

<b>Date of Meeting</b>	10/01/2018
<b>Application Number</b>	17/10079/FUL
<b>Site Address</b>	Nightwood Farm, Lucewood Lane, West Grimstead, SP5 3RN
<b>Proposal</b>	Retrospective application for grass planted bunds in south western corner of the site
<b>Applicant</b>	Mr C Chambers
<b>Town/Parish Council</b>	GRIMSTEAD
<b>Electoral Division</b>	ALDERBURY AND WHITEPARISH – Cllr Richard Britton
<b>Grid Ref</b>	421094 128179
<b>Type of application</b>	Full Planning
<b>Case Officer</b>	Matthew Legge

### Reason for the application being considered by Committee

Cllr Richard Britton has called this application into the planning committee due to the widespread public concern and differing views between Environment Agency Wiltshire Council Ecology and:

- Visual impact upon the surrounding area
- Relationship to adjoining properties
- Environmental or highway impact

### 1. Purpose of Report

The purpose of the report is to assess the merits of the proposal against the policies of the development plan and other material considerations and to consider the recommendation that the application be **approved**

### 2. Report Summary

This retrospective application for the continued siting of an earth bund is noted to contain contamination of asbestos the creation of which has resulted in the clearing of some peripheral trees associated with ancient woodland. Officers having considered the available information have on balance concluded that the scheme is in this instance not so harmful as to warrant refusal of planning permission.

### 3. Site Description

The application site is located in the open countryside outside of an adjoining compound of buildings currently being partly used by a local business for storage. The site is located on the edge of ancient woodland and is positioned between remaining woodland trees and the perimeter fence for the adjacent storage units.

### 4. Planning History

**16/08790/VAR** – Variation of Condition 3 to Planning Application 15/06705/FUL, to allow for changes to materials and changes in positions of some windows. Approved with conditions

**16/08573/FUL** – Retrospective application for addition of concrete hard standing to provide turning circle for vehicles, galvanised steel security fence, lamp posts and gate. With grass planted bunds to define a clear line between business and the surrounding woods. Withdrawn

**15/09867/FUL** – Re cladding (walls) of two Class B8 storage use buildings. Approved with conditions.

**15/06729/FUL** – Change of use of three agricultural buildings to Class B8 storage use. Refused

**15/06705/FUL** – Creation of 2 properties from one including detached double garage, conservatory, 2 storey extension and associated alterations. Approved with conditions

**S/2012/0403** – Change of use from B8 (storage and distribution) to D2 for martial arts training facility. Approved with conditions

**S/2010/0197** – Retrospective application for the change of use of two former agricultural barns to a B8 use and variation of the occupancy condition attached to Primrose Patch and cowslip cottage to allow occupancy by persons employed in the business use undertaken on site. Approved with conditions

**S/2009/0391** – Removal of occupancy condition relating to two semi detached farm workers dwellings. Withdrawn

**1976/0063** – Erection of two semi-detached farm worker dwellings. Approved with conditions

## **5. The Proposal**

This is a retrospective application for the creation of an earth bund. The bund appears to be at a height of around 1.8m – 2m and sits on an elevated earthed platform above the ground levels of the surrounding woodland. From the ground level of the woodland the total height to the top of the earth bund appears to be in and around the height of 5m. Also proposed as part of the remediation strategy is a covering of clean earth over the bund.

## **6. Local Planning Policy**

The Wiltshire Core Strategy (WCS) - adopted by Full Council on the 20<sup>th</sup> January 2015:

CP1 (Settlement Strategy)

CP2 (Delivery Strategy)

CP24 (Spatial Strategy for the South Wiltshire Community Area)

CP50 (Biodiversity and Geodiversity)

CP51 (Landscape)

CP56 (Contaminated Land)

CP57 (Ensuring high Quality Design and Place Shaping)

CP67 (Water resources)

Wiltshire Local Transport Plan 2011-2026:

Car Parking Strategy

Government Guidance:

National Planning Policy Framework (NPPF) March 2012

National Planning Policy Guidance (NPPG)

