

PLANNING COMMITTEE - 3 JULY 2018

Application No:	18/00279/FUL	
Proposal:	Retrospective consent for the installation of engineering operations for site drainage. Consent for the change of use of the land from Car Sales to Car Sales and Car Wash and the erection of fencing	
Location:	Lowdham Cars, Lowdham Road, Gunthorpe, Nottinghamshire, NG14 7ER	
Applicant:	Ms Hibbitt	
Registered:	16.03.2018	Target Date: 11.05.2018 Extension agreed to: 08.06.2018

This application has been called before the committee by Cllr R Jackson on the grounds of flood risk as a result of the proposed development.

The Site

The application site is located to the east side of Lowdham Road outside the built-up area of Gunthorpe within a ribbon of mixed development washed over by the Green Belt. The entire site also lies within Flood Zone 3 as defined by the Environment Agencies Flood Mapping.

North of the application site, Lowdham Road is characterised by large residential properties but around the site there are a number of commercial uses comprising caravan sales and garage sites, including the Lowdham Cars site itself, as well as residential uses.

The northern half of the site has a car sales unit and forecourt and a dwelling approx. 25 m from the proposed car wash site. The southern section of the site is not hard bound like the car forecourt and currently has two car wash canopy structures covering concrete hardstanding that have been erected without consent.

The application site is set back from the road with hardstanding to the access on to Lowdham Road. Car parking is currently available at the front of the site. Across the highway is the Lowdham Motorhome and Caravan Sales site which has a palisade and chain link fence perimeter to the site with the highway and has a large forecourt displaying motorhomes with a large warehouse unit towards the west.

Relevant Planning History

07/00630/FUL – Change of use from fuel filling station to car sales – Permitted 05.2007

07/00188/FUL – Demolition of existing petrol filling station and house. Erection of new sales building, car wash and petrol filling station development – Withdrawn 2007

05/01594/FUL – Demolition of existing filling station & house. Erection of new sales building, car wash & petrol filling station (Re-submission) – Permitted 2005

05/00835/FUL - Demolition of existing filling station and house. Erection of new sales building, car wash and petrol filling station – Withdrawn 2005

The Proposal

For the avoidance of doubt, the application has been significantly modified throughout the course of this application in response to initial officer objections to the proposal on the grounds of impact on the openness of the Green Belt – revised plans have subsequently been submitted. As such, the revised plans to be considered are “Proposed Site Plan – 372(08)S10 Rev B” received 04.05.2018.

The application seeks consent for the change of use of the land from solely a Car Sales Unit (*sui generis*) to Car Sales and Car Wash (also *sui generis*) unit. In addition the application seeks retrospective consent for the installation of engineering operations for site drainage to serve the car wash. Permission is also requested for the erection of a new 2.4m/8ft security fencing to the north (c.22 m), north-east (c.40 m) and south-east (c.45.3 m) site perimeters. The fence proposed is a green v-mesh fence approx. 2.4 m in height.

The application **does not** seek consent for the retention of the white canopies that have been erected on the site without consent and their removal will be sought through a separate enforcement process if necessary. Nevertheless the application shows the removal of these structures.

The two car wash areas to be retained are positioned to the south-east of the application site and are c.10 m x 10 m in size, positioned approx. 3 m from the southernmost boundaries of the site and approx. 5 m apart from one another. The car wash area is proposed to be approx. 25 m from the house on the site towards the NW.

Departure/Public Advertisement Procedure

Occupiers of 5 properties have been individually notified by letter with the consultation period expiring on 1st May 2018.

Planning Policy Framework

The Development Plan

Newark and Sherwood Core Strategy DPD (adopted March 2011)

Spatial Policy 1: Settlement Hierarchy

Spatial Policy 4B: Green Belt Development

Core Policy 6: Shaping our Employment Profile

Core Policy 9: Sustainable Design

Allocations & Development Management DPD

Policy DM5 – Design

Policy DM10 - Pollution and Hazardous Materials

Other Material Planning Considerations

- National Planning Policy Framework 2012
- Planning Practice Guidance 2014

Consultations

Gunthorpe Parish Council – “Major concerns were expressed about this application, there had been development prior to an application being made, impervious surfaces had been laid, the land is on a main flood corridor, the plans are an over development of the site which is 50 yards from a problematic road junction and will cause increased problems with traffic flow, PC unanimously against the application.”

NCC Highways Authority – 30.05.2018 – “The submitted information regarding drainage is unclear. If the proposal is to connect to an existing drain in the highway which outfalls into the ditch then this is not acceptable. If the proposal is to put in a new drain to the ditch then Internal Drainage Board permission should be sought. Further clarification should be sought.”

Following clarification with the agent and NCC Highways they have confirmed there is no objection to the application given the drain proposed does not discharge into the highway, it is an existing surface water drain that discharges to the rear of the site (so no change from the current arrangement). As per the layouts submitted.

