

REPORT FOR THE WESTERN AREA PLANNING COMMITTEE

Date of Meeting	16 February 2022
Application Reference	PL/2021/05520
Site Address	Unit 8 Atworth Business Park, Bath Road, Wiltshire, BA12 0AN
Proposal	Change of use to light industrial (Class E), variation of condition 10 and 12 attached to permission 19/06790/FUL, extension and alteration to existing building, landscaping and associated works
Applicant	Bristol Soap Ltd
Town / Parish Council	Atworth Parish Council
Electoral Division	Melksham Without North ED – Cllr Carbin
Grid Ref	386760- 156789
Type of Application	Full Planning Application
Case Officer	David Cox

Reason for the application being considered by Committee

This application was 'called in' for elected members to determine at the request of Cllr Carbin should officers be minded to support the application to enable the elected members to consider the following:

- The relationship to adjoining properties
- The environmental and highway impacts

1. Purpose of Report

The purpose of this 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 should be approved subject to conditions and the existing s106, that binds the entire business park, should be varied accordingly.

2. Report Summary

The key determining planning issues are considered to be:

- Principle of development
- Impact on neighbouring amenity
- Other issues
- Updated conditions

3. Site Description

The application site - developed out of the former Dowty Engineering site which had operated since the 1930's and became the Atworth Business Park in the late 1990s. Units 8 and 9 comprise a pair of semi-detached buildings which were granted permission in 1993 (under reference W/93/00116/OUT) with reserved matters approved in 1997 (reference W/97/01026/REM). The buildings are constructed of a red brick base with a light grey profile sheeting above and a grey steel profile-sheeting roof.

Several members may recall application 19/06790/FUL for unit 8 (*Retrospective change of use to B8 and proposed extension to existing building (also B8 Use), landscaping and associated works*) heard at the 18 December 2019 planning committee, where the recommendation to approve subject to varying the 1994 legal agreement was voted for by Members. The permission was eventually granted on 26 March 2020 following the variation of the legal agreement to include B8 uses as well as B1 and B2 on the application site. The permission included 13 conditions, three of which were pre-commencement conditions (No's 3, 4 and 9).

Conditions 3 (Great Crested Newt Mitigation Strategy) and 4 (Landscape and Ecology Management Plan (LEMP)) were discharged on 13 July 2020 under application 20/03763/DOC. However, condition 9 which required a thicket hedge protection plan has not yet been formally discharged.

The applicant has begun works under 19/06790/FUL and has undertaken a partial remodelling of the bund. In the LEMP, the thicket (which is shown in extract below) was shown to be retained and have a field access strip maintained between the bund and the thicket. The failure on the part of the applicant to formally discharge condition 9 is very concerning and does constitute a breach of planning control, however several site visits have been made following the implementation of the consented extension and the bund works, and the case officer can confirm that the thicket has been retained (and is protected) and whilst there remains an outstanding condition imposed on the 2019 application requiring formal discharge, officers advise that this can be secured through a separate application process. It is also the case that as there is a fresh application open for the Council to determine, another condition can be imposed to bind the applicant to adhere to suspensive planning conditions.



Extract from the LEMP discharged under 20/03763/DOC

Condition 10 imposed on the permission for application 19/06790/FUL limited unit 8's use to B8 (storage and distribution) only. However, since issuing the decision, new occupants have been found, Bristol Soaps Ltd, who manufacture soap and hand sanitiser products on site and then distribute it. This is why this application now seeks to vary the aforesaid condition to allow the premises to be used for 'Class E' purposes (a use which was formerly B1(c)). Whilst B2 and B8 land uses still exist, following legislative changes made by the Government in September 2020 enacted through the introduction of The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020, there is no longer a B1 land use. Instead, since Sept 2020, such uses fall under what is now titled Class E.

Condition 12 of application 19/06790/FUL stated that no windows, doors or any other form of openings other than those shown on the approved plans shall be inserted in the northern or western end elevations of the extension to unit 8. However, when unit 8 was constructed a side door, large enough for a forklift truck was formed into the northern elevation of the building, and this application seeks retrospective approval for that new opening.

4. Planning History

W/93/00116/OUT - *General industrial building on land to rear, and office block to existing unit, demolition of sports pavilion* – Granted permission including a s106 agreement to keep the units under B1 and B2 use but to also ensure that the adjacent (western field) was retained for private sporting/recreational use.