## **7. Summary of consultation responses**

44 letters of objection: (*the following summary of main themes*)

- Objection to the deposit of asbestos in an ancient woodland
- The proposed remediation strategy is inadequate and flawed
- Concerns of risk to health from airborne particles

- Objection to the size and number of vehicles serving the B8 unit (In-Excess) and the impact on the amenity of the residential users of the track.
- Objection to the loss of ancient woodland
- Objection to loss of ecological habitat
- Any approval of this application will give the wrong signal to any future illegal dumping of waste and create an unacceptable precedent.
- Concerns of Wiltshire Council's handling of the situation relating to the dumping of pollution waste and questions the Council's ongoing liability
- There is no justification for the siting of the bunds and they should be removed by a licensed asbestos contractor
- The land should be returned to woodland and the pollution completely removed
- Objection to potential impact to water course and threat to fish

## **8. Publicity**

**East Grimstead Parish Council** – Object to the dumping of hazardous waste due to danger to health and pollution to water course.

**Alderbury Parish Council** – Object to potentially hazardous waste material being dumped on the site of ancient woodland.

**WC Public Protection** – No objection subject to condition to secure the implementation of the remediation strategy.

**WC Ecology** – No objection

**WC Highways** – No objection

**Natural England** – None received

**Environment Agency** – None received

**Woodland Trust** – None received

**Forestry Commission** – No recommendation expressed

**Health & Safety Executive** – None received

**Highways England** – None received

## **9. Planning Considerations**

The application site is currently occupied by a local business and has in the recent past received a number of planning permissions in relation to the creation of and redevelopment of worker dwellings on the site together with the cladding of two of the B8 buildings. This application retrospectively seeks to gain a formal planning consent for the creation of an earth bund along the western boundary of the application site outside of erected security boundary fencing.

The primary issues for consideration for this retrospective application is site contamination, loss of woodland and neighbouring amenity:

### ***Contamination***

The applicant has provided some background information as to the reasoning for the creation of the earth bund. The applicant has undertaken renovation works to the buildings within the site which included the repair of the guttering. Between the buildings on the site were grassed margins which were too soft to support the equipment need to repair the gutters. As result the grass margins were removed and replaced with recycled concrete. The bulk of the materials in the bund are from these grass margins. The applicant states that the reason the material was not removed

off site was to limit the number of vehicle movements along the access track so to reduce disturbance to neighbouring dwellings.

The development of the bund has received a large number of local letters of objection which without much exception have objected to the creation of the bund which included asbestos cement materials. The letters of objection wish for the bund to be removed by a duly licensed asbestos contractor and the site restored to woodland.

This application has submitted a number of assessment reports covering soil sampling, air monitoring report and a remediation method statement. The soil report has identified the presence of asbestos cement and that the highest concentration is closest to the surface:

The soil results indicate that the presence of asbestos below the laboratory quantification method is widespread throughout the bund. However concentrations above the quantification method detection limit were only recorded within TP3, however the highest concentration was recorded within the shallowest sample.

This indicates that elevated concentrations of asbestos are present at the surface of the bund and during dry weather it is possible that these asbestos could be mobilised if disturbed. The results also indicate that there is potentially a significant volume of asbestos material within the bund, which may not necessary be hazardous due to its concentration but may require specialist disposal should the soil be excavated.

The report continues to comment:

The results would indicate, based on the lines of evidence detailed above, that the risks from asbestos fibres may be limited, although the actual level of risk will require further assessment in order to quantify it by a suitably experienced contractor. For example air monitoring around the site to sufficiently low detection limits may be required to determine if the widespread presence of asbestos in the mound is giving rise to measurable concentrations within the air. Remedial works cannot be ruled out at later stages.

