

DELEGATED OFFICER REPORT



WOKINGHAM
BOROUGH COUNCIL

Application Number:	242532
Site Address:	Headley Road East, Woodley, RG5 4SN
Expiry Date:	3 January 2025
Site Visit Date:	7 October 2024
Proposal: Application to vary condition 15 of planning consent 213106 for the proposed erection of 5 no. buildings for commercial development to provide flexible light industrial, general industrial, and storage and distribution uses, with ancillary offices, associated car parking, formation of new accesses, and landscape planting, following demolition of existing buildings. Condition 15 refers to BREEAM details, and variation is to change the trigger for the condition to within 6 months of occupation.	

PLANNING CONSTRAINTS/STATUS

Contaminated Land Consultation Zone
Local Authorities
Affordable Housing Thresholds
Borough Parishes
Core Employment Areas
Scale and Location of Development Proposals
Great Crested Newt Consultation Zone
Nuclear Consultation Zone
Public Open Space
Tree Preservation Orders
Borough Wards
Landscape Character Assessment Area
Land Terrier
SSSI Impact Risk Zones
JCEB Preferred Waste Areas
JCEB Mineral Safeguarding Areas
Local Plan Update Submitted Sites

PLANNING POLICY

National Policy	National Planning Policy Framework (NPPF) National Planning Policy Guidance (NPPG)
Core Strategy (CS)	CP1 – Sustainable Development CP15 – Employment Development
MDD Local Plan (MDD)	CC01 – Presumption in Favour of Sustainable Development CC04 – Sustainable Design and Construction CC05 – Renewable Energy and Decentralised Energy Networks TB11 – Core Employment Areas
Other	Borough Design Guide Supplementary Planning Document Sustainable Design and Construction Supplementary Planning Document

PLANNING HISTORY		
Application No.	Description	Decision & Date
213106	Full planning application for the proposed erection of 5 no. buildings for commercial development to provide flexible light industrial, general industrial, and storage and distribution uses, with ancillary offices, associated car parking, formation of new accesses, and landscape planting, following demolition of existing buildings.	Refused 10/06/2022, appeal allowed 22/12/2023 (APP/X0360/W/ 22/3306963)
240116	Application for submission of details to comply with the following condition of planning appeal decision consent [APP/X0360/W/22/3306963 application 213106] dated [22/12/2023]. Condition 6), Contamination Risk Assessment and part discharge of condition 7), detailed remediation scheme following condition 6 assessment.	Split decision 20/02/2024
240014	Application for submission of details to comply with the following conditions of planning consent 213106 (APP/X0360/W/22/3306963) dated 22/12/23. Condition 3 relates to a building recording document, condition 4 to a Construction Method Statement and condition 5 to a Construction Environmental Management Plan (CEMP).	Approved 28/03/2024
240497	Application for submission of details to comply with the following condition of planning consent 213106 (APP/X0360/W/22/3306963) dated 22/12/23. Condition 11 relates to external materials.	Approved 16/04/2024
240277	Application for submission of details to comply with the following condition of planning consent 213106 (APP/X0360/W/22/3306963) dated 22/12/23. Condition 21 relates to details of biodiversity enhancements.	Approved 10/05/2024
240601	Application for submission of details to comply with the following condition of planning consent 213106 (APP/X0360/W/22/3306963) dated 22/12/23. Condition 12 relates to tree protection works.	Approved 21/05/2024
240629	Application for submission of details to comply with the following conditions of planning consent 213106 (APP/X0360/W/22/3306963) dated 22/12/23. Condition 8 relates to road and footway	Approved 24/06/2024

	construction details, condition 9 to details of vehicular accesses and condition 10 to a scheme for highway signage.	
241291	Application for submission of details to comply with the following condition of planning consent 213106 (APP/X0360/W/22/3306963) dated 22/12/23. Condition 6 relates to contamination, condition 7 to remediation and condition 29 to unexpected contamination.	Approved 27/06/2024
241657	Application for submission of details to comply with the following conditions of planning consent 213106 (APP/X0360/W/22/3306963) dated 22/12/23. Condition 4 relates to a Construction Method Statement and condition 5 to a Construction Environmental Management Plan (CEMP).	Approved 23/08/2024
241926	Application to remove condition 32 of planning consent 213106 (granted at appeal, ref: APP/X0360/W/22/3306963) for the proposed erection of 5 no. buildings for commercial development to provide flexible light industrial, general industrial, and storage and distribution uses, with ancillary offices, associated car parking, formation of new accesses, and landscape planting, following demolition of existing buildings. Condition 32 refers to the timing of deliveries at units 9 and 10 and the proposed removal of the condition is to lift this restriction.	Under consideration

