

KIRKLEES METROPOLITAN COUNCIL INVESTMENT & REGENERATION SERVICE

DEVELOPMENT MANAGEMENT

Town and Country Planning Act 1990 (as amended) – SECTION 73

DELEGATED DECISION TO DETERMINE PLANNING APPLICATIONS TO CARRY OUT DEVELOPMENT WITHOUT COMPLIANCE WITH PLANNING CONDITIONS PREVIOUSLY ATTACHED

Reference No: 2021/70/90893/E

Site Address: Former North Bierley Waste Water Treatment Works,
Oakenshaw, BD12 7ET

Description: Variation of Conditions 1, 2 and 4 on previous
permission 2020/91807 for Reserved Matters
Application pursuant to Phase 2 of Outline Permission
2016/92298 (as amended by NMA 2020/91436) for re-
development of former waste water treatment works
following demolition of existing structures to provide
employment uses (B1(C), B2 and B8) to allow for
minor changes to the shape of the building to address
the correct positioning of existing overhead power
cables.

Recommending Officer: Kate Mansell

DECISION – Variation of Conditions- Approved

**I hereby authorise the approval of this application for the reasons set
out in the officer's report and recommendation annexed below in
respect of the above matter.**

David Wordsworth

AUTHORISED OFFICER

Date: 18-Jun-2021

OFFICER REPORT

Site Description

In its entirety, the application site extends to approximately 23 hectares incorporating the area of the former North Bierley Waste Water Treatment Works (WWTW) as well as agricultural fields. It is situated to the north-west of the M62 and to the east of the M606. The site slopes down from the north to the south with motorway embankments to the south and west. Access to the site is achieved from Cliff Hollins Lane utilising the road that previously served the WWTW. This connects onto Mill Carr Hill Road, which rises up to join Bradford Road. Turning left onto Bradford Road then provides a connection to Junction 26 of the M62.

The surrounding area is broadly residential in character. The site is positioned between the Oakenshaw to the north and Cleckheaton to the south. The village of Oakenshaw is broadly to the north-west of the site and includes dwellings along Bradford Road, to the west of the M606. There are further residential properties to the north-east and north-west of the site along Cliff Hollins Lane (which are closest to the site) and Mill Carr Hill Road. The Woodlands C of E Primary School lies at the bottom of Mill Carr Road, close to the junction with Cliff Hollins Lane.

Outline planning permission for the re-development of the site to provide employment uses (Use Classes B1(c), B2 and B8)) was issued on 25 October 2018 following its approval at Strategic Planning Committee on 8 March 2018. This was subject to a non-material amendment in 2020 (2020/91436) to modify the wording of some of the conditions to reflect a phased approach to development.

It is the intention that the site be developed in 5 phases:

Phase 0: Demolition of the waste water treatment structures

Phase 1: Construction of the access road and the formation of plateaued, remediated and serviced development plots. Approved in accordance with Reserved Matters application 2020/91488 on 15 October 2020

Phase 2: Building – approved in accordance with 2020/91807 – a single warehouse extending to 21,882m² of commercial floorspace (GFA) (approximately 19,984m² GIA).

Phase 3: Building phase (Future building phase)

Phase 4: Building phase (Future building phase) – current application 2021/91932

Phase 0 is finished and Phase 1 is also nearing completion on site.

Description of Proposal

This proposal is a Section 73 Variation of Condition application to vary Conditions 1 (Development in accordance with the approved plans), 2 (cycle parking facilities) and 4 (landscape scheme) of the Reserved Matters approval

2020/91807. These conditions all refer to specific drawing numbers that need to be amended.

Phase 2 secured Reserved Matters approval in December 2020 for a single industrial unit to be occupied for purposes within Use Classes B1c/B2/B8, as permitted by the outline planning permission, in accordance with 2020/91807. That permission also included the discharge of Condition 6 (BEMP), Condition 9 (Lighting design strategy), Condition 17 (Site investigations), Condition 29 (Noise attenuation) and Condition 31 (Electric vehicle charging points) of 2016/92298 as they related to Phase 2.

Following the grant of this Phase 2 Reserved Matters, the applicant advised that it became apparent that the overhead power cables situated to the southern boundary of the development site had been plotted incorrectly in the technical overview of the site. This Section 73 therefore makes minor revisions to the approved scheme to address the correct positioning of the cables comprising the following:

- (i) The building would be re-positioned 9.7 metres to the north-west of its originally approved position;
- (i) The access road would be similarly re-positioned in line with the location of the new building;
- (ii) The gatehouse would be re-positioned in line with the new road and slightly to the north-east of its original position. This would provide 23.5m² of floorspace (GEA).
- (iii) The entrance area within the car park would be relocated in line with the door locations.

In essence, in broad terms, the scheme moves just under 10 metres to the north-west and an access road that ran alongside the northern boundary of the building as originally approved has been omitted to facilitate the amendment.

In all other respects, the total floor area created by the development, its scale, appearance and means of vehicular access into the site remain as previously approved.

Under this S73, the proposed conditions would be amended as follows:

Condition 1

*The development hereby permitted shall be carried out in complete accordance with the plans and specifications schedule listed in this decision notice, except as may be specified in the conditions attached to this permission, which shall in all cases take precedence. **Reason:** For the avoidance of doubt as to what is being permitted and so as to ensure the satisfactory appearance of the development on completion.*

The wording of the condition remains unchanged but the Plans and

Specifications Schedule would be amended to update all the plans to take account of the revised site layout.

Condition 2

The development shall not be occupied until the approved cycle parking facilities have been provided in accordance with Plan 2454 P406 Revision B received 3 March 2021. The facilities shall thereafter be retained for the lifetime of the development. **Reason:** To encourage sustainable travel by means other than the private car.

Condition 4

The landscape scheme shall be implemented in accordance with landscape plan KL449-001 revision P4 received 3rd March 2021 prior to first occupation of the development, or within the first planting season following first occupation. If within a period of five years from the date of the planting of any tree/hedge/shrub that tree/hedge/shrub, or any replacement, is removed, uprooted or destroyed or dies, or becomes, in the opinion of the Local Planning Authority, seriously damaged or defective, another tree/hedge/shrub of the same species and size as that originally planted shall be planted in the same location as soon as reasonably possible and no later than the first available planting season, unless otherwise agreed in writing by the Local Planning Authority.