The Environment Agency – 18.06.18

For clarity, the Environment Agency have submitted a number of revised comments throughout this application in light of the amendments made to the proposal and the information provided by NSDC Environmental Health regarding the contaminated land concerns. As a result the EA has chosen to retract their previous comments to be replaced by the following comments received 18.6.18. In doing this they have also had sight of the officer report and have reviewed the Officer's interpretation of the flooding concerns relating to the development and can confirm that this reflects the advice that is given by the Environment Agency.

“Retrospective consent for the installation of engineering operations for site drainage. Consent for the change of use of the land from car sales to car sales and car wash and the erection of fencing at Lowdham Cars, Lowdham Road, Gunthorpe, Nottinghamshire, NG14 7ER

Thank you for consulting us on the application above. Please accept this letter as our formal, standalone, response to the application.

Environment Agency position

We have no objection to the proposal as submitted, subject to our recommended mitigation measures being secured and implemented by way of planning conditions on any subsequent planning permission. Our recommended conditions are set out throughout our response.

We would like to take this opportunity to highlight that, in our view, the two main issues with this site are the potential for contamination and the site's location within the floodplain. We would like to offer somewhat detailed comment on both matters, and for that reason, we will split our comments into these two sub-headings.

EA comments on Groundwater and Contaminated Land

The previous use of the development site as a petrol filling station presents a high risk of contamination that could be mobilised by surface water infiltration from the proposed sustainable drainage system (SuDS) leading to pollution of controlled waters. Controlled waters are particularly sensitive in this location because the proposed development site is located upon Secondary aquifer A associated with the Holme Pierrepont Sands and Gravels.

The previous petrol filling station on site also came with underground fuel storage facilities. We have previously held discussions with the environmental consultants for the site about significant hydrocarbon contamination beneath the site. As far as we are aware, this was being remediated in 2007; however, no completion report or validation of the works carried out has been submitted to date and so it is unclear whether or not remediation has been carried out.

In light of the above, we do not believe that the use of infiltration SuDS is appropriate in this location until it has been proven that any contamination in the ground and groundwater has been remediated to acceptable levels. We therefore request that the following planning condition is included in any permission granted. Without this condition we would object to the proposal in line with paragraph 109 of the National Planning Policy Framework (NPPF) 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 1

No infiltration of surface water drainage into the ground where contamination is present is permitted other than with the written consent of the Local Planning Authority. The development shall be carried out in accordance with the approved details.

Reason 1 - To ensure that the development is not put at unacceptable risk from, or adversely affected by, unacceptable levels of water pollution caused by mobilised contaminants in line with paragraph 109 of the NPPF.

Condition 2

Prior to any part of the permitted development being brought into use a verification report demonstrating the completion of works set out in a 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 2 - To ensure that the site does not pose any further risk to human health or the water environment by demonstrating that the requirements of the approved verification plan have been met and that remediation of the site is complete.

Informative advice on Condition 2 - Please note that a remediation strategy will need to be prepared and submitted, which sets out how known contamination on site will be remediated. We understand that your environmental health department have already requested that a full remediation strategy should be required by planning condition and we fully support this view. Our recommended condition has been set out on the assumption that such a condition will also be applied to any planning permission.

Condition 3

If, during operation of the site, contamination not previously identified is found to be present at the site then no further use (unless otherwise agreed in writing with the Local Planning Authority) shall be permitted 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 3 - To ensure that the development is not put at unacceptable risk from, or adversely affected by; unacceptable levels water pollution from previously unidentified contamination sources at the development site.

EA comments on Flood Risk

Newark and Sherwood's Level 2 Strategic Flood Risk Assessment (SFRA) shows the application site is within Flood Zone 3b, an area defined as 'the functional floodplain'. Furthermore, hydraulic modelling has been produced ('River Trent and Tributaries at Newark SFRM2', dated 2011) which shows the site to be within the 1 in 10 year flood outline (10% annual probability of flooding from the River Trent). Essentially, this means the site is at a very high risk of flooding.

The National Planning Policy Framework (NPPF) and associated Planning Practice Guidance (PPG) clearly state that only 'Water-compatible development' should be considered in areas of Flood Zone 3b. The PPG suggests that 'less vulnerable' development 'should not be permitted' in these areas. None the less, it is the responsibility of the Local Planning Authority (LPA) to determine the vulnerability classification of the development and not the Environment Agency. For this reason, we will not be objecting to the application on these grounds. Notwithstanding this, we strongly recommend that you consider whether or not the proposed use would be appropriate in this location; there are several factors which may inform your decision making on this matter such as the current permitted use of the site, etc.

From a flood risk management perspective our primary concerns in areas of Flood Zone 3b are floodplain storage and flood flow routes, given these are areas where water has to flow or be stored during times of flood. Any raising of ground levels, or the creation of new structures, will take up space that could be used to store floodwater, potentially increasing flood risk elsewhere. However, in this particular instance, the supporting documents show that only canopy supports and fencing will be introduced, which is unlikely to take up a significant area. Palisade fencing is relatively permeable and should not significantly affect flood flows. If ground raising will in fact

take place as part of the proposals, then please do re-consult us as soon as possible as our stance may well change.

