
Report of the Head of Planning and Development

STRATEGIC PLANNING COMMITTEE

Date: 03-Nov-2022

Subject: Planning Application 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), B2 and B8) Former North Bierley Waste Water Treatment Works, Cliff Hollins Lane, Oakenshaw, BD12 7ET

APPLICANT

Tungsten Properties Ltd
and BA Pension Trustees
Ltd

DATE VALID

26-May-2022

TARGET DATE

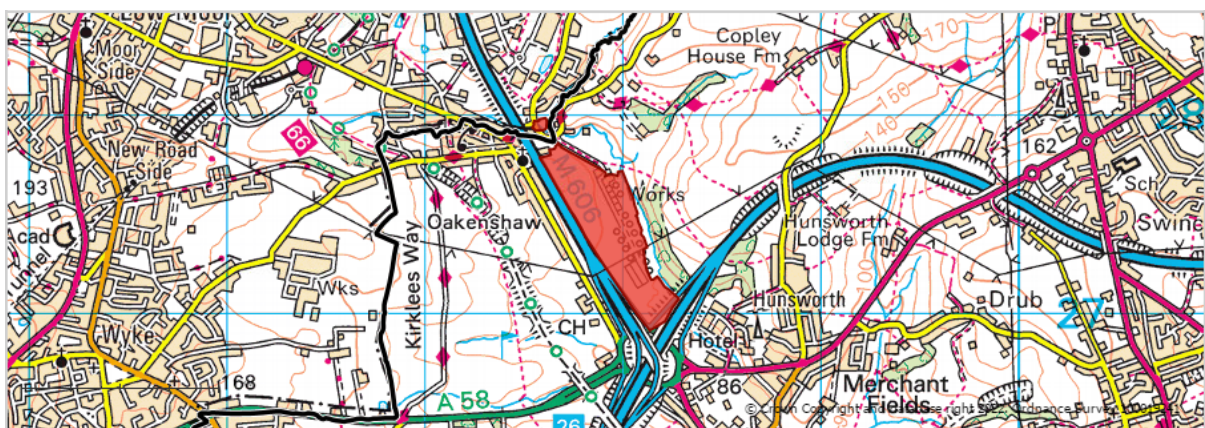
25-Aug-2022

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 21 on previous permission 2016/92298, which granted outline permission for the re-development of former wastewater 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 the timing of occupation and the delivery of highway improvement works.

- 1.3 This application is brought to the Strategic Planning Committee at the request of Local Ward Councillor Andrew Pinnock, due to concerns over cumulative highway impacts. This committee request and its reasoning have been accepted, 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.
- 2.4 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.
- 2.5 This application relates specific to one phase / building on the site, located approximately centrally within the site. The building in question is currently known as the Tungsten Properties Ltd and BA Pension Trustees Ltd building. The principle of development for the whole site was established via outline ref. 2016/92298, with the building in question being approved by the Reserved Matters application ref. 2020/91807.

3.0 PROPOSAL

3.1 This application seeks to vary condition 21 on previous permission 2016/92298. Condition 21 is as follows:

21. No more than 17,642m² of floorspace shall be occupied and come into use until either:

a. the highways works on the Bradford Road approach to M62 Junction 26 Chain Bar, identified in Condition 20) a) are implemented and open to traffic to Kirklees Council's approval in consultation with Highways England; or

b. the improvement scheme to remove M62 westbound to M606 northbound traffic from the M62 Junction 26 Chain Bar roundabout circulatory carriageway is implemented by Highways England

Reason: In the interests of highway safety for all those using the surrounding highway infrastructure to ensure either the mitigation highway works a) or b) above, are completed and implemented and to accord with Policy T10 of the Kirklees Unitary Development Plan, PLP21 of the Publication Draft Local Plan and guidance within the National Planning Policy Framework.

3.2 The applicant seeks to vary the occupation floor space limit, increasing it to 21,882sqm. This is an increase of 4,240sqm. All other aspects of the condition would remain as originally imposed.

3.3 The Tungsten Properties Ltd and BA Pension Trustees Ltd building has a floor area of 21,882sqm. The reason given for the desired change is '*To allow for the building to be occupied in advance of the completion of the sites highway works*'.

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 – NMA Approved

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) – Pending determination (approved at committee held 14.07.2022, awaiting S106 legal agreement being resolved)

2022/92824: Non material amendment to previous permission 2021/91932 for 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) – Pending determination

Note: 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 21, negotiations have been limited to that subject. Within this, the principal consideration is the impact the change would have upon the highway network.
- 5.2 The applicant has contended throughout that the increased floorspace limit of 4,240sqm prior to the works being implemented of would be negligible. Officers have sought clarification on aspects of the applicant's assessment, along with understanding the current position of the highway works in question and reassurance when they are expected to be delivered. This has taken place via meetings and email exchange, with the applicant, National Highways, and internal Council departments.

