

MC/24/0154

Land at Chatham Docks Industrial Estate, South Side Three Road, Chatham

This application was deferred from the meeting on 8 May 2024, as the Council had received on the Saturday evening of the Bank Holiday weekend, 2 working days before the Committee, a letter from Dentons, the solicitors acting on behalf of ArcelorMittal Kent Wire Limited suggesting that the officers report was flawed and that any decision based on that was challengeable. The contents of their letter needed to be properly assessed and responded to and that was not possible within the few working days prior to the Committee.

In addition, on Friday 3rd May the Council received an email from DLUHC referring to having received a request for the Secretary of State to call in the application. That was followed up by a letter dated 7 May (the day before Committee) setting out an article 31 holding direction on the Council such that no decision to approve the application can be issued without specific authorisation. While the Council has requested to see copies of the requests for a call in, these have not been made available by DLUHC as yet. However, the Council has been sent a copy of the letter from ArcelorMittal requesting a call in.

The Council have also been provided with a copy of the letter from the applicants, dated 10 May, responding to the call in request.

This report sets out an update to the original report to Planning Committee on 8 May. To assist members it also includes the following as appendices:

- A. A copy of the report as originally drafted for committee on 8 May.
- B. A copy of the letter from Denton's with Council officers' responses to their comments in red.
- C. A copy of the call in request from ArcelorMittal with Council officers' response in red.
- D. A copy of the applicants response to the call in request.

Set out below are all the adjustments and corrections that have been made to be read alongside the original report.

Amend name of applicant from Peel Land and Property to Peel Waters.

Recommendation A - Notification to the Sec of State of resolution to approve.

Recommendation B – Approval with Conditions set out below:

Due to small changes within a number of the conditions (mainly focusing the wording on allowing for phasing of development) and an additional condition, a full list of all conditions is set out below which is to supersede the list of conditions on the original report.

- 1 Approval of the details of the layout, scale and appearance of the buildings and the landscaping (hereinafter called "the reserved matters") shall be obtained

from the Local Planning Authority in writing before any development is commenced.

Reason: To accord with the terms of the submitted application and to ensure that these details are satisfactory.

- 2 Plans and particulars of the reserved matters referred to in Condition 1 above shall be submitted in writing to the Local Planning Authority for approval. Such application for approval shall be made to the Authority before the expiration of five years from the date of this permission and the reserved matters shall be carried out in accordance with the approved details.

Reason: To comply with Section 92 of the Town and Country Planning Act 1990.

- 3 The development hereby permitted shall take place no later than 2 years from the date of approval of the last of the reserved matters to be approved.

Reason: To comply with Section 92 of the Town and Country Planning Act 1990.

- 4 The development hereby permitted shall be carried out in accordance with the following approved plans:

Drawing numbers;
M23035-A-007 Rev B - Proposed Site Access
31852-PL-1003 Rev B - Development Parameters Plan

Reason: For the avoidance of doubt and in the interests of proper planning.

- 5 No development shall take place until a scheme based on sustainable drainage principles, has been submitted to and approved in writing by the Local Planning Authority.

The scheme shall include (where applicable):

- i. Details of the design of the scheme (in conjunction with the landscaping plan where applicable).
- ii. A timetable for its implementation (including phased implementation).
- iii. Operational maintenance and management plan including access requirements for each sustainable drainage component.
- iv. Proposed arrangements for future adoption by any public body, statutory undertaker or management company.

The development shall be undertaken in accordance with the agreed scheme.

Reason: To manage surface water during and post construction and for the lifetime of the development as outlined at Paragraph 169 of NPPF.

- 6 Prior to first occupation of any part of the development (or within an agreed implementation schedule) a signed verification report carried out by a qualified

drainage engineer (or equivalent) must be submitted to and approved in writing by the Local Planning Authority to confirm that the agreed surface water system has been constructed as per the agreed scheme and plans. The report shall include details and locations of critical drainage infrastructure (such as inlets, outlets and control structures) including as built drawings, and an operation and maintenance manual for the unadopted parts of the scheme as constructed.

Reason: This condition is sought in accordance with paragraph 169 of the NPPF to ensure that suitable surface water drainage scheme is designed and fully implemented so as to not increase flood risk onsite or elsewhere.