Reason: To ensure an appropriate and healthy landscape scheme in the interests of visual amenity and bio-diversity

Phase 2 would comprise the first building on the site. It would provide a single industrial unit to be occupied for purposes within Use Classes B1c/B2/B8, as permitted by the outline planning permission.

The building would be sited almost centrally within the extended plot. Access would be taken from the estate road approved in principle as part of 2020/91488 – the Reserved Matters for Phase 1.

The unit would have a rectangular form, to be sited on a north-south alignment. It would provide 21,882m² of commercial floorspace (GFA) (approximately 19,984m² GIA). The accommodation would comprise a main 'open' void with a linear 'office pod' in the south-west corner of the building at first floor and second floor level (Total GIA of approximately 1393m²). A smaller reception area would be provided at ground floor. To the rear (east), there would be a service yard whilst to the front (west) there would be a parking area for staff with a total of 191 spaces.

In scale, the building would extend to a height of 15m to eaves level and 18m to the ridge. The scale remains as previously approved.

In appearance, it would comprise a double barrel vault roof. It would have an industrial look, constructed in grey cladding over three colour ranges (light-dark). This would be punctuated by sections of vertical glazing to the front

elevation, a glazed reception area, rows of horizontal glazing across three levels to the office pod area and a fully glazed curtain walling system over three floors on the south-west corner. A small two-storey welfare/office unit would project from the rear elevation.

The separate single storey 'gatehouse' building would be sited to the south of the building along the access road to the service yard. A sub-station would also be necessary, to be positioned within the car park.

As originally approved, the Reserved Matters application also sought to discharge Condition 6 (BEMP), Condition 9 (Lighting design strategy), Condition 17 (Site investigations), Condition 29 (Noise attenuation) and Condition 31 (Electric vehicle charging points) of 2016/92298 as they relate to Phase 2. No changes are proposed to the discharge of these conditions as part of this application.

A range of other matters, including drainage, are still subject to conditions on the outline permission and will be dealt with via separate discharge of condition applications in due course.

History of negotiations/amendments received

There were extensive discussions between the applicant and Officers as part of the original Reserved Matters application. However, this seeks only a minor amendment to that permission and no negotiations/amendments have been necessary.

Relevant Planning History

The most relevant planning history for this site is detailed below:

2016/92298: Outline application for re-development of former waste water treatment works following demolition of existing structures to provide employment uses (use classes B1(c), B2 and B8).

Approved: 25th October 2018 subject to conditions and a S106 Legal Agreement.

2019/93679 Discharge of condition 16 (site investigation) of previous outline permission ref: 2016/92298.

Approved: 19th December 2019

2019/93727: Discharge of condition 7 (Construction Ecology Management Plan) of previous outline permission ref: 2016/92298.

Approved: 19th December 2019

2020/91436: Non material amendment to previous permission 2016/92298 for outline application for re-development of former waste water treatment works following demolition of existing structures to provide employment uses (use classes B1(c), B2 and B8).

Approved: 22nd May 2020

2020/91488: Reserved matters application pursuant to outline permission 2016/92298 outline application for re-development of former waste water treatment works following demolition of existing structures to provide employment uses (use classes B1(c), B2 and B8) (Phase 1) to include the discharge of Conditions 6 (BEMP), 17 (Site investigations), 18 (Tree Survey), 29 (Noise attenuation) and 31 (Electric vehicle charging points).
Approved: 15th October 2020

2020/91468: Discharge of Condition 5 (Phasing Plan), Condition 11 (Sewer Overflow), Condition 13 (Foul Water Drainage), Condition 14 (Discharge of Surface Water), Condition 23 (Flood Risk) and Condition 24 (Disposal of Surface Water) on previous permission 2016/92298 (Phase 1).
Approved: 25th November 2020

2020/92342: Discharge of Condition 8 (Construction Environment Management Plan (demolition and enabling works) (Phase 1) of previous permission 2016/92298.
Approved: 27th October 2020

2020/92345: Discharge of Condition 26 (surface water) (Phase 1) of previous permission 2016/92298.
Approved: 9th November 2020

2020/91889 Discharge of Condition 20 (Highway Works) on previous permission 2016/92298.
Pending Consideration

2020/91398 Discharge condition 16 (Access Road phase) on previous permission 2016/92298 for outline application for re-development of former waste water treatment works following demolition of existing structures to provide employment uses (use classes B1(c), B2 and B8).
Approved: 16 October 2020

2020/91808 Discharge conditions 16 and 25 on previous permission 2016/92298 for outline application for re-development of former waste water treatment works following demolition of existing structures to provide employment uses (use classes B1(c), B2 and B8) (Phase 2).
Pending Consideration

2020/93650: Discharge of Condition 3 (access road). Condition 4 (internal estate road) and Condition 5 (landscape works) of previous permission no. 2020/91488 for reserved matters application pursuant to application no. 2016/92298
Pending Consideration

2021/91932: Reserved matters application pursuant to outline permission 2016/92298 for re-development of former waste water treatment works following demolition of existing structures to provide employment uses (use classes B1(c), B2 and B8) relating to Phase 4 - the construction of 2 x

industrial warehouse units with ancillary office accommodation (approximately 6021m² and 4046m²) with parking and landscaping, including the discharge of Condition 6 (Bio-diversity Enhancement Management Plan), Condition 17 (Site Investigations), Condition 18 (Tree Survey), Condition 19 (Public Rights of Way), Condition 29 (Noise Attenuation) and Condition 31 (Electric Vehicle Charging Points).

Pending Consideration

Enforcement

A Temporary Stop Notice (TSN) was served on the site on 10th July 2020. It was issued as a result of construction works pursuant to Phase 1 having commenced without the relevant pre-commencement conditions having been discharged. The works that had started were principally deemed to have caused harm to residential amenity as a consequence of the stockpiling of material on the boundary of the site near to residential properties. The TSN required the applicant to cease all construction works pursuant to 2016/92298, including demolition, excavation & engineering works. It took effect on 10 July 2020 and ceased to have effect on 7 August 2020. The applicant complied with the terms of the TSN.

Representations

The application was advertised by the following means:

Site notice: Posted 26th May 2021

Press Notice: Dewsbury Reporter Series – Published 25 March 2021

Neighbour notification: Sent 31 March 2021

Public consultation expired on 17th June 2021

Public consultation

No representations have been received.