The hardstanding itself will not affect fluvial flood risk, however, if *new* hard standing is proposed on an area of previously permeable ground it may affect the risk of flooding from surface water. The new canopies may also have an impact on surface water flows. The Lead Local Flood Authority (LLFA) are responsible for assessing surface water flooding and the associated risks. In this particular instance, Nottinghamshire County Council are the LLFA and we therefore strongly recommend that you formally consult them on this application; we understand that a formal consultation has been requested. The LLFA will be better placed to comment on the potential flood risk impacts arising from the proposed hardstanding and canopies.

Informative advice on planning conditions

As you are aware the discharge of planning conditions rests with your Authority. It is, therefore, essential that you are satisfied that the proposed draft conditions meet the requirements of paragraph 4 of the National Planning Practice Guidance (Use of Planning Conditions, section 2). Please notify us immediately if you are unable to apply our suggested conditions, as we may need to tailor our advice accordingly.”

NCC Flood Risk - Thank you for inviting the Lead Local Flood Authority (LLFA) to comment on the above application. Having considered the application the LLFA will not be making comments on it in relation to flood risk as it falls outside of the guidance set out by Government for those applications that do require a response from the LLFA.

As a general guide the following points are recommended for all developments:

1. The development should not increase flood risk to existing properties or put the development at risk of flooding.
2. Any discharge of surface water from the site should look at infiltration – watercourse – sewer as the priority order for discharge location.
3. SUDS should be considered where feasible and consideration given to ownership and maintenance of any SUDS proposals for the lifetime of the development.
4. Any development that proposes to alter an ordinary watercourse in a manner that will have a detrimental effect on the flow of water (e.g. culverting / pipe crossing) must be discussed with the Flood Risk Management Team at Nottinghamshire County Council.

NSDC Environmental Health – “The above site was previously used as a petrol filling station with underground fuel storage facilities. Environmental Health has previously been in discussions with the Environment Agency regarding significant hydrocarbon contamination beneath the site. This was being remediated by use of a Total Fluids Recovery system and was being managed by Arcadis GMI Ltd on behalf of Total UK Ltd in 2007. I am aware that the ownership of the site was taken over by London & Boulton in 2011 who subsequently employed SLR to manage the remediation on their behalf.

To date no validation report of the works carried out has been submitted to Environmental Health and it is unclear whether or not it has been carried out.

Furthermore it is uncertain whether the fuel tanks from the former filling station are still in situ. I would therefore recommend the use of parts C and D of our full phased contamination condition

to ensure that remediation and verification are carried out to the satisfaction of Environmental Health.”

Verbal discussion with NSDC EH regarding the phased contamination has confirmed parts A-D are required given the passage of time and development proposed in this application.

Cadent Gas Plant Protection – “Should you be minded to approve this application please can the following notes be included an informative note for the Applicant

Considerations in relation to gas pipeline/s identified on site:

Cadent have identified operational gas apparatus within the application site boundary. This may include a legal interest (easements or wayleaves) in the land which restricts activity in proximity to Cadent assets in private land. The Applicant must ensure that proposed works do not infringe on Cadent’s legal rights and any details of such restrictions should be obtained from the landowner in the first instance.

If buildings or structures are proposed directly above the gas apparatus then development should only take place following a diversion of this apparatus. The Applicant should contact Cadent’s Plant Protection Team at the earliest opportunity to discuss proposed diversions of apparatus to avoid any unnecessary delays.

If any construction traffic is likely to cross a Cadent pipeline then the Applicant must contact Cadent’s Plant Protection Team to see if any protection measures are required.

All developers are required to contact Cadent’s Plant Protection Team for approval before carrying out any works on site and ensuring requirements are adhered to.

Email: plantprotection@cadentgas.com Tel: 0800 688 588”

Comments from 2 interested parties have been received, they can be summarised as follows:

Objection on the grounds that:-

- a) Unauthorized works have taken place on the site.
- b) There is land contamination and a vast amount of earth has been removed from the site.
- c) The applicants/owners of the site have not complied with previous planning conditions.

Concerns have also been raised regarding compliance with the conditions attached to permission 05/01594/FUL and 07/00630/FUL, namely the archaeological condition “No development shall take place within the application site until details of a scheme of treatment have been submitted to and approved in writing by the LPA” and the condition restricting the number of cars to be stored on the site.

Comments of the Business Manager

Principle of Development

The Core Strategy outlines the spatial strategy for the District aiming to direct new development

to the more sustainable areas of the District such as the Newark Urban Area or principal villages such as Lowdham. The application site lies within Gunthorpe parish, to the south of Lowdham in a strip of commercial units on Lowdham Road. Gunthorpe itself is considered to be an 'Other Village' within the Core Strategy albeit the site lies outside of any settlement within the Nottinghamshire-Derby Green Belt. Spatial Policy 1 clearly states that, where development falls within the designated Green Belt, proposals will be assessed against Spatial Policy 4B. This policy in turn directs assessment to the relevant paragraphs of the NPPF.

Impact on Green Belt

Paragraph 89 of the NPPF regards the construction of new buildings within the Green Belt as inappropriate, and by definition harmful to the Green Belt, with the exception of six listed circumstances.