Following the soil report an air monitoring report has been prepared. The air monitoring report concludes that the *air test is satisfactory*. Given the professional assessment of the air monitoring, the current air quality is considered to be acceptable. However the soil report did highlight possible future concerns over the release of air borne asbestos due to the surface level of the contaminant. A remediation strategy has been suggested to cover the bund with further 'clean' earth cover. Wiltshire Council Public Protection has also considered the submitted report and the application as a whole. The comments from WC Public Protection (contamination) is to raise no objection to the scheme subject to a condition being attached to any approval granted to ensure that the remediation works proposed are carried out and validated in accordance with the submitted remediation strategy.

Officers note that Wiltshire Council Ecology appears to provide conflicting advice "*I question the need for remediation works to the bund. The remediation process of adding further foreign topsoil and grass species would set back the natural colonisation that has already occurred. No imported soils, grasses or non-native species should be brought onto the site, which remains part of an area of ancient woodland. Addition of topsoil may further increase the encroachment of the bund into the woodland. The bunds must not be extended or increased in size*"

However if the remediation strategy is needed then Wiltshire Council Ecology have commented *“the process should be strictly supervised by an on-site ecologist to avoid injury to protected species which may be present; this should be conditioned”*

This application has not received any comments from Natural England, Environment Agency or the Woodland Trust. Given the evidence before officers, the submitted remediation strategy has been accepted as an appropriate mitigation against potential further harm to the mobile contaminants. The Council can condition that an ecologist is on site at the time the remediation strategy is implemented. Whilst officers recognise the wide spread local concern over the contamination within the bund the remediation strategy is considered to be a suitable method of mitigation that has been accepted by the Council's Public Protection team and such the aims of CP56 and CP57 are considered to be adhered to.

Officers note the wide spread objection to the contamination and the widespread objection of the perceived lack of compliance to the lawful disposal of waste. Nevertheless officers have to determine an application based on the evidence before the Council and in this instance professional advice at this stage is to condition the implementation of the remediation strategy.

### ***Loss of woodland***

Officers are aware that the letters of objection also comment on the loss of ancient woodland and the large amount of local comments provide a strong direction that the loss of the woodland is not to be supported. The Forestry commission have commented on this application and have commented that the development has resulted in a loss of ancient woodland. A number of the letters of local objection have referenced this loss of the ancient trees and made reference to the sites encroachment into the woodland.

Officers are not disputing the loss of trees in the periphery location and note that Wiltshire Council Ecology has recognised this loss *“It appears that the creation of these bunds has resulted in the loss of a very small amount of ancient woodland habitat. However as this area was on the periphery of the woodland itself, and likely already affected by the existing adjacent land use, it is likely less than top quality in condition. On balance, the lost woodland within the red line boundary does not need to be re-instated.”*

The intentional loss of any ancient trees within the woodland is indeed unwelcomed and officers have to now judge the development's impact on the landscape setting. The site is understood to be closely connected to the surrounding woodland being only separated by fencing with limited physical openings. It is clear that the woodland and the site area have continued in co-existence for a number of years and it is a balanced view that the character of the peripheral woodland can only be correctly interpreted by accepting the inter relationship the landscape has with the built environment. The loss of a “very small amount of ancient woodland habitat” is recognised by WC Ecology and officers note that WC Ecology have also commented that the balanced opinion is that the lost woodland does not need to be reinstated and as such this scheme before the Council is unlikely to result in a direct conflict with CP50 of the Wiltshire Core Strategy.

However the loss of trees has received a large amount of local objection and the applicant has agreed to the Council imposing a condition to require a scheme of replanting of trees should the application be approved. The applicant's agreement to provide a scheme of replanting is considered to be gain to the current situation and one that could go some way to mitigate local objection.

It is clear to officers that the development of the bund further erodes the woodland around the application site and this is not to be encouraged or endorsed in any way. However the level of impact to the woodland is judged by WC Ecology to be limited and a refusal of this application on this matter is considered to be difficult to fully justify. The applicant has stated they own the adjoining woodland and that the use of the woodland will be limited to their personal enjoyment. It is clear from the comments of the Woodland Trust that any loss of any ancient woodland is discouraged and the Government's intention is to protect or mitigate against such loss.