- 7 No phase or sub phase of development shall commence until details of a Construction Surface Water Management Plan (CSWMP) detailing how surface water and storm water will be managed on the site during construction of that phase or sub phase (including demolition and site clearance operations) is submitted to and agreed in writing by the Local Planning Authority. The CSWMP shall be implemented and thereafter managed and maintained in accordance with the approved plan for the duration of construction.

The approved CSWMP shall include method statements, scaled and dimensioned plans and drawings detailing surface water management proposals to include:

- i. Temporary drainage systems.
- ii. Measures for managing pollution / water quality and protecting controlled waters and watercourses.
- iii. Measures for managing any on or offsite flood risk

The development shall be undertaken in accordance with the agreed details.

Reason: To manage surface water during and post construction and for the lifetime of the development as outlined at Paragraph 169 of NPPF.

- 8 As part of the submission of each of the Reserved Matters applications, a statement of conformity must be submitted for each of the Reserved Matters that sets out compliance with the approved Design Principles Document for Basin3 - Michael Sparks Associates (18.01.2024).

Reason: To ensure a satisfactory external appearance in accordance with Policy BNE1 of the Medway Local Plan 2003.

- 9 In bringing forward the Reserved Matters application relating to landscaping, the Strategy as set out in pages 15-17 of the Design Principles Document shall be adhered to and a statement of conformity shall be submitted as part of the Reserved Matters application.

Reason: To ensure a satisfactory external appearance in accordance with Policy BNE1 of the Medway Local Plan 2003.

10 Prior to the commencement of any phase or sub phase of development an investigation and risk assessment, in addition to any assessment provided with the planning application, must be completed in accordance with a scheme to assess the nature and extent of any contamination on the site, including risks to groundwater, whether or not it originates on the site. The scheme shall be submitted to and approved in writing by the Local Planning Authority prior to commencement of that phase or sub phase of development. The investigation and risk assessment must be undertaken by competent persons and a written report of the findings must be produced. The written report shall be submitted to and approved by the Local Planning Authority prior to the commencement of that phase or sub phase of development. 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,
groundwaters and surface waters,
ecological systems,
archeological 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 'Land Contamination Risk Management document (LCRM)'.

Reason: To ensure that the development is undertaken in a manner which acknowledges interests of amenity and safety in accordance with Policy BNE23 of the Medway Local Plan 2003.

11 Prior to the commencement of any phase or sub phase of development, 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 submitted to and approved in writing by 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.

Reason: To ensure that the development is undertaken in a manner which acknowledges interests of amenity and safety in accordance with Policy BNE23 of the Medway Local Plan 2003.

- 12 Prior to the commencement of each phase or sub phase of development the approved remediation scheme must be carried out in accordance with its terms prior to the commencement of any development (other than development required to enable the remediation process to be implemented) unless otherwise agreed in writing by the Local Planning Authority. The Local Planning Authority must be given not less than two weeks written notification prior to the commencement of the remediation scheme works.

Following completion of the measures identified in the approved remediation scheme, a verification report that demonstrates the effectiveness of the remediation carried out must be produced and submitted to and approved in writing by the Local Planning Authority prior to the occupation of the development.

Reason: To ensure that the development is undertaken in a manner which acknowledges interests of amenity and safety in accordance with Policy BNE23 of the Medway Local Plan 2003.

- 13 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 condition 11, and where remediation is necessary a remediation scheme must be prepared in accordance with the requirements of condition 12, which is subject to the approval in writing of the Local Planning Authority.

Following completion of the measures identified in the approved remediation scheme a verification report providing details of the data that will be collected in order to demonstrate that the works set out in condition 12 are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action must be prepared, which is subject to the approval in writing of the Local Planning Authority in accordance with condition 12.

Reason: To ensure that the development is undertaken in a manner which acknowledges interests of amenity and safety in accordance with Policy BNE23 of the Medway Local Plan 2003.

- 14 Prior to the commencement of each phase or sub phase of the development a Construction Environmental Management Plan (CEMP) shall be submitted to and approved in writing by the Local Planning Authority. The Construction Environmental Management Plan shall include amongst other matters details of:

Hours of construction working, measures to control noise affecting nearby residents, wheel cleaning/chassis cleaning facilities, dust control measures, pollution incident control and site contact details in case of complaints.

All construction works on all parts of the development shall thereafter be carried out at all times in accordance with the approved CEMP unless any variations

are otherwise first submitted to and approved in writing by the Local Planning Authority.

Reason: Required before commencement of development in order to minimise the impact of the construction period on the amenities of local residents and with regard to Policy BNE2 of the Medway Local Plan 2003.

