
From: Curley, Jane
Sent: 14 August 2023 10:03
To: Planning Comments (SMDC)
Subject: FW: Flood planning and site safety /SMD/2019/0646 and SMD/2022/0014

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From: SheilaWalters
Sent: Sunday, August 13, 2023 8:54 PM
To: Curley, Jane
Cc:
Subject: Flood planning and site safety /SMD/2019/0646 and SMD/2022/0014



Dear Mrs Curley,

Another aspect arising from last Tuesday's meeting was the assertion by yourself and Mr Haywood that the flood plan was duly considered at the outline phase of the application SMD/2016/ 0378 in respect of the safety and stability of the lagoon in quarry 3.

On checking the file again, I find the comment from the flood team fails to mention anything except that there are 5 watercourses at the site. This does not appear to be a fully informed comment as to the actual site specifics as the former excavation pit and final quarrying that took place altered the pattern of drainage and led to the formation of the lagoon after the applicant took control of the quarry and all liabilities.

In point of fact no one had realised the significance of the waterbody in terms of safety until in early 2021 CVCS drew attention to concerns of safety and stability in that there had been no inspections, or safety checks on the site (and especially quarry 3)
by the HSE since the quarry closed in 2011, and that the precise nature of the lagoon that had filled the void of the old excavation
pit constituted either a tip or a reservoir under the respective legislation governing each eventuality.

That prompted intervention by the Environment Agency and triggered, not just the classification issue which continues to
rumble on, but also raised the issue of stability and public safety under the NPPF.

This in turn brought up the issue of the flood safety plan and all its requirements.

You will know that flood risk is defined for the purposes of applying the National Planning Policy Framework,
as follows :-

“flood risk” is a combination of the probability and the potential consequences of flooding from all sources – including from rivers and the sea, directly from rainfall on the ground surface and rising groundwater, overwhelmed sewers and drainage systems, and from reservoirs, canals and lakes and other artificial sources.’

Concerning **Reservoir undertakers** it says : **local planning authorities should discuss their proposed site allocations with reservoir undertakers so as to avoid an intensification of development within areas at risk from reservoir failure, and ensure that reservoir undertakers can assess the cost implications of any reservoir safety improvements required due to changes in land use downstream of their assets.**

Local planning authorities will also need to evaluate in Strategic Flood Risk Assessments (and when applying the sequential test) how an impounding reservoir will modify existing flood risk in the event of a flood in the catchment it is located within, and/or whether emergency draw-down of the reservoir will add to the extent of flooding.

There does not appear to be any consideration of such matters in the application files.

However we are aware that, from the file records, the applicant, via its agents, has attempted to avoid licensing and costs implications
by undertaking the unauthorised excavation of the dam in June 2021 when it discovered that investigations by the EA's enforcement officer were closing in on a deadline set for potential prosecution.

In the light of this panic by Laver's agents having suddenly become aware of their responsibilities, we suspected that a site specific
flood risk assessment has not been provided to you as the LPA considering these applications in accordance with new legislation
now in operation.

We were concerned and wrote to you as it had implications both for the applicant and for your authority in respect of what was required
for determining the suitability of the applications and the site itself.

For example legislation now requires

The developer should justify with evidence to the local planning authority what area of search has been used when making the application.

That has not been carried out.

Unfortunately this is one of many alterations to the legal requirements that have to be provided in the application.

Ultimately the local planning authority needs to be satisfied in all cases that the proposed development will be safe and not lead to increased flood risk elsewhere.

It should also consider the residual flood risk which the legislation includes, as examples, the following:-

the failure of flood management infrastructure, such as a breach of a raised flood defence, blockage of a surface water conveyance system, overtopping of an upstream storage area, or failure of a pumped drainage system;
failure of a reservoir, or;
a severe flood event that exceeds a flood management design standard, such as a flood that overtops a raised flood defence,
or an intense rainfall event which the drainage system cannot cope with.

We have emphasised the latter in italics as this seems appropriate to the shift in climate change concerns since the inception of this project back in 2010 and the current increased likelihood of severe rain events, plus the Council's adoption of new measures to address climate change implications.

In particular, as one of the many new obligations that has been imposed by government since 2019 when these latest applications were first made and since flood plans and site-specific analysis have now become an essential priority in the planning considerations, the LPA is therefore required to ensure that any new development is safe, including where there is a residual risk of flooding and whether adequate flood warnings would be available to people using the development.

Where surface water or other local flood risks are likely to significantly affect a proposed development site, early discussions between the planning authority and the developer must identify the flood risk issues that the authority would expect to see addressed in the planning application and accompanying site-specific flood risk assessment.

There is no evidence on the files of such early discussion taking place, or, if at all, it seems to have been overlooked and omitted from the documentation. Yet there is a whole suite of legislation that has now to be distilled and, where appropriate, accounted for as part of the NPPF.

Among the site specific flood assessments and those of residual risk, is the requirement that a flood warning and evacuation plan is to be approved and available as an essential for sites at risk of flooding used for holiday or short-let caravans and camping and are important at any site that has transient occupants (eg hostels and hotels).

Local planning authorities are also advised to consult with the owners/operators of raised reservoirs, to establish constraints upon safe development.

Ref:- Government Guidance

"Flood risk and coastal change" which advises how to take account of and address the risks associated with flooding and coastal change in the planning process.

Last updated

25 August 2022

We feel therefore that because of increased awareness flooding risks and the ensuing legislative changes since 2022, the degree of consideration undertaken by the Council to date in respect of the applications, is thoroughly inadequate and requires further attention from the authority as LPA and more importantly from the developer.

We note also that within the new guidance there is ample scope for the LPA to refuse applications that do not take account of the issues.

To conclude therefore, we do not accept the LPA's response derived from our meeting as sufficiently adequate.

We would request that the matters outlined above as well as the historic details of the applications be urgently reviewed if the case officer's report is imminent.

Because the applicants have been so dilatory in their approach to the standard of expectations and requirements of the applications with its manifold changes over the years, it seems that further attention must now be given to those issues of safety and flood risk as required by law and additional documentation produced for publication for all interested parties.

Also again it highlights the point that a poor planning application cannot necessarily be made not a good one by conditions.

As Councillor Aberley reminded us all at the meeting, the question of how a plethora of conditions is to be enforced or overseen by SMDC, if needs be, raises further problems and does not encourage confidence in a system of planning where the merits or benefits of those applications that should be obvious and decisive, are needed to be bolstered by such because they are so intrinsically weak and out of time and context.

We look forward to hearing from on this matter as soon as possible.

Yours sincerely,

David Walters
Secretary
Churnet Valley Conservation Society
CVCS

PS In the meantime while we await your responses, please file copies of this on the webpages for SMD/2019/0646 and SMD/2022/0014 as another objection.

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