Ward Members

Ward Members were advised of the proposal by email sent 24th April 2021.

No response has been received.

Consultation Responses

The following is a summary of consultee advice (more details are contained in the assessment section of the report, where appropriate). Given the very limited nature of the amendment, only key consultees were consulted on this occasion:

Statutory

KC Highways Development Management: Given that the total floor area to be created is the same as already approved and the vehicular access to the site is changed, HDM have no objection.

Non-Statutory

KC Trees: No objection

Lead Local Flood Authority: No comment

Policy

Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning applications be determined in accordance with the Development Plan unless material considerations indicate otherwise. The statutory Development Plan for Kirklees is the Kirklees Local Plan (KLP) (adopted 27th February 2019).

The site is designated as a Primary Employment Area within the KLP (ES7).

The following policies within the Plan are most relevant to the determination of this application:

Policy LP1 Presumption in favour of sustainable development
Policy LP21 Highways and Access
Policy LP24 Design
Policy LP28 Drainage
Policy LP30 Biodiversity and Geodiversity
Policy LP32 Landscape
Policy LP33 Trees
Policy LP52 Protection and improvement of environmental quality
Policy LP53 Contaminated and unstable land
Policy LP64 Employment allocations

National Policies and Guidance:

National planning policy and guidance is set out in National Policy Statements, primarily the National Planning Policy Framework (NPPF) published 19th February 2019, and the Planning Practice Guidance Suite (PPGS) first launched 6th March 2014, together with Circulars, Ministerial Statements and associated technical guidance.

The NPPF and NPPG constitutes guidance for local planning authorities and is a material consideration in determining applications.

ASSESSMENT

Scope of this application

Section 73 of the Town and Country Planning Act 1990 concerns the 'determination of applications to develop land without compliance with conditions previously attached'. One of the uses of a Section 73 application is to seek a minor material amendment, where there is a relevant condition that can be varied.

Planning Practice Guidance on 'Flexible options for planning permissions' confirms that permission granted under section 73 takes effect as a new, independent permission to carry out the same development as previously permitted subject to new or amended conditions.

The new permission sits alongside the original permission, which remains intact and unamended. It is open to the applicant to decide whether to implement the new permission or the one originally granted. The guidance continues to state that a decision notice describing the new permission should clearly express that it is made under Section 73. It should set out all of the conditions imposed on the new permission, and, for the purpose of clarity, restate the conditions imposed on earlier permissions that continue to have effect.

Planning Practice Guidance on the use of planning conditions also clarifies that in deciding an application under Section 73, the local planning authority must only consider the disputed condition/s that are the subject of the application – it is not a complete re-consideration of the application. As such, there is no requirement to re-consider the principle of development nor matters of access, appearance or scale that are unchanged by this application. Indeed, the use of the building would remain as previously approved within Classes B1c/B2/B8 and the extent of development (and associated impacts, including highways/air quality) also remain wholly consistent with the principles established by the outline planning permission.

This application is therefore restricted to a consideration of the proposed variation to Conditions 1, 2 and 4.

It should be considered against the development plan and material considerations, under Section 38(6) of the 2004 Act, and conditions attached to the existing permission. The guidance states that local planning authorities should, in making their decisions, focus their attention on national and development plan policies, and other material considerations which may have changed significantly since the original grant of permission. In this case, however, none have changed significantly as the previous permission was only issued in December 2020.

Condition 1

*The development hereby permitted shall be carried out in complete accordance with the plans and specifications schedule listed in this decision notice, except as may be specified in the conditions attached to this permission, which shall in all cases take precedence. **Reason:** For the*

avoidance of doubt as to what is being permitted and so as to ensure the satisfactory appearance of the development on completion.

The wording of the condition would remain unchanged but the Plans and Specifications Schedule would be amended to update all the plans to take account of the revision to the site layout to relocate the building and access road within the site by just under 10 metres to the north-west.

Given the scale of the site overall, this amendment is very minor. The overall size of the building, its appearance, the means of access into the site and car parking numbers all remain as previously approved. Its layout, scale and appearance would therefore still represent a sufficiently good design to accord with the principles of Policy LP24 of the Kirklees Local Plan and guidance within the NPPF.

For these reasons, the proposed amendment to the Plans and Specifications Schedule is acceptable.

Condition 2

As proposed within this application:

*The development shall not be occupied until the approved cycle parking facilities have been provided in accordance with Plan 2454 P406 Revision B received 3 March 2021. The facilities shall thereafter be retained for the lifetime of the development. **Reason:** To encourage sustainable travel by means other than the private car.*

This application does not alter the cycle parking facilities that were previously approved in accordance with 2020/91807, being 6 hoops/12 spaces positioned within a cycle shelter within the car park.

The only variation to the condition is that the plan reference within the condition would be updated to a plan number that reflects the revised position of the building. The position of the cycle parking has been amended to reflect this also. On the basis that the previously agreed provision is unchanged, the change to the plan reference within Condition 2 is considered to represent a minor amendment and it is therefore acceptable.

Condition 4

As proposed within this application:

The landscape scheme shall be implemented in accordance with landscape plan KL449-001 revision P4 received 3rd March 2021 prior to first occupation of the development, or within the first planting season following first occupation. If within a period of five years from the date of the planting of any tree/hedge/shrub that tree/hedge/shrub, or any replacement, is removed, uprooted or destroyed or dies, or becomes, in the opinion of the Local Planning Authority, seriously damaged or defective, another tree/hedge/shrub

of the same species and size as that originally planted shall be planted in the same location as soon as reasonably possible and no later than the first available planting season, unless otherwise agreed in writing by the Local Planning Authority.

Reason: *To ensure an appropriate and healthy landscape scheme in the interests of visual amenity and bio-diversity*

Policy LP32 of the KLP requires development proposals to take into account and to seek to enhance the landscape character of the area.

The landscape plan submitted with the previously approved Reserved Matters application showed the majority of landscaping to be to the front of the site with a further strip to the rear, adjacent to the Hunsworth Beck. Whilst avoiding any planting within the extent of the gas pipelines that run through the site, the plan proposed that the front area comprise native tree and shrub planting carried out on a 1.5m staggered grid. It would comprise a range of species, including Field Maple, Silver Birch, Hornbeam, Wild Cherry and Mountain Ash. This would be interspersed with native shrub planting as well as an area of native Hornbeam hedge. In total, the landscape scheme would deliver in excess of 900 new trees/shrubs to the front of the building with additional native hedge planting to the side boundary.