- 15 The development hereby permitted shall not be occupied unless and until a comprehensive Full Travel Plan has been submitted to and approved in writing by the Local Planning Authority (in consultation with the Highway Authority for the M2). The Full Travel Plan shall be prepared in line with prevailing policy and best practice and shall include as a minimum:

- o the identification of targets for trip reduction and modal shift;
 - o the measures to be implemented to meet these targets including an accessibility strategy to specifically address the needs of occupiers with limited mobility requirements;
 - o the timetable/ phasing of the implementation of the Travel Plan measures shall be alongside occupation of the development and its operation thereafter;
 - o the mechanisms for monitoring and review;
 - o the mechanisms for reporting;
 - o the remedial measures to be applied in the event that targets are not met;
- and
- o the mechanisms to secure variations to the Travel Plan following monitoring and reviews.

The development shall only be occupied in accordance with the approved Travel Plan which shall remain in perpetuity unless otherwise amended in accordance with a review to be agreed in writing by the Local Planning Authority in conjunction with the Highway Authority.

Reason: In order to minimise the use of the private car and promote the use of sustainable modes of transport in accordance with the National Planning Policy Framework (December 2023) and paragraph 40 DfT Circular 01/2022.

- 16 Prior to the commencement of the development hereby permitted a comprehensive Construction Traffic Management Plan shall be submitted to and approved in writing by the Local Planning Authority (in consultation with the Highway Authority for the M2). The plan shall include as a minimum:

- o Construction phasing
- o Construction routing plans
- o Permitted construction traffic arrival and departure times.

Thereafter all construction activity in respect of the development shall be undertaken in full accordance with such approved details unless otherwise approved in writing by the Local Planning Authority in consultation with the Highways Authority.

Reason: To mitigate any adverse impact from the development on the M2 in accordance with DfT Circular 01/2022.

- 17 No development shall take place until such time as an updated Flood Risk Assessment (FRA) has been submitted to, and approved in writing by, the Local Planning Authority. The FRA should specifically consider and update:

1. Any updated finished floor levels taken from the coastal flood model with updated climate change projections.
2. The existing and proposed topographic levels across the site which considers flood resilience of proposed the site and wider development proposals. This should include key infrastructure proposals (e.g. access roads, utilities, etc.) and demonstrate that flood risk to neighbouring development would not be increased e.g. considering flood flow paths across this site.
3. Finished floor levels are to be agreed at the detailed design stage with the Environment Agency.

Reason: This condition is required to reduce the risk of flooding to the proposed development and future users. The current Flood Risk assessment and drainage strategy (Reference - C1688-20230159 Version Rev B) acknowledges the current uncertainty regarding the options for safe access and egress requirements for this application, which are dependent on future development proposals into Northside Three. Although satisfied at this stage that the proposed development could be allowed in principle, the applicant will need to provide further information at detailed application stage to ensure that the proposed development can go ahead without posing an unacceptable flood risk.

- 18 Prior to the commencement of development an Historic Audit shall be undertaken, submitted to and approved in writing by the Local Planning Authority. The Audit shall detail all historical features found within the application site and it shall set out a detailed schedule of the retained features that will remain on site and how they will be retained and maintained thereafter.

Reason: To ensure that all historical assets relating to the navel dockyard are recorded and preserved in an appropriate manner, in accordance with the principles of paragraphs 195, 200, 201 and 203 of the NPPF.

- 19 Prior to the occupation of any phase or sub-phase of the development hereby permitted, details of historical interpretation boards to be incorporated within the development shall be submitted to and approved in writing by the Local Planning Authority. The submitted details shall include location, design, dimensions and materials of the interpretation boards and shall reflect the findings of the historical audit. The approved items shall be installed prior to the first occupation of the phase or sub-phase of the development. The approved interpretation boards shall thereafter be retained.

Reason: To ensure a satisfactory visual appearance in accordance with policy BNE1 of the Medway Local Plan 2003.

- 20 Applications for the approval of reserved matters in relation to layout for a phase or sub-phase, shall show land reserved for parking in accordance with the adopted Parking Standards.

None of the buildings within that phase or sub phase shall be occupied until this area has been provided, surfaced and drained in accordance with the approved details. Thereafter no permanent development, whether or not permitted by the Town and Country Planning (General Permitted Development) Order 2015 (or any order amending, revoking and re-enacting that Order) shall be carried out on the land so shown or in such a position as to preclude vehicular access to the reserved vehicle parking area.

