
Report of the Head of Planning and Development**STRATEGIC PLANNING COMMITTEE****Date: 14-Jul-2022**

Subject: Planning Application 2021/94060 Variation condition 32 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) Former North Bierley Waste Water Treatment Works, Oakenshaw, BD12 7ET

APPLICANT

Interchange LLP 26

DATE VALID

22-Oct-2021

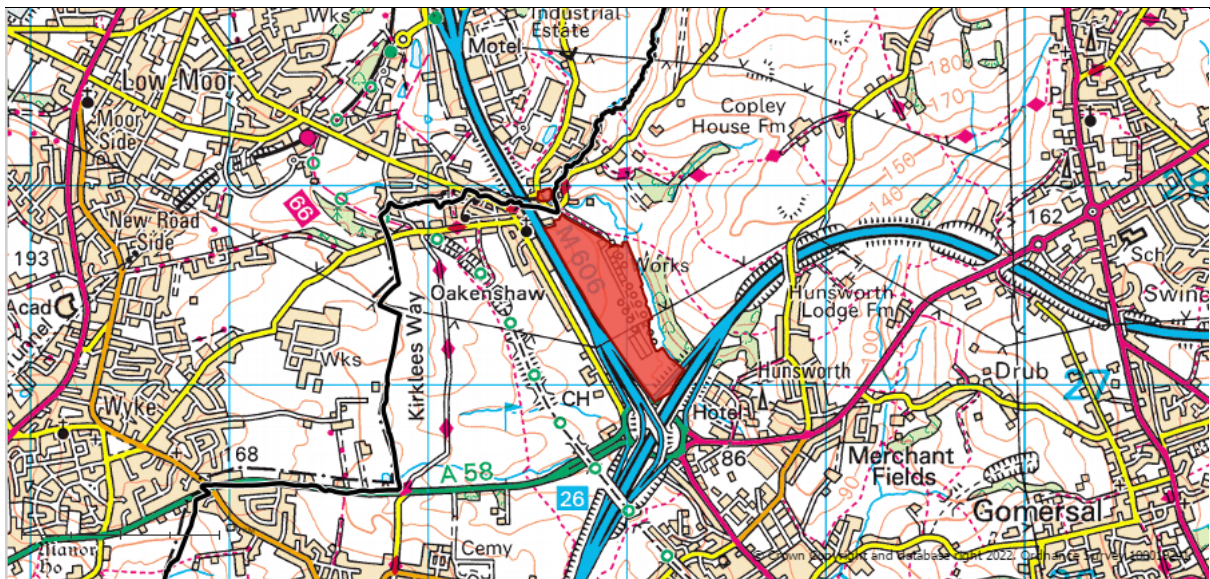
TARGET DATE

21-Jan-2022

EXTENSION EXPIRY DATE

Please click the following link for guidance notes on public speaking at planning committees, including how to pre-register your intention to speak.

[Public speaking at committee link](#)

LOCATION PLAN

Map not to scale – for identification purposes only

Electoral wards affected: Cleckheaton

Ward Councillors consulted: Yes

Public or private: Public

RECOMMENDATION

DELEGATE approval of the application and the issuing of the decision notice to the Head of Planning and Development in order to complete the list of conditions including those contained within this report and to secure a S106 agreement to cover the following matters:

A deed of variation, which ties the S106 obligations from 2016/92298, the original consent, to the new S73 consent. For reference, the original contributions were:

A. All off site associated highway works approved under s278 to be completed and made operational prior to any part of the commercial development on this application site being brought into use

B. A financial contribution of £71,370 (calculated damage costs) to be used towards air quality mitigation measures within the vicinity of the site in the absence of detailed low emission projects equating to the identified damage costs or above, being submitted at reserved matters stage, and

C. £20,000 towards real time passenger information displays to two existing bus stops (reference nos. 14572 and 14567)

In the circumstances where the S106 agreement has not been completed within 3 months of the date of the Committee's resolution then the Head of Planning and Development shall consider whether permission should be refused on the grounds that the proposals are unacceptable in the absence of the benefits that would have been secured; if so, the Head of Planning and Development is authorised to determine the application and impose appropriate reasons for refusal under Delegated Powers.

