

# TEWKESBURY BOROUGH COUNCIL – DEVELOPMENT MANAGEMENT

<b>Committee:</b>	Planning
<b>Date:</b>	18 January 2022
<b>Site Location:</b>	Phase 1B East Site Homelands Gotherington Lane Bishops Cleeve
<b>Application No:</b>	20/00089/FUL
<b>Ward:</b>	Cleeve St Michaels
<b>Parish:</b>	Bishops Cleeve
<b>Proposal:</b>	Removal/variation of conditions 2 (plans as set out), 4 (landscaping compliance) and 11 (noise assessment) of planning application reference 17/01131/FUL.
<b>Report by:</b>	Dawn Lloyd
<b>Appendices:</b>	Landscape proposals Site layout plan Proposed hardworks plan
<b>Recommendation:</b>	Permit

## 1.0 SITE DESCRIPTION AND PROPOSAL

- 1.1** The application site is known as East Site and forms part of the Homelands 2 development. The development is for three buildings divided into separate units of flexible use classes with A1 for Building A and use classes A3, A5, B1 or D1 for buildings B and C. In 2020 permission was granted to under application to incorporate A1 use into the flexible use classes for buildings B and C.
- 1.2** The current application seeks to regularise retrospective works to the landscaping adjacent to Gotherington Lane by varying conditions 2 and 4 of application 17/01131/FUL. A minor amendment was granted 18/00065/MINOR which included the alteration of the footpath/cycleway away from building A to provide a grass amenity area. To facilitate the footpath/cycle path and lighting, the boundary hedge has been cut back and slightly reduced in length. and with cycle storage and a slight reduction to the overall length of the hedge
- 1.3** Additional information has also been submitted with seeking to discharge condition 11 of 17/01131/FUL which requires the submission of a Noise Impact Assessment for buildings B and C prior to the installation of extraction ventilation equipment. The proposal would be for air conditioning (AC) plant to be installed comprising of a single AC unit on the west wall of building B, five units on the south wall of building C and a single unit on the north wall of building C. The hours of operation for the proposed plant would be between 07.00 and 21.00 hours.

## 2.0 RELEVANT PLANNING HISTORY

Application Number	Proposal	Decision	Decision Date
10/01005/OUT	Outline application for up to 450 dwellings (use class C3), provision of a local centre comprising 450 SQ.M (total gross internal floor area) of use classes A1, A2, A3, A4 and A5, 500 SQ.M (total gross internal area) of use class B1, A, B, C accommodation, 350 SQ.M (gross internal floor area) of community hall (use class D1), 700 SQ.M (total gross internal floor area) health, leisure and nursery accommodation (use D1 and D2), strategic parkland (including allotments and orchards) POS facilities and ancillary landscaping, vehicular access and provision of foul, surface water and infrastructure	NONDET	16.07.2012
14/00481/APP	Reserved Matters application in respect of Phase 1B of outline planning permission (10/01005/OUT) for 22 dwellings (use class C3), 448 sqm of Use Class A floorspace, 500 sqm of Use Class B1 floorspace, strategic parkland, POS facilities and ancillary landscaping, vehicular access and provision of foul, surface water and infrastructure .	APPROV	01.12.2014
17/01131/FUL	Construction of commercial buildings to allow flexible commercial uses to include B1/D1/A3/A5 uses.	PER	09.03.2018
19/00810/FUL	Section 73 application for the variation of conditions 2 (drawing numbers) and 3 (materials) of planning permission 17/01131/FUL to allow alteration to the roof materials (amended).	PER	12.02.2020
20/00034/FUL	Variation of condition 6 (retail floorspace) of application 17/01131/FUL to allow an additional 75sqm of gross retail floorspace available for use by customers (excluding toilets and other ancillary facilities) across the site, increasing the total area permitted from 450sqm to 525sqm.	PER	04.06.2020
20/00089/FUL	Removal/Variation of conditions 2 (plans as set out), 4 (landscaping compliance), 11 (noise assessment), of the planning application ref number 17/01131/FUL		
20/00941/ADV	Installation of illuminated fascia signs	CONSEN	07.12.2020
20/01051/FUL	Variation of Condition 6 (Gross retail floorspace) of planning application 17/01131/FUL to enable more flexibility within retail use and for the gross retail	PER	

	floorspace in each unit to exceed 75sqm.		
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### 3.0 RELEVANT POLICY

The following planning guidance and policies are relevant to the consideration of this application:

#### **National guidance**

National Planning Policy Framework (NPPF) and the National Planning Practice Guidance (NPPG)

#### **Gloucester, Cheltenham and Tewkesbury Joint Core Strategy (JCS) - Adopted 11 December 2017**

Policy SD4 (Design Requirements)

Policy SD14 (Health and Environmental Quality)

Policy SD6 (Landscape)

#### **Tewkesbury Borough Local Plan to 2011 - March 2006 (TBLP)**

Policy RET4 - New local facilities

#### **Tewkesbury Borough Plan 2011-2031 Pre-Submission Version (October 2019)**

Policy RET 5 Single or Small groups of shops in residential areas

#### **Neighbourhood Plan**

None relevant.