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
- 6.5 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

6.6 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

6.7 Other relevant national guidance and documents:

- MHCLG: National Design Guide (2021)

Climate change

6.8 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.

6.9 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 21st of July 2022. A total of two public representations were received. The following is a summary of the comments received:

- The proposal would harm the local highway network, which has seen a recent 'spate of accidents around Chain Bar'.
- Development works are taking place outside of the approved hours.
- Various conditions on the original permission have been breached, notably condition 20.
- Delivery / Construction vehicles are using Cliff Hollins Lane, which is not suitable and was not intended to be used as such.
- Disagreeing that application 2021/91901, which sought an amendment to condition 20, should have been approved as an NMA.

7.3 The site is within Cleckheaton Ward. Local ward members were notified. Cllr Andrew Pinnock expressed initial concerns and requested to be kept notified as officers undertook their assessment. Once officers concluded they were able to support the proposal, Cllr Pinnock was re-notified. He requested a committee decision due to concerns over cumulative highway impacts caused by various different developments at the site.

8.0 CONSULTATION RESPONSES

8.1 Statutory

K.C. Highways (Development Management): Have reviewed the applicant's Transport Statement, and concur that the additional traffic movements of 4,240sqm of floor space would not be substantial. However, the condition in question was requested by National Highways, and therefore defer to their assessment of the impact upon National Highways' network / assets.

K.C. Highways (S278): Have confirmed the stage which the works are at. At the time of writing the works have a detailed design approved by both K.C. Highways and National Highways. The design is being costed by the contractor, following which a bond will be calculated, paid, and the S278 agreement finalised. Following this, the works will be programmed, with an expected delivery of early 2023.

National Highways: Confirm that the required highway works are progressing through the appropriate stages of design. The detailed design has been approved and a S6 agreement (allowing contractors to work on National Highway Land) has been made.

In terms of the proposal, they are satisfied that the traffic generation caused by the occupational allowance being increased by 4,240sqm would not be severe and would be limited. Therefore, National Highways offer no objection to that proposed.

Bradford MDC: No objection.

8.2 Non-statutory

None.

9.0 MAIN ISSUES

- Scope of the application
- Variation of condition 21
- 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 21, 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 21

- 10.6 Condition 21 limits the amount of floorspace which may be occupied prior to specified highway improvements being implemented. The reason for this condition was to ensure the improvements are place prior to the traffic of the development reaching a specific level of traffic generation that may cause harm to highway assets – in this case the outbound (southbound) junction of Bradford Road and Chain Bar / J26 roundabout.

- 10.7 The relevant highway improvement works in question is one of either:
- a. works on the Bradford Road approach to M62 Junction 26 Chain Bar, providing an improved alignment to the junction, changes to signage, and a third lane for direct access to the M606, or
 - b. the improvement scheme to remove M62 westbound to M606 northbound traffic from the M62 Junction 26 Chain Bar roundabout circulatory carriageway is implemented by Highways England; effectively a flyover connecting M62 westbound traffic onto the M606, cutting out the necessary use of Chain Bar roundabout.
- 10.8 Each of these were intended to improve the flow and capacity of the roundabout. Option b. is not being progressed, following a change in intended programming by National Highways (formally Highways England), due to changes in the priority of the scheme. Therefore, the applicant has been working with K.C. Highways and National Highways on developing Option a.
- 10.9 Allowing an additional 4,240sqm of floor space to be occupied, assuming a B2 use with its highest traffic rate of the consented uses, would equate to an increase of 26 and 21 two-way vehicle movements in the AM and PM weekday peak periods respectively. However, based on traffic modelling it is accepted that approximately 74% of traffic would be distributed through the Bradford Road arm of M62 Junction 26, reducing the AM and PM peaks to 20 and 15 two-way movements respectively. This is detailed in full within Table 1.

Table 1: Consented and proposed vehicle movements via Chain Bar prior to improvement works being implemented.

| | AM (0800 – 0900) | | | PM (1700 – 1800) | | |
|------------------------|------------------|------------|------------|------------------|------------|------------|
| | Arrivals | Departures | Two Way | Arrivals | Departures | Two Way |
| Consented 17,642sqm | 68 | 13 | 81 | 7 | 57 | 64 |
| Proposed 21,882sqm | 85 | 16 | 101 | 9 | 70 | 79 |
| Difference | +17 | +3 | +20 | +2 | +13 | +15 |

- 10.10 The applicant contends that the principal consideration should be the outbound (departure) movements (i.e., movements from Bradford Road onto the roundabout), as the improvement works in question are to the outbound carriageway only. Looking at outbound traffic, this equates to only 3 and 13 additional movements in AM and PM peaks trips respectively. Taking the higher evening peak hour traffic flow, this would be an additional departure every four minutes and thirty-seven seconds if averaged over the hour.