The application has been revised to remove the unauthorised canopies and as such, this proposal does not comprise the erection of any new 'building' within the green belt. The application does however relate to the erection of boundary fencing within the Green Belt and the change of use of land within it. Para 89 of the NPPF regards the **construction of new buildings** within the Green Belt as inappropriate, and by definition harmful to the Green Belt subject to a number of exceptions. The current application does not relate to the erection of a building in the dictionary sense of the word but it does nevertheless relate to operational development which would have a permanent form. The erection of a fence does not fall neatly within any of the exceptions to inappropriate development cited by para. 89 of the NPPF. However, in an overall context, the proposed change of use and associated security fencing could be considered as the partial redevelopment of a previously developed site (which does not exclude sites in continuing use). I therefore deem that the principle of development in the Green Belt could be considered acceptable subject to it not having a greater impact on the openness of the Green Belt and the purpose of including land within it.

The main element of the proposal that could have the potential to impact the openness of the green belt is the erection of new perimeter fencing to the north (c.22 m), north-east (c.40 m) and south-east (c.45.3 m) boundaries. The fence proposed is a green v-mesh fence approx. 2.4 m in height. The current treatment to these boundaries comprise an approx. 1.8 m close boarded palisade fence and an approx. 1.8 m high post and rail fence to the SE boundary.

I am mindful that the applicant could exercise their permitted development rights to construct boundary treatment on these particular boundaries up to 2 m in height (under Schedule 2, Part 2. Class A - Gates, Fences, Walls etc. of the Town and Country Planning (General Permitted Development) (England) Order 2015) without the need for planning permission. Given the proposal seeks to erect an approx. 2.4 m boundary fence the difference is only minimal that would actually need permission and represents a strong fallback position. In addition, given the backdrop to these boundaries are dense vegetation and tree lines the fencing, considering that is proposed to be a v-mesh in green, is considered to assimilate with the surrounding area and represents an acceptable visual backdrop of the wider area.

Paragraph 79 of the Framework indicates that openness is an essential characteristic of the Green Belt. It can be considered as meaning an absence of built development. I accept that the site as existing does not have an open character due to the existing buildings and the storage of cars. Given that the site constitutes a previously developed site, in a strip of commercial units along Lowdham Road that also include the storage of vehicles I consider that the erection of this fencing would not have a greater impact on the openness of the Green Belt and the purpose of including land within it, the application is considered to comply with the objectives of the NPPF.

In addition, the proposal would see part of the site that was previously hardstanding and used as part of the car sales forecourt used as a car wash area with two concrete areas installed to serve the hand car wash sites. Whilst I accept that this application is for retrospective consent for the installation of the concrete hardstanding and associated engineering operations the land previously was graveled and part of the forecourt for the storage of vehicles. As such, the development of the car wash areas have not resulted in the loss of green land or countryside. In addition, examples can be seen in close proximity, across the highway, of similar concrete bases and fences to the commercial units on Lowdham Road. Given the proposed design of the mesh fence and colour it is considered that the fencing will not be unduly prominent in the wider area and will not impact the openness of the Green Belt.

Having considered the purposes of the Green Belt listed at para. 80 of the NPPF I see no credible reason to conclude that the proposal would not conform with the objectives of the NPPF. The proposal is therefore not considered to constitute inappropriate development within the Green Belt.

Impact on Flooding

The Environment Agency have submitted revised comments throughout this application in light of the amendments made to the proposal and the information provided by NSDC Environmental Health regarding the contaminated land concerns. As a result the EA have chosen to retract their previous comments to be replaced by comments received 18.6.18. In doing this they have also had sight of the officer report and have reviewed the Officer's interpretation of the flooding concerns relating to the development and can confirm that this reflects the advice that is given by the Environment Agency. The conditions suggested by the EA relating to flooding have been discussed and they have confirmed that the Contaminated Land condition is sufficient to cover the ground contamination concerns with the retention of the surface water drainage condition.

The site is situated to the east of the River Trent and within Flood Zone 3 according to the Environment Agency maps. The applicant has provided details of the drainage that has been installed and confirmed that waste water passes through an interceptor and then into the main sewer system for the area thus ensuring there is no surface water drain off. Initially, the Environment Agency reviewed the submitted details and had raised no objection to the proposed development suggesting the imposition of standard conditions to ensure there is no water

pollution from the site. They also considered the flood risk and considered the development to be of low risk.

In response to the comments received from the Environmental Health officer regarding contamination on the site the Environment Agency (EA) submitted revised comments, again raising no objection to the proposal in principal subject to further contaminated land conditions. The previous use of the proposed development site as a petrol filling station presents a high risk of contamination that could be mobilised by surface water infiltration from the proposed sustainable drainage system (SuDS) leading to pollution of controlled waters. In light of the above, the EA advised that the use of infiltration SuDS is not appropriate in this location until it has been proven that any contamination in the ground and groundwater has been remediated to acceptable levels.