W/97/01026/REM - *Erection of industrial building and associated site works* – Approved

W/98/01498/FUL - *Erection of entrance wing to existing unit and revisions to approved car parking/turning areas* - Approved

17/05785/FUL - *Extension to B8 commercial building, service road extension, landscaping and associated drainage works* – Refused under delegated powers on ecology grounds only for the following reason:

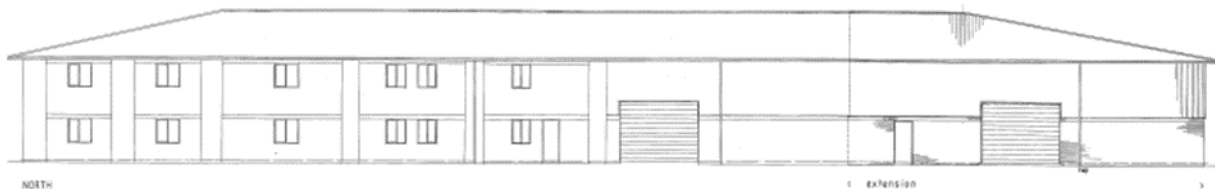
There is the potential for the site and/or surrounding land to support protected wildlife species – notably great crested newts and bats.

Although the application is accompanied by an ecological report, this is deficient in terms of the scope of survey and assessment, and the recommendations put forward (including mitigation measures), to minimise the potential for adverse impacts upon ecology as a result of the proposed works. Furthermore, there are a number of significant omissions in the report, it is not in line with industry best practice standards and contains out of date references. Therefore, the Council has not been provided with adequate evidence and assurances that ecology has been suitably assessed through an appropriate level of survey for the purposes of formulating a robust and sufficient approach to mitigation. This is contrary to Core Policy 50 ('Biodiversity and Geodiversity') of the Wiltshire Core Strategy 2015.

18/04589/FUL – *Extension to existing building (use class B8), extension to service road, landscaping and associated works* – Refused at Planning Committee on 11 May 2018 which was subsequently dismissed at appeal (under appeal ref: APP/Y3940/W/18/3216228) Note: A copy of the appeal decision is appended to this report.

It should be noted that in 2018, the Council was content that the ecology reason for refusal that was applied in 2017, had been overcome and that the physical appearance of the building was acceptable. However, the Committee refused the 2018 application for the reasons as set out below.

- 1 The proposed development lies outside of the Limits of Development brought forward for Atworth from the West Wiltshire Local Plan and retained in the Wiltshire Core Strategy. The proposal therefore conflicts with policies CP1 and CP2 of the Wiltshire Core Strategy which do not permit development outside these limits, other than that permitted by other policies in the Wiltshire Core Strategy. Whilst these other policies include CP34, the proposal does not comply with the criteria set out in that policy, for the reasons set out in 2 below.
- 2 The proposed development does not comply with Core Policy 34. In particular, the extension is not considered essential to the wider strategic interest of the economic development of Wiltshire; and the construction and use of the proposed road extension and turning head, coming so close to the adjacent residential property, will have an adverse impact on the amenity that residents of that property can reasonably expect to enjoy. The proposal is therefore not considered to be sustainable development.



Refused North Elevation for 18/04589/FUL



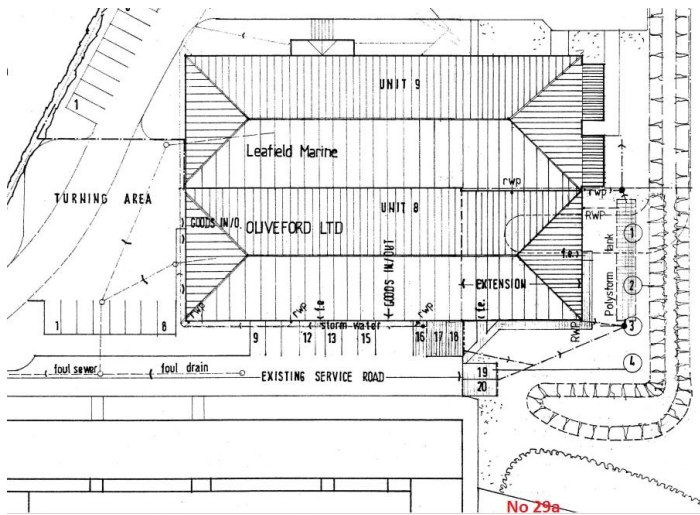
Refused Site Plan for 18/04589/FUL

Please note that the previous site plans were not presented in the usual manner facing north. Although No 29a is to the north of the application site, it is shown to be below but this should not be confused as being to the south.

