likely to be contaminated and in my opinion severely so.

Several years ago I acted on behalf of British Aerospace in the disposal of ROF Blackburn, a sister site to ROF Thorp Arch, being located in a similar isolated location and carrying out the same ammunition manufacturing and assembly functions during and after the Second World War.

The site had received planning consent from Blackburn Council based only on a desktop contamination report which suggested that it was unlikely that there were any major contamination problems.

However, when the sale was agreed the purchasers carried out a more detailed intrusive investigation and found that the contamination was severe and comprised many forms of explosives, toxins and, varieties of dangerous forms of asbestos. Much of this was in and under the existing buildings and bunds or buried on site.

As a result part of the site had to be closed immediately due to the danger to the existing working population and other areas were deemed undevelopable as they were too dangerous to deal with at an affordable cost.

In the remaining areas the contaminants could not be taken off site and had to be gathered together to form a large mound and then capped.

The overall result was that a much smaller area of the site was developed. The abnormal development costs were much higher and anticipated and the eventual land value plummeted.

In this case I do not see how you could possibly advise the Planning Committee to grant outline planning consent regardless of the conditions that may be attached as:

- You do not know whether the development is even viable as the clean-up costs are unknown.
- You do not know how many houses can actually be developed and the actual number may fall well below the figure required to class the development as sustainable.
- You have a duty of care. At this point you cannot possibly know whether the site is even safe as it exists and what dangers may be exposed to the local population both on site and in surrounding villages when the site is remediated.

I trust your department will see sense over this issue. Following initial legal advice I fear that if you comply with the applicant's wishes you may be exposing Leeds City Council and possibly some of its members to a raft of litigation through both health and safety and human rights legislation.

Yours sincerely

**M J Heap**