Further to concerns that have been raised by the Local Member regarding the potential for third party flood risk and impact upon the flood plain the EA have submitted additional comments which can be read in full in the consultation section above. In summary the EA reiterated that subject to conditions, they had no objection to the principal of this application, they also outlined the potential for flood risk as a result of this development advising that Newark and Sherwood's Level 2 Strategic Flood Risk Assessment (SFRA) shows the application site is within Flood Zone 3b, an area defined as 'the functional floodplain'. Furthermore, hydraulic modelling has been produced ('River Trent and Tributaries at Newark SFRM2', dated 2011) which shows the site to be within the 1 in 10 year flood outline (10% annual probability of flooding from the River Trent). Essentially, this means the site is at a very high risk of flooding.

The National Policy Framework (the NPPF) provides guidance on dealing with development within Flood Zones 2 and 3. Chapter 10 of the NPPF outlines that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk, but where development is necessary, making it safe without increasing flood risk elsewhere. Local Plans should apply a sequential, risk-based approach to the location of development to avoid where possible flood risk to people and property and manage any residual risk, taking account of the impacts of climate change, by:

- applying the Sequential Test;
- if necessary, applying the Exception Test;
- using opportunities offered by new development to reduce the causes and impacts of flooding; and
- where climate change is expected to increase flood risk so that some existing development may not be sustainable in the long-term, seeking opportunities to facilitate the relocation of development, including housing, to more sustainable locations (paragraph 100).

Paragraph 101 of the NPPF confirms that the aim of the Sequential Test is to steer new development to areas with the lowest probability of flooding. Development should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower probability of flooding.

The above guidance is reflected in Core Policy 10 of the Newark and Sherwood Core Strategy which states that when determining development proposals, the Council will, informed by national guidance and the District's Strategic Flood Risk Assessment, apply a sequential approach to future development and will work with partners to secure strategic flood mitigation measures as part of new development.

Policy DM5 of the Allocations and Development Management DPD contains similar provisions, confirming that the Council will aim to steer new development away from areas at highest risk of flooding. Policy DM5 confirms that proposals within Flood Zones 2 and 3 will only be considered where they constitute appropriate development and it can be demonstrated, by application of the Sequential Test, that there are no reasonably available sites in lower risk Flood Zones. Where development is necessary within areas at risk of flooding, proposals will also need to satisfy the Exception Test by demonstrating they would be safe for the intended users without increasing flood risk elsewhere. In accordance with the aims of Core Policy 9, proposals should wherever possible include measures to pro-actively manage surface water including the use of appropriate surface treatments in highway design and Sustainable Drainage Systems.

Within Flood Zone 3 proposals are subject to the Sequential Test in accordance with national planning policy and the Newark and Sherwood Development Plan, however, as set out within the NPPG the sequential test does not need to be applied for 'minor development' or development that involves a change of use. The NPPG discusses what is classed as 'minor development' in relation to flood risk and it is considered that this proposal accords with point 2 of this definition '*alterations: development that does not increase the size of buildings e.g. alterations to external appearance*' given that the application does not seek consent for the erection of a new building or the extension of an existing building. As such, it can be concluded that the sequential test does not need to be applied for this development.

Notwithstanding this, I have considered the application in line with the parameters of the sequential test - Paragraph 33 of the Planning Practice Guidance: Flood Risk and Coastal Change advises that for individual planning applications where there has been no sequential testing of the allocations in the development plan, a pragmatic approach on the availability of alternative sites should be taken and the area to apply the Sequential Test will be defined by local circumstances relating to the catchment area for the type of development proposed. The PPG uses the example of an extension for an existing business premises to advise that where the proposal needs to be in a certain location, it might be impractical to suggest that there are more suitable alternative locations for that development elsewhere. Therefore in any event it is considered that given the application seeks to allow for business diversification it would be impractical to suggest that there is a more suitable alternative location. The proposal would therefore, in any case, satisfy the sequential test.

This then leads me to consider whether the application would pass the Exception Test. As set out in paragraph 102 of the Framework, the Exception test is a method to demonstrate and help ensure that flood risk to people and application sites will be managed satisfactorily, while allowing

necessary development to go ahead in situations where suitable sites at lower risk of flooding are not available.

The NPPF and associated guidance clearly state that only ‘Water-compatible development’ should be considered in areas of Flood Zone 3b. The PPG suggests that ‘less vulnerable’ development ‘should not be permitted’ in these areas, this proposal is considered to fall within a ‘less vulnerable’ use in my view. The table set out in the Guidance is provided below:

Flood Zones	Flood Risk Vulnerability Classification				
	Essential infrastructure	Highly vulnerable	More vulnerable	Less vulnerable	Water compatible
Zone 1	✓	✓	✓	✓	✓
Zone 2	✓	Exception Test required	✓	✓	✓
Zone 3a †	Exception Test required †	✗	Exception Test required	✓	✓
Zone 3b *	Exception Test required *	✗	✗	✗	✓*

Key:

✓ Development is appropriate

✗ Development should not be permitted.