1.0 INTRODUCTION

1.1 This application is a S73, Variation of Condition. The proposal seeks to vary condition 32 on previous permission 2016/92298, which granted outline permission for the re-development of former waste water treatment works following demolition of existing structures to provide employment uses (use classes B1(c), B2 and B8).

1.2 The condition sought to be varied relates to the ratio of B2 use and the site's approved total floor area.

1.3 This application is brought to the Strategic Planning Committee as it is deemed appropriate by planning officers, given the nature of the proposal, in agreement with the Chair of Committee and in accordance with the Delegation Agreement.

2.0 SITE AND SURROUNDINGS

- 2.1 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 to join Bradford Road. Turning left onto Bradford Road then provides a connection to Junction 26 of the M62.
- 2.2 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.
- 2.3 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.

This has been followed by several Reserved Matters applications (see planning history) and development has commenced. The ongoing development has formed several plateaus with three industrial buildings built upon them, with central access road. Parts of the former WWTW remain to the south.

3.0 PROPOSAL

- 3.1 This application seeks to vary condition 32 on previous permission 2016/92298. Condition 32 is as follows:

32. The B2 Use within the site shall not exceed 75.8% of the maximum 35,284m² floor space to be created.

Reason: *In the interest of highway safety as the submitted traffic assessment is based on development to include 75.8% of B2 Use, to avoid an intensification in vehicle movement on the surrounding highway infrastructure and to accord with Policy T10 of the Kirklees Unitary Development Plan and PLP21 of the Publication Draft Local Plan.*

- 3.2 The applicant seeks to lower the approved percentage of B2 use and increase the approved floor space, to 41,191m² (+5,907 m², 16.7% increase) The following use mixture is proposed:

- B2: 21,367m² (a reduction of 3,111m²)
- B8: 19,824m² (an increase of 11,665m²)

3.3 The reason given for the desired change is:

As a result in a shift in the commercial market, the requirement for the B1(c) (now E(g)) and B2 uses has significantly reduced and the strongest demand is for B8 storage facilities. This has been reflected in the fact that all the reserved matters submitted to date have been for B8 uses. As such, the applicant is looking to further respond to this demand and change the mix of uses to more closely reflect demand.

4.0 RELEVANT PLANNING HISTORY (including enforcement history)

4.1 Application Site

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) – S106 Outline Approved

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) – NMA Approved

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) – RM Approved

2020/91807: Reserved matters application pursuant to Phase 2 of outline permission no. 2016/92298 (as amended by NMA 2020/91436) for the re-development of the former waste water treatment works following demolition of existing structures to provide employment uses (Use classes B1(c), B2 and B8) to include 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 relate to Phase 2 – RM Approved

2021/90893: 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 – Removal / Variation approved

2021/91901: Non material amendment to Condition 20 of 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) to enable the construction of Phase 2 – NMA Approved

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 19 (Public Rights of Way), Condition 29 (Noise Attenuation) and Condition 31 (Electric Vehicle Charging Points) – RM approved

2021/94061: Reserved matters application pursuant to outline permission 2016/92298 for re-development of former wastewater treatment works following demolition of existing structures to provide employment uses (use classes B1(c), B2 and B8) – Pending determination

2021/94208: Outline application for re-development of former wastewater treatment works, including demolition of existing structures to provide employment uses (Use Classes E(g)(ii); E(g)(iii); B2 and B8) – Pending determination

2022/91639: Non material amendment to previous permission 2021/90893 for 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 – Pending determination

2022/91849: Variation condition 21 (highways and occupation) 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)) – Pending determination

There are also numerous discharge of condition applications associated with the above applications.

4.2 Surrounding Area

Woodlands CE Primary School, Mill Carr Hill Road

21/01760/FUL: New car park for school staff, electric vehicle charging and drop-off for pupils, revised site access, improved outdoor play provision and enhanced scheme of soft landscaping (amended plans received) – Pending determination

Note: this application falls under Bradford Council

land west of M62, south of, Whitehall Road

2021/92603: Erection of storage and distribution unit (Use Class B8) with ancillary offices, car parking, servicing, landscaping and access (Revised Plans) – Pending determination

4.3 Enforcement

A Temporary Stop Notice (TSN) was served on the site on 10th July 2020. It was issued because of construction works pursuant to Phase 1 (access road) 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 because 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.