To the rear boundary of the site, an existing area of woodland/scrub would be retained and the immediate vegetation along the bank of the Beck would also be retained and protected. Immediately adjacent to that, the landscape plan notes that any area disturbed by re-grading works would be re-instated with native grasses. As part of that permission, it was considered that the planting scheme would deliver a meaningful level of new native planting that would serve to soften the appearance of the development within the landscape. It would also screen the car park in longer views of the site from the residential areas to the north and west and significantly enhance the existing planting levels on site.

These principles have been retained within the updated landscape plan reflected in the revised wording of Condition 4, which has simply been modified to reflect the revised position of the building. For these reasons, the change to the plan reference within Condition 4 is considered to represent a minor amendment and it is therefore acceptable as the scheme remains in accordance with Policy LP32 of the KLP.

Living Conditions of adjoining occupiers

Policy LP24 (b) of the KLP advises that proposals should provide a high standard of amenity for future and neighbouring occupiers, including maintaining appropriate distances between buildings.

As set out above, the proposed use of the Phase 2 building within Classes B1c/B2/B8 and the extent of development (and associated impacts, including highway/air quality) remains unchanged and is wholly consistent with the principles established by the outline planning permission.

The building would move by approximately 10 metres within the site from that previously approved. Given the substantial scale of the site overall and the centralised position of Phase 2, it is considered that this would not be perceptible from beyond the site boundary. The impact on the living conditions of nearby occupiers would therefore remain unchanged from the previously approved Reserved Matters, which concluded that this Phase 2 development would not be harmful to the living conditions of existing occupiers. On this basis, the application is considered to comply with Policy LP24 (b) of the KLP.

Flood Risk and Drainage

With regard to drainage matters, Phase 2 is still subject to the drainage conditions imposed on the outline planning permission. These include Conditions 14 (piped discharge of surface water), 23 (residential uncertainty) and 24 (discharge rates) as they relate to Phase 2. These will have to be applied for separately to ensure compliance with the outline.

Climate Change

The outline planning permission, to which this RM application relates, pre-dates the Council's declaration of a climate change emergency in 2019 and the target of achieving "net zero" carbon emissions by 2038.

However, as noted within the previous Reserved Matters approval, the applicant intends to construct the building to achieve a BREEAM rating of 'Very Good'. This includes a consideration of matters such as sustainable procurement, energy performance, visual comfort (daylighting/views), ventilation, energy monitoring, water consumption and travel measures. Whilst this BREEAM rating does not specifically include any requirements in relation to low or zero carbon technologies (limited to buildings that seek to achieve a rating of excellent or outstanding), it does at least demonstrate a commitment to considering the environmental impact of the building and addressing it as far as practicable for a building of this type.

It is also noted that the proposal includes the provision of electric vehicle charging points and extensive tree planting. In combination, these elements will serve to make some positive contribution to the building's impact on climate change.

Discharge of conditions

The previous Reserved Matters sought to discharge five conditions pursuant to the outline planning permission. No changes are proposed to these conditions and the assessment undertaken as part of that application is repeated in this report for completeness because it will be reflected on the decision notice on the grounds that Government guidance requires that conditions imposed on earlier permissions that continue to have effect are restated. This is also considered to apply to Informatives as relevant to the discharge of these conditions.

Condition 6 (BEMP)

Detailed plans and particulars of the Reserved Matters for the first phase of development shall include a Biodiversity Enhancement and Management Plan (BEMP) for the entire site. The content of the BEMP shall include the following:

- a) Description and evaluation of the features to be managed.*
- b) Ecological trends and constraints on site that might influence management.*
- c) Aims and objectives of management.*
- d) Appropriate management options for achieving aims and objectives.*
- e) Prescriptions for management actions.*
- f) Details of initial aftercare and long-term maintenance;*
- g) Details of the body or organisation responsible for implementation of the plan.*
- h) Details for on-going monitoring and remedial measures.*

The approved plan and particulars shall be implemented in accordance with the approved details and timescales pre, during and post construction.

Reason: In the interests of the biodiversity of the area and to accord with Policy EP11 of the Kirklees Unitary Development Plan, PLP30 of the Publication Draft Local Plan and guidance within chapter 15 of the National Planning Policy Framework. This is a pre- commencement condition in order to ensure that adequate mitigation and enhancement measures are incorporated into the development at the appropriate stage of the development.

To discharge Condition 6, the applicant originally submitted a Bio-diversity Enhancement Management Plan (BEMP) (ER-5146-01) prepared by Brooks Ecological dated November 2020. It sets out the scope of the Plan for Phase 2 as well as how it will be delivered and funding mechanisms. It then sets out to describe and evaluate the features of the site, ecological trends and constraints (noting that the site adjoins Hanging Wood, a Kirklees Site of Wildlife Significance (SWS) but that no protected species have been identified on the site). It also identifies clear aims and objectives for the BEMP and a work schedule.

The Council's Ecologist advised on 9th December 2020 that this version of the BEMP addressed many of the comments provided originally on the application (03/08/2020) with regards to this phase of the development. However, it was noted that the Landscape Proposal plan needed to be consistent with this and, in particular, the details regarding the usage of herbicide. It was recommended that the landscape proposals be updated to reflect the BEMP. In addition, no monitoring or remedial measures had been proposed for the faunal boxes and refuges to be installed on the site.

Consequently, the applicant submitted a revised BEMP (ER-5146-01-1) prepared by Brooks Ecological dated December 2020 and an updated landscape plan KL-449-001 revision P3 received 10th December 2020. The Council's Ecologist confirmed by email dated 10th December that these

revised documents address the matters raised previously and they are now acceptable.

Condition 6 can therefore be discharged for Phase 2 subject to advice that to secure full compliance with Condition 6 the development shall be implemented in accordance with the approved plan and particulars and in accordance with the approved details and timescales pre, during and post construction as set out in the BEMP (ER-5146-01-1) prepared by Brooks Ecological dated December 2020 and the landscape plan KL-449-001 revision P3 received 10th December 2020.