CONSULTATION RESPONSES

Internal

WBC Environmental Health – no comments received
WBC Sustainability – no objection

External

None consulted

REPRESENTATIONS

Woodley Town Council	“The Planning & Community Committee have reviewed this application and, whilst they had no objections, asked that Planning Officers confirm the Committee’s understanding that it would be impractical to apply the BREEAM requirements without changing the trigger for the condition to within 6 months of occupation.”
Ward Member(s)	No comments received

Neighbours	6 comments received (including 1 duplicate). Comments raised the following issues: - Inappropriate to introduce further development in the middle of residential area - Concerns over increase in traffic, noise and pollution as a result of construction and operation stages (<i>Officer comment:</i> the current proposal seeks changes to triggers for timescales within which details required to be submitted for approval pursuant to Condition 15 need to be submitted (i.e. from prior to first occupation to within 6 months of occupation). Therefore, this application does not seek to introduce further development within the site and as such, the current proposal would not result in increase in levels of traffic, noise and pollution (these have been assessed as part of 213106 planning application and appeal process)). - Unclear what operating times will be (<i>Officer comment:</i> Application for the variation of Condition 32 (which restricts operating hours of Units 9 and 10) is currently under consideration. The times of operation of the remaining units have not been restricted in the appeal decision notice.) - Works commenced prior to receiving approval (<i>Officer comment:</i> all conditions requiring approval of details prior development commencing have been approved – please see the Relevant Planning History section of this report.) - BREEAM should have been factored when planning development (<i>Officer comment:</i> this is addressed in the main body of the report.)
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APPRAISAL

Proposal:

This is an application made pursuant to Section 73 of the Town and Country Planning Act 1990 (as amended) (TCPA) for the variation of the trigger within which details are required to be submitted to the Local Planning Authority for approval pursuant to Condition 15 of planning permission 213106 granted at appeal APP/X0360/W/22/3306963, dated 22nd December 2023.

Section 73 of the Town and Country Planning Act 1990 (as amended) gives Local Planning Authorities powers to make a material amendment to planning permissions by varying or removing conditions associated with that planning permission. There is no statutory limit on the degree of change permissible to conditions under Section 73 applications, but the change must only relate to conditions and not to the operative part of the permission. The Local Planning Authority can grant a permission under Section 73 application unconditionally or subject to different conditions, or they can refuse the

application if it decides that the original conditions should continue. The effect of an application under Section 73 is the issue of a new planning permission sitting alongside the original permission, which remains intact and unamended.

The operative part of planning permission 213106 is contained within the description of development which states: *“Full planning application for the proposed erection of 5 no. buildings for commercial development to provide flexible light industrial, general industrial, and storage and distribution uses, with ancillary offices, associated car parking, formation of new accesses, and landscape planting, following demolition of existing buildings.”* The current application seeks to amend the wording of Condition 15 of planning permission 213106 and it does not seek to amend any of the elements comprised in the operative part of the planning permission 213106.

Condition 15 of planning permission 213106 states:

15) Prior to the first occupation of any of the buildings within the development hereby permitted, details shall be submitted to the local planning authority which demonstrate it has achieved BREEAM level ‘Very Good’ in accordance with the requirements of BREEAM [or such national measure of sustainability for non-residential design that replaces that scheme] and shall be maintained as such thereafter.

The reason for imposing Condition 15 was to ensure developments contribute to sustainable development, in accordance with Policy CC04: *Sustainable Design and Construction* of the Managing Development Delivery Local Plan.

The proposal is to amend the wording of Condition 15 to vary the trigger of when the details are required to be submitted to the Local Planning Authority for approval from *“prior to the first occupation”* to *“within six months of occupation”*.

The reason for the proposed change as stated in the Covering Letter dated 3 October 2024 which accompanies this application is *“because the development is speculative and the end user is unknown, so it is impossible to demonstrate achieving the BREEAM level and provide a BRE certificate without the building being in operation for the end user”*.

The National Planning Policy Framework was last updated on 20th December 2023 and the appeal decision notice states that the Inspector has had regard to the updated version. The development plan remains as it was at the time of the appeal being determined. A local plan update is taking place but is at an early stage (Regulation 19). Therefore, the main considerations are how the proposed changes to Condition 15 affect the assessment of the proposal.