5.0 **HISTORY OF NEGOTIATIONS (including revisions to the scheme)**

- 5.1 Given the limited scope of the application, being focused upon condition 32, negotiations have been limited to that subject.
- 5.2 The proposed amendment to condition 32 was anticipated to have two main considerations, which were the focus of discussions: traffic generation and air quality. The applicant's stance has been throughout that that the proposal would not materially change traffic generation, and therefore not change the impact on air quality.
- 5.3 Following review of the submission, K.C. Highways concluded they agreed with the applicant's ascertains, with the exception of concerns regarding the site operating as a last mile / parcel distribution centre. Such a use would have a greater traffic generation than had been assessed. The applicant was presented with the options of agreeing a condition for no last mile / parcel distribution centre or undertaken the required assessment. Following discussions, a suitably worded condition was agreed.

6.0 **PLANNING POLICY**

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

Kirklees Local Plan (2019) and Supplementary Planning Guidance / Documents

- 6.2 The application site is part employment allocation (ES7) and part Green Belt in the Kirklees Local Plan (2019). When 2016/92298 was determined the relevant development plan was the Unitary Development Plan. In the UDP, the whole site was designated as Green Belt.

6.3 Relevant Local Plan policies are:

- **LP1** – Presumption in favour of sustainable development
- **LP2** – Place shaping
- **LP3** – Location of new development
- **LP20** – Sustainable travel
- **LP21** – Highway safety and access
- **LP22** – Parking
- **LP64** – Employment allocations

6.4 The following are relevant Supplementary Planning Documents or other guidance documents published by, or with, Kirklees Council;

Supplementary Planning Documents

- N/A

Guidance documents

- Planning Applications Climate Change Guidance (2021)
- West Yorkshire Low Emissions Strategy and Air Quality and Emissions Technical Planning Guidance (2016)

National Planning Guidance

6.5 National planning policy and guidance is set out in National Policy Statements, primarily the National Planning Policy Framework (NPPF) 2021, published 20th July 2021, and the Planning Practice Guidance Suite (PPGS), first launched 6th March 2014, together with Circulars, Ministerial Statements and associated technical guidance. The NPPF constitutes guidance for local planning authorities and is a material consideration in determining applications.

- **Chapter 2** – Achieving sustainable development
- **Chapter 4** – Decision-making
- **Chapter 9** – Promoting sustainable transport
- **Chapter 11** – Making effective use of land
- **Chapter 14** – Meeting the challenge of climate change, flooding and coastal change

6.6 Other relevant national guidance and documents:

- MHCLG: National Design Guide (2021)

Climate change

6.7 The Council approved Climate Emergency measures at its meeting of full Council on the 16th of January 2019, and the West Yorkshire Combined Authority has pledged that the Leeds City Region would reach net zero carbon emissions by 2038. A draft Carbon Emission Reduction Pathways Technical Report (July 2020, Element Energy), setting out how carbon reductions might be achieved, has been published by the West Yorkshire Combined Authority.

- 6.8 On the 12th of November 2019 the Council adopted a target for achieving 'net zero' carbon emissions by 2038, with an accompanying carbon budget set by the Tyndall Centre for Climate Change Research. National Planning Policy includes a requirement to promote carbon reduction and enhance resilience to climate change through the planning system, and these principles have been incorporated into the formulation of Local Plan policies. The Local Plan predates the declaration of a climate emergency and the net zero carbon target; however, it includes a series of policies which are used to assess the suitability of planning applications in the context of climate change. When determining planning applications, the council would use the relevant Local Plan policies and guidance documents to embed the climate change agenda.