Human Rights Act 1998 - Article 8 (Right to Respect for Private and Family Life)

The First Protocol, Article 1 (Protection of Property)

### 4.0 CONSULTATIONS

#### **Environmental Health Advisor- no objection**

The 'Plant Noise Impact Assessment' has been reviewed. The report appears to have been carried out in line with relevant British Standards and Guidance. The report concludes that rating levels at each of the identified sensitive receptors will be below or equal to the background noise level, this is indicative of a 'low impact' as per BS4142:2014. The conclusions drawn within the report are supported.

#### **Bishops Cleeve Parish Council – Objection**

The approval of the removal / variation of condition 2 - the plans as set out - would remove the need for the applicant to comply in accordance with previously approved plans.

Condition 4 - landscaping - the council objects to the removal / variation of this condition as the removal of the hedge along Gotherington Lane urbanises the area, alters the street scene, causing damage to wildlife in the area and potential harm to the ecology in the vicinity, as well as removing the context of the village setting.

Condition 11 - noise - the council objects to the removal / variation of this condition as the noise assessment report is outdated - dated May 2019 - having been prepared prior to the construction and occupation of the commercial buildings adjacent. This report needs to be updated to take into consideration the current situation before the application can be further considered.

Full copies of all the consultation responses are available online at <https://publicaccess.tewkesbury.gov.uk/online-applications/>

## **5.0 PUBLICITY AND REPRESENTATIONS**

The application has been publicised through the posting of a site notice for a period of 21 days.

Full copies of all the representations responses are available online at <https://publicaccess.tewkesbury.gov.uk/online-applications/>

## **6.0 POLICY CONTEXT**

Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. Section 70 (2) of the Town and Country Planning Act 1990 provides that the Local Planning Authority shall have regard to the provisions of the Development Plan, so far as material to the application, and to any other material considerations.

The Development Plan currently comprises the Joint Core Strategy (JCS) (2017), saved policies of the Tewkesbury Borough Local Plan to 2011 (March 2006) (TBLP), and a number of 'made' Neighbourhood Development Plans.

The Tewkesbury Borough Plan (TBP) has reached an advanced stage. The Examination in Public was held in February/March 2021 and the Inspector's post hearings Main Modifications letter was received on 16th June 2021. In this letter the Inspector provided his current view as to what modifications are required to make the Plan 'sound'. Those policies in the Pre-submission version of the TBP which are not listed as requiring main modifications may now attract more weight in the consideration of applications, with those policies which do in the Inspector's view require main modifications attracting less weight depending on the extent of the changes required. The TBP remains an emerging plan and the weight that may be attributed to individual policies will still be subject to the extent to which there are unresolved objections (the less significant the unresolved objections, the greater the weight that may be given) and the degree of consistency with the NPPF (the closer the policies to those in the NPPF the greater the weight that may be given).

The relevant policies are set out in the appropriate sections of this report.

## **7.0 ANALYSIS**

**7.1** Permission has been granted for three commercial buildings on this development, the original application has undergone subsequent revisions. Building A is occupied by the Co-op store has A1 use and buildings B and C have flexible commercial use A1-A5/B1/D1. Building B has two takeaways and a café/deli. Building C is not fully occupied, but two units are occupied by an accountant and a hairdresser.

- 7.2 The application will be assessed with regard to the noise assessment for buildings B and C and impact on neighbour amenity in accordance with SD14. In addition, the alterations to the boundary hedge will be assessed with regard to landscape impact and character of the area.