Condition 15

Condition 15 of planning permission 213106 was imposed to ensure that the development contributes to sustainable development, in accordance with Policies CC04: *Sustainable Design and Construction* and CC05: *Renewable Energy and Decentralised Energy Networks* of the Managing Development Delivery Local Plan. Policy CC04 states:

Planning permission will only be granted for proposals that seek to deliver high quality sustainably designed and constructed developments by:

- 1. In respect of all new homes:
 - a. Seeking to achieve the requirements of the full Code for Sustainable Homes Level 4;*
 - b. Meet internal potable water consumption targets of 105 litres or less per person per day (as part of the requirement to meet full Code for Sustainable Homes Level 4).**
- 2. All new non-residential proposals of more than 100 sq m gross non-residential floorspace shall at least:
 - a. Achieve the necessary mandatory Building Research Establishment Assessment Method (BREEAM) requirements or any future national equivalent*
 - b. Meet or exceed statutory requirements for water resource management.**
- 3. All development, including conversions, alterations and extensions shall incorporate suitable waste management facilities, including on-site recycling.*

Policy CC05 states:

- 1. Local opportunities to contribute towards decentralised energy supply from renewable and low-carbon technologies will be encouraged.*
- 2. Planning permission will only be granted for proposals that deliver a minimum 10% reduction in carbon emissions through renewable energy or low carbon technology where the development is for:
 - a. Schemes of more than 10 dwellings (gross), or*
 - b. Non-residential proposals of more than 1,000 sq m gross floorspace.**
- 3. Proposals for renewable energy and decentralised energy works, including wind turbines, must demonstrate that:
 - a. They are appropriate in scale, location and technology type;*
 - b. Are compatible with the surrounding area, including the impact of noise and odour;*
 - c. Do not have a damaging impact on the local topography and landscape;*
 - d. There is no significant impact upon heritage assets, including views important to their setting;*
 - e. In the case of wind turbines, take account of their cumulative effect and properly reflect their increasing impact on the landscape and on local amenity.**

Application 213106 was accompanied by the Energy Strategy Report (Issue 1) dated 30th July 2021 (ESR), which outlined the proposed strategy for the development to achieve the required 'Very Good' BREEAM rating. The ESR was assessed as part of application 213106, and the subsequent appeal, and it was concluded that the ESE demonstrated that the proposals were capable of achieving the necessary BREEAM rating of 'Very Good'.

The current proposal had been reviewed by the WBC Sustainability Officer who requested that the applicant submits an interim report to demonstrate that the credits targeted are on track to reach the required BREEAM certification level. The applicant subsequently submitted the BREEAM Credits Criteria Summary - Design Stage, which outlines that out of the 90 credits targeted the scheme already achieved 21 credits and that the Design Stage Report incorporates a buffer of 5% (at 75.91%) above the minimum requirement of 70% for BREEAM rating of 'Excellent'. The WBC Sustainability Officer has reviewed the additional information and concluded that it satisfactorily demonstrated that the proposal is on track to achieve the required BREEAM rating and raised no objection to the proposal to amend the trigger for the submission of information required under Condition 15 to be within 6 months post-occupation.

It is acknowledged that not all credits targeted can be achieved at pre-commencement stage and some are dependent on the future use of the buildings (for example waste management or the need for refrigerants use), whilst others are dependent on approval of details pursuant to other conditions (for example details of travel plan and sustainable transport measures required to be submitted within 6 months of the occupation rather than prior commencement, pursuant to Condition 21). As such, given that the prospective end-users of these units are yet unknown and that some of the credits targeted rely on details which are required to be submitted for approval post-occupation, it would not be reasonable to refuse the proposed change to the trigger of Condition 15.

The proposed change to the condition wording would not lead to changes in BREEAM ratings to be achieved and as such, the scheme would continue to comply with MDD LP Policies CC04 and CC05, and is therefore acceptable.

Conclusion:

It is acknowledged that, due to the stage of the project, uncertainties as to the future occupier of the premises and the triggers for other details (which impact BREEAM rating) being post-occupation, it may not be feasible to provide a final BREEAM certification prior to first occupation. Moreover, the proposal does not seek to alter the assessment of the scheme in terms of BREEAM rating required to be achieved, and the submitted information demonstrates that progress is being made to ensure that at least 'Very Good' BREEAM rating is achieved. As such, it is recommended that the trigger for the submission of BREEAM certificate confirming 'Very Good' BREEAM rating has been achieved is altered to within 6 months of occupation.