7.0 PUBLIC/LOCAL RESPONSE

Public representation

- 7.1 The application has been advertised as a major development via site notices and through neighbour letters to properties bordering the site, along with being advertised within a local newspaper. This is in line with the Council's adopted Statement of Community Involvement.
- 7.2 The end date of the period of advertisement was the 5th of January 2022. A total of 5 public representations were received. The following is a summary of the comments received:
- Concerns over the impact the site's current construction is having upon local residents, including traffic movements and mud on the road.
 - The developers of the site have ignored conditions and progressed without following requirements of the planning permission.
 - The proposed variation is too substantial to be considered under the S73 / Variation of Condition procedure. The application is not lawful.
 - The car park for the school has not been built.
 - Objection to additional traffic movements and more vehicles associated with the development.
 - The application, and other applications on the site, should not be accepted and/or refused outright.
 - Development should not be approved within the Green Belt. The development would result in villages being merged together.
 - Warehousing will create less jobs and more HGV traffic. Job creation was an important factor in the Outline's assessment and is therefore being prejudiced.
 - The Kirklees Local Plan did not allocate the whole red-line of 2016/92298 as an employment allocation, with part of the site (north) kept as Green Belt to act as a buffer to prevent urban areas merging.
 - The proposed application would approve a floor space exceeding the Local Plan's indicative capacity for the allocation (35,284sqm). Claims that the 35,284sqm indicative capacity refers to the development area, not floor space.
 - The applicant's claims that the market has changed to necessitate this variation should not be considered relevant.
 - The data used in the highway assessment is based on the 2011 census and therefore out of date. Modern data would be much higher.

- 7.3 The site is within Cleckheaton Ward. Local ward members were notified. The ward members asked to be kept apprised as the application (and others on the site) progressed.

8.0 CONSULTATION RESPONSES

8.1 Statutory

K.C. Highways: The applicant's initial data was accepted, however concerns over the new unit operating as a 'Parcel Distribution Centre' were raised. This led to further discussions and the ultimate agreement to impose a condition preventing such use.

National Highways: Offered no objection to the proposal in their initial comments, as they accepted the conclusion of the applicant's Transport Note and agreed there would be no significant change to the number of peak hour trips to and from the site. Officers notified National Highways of their concerns over the potential operation of a 'Parcel Distribution Centre'. In response, they stated

National Highways note the Council's comments regarding the potential for a Parcel Distribution Centre (PDC) to come forward within the proposed uses. However, we consider that any conditions placed on the S73 application are a matter for the Council to come to a conclusion on, although given that AMA state that a PDC is unlikely to come forward at this location, it is not apparent as to why there is a degree of a resistance to a condition that prevents this type of development coming forward. Furthermore, such a condition would reduce the potential need for further transport work to be undertaken by the applicant.

In broad terms, National Highways would support any move from the Council to ensure a no 'Parcel Distribution Centre' condition on the application, as that would reduce the potential impact of the development proposals at the SRN, whilst paying due cognisance to the consented planning application. However, it is considered a matter for the Council to come to a view on.

Notwithstanding, if a PDC were to come forward at this location, then National Highways would expect an assessment of the impact of the trip generation of such a use from the applicant, compared to the consented B8 use.

In conclusion, National Highways offers 'no objection' to the Section 73 application.

8.2 Non-statutory

K.C. Environmental Health: Subject to the proposal creating no additional traffic movements, no objection.

Northern Gas Network: No objection.

9.0 MAIN ISSUES

- Scope of the application
- Variation of condition 32
- Environmental Impact Assessment
- Previous conditions
- Representations

10.0 APPRAISAL

Scope of the application

- 10.1 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.
- 10.2 Planning Practice Guidance on the use of planning conditions 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. The application is not a complete re-consideration of the application. As such, there is no requirement to re-consider the principle of development nor technical matters such as ecology or drainage.
- 10.3 This application is therefore restricted to a consideration of the proposed variation to condition 23, and its potential impacts.
- 10.4 Section 73 applications 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.
- 10.5 Regarding national policies, the NPPF has been revised since the determination of 2016/92298. Nonetheless, the revisions are not considered to have any impact. For local policy, 2016/92298 was determined under the Unitary Development Plan although the Local Plan (then the Draft Publication Draft Local Plan) was given material weight. The Local Plan allocated part of the site as an Employment Allocation, with the rest remaining as Green Belt. Officers are satisfied that the changes between the UDP and Local Plan do not affect the principle of development on this site. In terms of other material considerations, the subsequent reserved matters on the site to detail the phased development is noted. This does not however affect how this assessment would be assessed. There are deemed no other material changes in the area that could affect the proposal.