Condition 9 (Lighting design strategy)

Prior to the occupation of the first phase of development, a “lighting design strategy for biodiversity” for the whole development site shall be submitted to and approved in writing by the Local Planning Authority. The strategy shall:

- a) Identify those areas/features on or adjacent to the site, including Hunsworth Beck and Hanging Wood, where artificial lighting is likely to affect the function of these habitats as part of a wider ecological network; and then;*
- b) Prior to each phase, details will be submitted to show how and where external lighting will be installed (through the provision of appropriate lighting contour plans and technical specifications) so that it can be clearly demonstrated that areas to be lit will not disturb or prevent species using their territory or having access to their breeding sites and resting places.*

All external lighting shall be installed in accordance with the phasing, specifications and locations set out in the strategy, and these shall be maintained thereafter in accordance with the strategy. Under no circumstances should any other external lighting be installed without prior consent from the Local Planning Authority.

Reason: To maintain the function of the site and surrounding habitats as part of an ecological network, by avoiding indirect impacts to these features, in accordance with Policy EP11 of the Kirklees Unitary Development Plan, PLP30 of the Publication Draft Local Plan and guidance within chapter 15 of the National Planning Policy Framework.

To discharge Condition 9, the applicant has submitted the following:

- Lighting Strategy prepared by Loveday Lighting (Report ref: LL117-001) dated 10 June 2020 received 16 June 2020
- Lighting classifications (Overspill and Office Car Parks, Access Road and Rear HGV, prepared by Loveday Lighting Limited received 16 June 2020
- Street Lighting Design Risk Assessment received 16 June 2020
- Plan LL117-001 received 16 June 2020

The lighting strategy acknowledges the impacts of light pollution and also, the effect on bio-diversity. It notes that the surrounding area to the development is a combination of built-up and rural areas, with the former lit by systems of

street lighting owned and maintained by the Council. It also acknowledges that the sensitive receptors to light are the surrounding residential properties and local wildlife.

With specific regard to ecology, the report advises that within the development, it is proposed that LED lighting with a correlated colour temperature of 3000 kelvin is used. LED light sources contain no UV wavelengths and warmer colour temperatures reduce the light emitted beyond the 550 nanometer wavelengths. These requirements are consistent with current research on the impact of artificial lighting on bats, as published by the Bat Conservation Trust (2018) and is a requirement of good practice of external lighting.

It also acknowledges that light spill has the potential to affect both flora (plants etc.) and fauna (from insects through to bats). Light spill can disrupt feeding patterns and force ecological receptors to leave their habitat. The lighting strategy will seek to avoid and mitigate light spill where there are potential ecological receptors that could be adversely affected. This will be sought through guidance provided by the ILP for the reduction of obtrusive light. In order to minimise the impact of light spill onto the site boundary and any sensitive areas, rear light shields should be specified on lighting units proposed for the development.

The lighting strategy then identifies a series of mitigation measures during both the construction and operational phase. The conclusion also identifies the need to use low light pollution fittings, which retain light spill within the development and thereby minimising the loss of light to the night sky and glare and discomfort off-site.

These details have been considered by the Council's Ecologist and deemed to be acceptable in principle. Consequently, Condition 9 is discharged for Phase 2 subject to advice that to secure full compliance with Condition 9, all external lighting within Phase 2 shall be installed in accordance with the phasing, specifications and locations set out in the following documents:

- Lighting Strategy prepared by Loveday Lighting (Report ref: LL117-001) dated 10 June 2020 received 16 June 2020
- Lighting classifications (Overspill and Office Car Parks, Access Road and Rear HGV prepared by Loveday Lighting Limited received 16 June 2020
- Street Lighting Design Risk Assessment received 16 June 2020
- Plan LL117-001 received 16 June 2020

The lighting shall be maintained thereafter in accordance with the above strategy and plans.

Condition 17 (Site investigations)

Detailed plans and particulars of the reserved matter (layout & landscape) for each phase pursuant to conditions nos. 1, 2 and 5 above shall include:

- a) A report of the findings following intrusive site investigations carried out in relation to condition no. 16,
- b) The results of any gas monitoring undertaken,
- c) A layout plan which identifies appropriate zones of influence for the recorded mine entries on site and the definition of suitable 'no build' zones,
- d) A scheme of treatment for the recorded mine entries for approval;
- e) A scheme of remedial works for the shallow coal workings for approval,
- f) Details and how d) and e) above are to be undertaken, and
- g) Written verification that the remediation works shall be carried out in accordance with the approved details.

Thereafter the development of each phase shall be carried out in accordance with the approved details. Prior to the first use of each phase of the approved development, written confirmation shall be submitted to the Local Planning Authority, verifying the works have been fully completed in accordance with the approved details.

Reason: In the interest of health and safety. This is a pre commencement condition to ensure any pollution/risk identified is dealt with appropriately, to ensure the users of the new development are protected from being put at unacceptable risk and to accord with Policies D2 and G6 of the Kirklees Unitary Development Plan, PLP52 and 53 of the publication Draft Local Plan as well as guidance in the National Planning Policy Framework

In order to discharge Condition 17, the applicant has submitted the following:

Phase II Site Investigation report by Curtins dated 3rd December 2019, (ref: 065646-CUR-00-XX-RP-GE-001 Revision Vo1 received 16 June 2020.

Phase II Geo-environmental Assessment prepared by Wardell Armstrong dated November 2017 Report Number RPT-002C received 16 June 2020

This report was originally submitted pursuant to Phase 1 in accordance with 2020/91488. At that time, the Council's Environmental Health team requested further information relating to ground gas migration and cyanide concentrations at the site. Since then, they received further information to demonstrate a low gas migration risk to site users therefore no gas mitigation measures are required. Environmental Health also received a revised screening criterion for commercial land use, which demonstrated a low risk from cyanide on site. In light of the additional information received, the Phase II report was deemed satisfactory and Environmental Health agree that contaminated land remediation measures are not necessary in relation to the proposed development. Condition 17 was in fact discharged as part of 2020/91488 pursuant to Phase 1 and the wider site and it can therefore be discharged as part of this application having regard to the documents approved at that time.

Accordingly, Condition 17 is discharged pursuant to Phase 2 and the wider site, as detailed in the submitted reports, subject to advice that to secure full compliance with Condition 17, the development must be implemented in

accordance with the information and recommendations set out in the Ground Investigation Report (Ref: V01) dated 3rd December 2019 received 16 June 2020 as well as the Phase II Geo-environmental Report prepared by Wardell Armstrong dated November 2017 (Report Ref: RPT-002C) and the Coal Mining Risk Assessment for Phase 1 and 2 prepared by Curtins dated 4 February 2020 (Report Ref: B065646-CUR00-XX-RP-GE-001) approved as part of Condition 16 in accordance with 2019/93679 and confirmed in accordance with 2020/91488 (Phase 1).