Officers are aware of the ability of the applicant to fell trees without approval of the Local Planning Authority as the site is not the subject of a blanket TPO and is not protected by any area designation such as a Conservation Area. The ability to fell trees is nevertheless subject to a licence from the Forestry Commission and the issuing of any such licence is not a planning matter.

### ***Neighbouring amenity***

Officers note the comments of local objection to the bund with comments relating to risk to health and loss of residential amenity. Officers consider that the bund has a limited vertical height of between 1.8m – 2m and is enclosed by the application site's buildings, yard, security fence and partly encompassed by established ancient woodland. Whilst officers note comments that the bund will impact upon residential amenity it is considered that there is a reasonable distance to the closest neighbouring residential boundary and any permitted views will be masked by existing woodland. The ability to see development is not of itself harmful and in this instance officers are unable to substantiate any objection to the application based on an impact to residential amenity. The comments of concern relating to health are considered to be covered in the above section on contamination. The application is considered to be consistent with the requirements of CP50 of the Wiltshire Core Strategy.

## **10. Conclusion**

This retrospective application for the continued siting of an earth bund is noted to contain contamination of asbestos and whose creation has resulted in the clearing of some peripheral trees associated with ancient woodland. Officers note the widespread local objection to this retrospective application but also note the received consultee comments do not amount to a professional objection to the proposals. Clearing of ancient woodland is not endorsed and the Applicant has agreed to the Council imposing a condition to secure a scheme of tree replanting. The recognised harm though contaminates can be mitigated through the implementation of a remediation strategy which has been approved by Wiltshire Council Public Protection. Officers having considered the available information have on balance concluded that the scheme whilst not encouraged or indeed endorsed is in this instance not so harmful as to warrant the refusal of this application that could be duly defended.

**RECOMMENDATION:** Approve subject to conditions:

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

DRG No. Location Plan 16/10/2017

DRG No. 09 B - Proposed Site Plan 16/10/2017

REASON: For the avoidance of doubt and in the interests of proper planning.

2. The remediation work proposed in section 3.2.8 of the remediation method statement as submitted (Reference number of the RMS is: RMS – 20916-17-298 REV B) shall be fully carried out and validated in line with the proposals in section 4.2 of the remediation method statement and shall remain in perpetuity. The works shall be strictly supervised by an on-site ecologist to avoid injury to any protected species.

REASON: In the interests of public health and prevention of contamination.

3. No external lighting shall be installed on site until plans showing the type of light appliance, the height and position of fitting, illumination levels and light spillage in accordance with the appropriate Environmental Zone standards set out by the Institute of Lighting Engineers in their publication "Guidance Notes for the Reduction of Obtrusive Light" (ILE, 2005)", have been submitted to and approved in writing by the Local Planning Authority. The approved lighting shall be installed and shall be maintained in accordance with the approved details and no additional external lighting shall be installed.

REASON: In the interests of the amenities of the area and to minimise unnecessary light spillage above and outside the development site.

4. No materials, goods, plant, machinery, equipment, finished or unfinished products/parts of any description, skips, crates, containers, waste or any other item whatsoever shall be placed, stacked, deposited or stored within the wooded side of the application site on the western side of the earth bund.

REASON: In the interests of the appearance of the site and the amenities of the area.

5. Within 3 months of the date of this notice, a scheme of soft treed landscaping (within the wooded side of the application site on the western side of the earth bund) shall be submitted to and approved in writing by the Local Planning Authority, the details of which shall include:-

- A detailed planting specification showing all tree plant species, supply and tree planting sizes and planting densities;

REASON: The application contained insufficient information to enable this matter to be considered prior to granting planning permission

6. All soft landscaping comprised in the approved details of landscaping shall be carried out in the first planting and seeding season following the first occupation of the building(s) or the completion of the development whichever is the sooner; All shrubs, trees and hedge planting shall be maintained free from weeds and shall be protected from damage by vermin and stock. Any trees or plants which, within a period of five years, die, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species, unless otherwise agreed in writing by the local planning authority.

REASON: To ensure a satisfactory landscaped setting for the development and the protection of existing important landscape features.