However I note the comments from the EA that signpost to the notes within the NPPG that supplement the Exception Test. These state that in FZ 3b (functional floodplain) where the Exception Test is required it should be designed and constructed to:

- *remain operational and safe for users in times of flood;*
- *result in no net loss of floodplain storage;*
- *not impede water flows and not increase flood risk elsewhere.*

From a flood risk management perspective the primary concerns of the EA in areas of Flood Zone 3b are fluvial flooding, floodplain storage and flood flow routes, given these are areas where water has to flow or be stored during times of flood. Any raising of ground levels, or the creation of new structures, will take up space that could be used to store floodwater, potentially increasing flood risk elsewhere. However, in this particular instance, the application does not include the raising of ground levels, nor does it include the construction of a building that would impede surface water run-off or fluvial patterns in flood events. The hardstanding proposed to be retained, as well as the level of fencing proposed to be erected is not considered to result in a significant net loss of floodplain storage. I note that the fencing proposed to be erected is open meshing; this is considered to be permeable and would not impede water flows in flood events. The EA have

identified that the hardstanding itself will not affect fluvial flood risk, however they have advised that if further hard standing is to be proposed in the future on an area of previously permeable ground it may cumulatively affect the risk of flooding from surface water.

The Lead Local Flood Authority (LLFA) are responsible for assessing surface water flooding and the associated risks. Despite consultation no comments specific to this application have been received from the LLFRA. However an informal discussion with Ross Marshall (Principal Flood Risk Management Officer) from NCC Flood Risk has clarified that the risk of flooding as a result of this proposal is “borderline unquantifiable”, the officer advised that “the pluvial impact of this development would be insignificant given the amount of concrete hardstanding is so small and separated from adjacent properties.” The capacity of the functional floodplain is considered by the Environment Agency and reaffirmed by the LLFRA concluding that given this development is so small scale within the floodplain the development would have an insignificant and undetectable impact upon the capacity of the floodplain and that the risk would be much higher to the actual business than to the impact on floodplain retention and 3rd party flood risk.

Whilst I acknowledge that technically the application should not be permitted as set out in the guidance, this is not enshrined in policy - it is guidance only and for the application to be refused there needs to be demonstrable planning harm. In this particular case, there are no physical buildings being proposed and neither the EA nor the LFRA have identified any harm despite having looked at this very carefully on several occasions. As a result I conclude that the proposal would not cause an unacceptable flood risk from fluvial or pluvial flooding. Without any technical support for the refusal of this application, along with the lack of harm that has been identified, there would be no grounds to refuse this application based on flood risk.

Impact of Design

Policy CP9 identifies that the District Council will expect new development to be of a high standard of sustainable design that, amongst other things, demonstrates an effective and efficient use of land that where appropriate promotes the re use of previously developed land and optimises site potential at a level suitable to the local character of the area.

Policy DM5 of the Allocations and Development Management DPD considers the matter of design. Criterion 4 of this policy outlines that the character and built form of new proposals should reflect the surrounding area in terms of scale, form, mass, layout, design, materials, and detailing.

The design of the proposed fencing is functional to its end use and similar in style to a number of other fences which exist within the surrounding area. On this basis I see no reason to resist the application on the basis of its design and the proposal is considered compliant with the relevant elements of Policy DM5.

Impact on Amenity

The closest residential property is the house of the application site that is approx. 25 m away from the application site for the car wash facilities. The current business comprises of people visiting the forecourt to view vehicles for sale, a similar pattern of visitation and vehicular movement is anticipated from the new use as with the existing use with cars periodically parking and leaving to use the facilities. Given the separation distance and the operation as part of the main unit it is not considered that the operations at the car wash would have an adverse impact by way of noise on neighbouring properties. In terms of visual amenity; the car wash facility will be read in conjunction with the wider site. As such it is not considered that the development has an adverse impact upon visual amenity and does not result in overbearing upon any neighbouring properties.

Impact on Highways

Spatial Policy 7 of the Core Strategy seeks to ensure that vehicular traffic generated does not create parking or traffic problems. Policy DM5 of the DPD requires the provision of safe access appropriate parking provision. The application has been revised so that it no longer includes amendments to the access to the site and also no longer includes fencing on the boundary with the highway.

The Highways department has commented on the application advising, "The submitted information regarding drainage is unclear. If the proposal is to connect to an existing drain in the highway which outfalls into the ditch then this is not acceptable. If the proposal is to put in a new drain to the ditch then Internal Drainage Board permission should be sought. Further clarification should be sought."

Following clarification with the agent and NCC Highways they have confirmed there is no objection to the application given the drain proposed does not discharge into the highway, it is an existing surface water drain that discharges to the rear of the site (so no change from the current arrangement).