Reason: Development without provision of adequate accommodation for the parking of vehicles is likely to lead to hazardous on-street parking and in accordance with Policies T1 and T13 of the Medway Local Plan 2003.

- 21 Full noise surveys for each phase or sub phase shall be submitted as part of the reserved matters applications for that phase or sub phase.

Reason: To ensure that noise associated with the development is controlled and remains at an acceptable level in terms of impact on neighbouring uses.

- 22 No phase or sub phase shall be occupied until details of cycle and refuse storage facilities for that phase or sub phase have been submitted to and approved in writing by the Local Planning Authority. The cycle and refuse storage facilities shall be provided in accordance with the approved details prior to the occupation of the relevant phase.

Reason: All new development requires provision of adequate accommodation for cycle and refuse storage to accord with Policies BNE1 and T4 of the Medway Local Plan.

- 23 No development above ground floor slab level within each phase or sub phase shall commence until details for the provision of the following mitigation measures for that phase or sub phase have been submitted to and approved in writing by the Local Planning Authority:

- o Appropriate and agreed number of Electric Vehicle charge points per commercial/industrial unit.

The mitigation measures set out in the approved details shall be implemented prior to the first occupation of that phase and thereafter be retained.

Reason: In the interests of sustainability in accordance with paragraph 112E of NPPF 2021

- 24 No building shall be occupied within a phase or sub-phase until a plan indicating the positions, design, materials and type of boundary treatment to be erected has been submitted to and approved in writing by the Local Planning Authority. The approved boundary treatment for each building shall be completed in

accordance with the approved details before that building is occupied and shall thereafter be retained.

Reason: To ensure that the appearance of the development is satisfactory and without prejudice to conditions of visual amenity in the locality, in accordance with Policy BNE1 of the Medway Local Plan 2003.

- 25 Applications for the approval of reserved matters in relation a phase or sub-phase shall be accompanied by a Climate Change and Energy Efficiency Statement. These details shall outline the measures the development would incorporate to address climate change. The development herein approved shall incorporate the measures to address energy efficiency and climate change as set out within Section 1.8 of the approved Design Principles Document. The development shall not be occupied within a phase or sub-phase until a verification report prepared by a suitably qualified professional has been carried out to demonstrate compliance.

Reason: In the interests of sustainability and to positively address concerns regarding climate change in accordance with paragraph 154 the National Planning Policy Framework 2021.

- 26 The development hereby permitted shall not exceed 31,000m² of Use Class B2, B8 and/or E(g).

Reason: To ensure that the overall floorspace remains within the parameters of the outline application in the interests of intensification of use and highway capacity.

- 27 Prior to the submission of a Reserved Matters, a scheme demonstrating the mix of B2, B8 and E(g) uses to be adopted within the site shall be submitted to and approved in writing by the Local Planning Authority and development shall then be carried out in accordance with the agreed mix.

Reason: To ensure that development comes forward in the spirit of Policy ED1 of the Local Plan and that the amount of B2 and B8 uses remaining on site are controlled.

Representations

Since the original report was written **2 letters of support** have been received in relation to this application. The support letters raise the following points:

- The new community at Chatham Waters is not well established and the whole area has a positive vibe.
- Works Peel Waters have undertaken have bene executed excellently.
- This application to extend employment opportunities for new occupiers and employees is exciting and an excellent boost to economic growth.
- The proposed vision would create a dynamic, high-quality destination that integrates with existing communities whilst attracting new employers and

business to the area, offering much needed, high-quality, new employment spaces for already established Medway businesses.

- This would open up part of the Medway waterfront for the first time in its history, which would connect up Chatham Waters with the wider local community and university campuses.
- We can see how this workspace hub will attract new SMEs to the area and will provide much needed workspace for existing local businesses.
- With the universities just around the corner and the beautiful setting by the banks of the Medway we think this would in time be a vital part of the community and would help keep local young people living in Medway rather than them having to commute or relocate to London and beyond in search of employment.

1 additional letter of objection has been received (total is therefore now **172 letters of objection**) from a local resident stating the following additional points:

- Redevelopment as proposed will restrict opportunities for any remaining businesses.
- Forcing a successful business to close for speculative hope of new jobs is a bad decision.
- Maritime traffic arriving and departing with cargo demonstrates the value of having the docks.
- The non-tidal nature of the berths at Chatham Docks used to be promoted as being key for project work and specialised cargo. To replicate these facilities would be exceedingly expensive if space could even be found elsewhere.