Environmental Health do note that although it is agreed that remediation measures are not necessary, unexpected contamination being encountered during the construction of the development cannot be ruled out, therefore a condition relating to this is necessary. However, this is already covered by Condition 30 of the outline permission such that an additional condition on this Reserved Matters approval is unnecessary.

Condition 29 (Noise attenuation)

Detailed plans and particulars for each phase of the reserved matters (layout & landscape) pursuant to condition nos. 1, 2 and 5 above, shall demonstrate how proposals for that phase will achieve a level of 5dB attenuation measures through the provision of screening and land features as predicted in Table 21 of the Noise & Vibration Report by AECOM, dated December 2017.

Thereafter the development of each phase shall be completed in accordance with the approved details, before occupation of any building within each phase.

Reason: In the interest of residential amenity of nearby residents and to accord with

Policies EP4 of the Kirklees Unitary Development Plan, PLP52 of the Publication Draft Local Plan and guidance within the National Planning Policy Framework.

In order to discharge Condition 29, the applicant has submitted the 'M606 Bradford.

Planning Condition Discharge (Noise)' report prepared by Hoare Lea Acoustics received 16 June 2020. The report has been considered by the Council's Environmental Health Officer who advises as follows:

'Condition 29 related mainly to the parts of the outline application site area that were to be located closest to the residential premises at Cliff Hollins Lane and is not particularly relevant to this current application for just part of the outline application site area. Nevertheless, the applicant has submitted a Noise Assessment

The author states that the location of the warehouse building in relation to the service yard will provide significant screening to the nearest dwellings located on Bradford Road to the West of the development and that attenuation in excess of 15dB reduction can be expected because of this. The report also advises that the site topography will provide natural barrier screening to the

properties at Cliff Hollins Lane with further screening from buildings if and when other parts of the development are completed.

The report strongly indicates that noise from vehicle movements at the site is unlikely to have any adverse impact on noise sensitive premises in the vicinity. It is therefore not necessary to repeat the original outline application condition No. 29 for this reserved matters application. The report provides no details regarding noise from fixed plant at the site, which may have the potential to have an adverse impact on occupiers of nearby noise sensitive premises. Therefore the original condition No. 28 is still necessary for this application'.

On this basis, it is considered that Condition 29 can be discharged pursuant to Phase 2. Condition 28 remains outstanding and Condition 29 will still have to be discharged for all future phases.

Accordingly, Condition 29 is discharged pursuant to Phase 2 subject to advice that to secure full compliance with Condition 29, it shall be completed in accordance with the details set out within the 'M606 Bradford Planning Condition Discharge (Noise)' report prepared by Hoare Lea Acoustics received 16 June 2020 before the occupation of the Phase 2 building.

Condition 31 (Electric vehicle charging points)

Detailed Plans and particulars of the Reserved Matters (layout and landscape) for each phase pursuant to condition nos. 1, 2 and 5 shall include:

- *On site, low emission mitigation strategies, and*
- *Details of electric charging points which shall be installed on the basis of 1 charging point per 10 spaces.*

Thereafter, each phase of the development shall be completed in accordance with the approved details/mitigation strategies, before occupation/use of any building on site within that phase.

Reason: To offset and mitigate the impact from the development, equivalent to the identified damage costs and to accord with the guidance contained in Chapter 9 and

Chapter 15 of the National Planning Policy Framework, the West Yorkshire Low Emissions Strategy and Policies PLP 24 and PLP21 of the Kirklees Publication Draft Local Plan

In order to discharge Condition 31 pursuant to Phase 2, the applicant has submitted the following:

- Confirmation within the covering letter from Pegasus Planning dated 12 June 2020 that the building will be constructed to a minimum BREEAM standard of 'Very Good'. This

- Proposed Site Parking Plan B1/B2 Parking Arrangement by HTC Architects dated May 2020 (ref: Job 2454 Dwg. P403 Rev. A) received 16 June 2020.
- Fastcharge Floor Mounted Electric Vehicle Charging Units manufacturer's information received 16 June 2020.
- Design and Access Statement HTC Architects received 16 June 2020.

The plan shows a total of 191 parking spaces within the site and the position of 5 EVCPs (labelled EV 1-5). The Fastcharge information details a FNC3 charging point that incorporates two 3.6kW (16A) charging points that provide Mode 3 charging via Type 2 sockets therefore making a proposed total of 10 charging points. This information is confirmed in the Design & Access Statement, which also advises that provision will be made for the future installation of an additional 20 electronic vehicle charging points and that an additional 116 parking spaces could be made available in the yard.

Environmental Health have confirmed by memo dated 6th August 2020 that the proposed charging points meet the required specification for a standard charging point and they are therefore acceptable. The proposal to provide 10 charging points initially with provision to provide up to 20 more in the future is also acceptable, even considering the possible additional of another 116 parking spaces. However, there are no proposals provided regarding what the trigger points would be for the provision of additional charging points. This information is needed and therefore, a condition regarding EVCPs is necessary pursuant to the Reserved Matters application.

It is noted that in order to comply with the condition, 20 EVCP would need to be provided. Consequently, subject to that being secured by means of a condition through the Reserved Matters and subject to the building being constructed to a minimum BREEAM standard of 'Very Good' (or equivalent standard) the details provided in respect of this condition are acceptable and Condition 31 can be discharged.

Accordingly, Condition 31 is discharged subject to advice that to secure full compliance with the condition, the Phase 2 building hereby approved shall be constructed to a minimum BREEAM standard of 'Very Good' (or equivalent standard) and at least 20 electric vehicle charging points shall be provided in accordance with the following documents before occupation/use of the Phase 2 building on site or in accordance with the phasing agreed by Condition 7:

- Condition 7 of this Reserved Matters permission;
- Covering letter from the agent dated 12th June (received 16th June 2020 to confirm that the building will be delivered to a minimum BREEAM standard of 'Very Good'

- The Proposed Site Parking Plan B1/B2 Parking Arrangement by HTC Architects dated May 2020 (ref: Job 2454 Dwg. P403 Rev. A) received 16 June 2020 for the first phase of spaces;
- The Fastcharge Floor Mounted Electric Vehicle Charging Units manufacturer's information received 16 June 2020 and;
- Confirmation on p8 of the Design and Access Statement HTC Architects received 16 June 2020 in respect of the provision of electronic vehicle charging points.