Variation of Condition 32

- 10.6 The proposed increase in floor space, from 35,284m² to 41,191m², represents an increase of 16.7%. In the context of this proposal officers are satisfied the change may be considered 'minor material' in nature, and therefore may be considered under a S73 application. Nonetheless, the impacts of the change require due regard.

- 10.7 Consideration is first given to the reason the original condition was imposed, which was:

Reason: *In the interest of highway safety as the submitted traffic assessment is based on development to include 75.8% of B2 Use, to avoid an intensification in vehicle movement on the surrounding highway infrastructure and to accord with Policy T10 of the Kirklees Unitary Development Plan and PLP21 of the Publication Draft Local Plan.*

- 10.8 Fundamentally, the condition seeks to limit the traffic movements of the development, to those demonstrated and assessed as part of the application. This is to prevent undue harm, through vehicle movements, to the local highway network (including the M62).
- 10.9 The vehicle movements for 2016/92298 were calculated using the TRICS (Trip Rate Information Computer System) database, a nationally accepted method of calculating a development's anticipated traffic movement. It provides an anticipated vehicle movement per 100sqm, which can then be converted to a new building's proposed floor space.
- 10.10 The Transport Assessment submitted with 2016/92298 identified the development as creating the following traffic movements.

Table 1: Consented peak hour trip generation

	AM (0800 – 0900)			PM (1700 – 1800)		
	Arrivals	Departures	Two Way	Arrivals	Departures	Two Way
B1 Trip rate (per 100sqm)	0.486	0.091	0.577	0.054	0.405	0.456
B1 Trip rate (at 2,648 sqm)	13	2	15	1	11	12
B2 Trip rate (per 100sqm)	0.525	0.099	0.0624	0.059	0.433	0.492
B2 Trip rate (24,478sqm)	129	24	153	14	106	120
B8 Trip rate (per 100sqm)	0.165	0.057	0.222	0.059	0.160	0.219
B8 Trip rate (8,159sqm)	13	5	18	5	13	18
Total	155	31	186	21	130	151

- 10.11 As per the above table, application 2016/92298 was approved on the assessment of a total 186 two-way vehicle movements in the AM peak and 151 two-way movements in the PM peak. Condition 32 aimed to secure this maximum movement.

- 10.12 In TRICS different use classes have different anticipated vehicle movement values. The applicant contends that the proposed increased floor space may be accommodated on the site, without increasing vehicle movements by changing the ratio of the use classes.
- 10.13 The B2 floor spaces would be reduced, from 24,478sqm to 21,367sqm. and the B8 floorspace increased from 8,159sqm to 19,824sqm. The applicant states this is to address modern market demands for floor space.
- 10.14 The following table is based on the applicant's proposed amended floorspace and use class ratio.

Table 2: Propose trip generation of revised floor area

	AM (0800 – 0900)			PM (1700 – 1800)		
	Arrivals	Departures	Two Way	Arrivals	Departures	Two Way
B2 Trip rate (per 100sqm)	0.525	0.099	0.624	0.059	0.433	0.492
B2 Trip rate (21,367sqm)	112	21	133	13	93	105
B8 Trip rate (per 100sqm)	0.165	0.057	0.222	0.059	0.160	0.219
B8 Trip rate (19,824sqm)	33	11	44	12	32	43
Total	145	32	177	24	124	149

- 10.15 The following table compares the total movements between the consented scheme, and that now proposed.