### **Landscape and Visual Amenity**

- 7.3 NPPF attaches great importance to the design of the built environment. Good design is a key aspect of sustainable development, is indivisible from good planning, and should contribute positively to making places better for people. Policy SD4 of the Joint Core Strategy considers that new development should respond positively to, and respect the character of, the site and its surroundings, enhancing local distinctiveness. Policy SD6 considers that development will seek to protect landscape character for its own intrinsic beauty and for its benefit to economic, environmental and social well-being.
- 7.4 Although the Parish Council have expressed concern about the loss of the hedge along Gotherington Lane, in fact, the application is retrospective and seeks to regularise the landscape works that have already been carried out. The footway running between the commercial buildings and Gotherington Lane has been re-oriented slightly which have resulted in the boundary hedge being cut back and slightly reduced in length (as compared to the approved plans), and the cycle storage located adjacent to the grass amenity area. There have also been some small changes to the landscaping within the car parking area to the rear of the buildings. Whilst the Parish Council's concerns are noted, the character of the area has become less rural with the permission of the residential development and commercial centre. The existing hedge would still provide a soft boundary to the development together with the areas of grass. It is considered the proposal is not significantly detrimental in terms of visual amenity and landscape character.
- 7.5 There are some minor discrepancies between the submitted hard landscaping and soft landscaping plans and clarification has been sought from the applicants. **An up-date will be provided at committee.**

### **Effect on the Living Conditions of Neighbouring Dwellings**

- 7.6 Policy SD14 of the JCS requires that new development must cause no harm to local amenity including the amenity of neighbouring occupants and result in no unacceptable levels of air, noise, water, light or soil pollution or odour, either alone or cumulatively with respect to relevant national and EU limits.
- 7.7 Condition 11 of 17/01131/FUL required a further noise assessment to be submitted for the commercial buildings. Whilst the attenuation measures for Building A have already been approved, the current proposal also seeks approval for Buildings B and C. The report by Noise Solutions Ltd reference dated 2nd September 2020 has been carried out in accordance with British Standards and Guidelines. The report states that Plant noise would be limited with the rating level no higher than the existing representative background levels during operation 40dB(A) and that the plant will not operate after 21:00 hours. The Council's Environmental Health Advisor considers the report acceptable for the discharge of condition 11. However, the hours of operation of the plant and noise level would be controlled by condition.
- 7.8 The impact of the proposal upon neighbouring properties has carefully been assessed and it is considered that there would not be an undue impact to neighbouring properties with regard to unacceptable levels of noise in accordance with Policy SD14 of the JCS.

## **UPDATED REPORT**

The application was deferred by the Planning Committee on 21 September 2021 in order to investigate installation of bollards or other measures to address highway safety concerns; to allow revised plans to be submitted to address the minor discrepancies in relation to the location of the cycle storage area and landscaping; and to enable the Environmental Health Officer to explain in more detail the response to the Parish Council's concerns regarding the noise assessment report being outdated.

Revised plans were submitted on 8 December 2021 which seek to regularise the hard and soft landscaping works. In response to Members' concerns regarding public safety and the lack of a physical barrier between the road and grass verge, the revised plans propose to extend the existing hedgerow with additional planting along this boundary to the southern edge of the site. The additional hedge would be planted with a mix of native species.

The report by Noise Solutions Ltd was previously found to be acceptable for discharge by our Environmental Health Advisor and the plant noise would be limited with the rating level no higher than the existing representative background levels during operation 40dB(A). The plant would not operate after 21:00 hours which would be controlled by condition. The Council's Environmental Health Advisor considers the report acceptable for the discharge of condition 11. The hours of operation of the plant and noise level would be controlled by condition.

The Environment Health Advisor has been consulted for comments with regard to the Parish concerns relating to noise impact from the air conditioning units and date of the survey. Our advisor considers that a new Noise Impact Assessment (NIA) is not required as the submitted NIA fulfils the requirements of BS4142:2014 and carried out in line with relevant guidance. The Parish objection appears to infer that background noise levels will be higher due to the new commercial units, this however does not impact the acceptability of new plant as any new plant will form part of the background noise climate and so long as it meets the requirements of BS4142:2014 should not lead to an adverse impact. Measuring the background noise levels prior to construction of the 'new' commercial units is likely to have reduced the acceptable rating level (40dB) leading to lower overall impact. If the NIA were to be carried out again and the background noise levels found to be higher then accordingly the plant noise could be higher and still be deemed as 'low impact' so long as the plant noise is at or beneath the background noise level. Therefore, no additional report is required to satisfy condition 11.

## **CONCLUSION AND RECOMMENDATION**

It is considered that the proposal would accord with relevant policies as outlined above. Therefore, it is recommended that planning permission be permitted subject to the following conditions:

## CONDITIONS:

1. The development hereby permitted shall be begun before the expiration of five years from the 9th March 2018 the date of permission 17/01131/FUL.

Reason: To comply with the requirements of Section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004 and to ensure the timely commencement of this development.