Once provided, the measures shall thereafter be retained.

Conclusion

This proposal is a Section 73 Variation of Condition application to vary Conditions 1 (Development in accordance with the approved plans), 2 (cycle parking facilities) and 4 (landscape scheme) of the Reserved Matters approval 2020/91807. These conditions all refer to specific drawing numbers that need to be amended.

This amendment is required to accommodate a proposed minor change to the position of the building to take proper account of the overhead power cables situated to the southern boundary of the development site, which were plotted incorrectly in the technical overview of the site. As a result, the building would be re-positioned 9.7 metres to the north-west of its originally approved position with the access road similarly re-positioned in line with the location of the new building. The gatehouse would be also re-positioned in line with the new road and the entrance area within the car park would be relocated in line with the door locations. In all other respects, the scheme would remain unchanged from that previously approved.

As set out above, in determining a S73, the local planning authority must only consider the disputed condition/s that are the subject of the application – it is not a complete re-consideration of the application. As such, it is a consideration of Conditions 1, 2 and 4 only. As detailed within the report, given the very minor modification that is sought by this proposal, which is reflected in the plan numbers associated with Condition 1 and the plan numbers specifically reference in the revised Conditions 2 and 4, the minor variation to these conditions is considered acceptable.

The NPPF has introduced a presumption in favour of sustainable development. The policies set out in the NPPF taken as a whole constitute the Government's view of what sustainable development means in practice. This application has been assessed against relevant policies in the development plan and other material considerations. The Reserved Matters proposal is considered to remain in accordance with the development plan and there are no material considerations to indicate otherwise. The development would therefore constitute sustainable development and it is recommended for approval.

Recommendation: Approval subject to conditions

Decision Authorisation - Delegated Powers

Application Number: 2021/90893

Officer Recommendation: Approve

Conditions and Reasons

1. The development hereby permitted shall be carried out in complete accordance with the plans and specifications schedule listed in this decision notice, except as may be specified in the conditions attached to this permission, which shall in all cases take precedence.

Reason: For the avoidance of doubt as to what is being permitted and so as to

2. The development shall not be occupied until the approved cycle parking facilities have been provided in accordance with Plan 2454 P406 Revision B received 3 March 2021. The facilities shall thereafter be retained for the lifetime of the development.

Reason: To encourage sustainable travel by means other than the private car.

3. No above ground building works shall take place until samples (manufacturing details) of all external cladding and roofing materials have been submitted to and approved in writing by the Local Planning Authority. The development shall then be constructed from the approved materials.

Reason: To ensure good design and in the interests of visual amenity.

4. The landscape scheme shall be implemented in accordance with landscape plan KL449-001 revision P4 received 3rd March 2021 prior to first occupation of the development, or within the first planting season following first occupation. If within a period of five years from the date of the planting of any tree/hedge/shrub that tree/hedge/shrub, or any replacement, is removed, uprooted or destroyed or dies, or becomes, in the opinion of the Local Planning Authority, seriously damaged or defective, another tree/hedge/shrub of the same species and size as that originally planted shall be planted in the same location as soon as reasonably possible and no later than the first available planting season, unless otherwise agreed in writing by the Local Planning Authority.

Reason: To ensure an appropriate and healthy landscape scheme in the interests of visual amenity and bio-diversity

5. A landscape management plan, including long term design objectives, management responsibilities and maintenance schedules shall be submitted to and approved in writing by the Local Planning Authority prior to the first occupation of the development. The landscape management plan shall be implemented in accordance with these approved details.

Reason: To ensure the successful aftercare of the landscaping.

6. Before the electrical system is installed, a scheme detailing the dedicated facilities that will be provided for a minimum of 20 Standard Electric Vehicle Charging Points (of a minimum output of 16A/3.5kW) charging electric vehicles and other ultra-low emission vehicles, including the phasing of their delivery, shall be submitted to and approved in writing by the Local Planning Authority. Buildings and parking spaces that are to be provided with charging points shall not be brought into use until the charging points are installed and operational or in accordance with the alternative phasing strategy to be approved. Charging points installed shall be retained thereafter.

Reason: In the interest of supporting and encouraging low emission vehicles, in the interest of air quality enhancement.

7. The boundary fence to the site frontage shall be implemented as shown on approved plan number ADC2358-DR-001-rev P2 to be set back to the rear of the proposed visibility splays and shall, at all times, be cleared of all obstructions to visibility.

Reason: To ensure adequate visibility in the interests of highway safety.

DISCHARGE OF CONDITIONS

Condition 6 BEMP

Condition 6 is discharged for Phase 2 subject to advice that to secure full compliance with Condition 6 the development shall be implemented in accordance with the approved plan and particulars and in accordance with the approved details and timescales pre, during and post construction as set out in the BEMP (ER-5146-01-1) prepared by Brooks Ecological dated December 2020 and the landscape plan KL-449-001 revision P3 received 10th December 2020.

Condition 9 (Lighting)

Condition 9 is discharged for Phase 2 subject to advice that to secure full compliance with Condition 9, all external lighting within Phase 2 shall be installed in accordance with the phasing, specifications and locations set out in the following documents:

- Lighting Strategy prepared by Loveday Lighting (Report ref: LL117-001) dated 10 June 2020 received 16 June 2020
- Lighting classifications (Overspill and Office Car Parks, Access Road and Rear HGV prepared by Loveday Lighting Limited received 16 June 2020
- Street Lighting Design Risk Assessment received 16 June 2020
- Plan LL117-001 received 16 June 2020

The lighting shall be maintained thereafter in accordance with the above strategy and plans.

Condition 17 (Site investigations)

Condition 17 is discharged pursuant to Phase 2 and the wider site as detailed in the submitted reports subject to advice that to secure full compliance with Condition 17, the development must be implemented in accordance with the

information and recommendations set out in the Ground Investigation Report (Ref: V01) dated 3rd December 2019 received 16 June 2020 as well as the Phase II Geo-environmental Report prepared by Wardell Armstrong dated November 2017 (Report Ref: RPT-002C) and the Coal Mining Risk Assessment for Phase 1 and 2 prepared by Curtins dated 4 February 2020 (Report Ref: B065646-CUR00-XX-RP-GE-001) approved as part of Condition 16 in accordance with 2019/93679 and confirmed in accordance with 2020/91488 (Phase 1).