Table 3 – Trip generation comparison

	AM (0800 – 0900)			PM (1700 – 1800)		
	Arrivals	Departures	Two Way	Arrivals	Departures	Two Way
Consented	155	31	186	21	130	151
Proposed	145	32	177	24	124	148
Difference	-10	+1	-9	+3	-6	-3

- 10.16 As a result of the proposed change in floor space ratio, despite the overall increase of floor area by 5,907sqm, two-way traffic movements in the AM and PM peaks would be reduced by 9 and by 3 respectively.
- 10.17 The applicant has used the national TRICS database and an accepted methodology to demonstrate the proposed variation would have no materially greater impact upon the local highway network. K.C. Highways and National Highways have reviewed the proposal, confirming the methodology to be acceptable and that they have no objection.
- 10.18 Officers return to the reason for condition 32; to set a limit of vehicle movements to protect the highway network. In light of the assessment undertaken officers conclude that the variation would not prejudice the safe and effective operation of the highway. It is therefore recommended that condition 32 be amended to the following:
32. *The B2 Use within the site shall not exceed 51.9*% of the maximum 41,191m² floor space to be created.*
Reason: *In the interest of highway safety as the submitted traffic assessment is based on development to include 51.9% of B2 Use, to avoid an intensification in vehicle movement on the surrounding highway infrastructure and to accord with Policy LP21 of the Kirklees Local Plan.*
- 10.19 Condition 32 was part of a set of conditions that sought to control and/or manage the proposal's highways impact, including conditions that required highway improvements. These are detailed in the following section: if minded to approve the variation, the other conditions would remain unaffected.
- 10.20 Notwithstanding the above, K.C. Highways did raise concern over the potential operation of the site as a 'Last Mile' or 'Parcel Distribution Centre'. Such uses do fall under the B8 use class, but do not operate in a traditional sense as they have a higher transport generation. 'Last Mile' developments have become more popular over the last several years and typically consist of warehouse to home deliveries. As a result, their traffic generation is greater as smaller vans deliver a high volume of parcels to numerous addresses. This has not been accounted for and assessed within the applicant's submission. The applicant is of the opinion that the site would not be suitable
- 10.21 To address this concern, the following condition has been drafted. The condition would prevent the area that the additional unit / new floor space would occupy being utilised as a 'Last Mile' distribution, negating the concerns raised by K.C. Highways. This approach has been agreed with the applicant. The final wording is subject to review by K.C. Legal and K.C. Enforcement, with a meeting to take place prior to the committee. Any material change will be noted in the member's update.

33. *The hereby approved development does not authorise the operation of a 'Last Mile' distribution use within the area highlighted in red on plan ref. '2147 PL 100B', as submitted on the 13th June 2022.*

Reason: *In the interest of highway safety as the submitted traffic assessment is based on the traffic generation of a traditional B8 use, as opposed to the high movements attributed to 'last mile' distribution centres, to avoid an intensification in vehicle movement on the surrounding highway infrastructure and to accord with Policy LP21 of the Kirklees Local Plan.*

Note: Pursuant to condition 33, 'Last Mile' distribution use is defined as a single parcel undertaking its last leg of a journey from a transportation hub to a final destination.

- 10.22 In summary, while the proposal would increase the maximum allowed floorspace at the site, by virtue of a reduced maximum B2 offer at the site traffic generation would not be materially affected. The proposed variation to condition 32 would not therefore be contrary to the aims and objectives of Policy LP21 of the Kirklees Local Plan.

Previous conditions

- 10.23 As this is an application under S73 of TCPA 1990 it will in effect be a new permission. The Planning Practise Guidance confirms that for the purpose of clarity, decision notices for the grant of planning permission under section 73 should set out all of the conditions imposed on the new permission, and restate the conditions imposed on earlier permissions that continue to have effect.

- 10.24 Application 2016/92298 was granted with 32 conditions. These are summarised below:

1. Reserved matters to be submitted prior to commencement
2. Reserved matters to be submitted to the LPA and carried out per plans
3. Reserved matters time limit for submission
4. Reserved matters time limit to commence
5. Phasing plan to be submitted
6. Biodiversity Enhancement and Management Plan to be submitted
7. Construction Ecology Management Plan to be submitted
8. Construction Environment Management Plan to be submitted
9. Lighting Design Strategy for Biodiversity to be submitted
10. Sewer easement
11. Access to Moorend combined sewer overflow and syphon sewer details
12. Separate foul and surface water required
13. Drainage details to be submitted
14. Outfall details to be provided
15. Development done in accordance with Flood Risk Assessment
16. Coal working site investigations
17. Layout and landscape RMs to include consideration of coal working investigations
18. Layout and landscape RMs to include Arboricultural Survey and Method Statements
19. Layout and landscape RMs to include treatment of PROW on site
20. Limiting floorspace constructed to 17,642m² until given highway works are approved or Highway England works undertaken
21. Limiting floorspace occupied to 17,642m² until given highway works implemented (as approved by condition 20) or Highway England works undertaken
22. Development restricted to the areas shown on plateau plan
23. Reserved Matters shall include a 'Residual Uncertainty Assessment' in relation to flood risk
24. Reserved Matters to include surface water disposal strategy
25. Before occupation, SUDS features management, maintenance, and adoption to be submitted

26. Temporary surface water details to be provided
 27. Prior to occupation, confirmation of highway works to be provided (improvements to Mill Carr Hill Road and Cliff Hollins Lane)
 28. Fixed mechanical services and plan to be noise controlled.
 29. Layout and landscape RMs to include noise attenuation
 30. Unexpected contamination procedure
 31. Layout and landscape RMs to include low emission and charging point details
 32. Limitation on B2 and total floor space (to be varied).
- 10.25 Condition 23 is sought to be varied, as considered previously. The wording would be amended as proposed.
- 10.26 All other conditions remain pertinent and are to be kept. As several have been previously discharged (or partly discharged), a note relating to the previously submitted information remaining relevant is recommended for consistency.
- 10.27 Application 2016/92298 was granted subject to a S106 agreement. Therefore, a S106 Deed of Variation is recommended to be secured. This will simply secure the same contributions to this application, as secured as part of 2016/92298.

Environmental Impact Assessment

- 10.28 The previous application was submitted with an Environmental Impact Assessment. In accordance with Government guidance contained within Planning Practise Guidance, the applicant was required to submit An Environmental Statement.
- 10.29 Government guidance identifies key issues for industrial estate developments as traffic, emissions, and noise. The applicant contended that, notwithstanding the increase in floor space, their proposal would not result in a net increase in traffic movement. Therefore, there would be no material change in circumstances compared to that previously approved. For the reasons outlined above, subject to the proposed condition, officers concur. Furthermore, conditions relating to the management of noise and emissions imposed on the original outline, will remain attached should the application be approved. See the previous section for further information.

Representations

- Concerns over the impact the site's current construction is having upon local residents, including traffic movements and mud on the road.
- The developers of the site have ignored conditions and progressed without following requirements of the planning permission.

Response: These comments do not form material planning considerations in the assessment of the current application.

- The proposed variation is too substantial to be considered under the S73 / Variation of Condition procedure. The application is not lawful.

Response: This matter is considered by officers within paragraph 10.6. In summary, given that the increase in floor space is low at 16.7%, the increase is considered 'minor material', the test for a S73 application. To add more to this, the floor space was not included within the description of development, the development plateaus were established and would not change, and the limitation was put in place to control highway movements. These aspects would not therefore be materially affected or prejudiced by the current S73 application.

- The car park for the school has not been built.

Response: The original application included plans (not within the red-line) to provide a car park for Woodlands CE Primary School. This was to remove / reduce parent parking on Mill Carr Hill Road and Cliff Hollins Lane. Woodlands CE Primary School falls within Bradford Council, with a live application for the car park pending determination (ref. 21/01760).

- Objection to additional traffic movements and more vehicles associated with the development.

Response: As per the assessment undertaken in this report, officers are satisfied that the proposed variation would not materially increase traffic movements.

- The application, and other applications on the site, should not be accepted and/or refused outright.

Response: It is the statutory duty of the Local Planning Authority to assess planning applications, in accordance with the relevant legislation.

- Warehousing will create less jobs and more HGV traffic. Job creation was an important factor in the Outline's assessment and is therefore being prejudiced.

Response: This is noted. Nonetheless the reason for the condition pertained to Highways only and matters of job creation are not therefore material to this S73 application.

- The Kirklees Local Plan did not allocate the whole red-line of 2016/92298 as an employment allocation, with part of the site (north) kept as Green Belt to act as a buffer to prevent urban areas merging.
- Development should not be approved within the Green Belt. The development would result in villages being merged together.