Planning Obligations:

The full planning permission (213106) was supported by a Section 106 legal agreement which secured planning obligations relating to monitoring of the implementation of the Travel Plan and to the payment of Employment Skills Contribution.

Where a Section 73 permission is granted, it results in a grant of a new planning permission. Where the original planning permission was accompanied by an associated legal agreement, the planning obligations subject to which planning

permission was granted may no longer continue to be enforceable if the associated legal agreement did not make a provision for the obligations to continue to apply in any future Section 73 planning permissions. If this is the case, the Section 73 application may require a Deed of Variation to be entered into in respect of the legal agreement associated with planning permission which is sought to be varied.

The planning permission 213106 was supported by a Section 106 legal agreement dated 3 April 2023. This agreement has been examined to ascertain whether a Deed of Variation to the original Section 106 legal agreement would be required before the current application could be granted permission.

The definition of “Planning Permission” within the existing Section 106 legal agreement (associated with planning permission 213106) includes reference to “*any subsequent permissions under Section 73 of the Act permitting the carrying out of the Development*”. As such, the permission granted pursuant to the current Section 73 application is captured in the legal agreement associated with planning permission 213106 and its provisions remain enforceable. As such, no Deed of Variation is required in this instance.

Remaining Planning Conditions:

The effect of an application under Section 73 is the issue of a new planning permission sitting alongside the original permission, which remains intact and unamended. The NPPG outlines that to assist with clarity, decision notices should also repeat the relevant conditions from the original permission unless they have already been discharged.

Section 73(5) of the TCPA sets out that that planning permission pursuant to Section 73 must not be granted to the “*to the extent that it has the effect to change a condition subject to which a previous planning permission was granted by extending the time within which a development must be started (...)*”. During the site visit in October 2024 it was confirmed that the original planning permission 213106 had been commenced. Moreover, the details required to be submitted and approved prior to commencement of development have all now been submitted and approved. This is outlined in more detail below. As such, Condition 1, which required the development to commence within three years of the date of the appeal decision notice (22 December 2023) is deleted.

Condition 2 setting out the list of approved plans is retained for the avoidance of doubt and to ensure that the development is carried out in accordance with the approved details.

Condition 3 (Building Recording) was imposed to ensure that the understanding and significance of the non-designated heritage asset (buildings and site forming part of historic Woodley Aerodrome) can be recorded. The applicant subsequently submitted a Historic Building Record which has been approved by the LPA (application ref 240014). No evidence has yet been submitted to evidence that the document has been deposited with the Berkshire Archaeology’s Historic Environment Record Officer.

Therefore, the conditioned wording is amended to require evidence to be submitted within three months of the date of the decision notice.

Conditions 4 (Construction Method Statement) and 5 (Construction Management Plan) were imposed to ensure that impacts arising out of construction activities are minimised. The applicant subsequently submitted a suite of drawings and reports which have been approved (application reference 240014). Both conditions are retained in a re-worded form to ensure that demolition and construction activities are carried out in accordance with the approved documents.

Conditions 6 (Contamination Risk Assessment) and 7 (Remediation Scheme) were imposed to ensure that any potential risks to human health are mitigated. The applicant subsequently submitted a suite of drawings and reports, which were considered to be acceptable and both conditions were discharged (application reference 241291), subject to verification report being submitted pursuant to Condition 29. As such, both conditions are deleted.

Conditions 8 (Highway Construction Details), 9 (Vehicular Access) and 10 (Highways signage) were imposed to ensure safe, functional and accessible development. Details submitted pursuant to these conditions have now been approved (application reference 240629). All three conditions are retained in a re-worded form to ensure that the approved details are implemented.

Condition 11 (Materials) was imposed in the interest of appearance. Details required by this condition have been approved (application reference 240497). The condition is retained in a re-worded form to ensure the approved details are implemented.

Condition 12 (Tree Protection) was imposed in the interest of appearance and ecology. Whilst the required tree protection measures have been implemented (application reference 240601), it is necessary to retain this condition to ensure ongoing protection of trees.

Condition 13 (Stopping up of Access Points) was imposed to ensure that adequate measures are implemented to mitigate impacts in highway terms through stopping up of the existing vehicular accesses within one month of the completion of new accesses. As such, this condition is retained in an unchanged form.