- 10.11 K.C. Highways and National Highways consider it more appropriate to consider the two-way movements, to more robustly consider the impact upon Chain Bar Roundabout. Nonetheless, if looking at the higher AM peak two-way movement increase of 20, this still equates to only an increase of one vehicle every three minutes, spread across two directions and four lanes.
- 10.12 The impact of one additional vehicle, on average, every three minutes at this junction is not considered to be severe by either K.C. Highways or National Highways, who initially requested the condition in question. While due regard must be given to cumulative impacts, overall, the associated traffic is expected to be imperceptible; neither K.C. Highways nor National Highways object to the proposal.
- 10.13 Regarding the justification for the desired change, the applicant has a tenant seeking to occupy the entirety of the 21,882sqm Tungsten Properties Ltd and BA Pension Trustees Ltd building. The original intended occupation date has been stalled for several months, due to delays in the highways improvement works being designed and implemented. Thus, the current application, seeking the change in occupation limit. The potential for the tenant to take partial occupation has been raised, but would be unfeasible due to legal and operational constraints.
- 10.14 For information on the position of the improvement works, the detailed design works for Option a. have been completed, having received support from K.C. Highways and National Highways. The works will be undertaken by contractors, who are at the time of writing costing the scheme. Based on the costing a bond will be calculated, paid, and the S278 (works in the highway) agreement completed. The legal agreement for works on National Highway land (S6) has been completed. Following the S278 being formally approved, the works will be programmed for delivery (currently expected to be commenced early 2023).
- 10.15 It is reiterated that the 4,240sqm in question is not 'additional' floorspace, but approved floor space that falls within the original approved maximum of 35,284m² (which is to be increased to 41,191sqm by application 2021/94060 (approved at committee, decision pending S106 agreement). This application pertains to when said floorspace may be occupied. The NPPF, paragraph 111, states that:

Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

The proposal has been reviewed by both K.C. Highways and National Highways (who requested the condition in question). Both are satisfied that the identified level of traffic associated with the 4,240sqm of floor space (effectively one vehicle movement per three minutes) would not be severe, nor would the residual cumulative impacts on the network be severe.

- 10.16 Considering the above, officers are satisfied that the proposal would not cause harm, nor effect the efficient and effective operation of, the highway network. The proposal is deemed to comply with the aims and objectives of LP21 of the Kirklees Local Plan.

Previous conditions

- 10.17 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.
- 10.18 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).

- 10.19 Condition 21 is sought to be varied, as considered previously. The wording would be amended as proposed.
- 10.20 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.
- 10.21 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

- 10.22 The previous application was submitted with an Environmental Impact Assessment. Given the scope of this S73 application, relating to a change in a trigger for works only, no further EIA information was deemed necessary.

Representations

- The proposal would harm the local highway network, which has seen a recent 'spate of accidents around Chain Bar'.

Response: As noted within this assessment, the traffic generation associated with the change in trigger by 4,240sqm is considered minimal, and will not materially affect highway safety. This has been considered and supported by K.C. Highways and National Highways.

- Development works are taking place outside of the approved hours.
- Various conditions on the original permission have been breached, notably condition 20.
- Delivery / Construction vehicles are using Cliff Hollins Lane, which is not suitable and was not intended to be used as such.

Response: These comments do not form material planning consideration for this application. The site is being monitored by K.C. Planning Compliance.

- Disagreeing that application 2021/91901, which sought an amendment to condition 20, should have been approved as an NMA.

Response: This does not form a material consideration for this application. Officers' assessment on 2021/91901, including the reasoning for finding the works to be a non-material amendment, is contained within that application's dedicated officer report.

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, the change of the trigger points for the highway improvement works detailed in this report, through allowing an additional 4,240sqm of floor space to be occupied, with no result in material harm to the local highway network. In effect, it equates to only an increase of one vehicle every three minutes, spread across two directions and four lanes, which will have a negligible impact, nor will the impact be severe, either in isolation or cumulative with other works. Neither K.C. Highways nor National Highways raise concerns over this impact.
- 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 – 20 and 22 – 32 are to be repeated as per 2016/92298. Condition 21 is to be varied as outlined in this report.

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 **(To be varied)**
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

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

Background Papers

Application and history files

Available at:

<https://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2022%2f91849>

[Link to application details](#)

Certificate of Ownership

Certificate A signed.