Response: Within the local plan the red-line boundary for 2016/92298 including Green Belt land and the land of Employment Allocation ES9. This is noted, but matters of principle and land use are not material to this S73 application which is limited to assessing the impacts of changing the condition. The development plateaus are established.

- The proposed application would approve a floor space exceeding the Local Plan's indicative capacity for the allocation (35,284sqm). Claims that the 35,284sqm indicative capacity refers to the development area, not floor space.

Response: The floorspace contained within the Local Plan is indicative, and can be greater if no material harm is caused. The figure of 35,284sqm refers to floor space, not site area.

- The applicant's claims that the market has changed to necessitate this variation should not be considered relevant.

Response: The reason for an application is not typically considered material: this assessment has been undertaken against the applicant's highways document.

- The data used in the highway assessment is based on the 2011 census and therefore out of date. Modern data would be much higher.

Response: Census data is collected once a decade. The census data collected in 2021 takes time to be disseminated and updated.

11.0 CONCLUSION

- 11.1 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.
- 11.2 As a S73 application the principal consideration is the planning implications of the sought variation. In summary, officers are satisfied that, by virtue of the greater B8 use of the site the proposed increase in floor space would not result in a material change in traffic generation to and from the site. This is subject to an additional condition preventing the remaining development plateau from being occupied by a Last Mile / Parcel Distribution Centre.
- 11.3 This application has been assessed against relevant policies in the development plan and other material considerations. It is considered that the development would constitute sustainable development and is therefore recommended for approval, subject to conditions and deed of variation to be secured via a Section 106 agreement.

12.0 CONDITIONS (Summary list. Full wording of conditions including any amendments/additions to be delegated to the Head of Planning and Development)

Note: Conditions 1 – 31 are to be repeated as per 2016/92298. Condition 32 is to be varied and a new condition is proposed (number 33).

1. Reserved matters to be submitted prior to commencement
2. Reserved matters to be submitted to the LPA and carried out per plans
3. Reserved matters time limit for submission
4. Reserved matters time limit to commence
5. Phasing plan to be submitted
6. Biodiversity Enhancement and Management Plan to be submitted
7. Construction Ecology Management Plan to be submitted

8. Construction Environment Management Plan to be submitted
9. Lighting Design Strategy for Biodiversity to be submitted
10. Sewer easement
11. Access to Moorend combined sewer overflow and syphon sewer details
12. Separate foul and surface water required
13. Drainage details to be submitted
14. Outfall details to be provided
15. Development done in accordance with Flood Risk Assessment
16. Coal working site investigations
17. Layout and landscape RMs to include consideration of coal working investigations
18. Layout and landscape RMs to include Arboricultural Survey and Method Statements
19. Layout and landscape RMs to include treatment of PROW on site
20. Limiting floorspace constructed to 17,642m² until given highway works are approved or Highway England works undertaken
21. Limiting floorspace occupied to 17,642m² until given highway works implemented (as approved by condition 20) or Highway England works undertaken
22. Development restricted to the areas shown on plateau plan
23. Reserved Matters shall include a 'Residual Uncertainty Assessment' in relation to flood risk
24. Reserved Matters to include surface water disposal strategy
25. Before occupation, SUDS features management, maintenance, and adoption to be submitted
26. Temporary surface water details to be provided
27. Prior to occupation, confirmation of highway works to be provided (improvements to Mill Carr Hill Road and Cliff Hollins Lane)
28. Fixed mechanical services and plan to be noise controlled.
29. Layout and landscape RMs to include noise attenuation
30. Unexpected contamination procedure
31. Layout and landscape RMs to include low emission and charging point details
32. Limitation on B2 and total floor space (to be varied).
33. Prevent given area being used as Last Mile (new)

Note: The definition of a 'Last Mile' distribution use.

Note: Pertaining to the previously approved discharge of conditions associated with 2016/92298.

Background Papers

Application and history files

Available at:

[Link to application details](https://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2021%2f94060)

<https://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2021%2f94060>

Certificate of Ownership

Certificate B signed. Notice served on 1 party.