Condition 14 (Permitted Use) was imposed to ensure adequate parking is secured on-site with reference to parking requirements for general industrial use. As such, the condition is retained in an unchanged form.

Conditions 16 (Parking Plan), 17 (Parking Management Strategy) and 18 (Electric Vehicle Charging) were imposed to ensure that adequate parking provision and management thereof is secured, along with adequate provision of electric vehicle charging points, prior to first occupation. As these details are yet to be submitted, all three conditions are retained in an unchanged form.

Conditions 19 (Hard and Soft Landscaping), 20 (Landscape Management Plan) and 25 (Boundary Treatment) were imposed to ensure that details of landscaping, its future management responsibilities and maintenance schedules, as well as details of

boundary treatments, are appropriately secured. As these details are yet to be submitted, both conditions are retained in an unchanged form.

Condition 21 (Biodiversity Enhancements) was imposed to ensure that enhancements recommended in the Preliminary Ecological Appraisal are implemented subject to details to be provided for approval. The applicant submitted the required details (application reference 240277) and these were subsequently approved. As such, the condition is retained in a re-worded form to ensure the approved details are implemented.

Condition 22 (Lighting) was imposed to ensure that the impact of any external lighting scheme on wildlife, residents and highway safety is adequately mitigated. As these details are yet to be submitted, the condition is retained in an unchanged form.

Conditions 23 (Noise Management Plan) and 24 (Acoustic Barrier) were imposed to ensure adequate measures are submitted for approval to mitigate the impact of development on local noise receptors. As these details are yet to be submitted, the condition is retained in an unchanged form.

Condition 26 (Heritage Information Boards) was imposed to require details of interpretative heritage information boards for submission for the Local Planning Authority's approval. As these details are yet to be submitted, the condition is retained in an unchanged form.

Condition 27 (Travel Plan) was imposed to ensure that the proposal promotes alternative forms of transport. As details of the Travel Plan are yet to be submitted, the condition is retained in an unchanged form.

Condition 28 (Vegetation Clearance) was imposed to ensure that vegetation clearance is carried out without impacts on nesting birds. As the construction is yet to complete, it is necessary to ensure ongoing protection of nesting birds. Therefore, the condition is retained in an unchanged form.

Condition 29 (Contamination) was imposed to ensure that any contamination previously not identified is adequately dealt with in the event of being discovered. As the construction is yet to complete, it is necessary to retain this condition and amend the wording to incorporate recommendations contained in reports submitted pursuant to Conditions 6 and 7 (application reference 241291).

Condition 30 (Hours of Construction) was imposed to limit impacts on neighbouring land uses. As the construction is yet to complete, it is necessary to retain this condition in an unchanged form.

Condition 31 (Approved Documents) was imposed to ensure that the development is carried out in accordance with details of and measures contained in the approved Energy Strategy Report and Flood Risk Assessment and Outline Drainage Report. As the construction is yet to complete, it is necessary to retain this condition in an unchanged form.

Conditions 32 (Delivery Hours) and 33 (Doors and Windows Closed) were imposed to restrict operations arising in relation to development in the interest of amenity of nearby residential uses. It is noted that there is currently under consideration an application ref 241926 to amend the wording of Condition 32. However, at the time of writing of this report, this application is yet to be determined. Therefore, it is necessary to retain both conditions in an unchanged form.

Condition 34 (Permitted Development Rights) was imposed to restricts Permitted Development Rights in respect of new windows and openings, in the interest of amenity of neighbouring residential uses. As such, this condition is retained in an unchanged form.

Community Infrastructure Levy (CIL):

When planning permission is granted for a development that is CIL liable, the Council will issue a liability notice as soon as practicable after the day on which the planning permission first permits development. Completing the assumption of liability notice is a statutory requirement to be completed for all CIL liable applications.

The Public Sector Equality Duty (Equality Act 2010):

In determining this application the Council is required to have due regard to its obligations under the Equality Act 2010. The key equalities protected characteristics include age, disability, gender, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief. There is no indication or evidence (including from consultation on the application) that persons with protected characteristics as identified by the Act have or will have different needs, experiences, issues and priorities in relation to this particular planning application and there would be no significant adverse impacts as a result of the development.

RECOMMENDATION

Conditions agreed:	Not required
Recommendation:	Required
Date:	25 October 2024
Earliest date for decision:	4 November 2024

Recommendation agreed by: (Authorised Officer)	
Date:	27.11.24