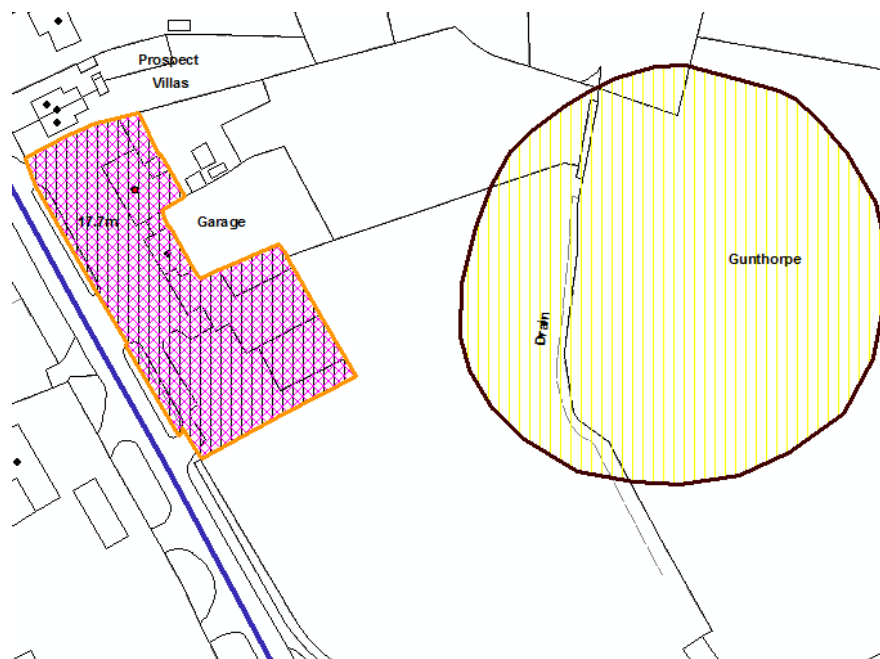
In any case, NCC Highways Authority have raised no objection to the car wash. The applicant has provided details of the drainage that has been installed which is considered by officers sufficient to ensure surface water is managed in an appropriate fashion. The boundary fencing to the north, north-east and south-east boundaries are not considered to have an impact upon the highway in accordance with SP7.

Other Matters

Comments have been received from interested parties which object to the proposal and they have been duly taken on board. The comments raised relate to the carrying out of unauthorised works on the site and the failure to comply with previous planning conditions relating to car storage and archeological surveying.

The council accepts that work has been undertaken on the site without planning permission and I note that the site has been the subject of ongoing enforcement action which has initiated the submission of this application. I also note that concerns have been raised regarding the site owners failure to comply with planning conditions relating to the storage of cars on the site, this matter is currently being addressed with the applicant and will be pursued through the enforcement process – it is not considered material to this decision. Notwithstanding the enforcement proceedings, it is considered reasonable to reaffirm the conditioned opening hours and car storage numbers within this application to prevent unacceptable impact upon neighbouring residential amenity.

I also note the failure to comply with the archeological condition attached to the 2007 permission has been raised in consultee comments – this matter has been discussed with the Senior Conservation officer and the Enforcement team who have discussed the severity of works close to a scheduled ancient monument (SAM) with the applicant, however, it is noted that the SAM is in excess of 50 m NE of the concrete hardstanding that has been installed (see below image), any works that have taken place could have damaged land of archeological significance however, anything of merit is no longer available for inspection and as such cannot be investigated.



Comments received have also referenced the Environmental Health (EH) Officer's comments relating to the contamination on the site following a petrol leak in 2007. It is acknowledged that there was a contamination risk associated with the land following a leaking storage tank on the site, the EH officer has advised that to this date, no validation report of the works carried out have been submitted to EH for confirmation. As such they have advised that parts C and D of the full phased contamination conditions be attached to any permission to ensure that remediation and verification are carried out to the satisfaction of Environmental Health – further clarification with the EH officer has concluded that it is pertinent to attach condition parts A-D regarding contamination given that works have been undertaken on the site that would supersede the 2007 permission and any previous remediation scheme would need to be revised to ensure it

is compatible with the new water sensitive use. The Environment Agency have also considered the contaminated land on site advising that conditions be attached to any permission to ensure that any contamination does not interfere with the watercourse.

Comments received from the parish council have been duly taken on board, I note that they make reference to the impact the development will have on flooding, surface water run-off and the highway – these matters have been considered in full in the appraisal section above.

Conclusion

As concluded above, the proposal is not considered to constitute inappropriate development within the Green Belt in accordance with the objectives set out by the NPPF. The development is not considered to unduly impact the character and appearance of the Green Belt or wider area or impact the amenity of any neighbouring residents. In addition the development is also not considered to have a detrimental impact on the public highway. With regards to flooding, it is accepted that as a matter of fact and degree no harm has been identified as a result of this proposal. Any potential impacts the development could have on flooding have been concluded to be insignificant from both pluvial and fluvial flood risk, and in any event would be outweighed by the economic benefit for allowing an existing business to diversify.

I consider the proposal would be typically functional to the intended use of the land. I have identified no other material planning considerations which would justify resistance of the proposal. As such approval is recommended on the basis of the following conditions.

RECOMMENDATION

That full planning permission is approved subject to the conditions and reasons shown below.

Conditions

01

The development hereby permitted comprising the erection of the fence and the change of use shall not begin later than three years from the date of this permission.

Reason: To comply with the requirements of Section 51 of the Planning and Compulsory Purchase Act 2004.

02

The development hereby permitted shall not be carried out except in complete accordance with the following approved plans reference:

- Site Location and Block Plans – 372(02) S10
- Revised Proposed Site Plan - 372(08)S10 REVISION B
- Surface Water Layout Plan

- Drainage Layout

unless otherwise agreed in writing by the local planning authority through the approval of a non-material amendment to the permission.