Condition 29 (Noise Assessment)

Condition 29 is discharged pursuant to Phase 2 subject to advice that to secure full compliance with Condition 29, it shall be completed in accordance with the details set out within the 'M606 Bradford Planning Condition Discharge (Noise)' report prepared by Hoare Lea Acoustics received 16 June 2020 before the occupation of the Phase 2 building.

Condition 31 (EVCP and Mitigation)

Condition 31 is discharged subject to advice that to secure full compliance with the condition, the Phase 2 building hereby approved shall be constructed to a minimum BREEAM standard of 'Very Good' (or equivalent standard) and at least 20 electric vehicle charging points shall be provided before occupation/use of the Phase 2 building on site in accordance with the phasing agreed by Condition 7 and in accordance with the following documents:

- The Proposed Site Parking Plan B1/B2 Parking Arrangement by HTC Architects dated May 2020 (ref: Job 2454 Dwg. P403 Rev. A) received 16 June 2020 for the first phase of spaces;
- Covering letter from the agent dated 12 June 2020, received 16 June 2020 to confirm that the building is to be delivered to a minimum BREEAM standard of 'Very Good';
- The Fastcharge Floor Mounted Electric Vehicle Charging Units manufacturer's information received 16 June 2020 and;
- Confirmation on p8 of the Design and Access Statement HTC Architects received 16 June 2020 in respect of the provision of electronic vehicle charging points.

Once provided, the measures shall be thereafter retained.

Informatives

EVF1 Electric Vehicle Charging Points

A Standard electric vehicle charging point is one which is capable of providing a continuous supply of at least 16A (3.5kW). A 32A (7kW) is however more likely to be futureproof.

Standard charging points that meet the requirements specified in the latest version of "Minimum technical specification - Electric Vehicle Homecharge

Scheme (EVHS)” by the Office for Low Emission Vehicles will be acceptable. Basically, charging points that provide Mode 3 charging with a continuous output of least 16A (3.5kW) and have Type 2 sockets would be acceptable. At non-residential developments, the requirement for one electric vehicle charging point for every 10 parking spaces may initially be reduced to one charging point for every 20 parking spaces with the remainder provided at an agreed trigger point.

For developments where some or all of the parking is likely to be used for shorter stay parking (30mins to 4 hours) then Fast (7-23kW) or Rapid (43kW+) charging points may be more appropriate. If Fast or Rapid charging points are proposed together with restrictions on the times that vehicles are allowed to be parked at these points then a lower number of charging points may be acceptable. • The electrical supply of the final installation should allow the charging equipment to operate at full rated capacity.

The installation must comply with all applicable electrical requirements in force at the time of installation.

Conditions

The applicant is advised that Conditions 3 and 5 to 7, as well as the details pursuant to the discharge of Conditions 6, 9, 17, 29 and 31 were imposed by Reserved Matters permission 2020/61/91807/E. They are reproduced on this notice to provide you with a complete record of all conditions, regardless of whether some may have already been discharged. In the event that these conditions are discharged pursuant to 2020/61/91807/E and assuming that the details remain the same, there would be no need to apply again to discharge them pursuant to this permission.

Plans and specifications schedule:-

Plan Type	Reference	Version	Date Received
Site Location Plan	P400		16 June 2020
Existing Site Plan	P401		16 June 2020
Proposed Site Plan	P402	Rev C	03 March 2021
Parking arrangements	P403	Rev B	03 March 2021
Floor plans and elevations	P100	Rev B	03 March 2021
Roof plan	P110	Rev A	03 March 2021
Gatehouse	P120		16 June 2020
Substation	P130		16 June 2020
Boundary Treatments	P404	Rev B	03 March 2021
Constraints overview	P405	Rev B	03 March 2021
Bin/cycle store	P406	Rev B	03 March 2021
Landscape Plan	KL-449-001	Rev P4	03 March 2021
Gas Pipeline Route and Easements	P408	Rev B	03 March 2021

Plan Type	Reference	Version	Date Received
Design and Access Statement	Prepared by hta Architects		16 June 2020
Noise Assessment	Prepared by Hoare Lea		16 June 2020
BEMP	Prepared by Brooks Ecological Report Ref ER-5146-01.1 dated December 2020		10 December 2020
Swept Path Analysis Articulated Vehicle B1/B2	ADC2358-DR-051	Rev P2	16 June 2020
Swept Path Analysis Articulated Vehicle B8	ADC2358-DR-052	Rev P1	16 June 2020
Swept Path Analysis Large Car	ADC2358-DR-053	Rev P1	16 June 2020
Ground Investigation Report prepared by Curtins	065646-CUR-00-XX-RP-GE-001 dated 3 December 2020	Rev VO1	16 June 2020
Ground Investigation Results Test Certificate	Prepared by i2 Analytical Ltd Job Ref 19-66815		16 June 2020
Phase II Geo-environmental Assessment	Prepared by Wardell Armstrong dated November 2017 Report Number RPT-002C		16 June 2020
Lighting Strategy	LL1171-001 dated 1 March 2021 prepared by Loveday Lighting Limited	Rev A	03 March 2021
Lighting plan	LL1171-001	Rev A	03 March 2021
Lighting Report	LL1171-001 dated 1 March 2021 prepared by Loveday Lighting Limited	Rev A	03 March 2021
Lighting Report overspill and office car parks	LL1171-001 dated 1 March 2021 prepared by Loveday Lighting Limited	Rev A	03 March 2021
Street Lighting Design	LL1171-001 dated		16 June 2020

Plan Type	Reference	Version	Date Received
Risk Assessment	10 June 2020 prepared by Loveday Lighting Limited		
Fastcharge document	Produced by Chargemaster		16 June 2020

Pursuant to article 35 (2) of the Town and Country Planning (Development Management Procedure) Order 2015 and guidance in the National Planning Policy Framework, the Local Planning Authority have, where possible, made a pre-application advice service available, complied with the Kirklees Development Management Charter 2015 and otherwise actively engaged with the applicant in dealing with the application. The conditions set out on this decision notice ensure an acceptable quality of development.

Report Dated: 17 June 2021