An additional letter of objection has also been received from the **Medway Liberal Democrats** stating that warehousing does not represent high value employment that provides good training opportunities.

Members to note that the Council have received a letter from **DLUHC** issuing an Article 31 Holding Direction whereby the Council cannot approve the issue a decision to approve the application prior to confirmation on whether the Secretary of State considers it appropriate to call in the application for his consideration.

A letter from Solicitors (Dentons) acting on behalf of ArcelorMittal Kent Wire Limited has been received setting out why they consider the officers report to be flawed and any determination of the application unlawful. This letter is attached as appendix B along with highlighted Council Officer response to each of the points that have been raised.

A letter from ArcelorMittal Kent Wire Limited to the Secretary of State requesting a call in. This letter is attached as Appendix C along with highlighted Council Officers response to each of the points raised.

The Applicant has written to the Secretary of State in response to the letter that they have seen from ArcelorMittal to the Secretary of State requesting the application be called in. A copy of the applicants letter is attached as appendix D to this report.

Planning Appraisal

Site description and surrounding area

Amend 1st Paragraph, 2nd sentence to read:

... with a series of smaller structures and primarily making up two main businesses (ArcelorMittal and Aggregate Industries Cementitious Materials).

Principle

Add new paragraph before paragraph 4 reference to Policy ED1 to read as follows:

The supporting text to Policy ED1 of the Adopted Local Plan on existing employment areas states as follows:

“Priority will be given to the retention of existing employment uses, provided that local amenity is not jeopardised. The Council will encourage the improvement of such areas to enhance both the image and efficiency of companies and the environment. The latter is particularly important to the way that potential business investors perceive Medway. Their accessibility by modes of transport other than the car is important and will be encouraged. Therefore, proposals for new development and extensions which are likely to generate further employment will be permitted in the areas listed below, subject to the particular characteristics of each site. A number of existing employment areas have been developed for a variety of office, industrial and warehousing uses. Accordingly, Business Uses (Class B1) and where appropriate, general industrial uses (Class B2) and storage and distribution uses (Class B8) will be permitted on the following sites for the reasons set out:”

This sets out a clear direction on improving the attractiveness of the employment areas both visually and in terms of attractability to potential investors reflecting on the future employment needs/demands.

Amend paragraph 7 to add a new sentence 2 which states” This is far greater than the 18,000m² of B2 and B8 floorspace that exists”.

Add at end of paragraph 7 new sentence. “New condition 27 above, along with condition 26 seek to secure not only up to 31,000m² floor area but also to ensure that the mix provided reflects the floorspace of B2/B8 required under Policy ED1 and as such the recommendation and conditions secure the spirit of the Policy and employment aims of the Local Plan. As such the proposal does not represent a Departure from the Development Plan.

Amend last sentence of penultimate paragraph to read:

Linked to this, of the 22 businesses in the industrial estate in 2022, 14 were not related to the operation of the Port.

Economic

Amend 2nd sentence of 1st paragraph as follows:

“Their importance in terms of employment and the national economy is accepted, albeit that there is some dispute over total job numbers on site.”

Delete remaining sentences in this paragraph and **replace** with “This application does not impact on the larger northern employment site, nor does it impact on the Lock Gates.

Delete 3rd paragraph.

Add new paragraph at end of Economic section as follows:

Paragraph 85 of the NPP states that planning policies and decisions should help create the conditions in which businesses can invest, expand and adapt. Significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development. The approach taken should allow each area to build on its strengths, counter any weaknesses and address the challenges of the future. This is particularly important where Britain can be a global leader in driving innovation....

It is considered that this proposal on part of the Docks site, to bring in a flexibility of uses that will respond to the challenges and opportunities of the future is completely consistent with this part of the NPPF in terms of building a strong competitive economy.

Paragraph 87 states that planning decisions should recognise and address the specific locational requirements of different sectors. This includes making provision for clusters or networks of knowledge and data driven, creative or high technology industries, and for storage and distribution operations at a variety of scales and in suitably accessible locations.

Again, it is considered that this application on part of the Docks, closest to the universities and other innovation projects is completely consistent with the NPPF. The proposal therefore represents a significant opportunity (in this location and site) to respond to the aspirations of the Thames Estuary Production Corridor and the potential for the further development of creative industries in Medway while not necessarily preventing appropriate B2/B8 uses on the site.