Reason: So as to define this permission.

03

The fence hereby permitted shall be constructed entirely of the materials details submitted as part of the planning application unless otherwise agreed in writing by the local planning authority.

Reason: In the interests of visual amenity.

04

Unless otherwise agreed by the Local Planning Authority, the car wash use must not commence until Parts A to D of this condition have been complied with.

Part A: Site Characterisation

The car wash use hereby permitted shall not be commenced until an investigation and risk assessment has been completed in accordance with a scheme to assess the nature and extent of any contamination on the site, whether or not it originates on the site. The contents of the scheme are subject to the approval in writing of the Local Planning Authority. The investigation and risk assessment must be undertaken by competent persons and a written report of the findings must be produced. The written report is subject to the approval in writing of the Local Planning Authority. The report of the findings must include:

- (i) a survey of the extent, scale and nature of contamination;
- (ii) an assessment of the potential risks to:
 - human health;
 - property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes;
 - adjoining land;
 - ground waters and surface waters;
 - ecological systems;
 - archaeological sites and ancient monuments;
- (iii) an appraisal of remedial options, and proposal of the preferred option(s).

This must be conducted in accordance with DEFRA and the Environment Agency's 'Model

Part B: Submission of Remediation Scheme

A detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment must be prepared, and is subject to the approval in writing of the Local Planning Authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

Part C: Implementation of Approved Remediation Scheme

The approved remediation scheme must be carried out in accordance with its terms prior to the commencement of development other than that required to carry out remediation, unless otherwise agreed in writing by the Local Planning Authority. The Local Planning Authority must be given two weeks written notification of commencement of the remediation scheme works.

Following completion of measures identified in the approved remediation scheme, a verification report (referred to in PPS23 as a validation report) that demonstrates the effectiveness of the remediation carried out must be produced, and is subject to the approval in writing of the Local Planning Authority.

Part D: Reporting of Unexpected Contamination

In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken in accordance with the requirements of Part A, and where remediation is necessary a remediation scheme must be prepared in accordance with the requirements of Part B, which is subject to the approval in writing of the Local Planning Authority.

Following completion of measures identified in the approved remediation scheme a verification report must be prepared, which is subject to the approval in writing of the Local Planning Authority in accordance with Part C.

Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors.

05

No infiltration of surface water drainage into the ground where contamination is present (as identified within condition 04) is permitted other than with the written consent of the Local Planning Authority. The development shall be carried out in accordance with the approved details.

Reason: To ensure that the development is not put at unacceptable risk from, or adversely affected by, unacceptable levels water pollution caused by mobilised contaminants in line with paragraph 109 of the NPPF.

06

The car sales and car wash premises shall only be open to the public between the hours of 08.30 am and 6pm.

Reason: In the interest of residential amenity.

07

There shall be no more than 30 cars for sale displayed on the premises at any time unless otherwise approved in writing by the Local Planning Authority.

Reason: To ensure that the site remains in a tidy condition and there is adequate customer and staff parking areas and to protect the openness of the Green Belt.

08

There shall be no outside storage or paraphernalia associated with the car wash facility erected on the site unless otherwise approved in writing by the Local Planning Authority.

Reason: To protect the openness of the Green Belt.

Notes to Applicant

01

The applicant is advised that all planning permissions granted on or after the 1st December 2011 may be subject to the Community Infrastructure Levy (CIL). Full details of CIL are available on the Council's website at www.newark-sherwooddc.gov.uk/cil/

The proposed development has been assessed and it is the Council's view that CIL is not payable on the development hereby approved as the development type proposed is zero rated in this location.

02

Considerations in relation to gas pipeline/s identified on site:

Cadent have identified operational gas apparatus within the application site boundary. This may include a legal interest (easements or wayleaves) in the land which restricts activity in proximity to

Cadent assets in private land. The Applicant must ensure that proposed works do not infringe on Cadent's legal rights and any details of such restrictions should be obtained from the landowner in the first instance.

If buildings or structures are proposed directly above the gas apparatus then development should only take place following a diversion of this apparatus. The Applicant should contact Cadent's Plant Protection Team at the earliest opportunity to discuss proposed diversions of apparatus to avoid any unnecessary delays.

If any construction traffic is likely to cross a Cadent pipeline then the Applicant must contact Cadent's Plant Protection Team to see if any protection measures are required.

All developers are required to contact Cadent's Plant Protection Team for approval before carrying out any works on site and ensuring requirements are adhered to. Email: plantprotection@cadentgas.com Tel: 0800 688 588

03

This application has been the subject of discussions during the application process to ensure that the proposal is acceptable. The District Planning Authority has accordingly worked positively and pro-actively, seeking solutions to problems arising in coming to its decision. This is fully in accordance with Town and Country Planning (Development Management Procedure) Order 2010 (as amended).

BACKGROUND PAPERS

Application case file.

For further information, please contact Honor Whitfield on ext. 5827.

All submission documents relating to this planning application can be found on the following website www.newark-sherwooddc.gov.uk.

Matt Lamb
Business Manager Growth and Regeneration

Committee Plan - 18/00279/FUL