2. The development hereby permitted shall be carried out in accordance with the following approved documents:

Drawings numbered 06 Rev G, 07 Rev A and received by the Council on 20th October 2017 and drawing numbered 19 Rev F, and received by the Council on 16th February 2018. Drawing No.(s), 01 Rev C, 02 Rev B, 11 Rev B received 11 October 2028

- Drawing Number 70 Rev G Proposed Street Elevations received 25th February 2020
- Drawing Number 71 Rev L Building B Proposed Plans and Elevations received 25th February 2020
- Drawing Number 72 Rev H Building C Proposed Plans and Elevations received 25th February 2020
- Drawing Number 73 Rev H Building A Proposed Plans and Elevations received 25th February 2020
- Site Layout Plan Drawing Number 05 Rev AC received 8<sup>th</sup> December 2021
- Landscape Proposals Drawing Number P 01 Rev F received 7<sup>th</sup> December 2021
- Proposed External Works Hardworks Plan Drawing Number 08 Rev S received 8<sup>th</sup> December 2021.

except where these may be modified by any other conditions attached to this permission.

Reason: To define the terms and extent of the permission.

3. The development hereby approved shall be constructed strictly in accordance with the materials shown on the above plans.

Reason: In the interests of the appearance of the development

4. All hard and soft landscape works shall be carried out in accordance with the details shown on drawings numbered P 01 Rev F and 08 Rev S. The works shall be carried out prior to the occupation of any part of the development or in accordance with the programme (phasing) agreed in writing with the Local Planning Authority. Any trees or plants indicated on the approved scheme which, within a period of five years from the date of the development being completed, die, are removed or become seriously damaged or diseased shall be replaced during the next planting season with other trees or plants of a species and size to be first approved in writing by the Local Planning Authority. All hard landscape works shall be permanently retained in accordance with the approved details.

Reason: In the interests of visual amenity and the character and appearance of the development.

5. The disposal of foul and surface water flows shall be implemented in accordance with 310 Rev B, 311 Rev B and 400 Rev E, received by the Local Planning Authority on 21 November 2018 before the development is first brought into use.

Reason: To ensure that the development is provided with a satisfactory means of drainage as well as to prevent or to avoid exacerbating any flooding issues and to minimise the risk of pollution.

6. The total gross retail floorspace available for use by customers (excluding toilets and other ancillary facilities) of all premises falling within Class A1, A2, A3, A4 and A5 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification) shall not exceed 525sqm. Only one premises to be used for Class A1, A2, A3, A4 or A5 purposes shall have gross retail floorspace available for use by customers (excluding toilets and other ancillary facilities) exceeding 75sq m but shall not exceed 200sq m.

Reason: To protect the vitality and viability of nearby retail centres.

7. Any Class A3 (food and drink for consumption on the premises), Class A4 (public house, wine-bar or other drinking establishment) and Class A5 (hot food for consumption off the premises) shall not be open to customers outside the hours of 08.00 to 23.00 Monday to Saturday and 12.00 to 22.30 on Sundays and bank or public holidays.

Reason: To safeguard the amenity of adjacent residential occupiers

8. Works shall be carried out in accordance with the Construction Method Statement and associated block plan received on 22nd March 2018.

Reason: To reduce the potential impact on the public highway and accommodate the efficient delivery of goods and supplies.

9. The development hereby permitted shall not be occupied until the cycle storage facilities have been made available for use in accordance with the submitted plan 08 Rev S and those facilities shall be maintained for the duration of the development.

Reason: To ensure that adequate cycle parking is provided, to promote cycle use and to ensure that the opportunities for sustainable transport modes have been taken up.

10. The buildings hereby permitted shall not be occupied until the vehicular parking, turning and loading/unloading facilities have been provided in accordance with the submitted plan 08 Rev S and those facilities shall be maintained available for those purposes thereafter.

Reason: To ensure that a safe, suitable and secure means of access for all people that minimises the conflict between traffic and cyclists and pedestrians is provided.

11. The noise mitigation measures proposed in the noise assessment by Noise Solutions Ltd submitted 23rd May 2019 in relation to the noise from Building A, shall be implemented prior to the installation of external plant/equipment on Building A. The noise mitigation measures in the noise assessment by Noise Solutions Ltd dated 2nd September 2020 for Buildings B and C shall be implemented prior to the installation of external plant/equipment on these buildings. The rating level of plant/equipment shall be no higher than the existing representative background levels during operation 40dB(A). The plant/equipment shall only operate between 07.00 and 21.00 hours. The development shall thereafter be carried out in accordance with the details so approved.



Reason: To safeguard the amenity of nearby occupiers

**INFORMATIVES:**

1. In accordance with the requirements of the NPPF the Local Planning Authority has sought to determine the application in a positive and proactive manner by offering pre-application advice, publishing guidance to assist the applicant, and publishing to the council's website relevant information received during the consideration of the application thus enabling the applicant to be kept informed as to how the case was proceeding.