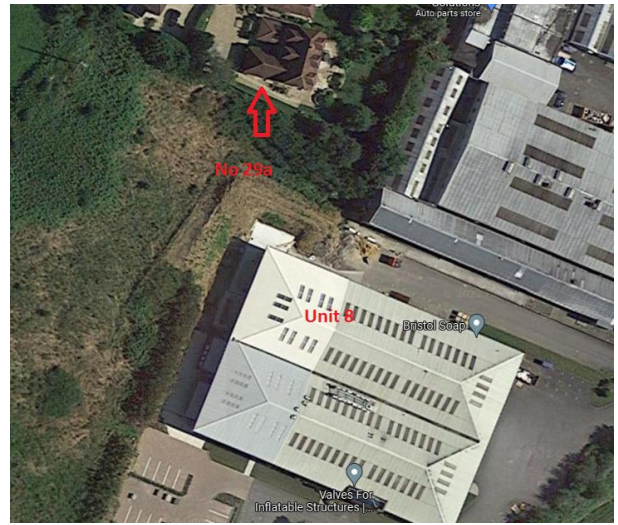
For the adjoining unit No. 9, planning permission was granted in application 16/09685/FUL for a *two-storey extension with replacement single storey lean-to structures; additional car parking & roadworks; landscaping; drainage and associated works* on 10 January 2017. A planning condition restricted its use to B1 use – a development which has been fully completed.

At the time of the submission of the 18/04589/FUL application, the extension at Unit 9 had not commenced on site, which explains why the extension does not appear on the proposed block plan above.

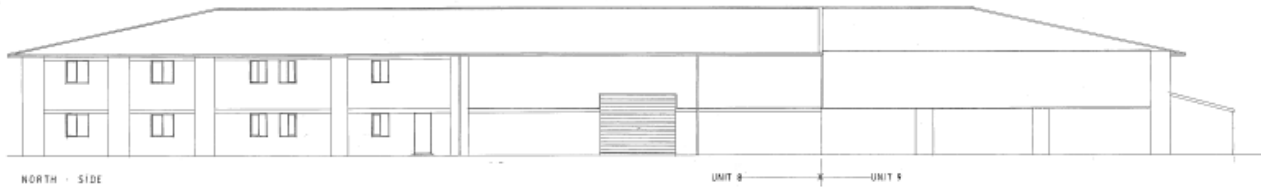
19/06790/FUL - *Retrospective change of use to B8 and proposed extension to existing building (also B8 Use), landscaping and associated work* – Approved at the 18 December 2019 western planning committee. This proposal removed the continuous turning area adjacent to No 29a and omitted the service door from the northern elevation facing No 29a from the 18/04589/FUL application.



Approved Site Plan for 19/06790/FUL



2022 Google Aerial image of unit 8 and No 29a

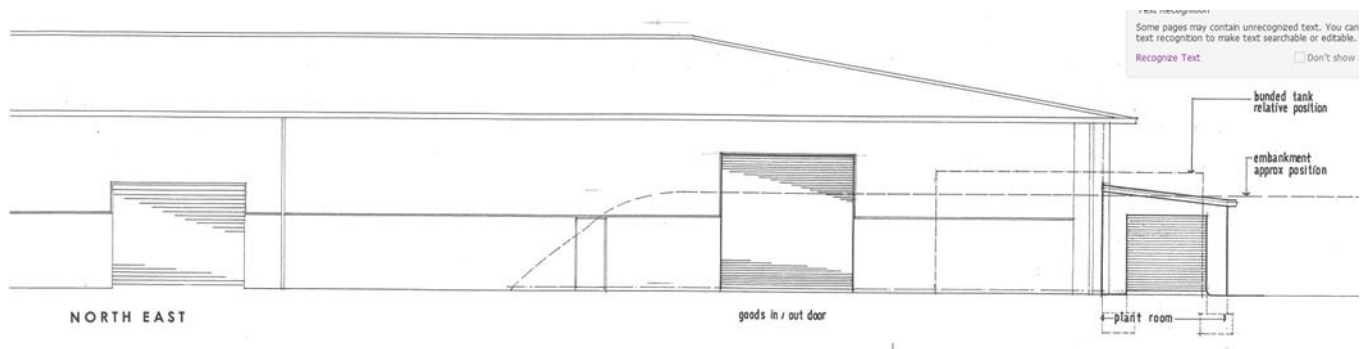


Approved North Elevation for 19/06790/FUL

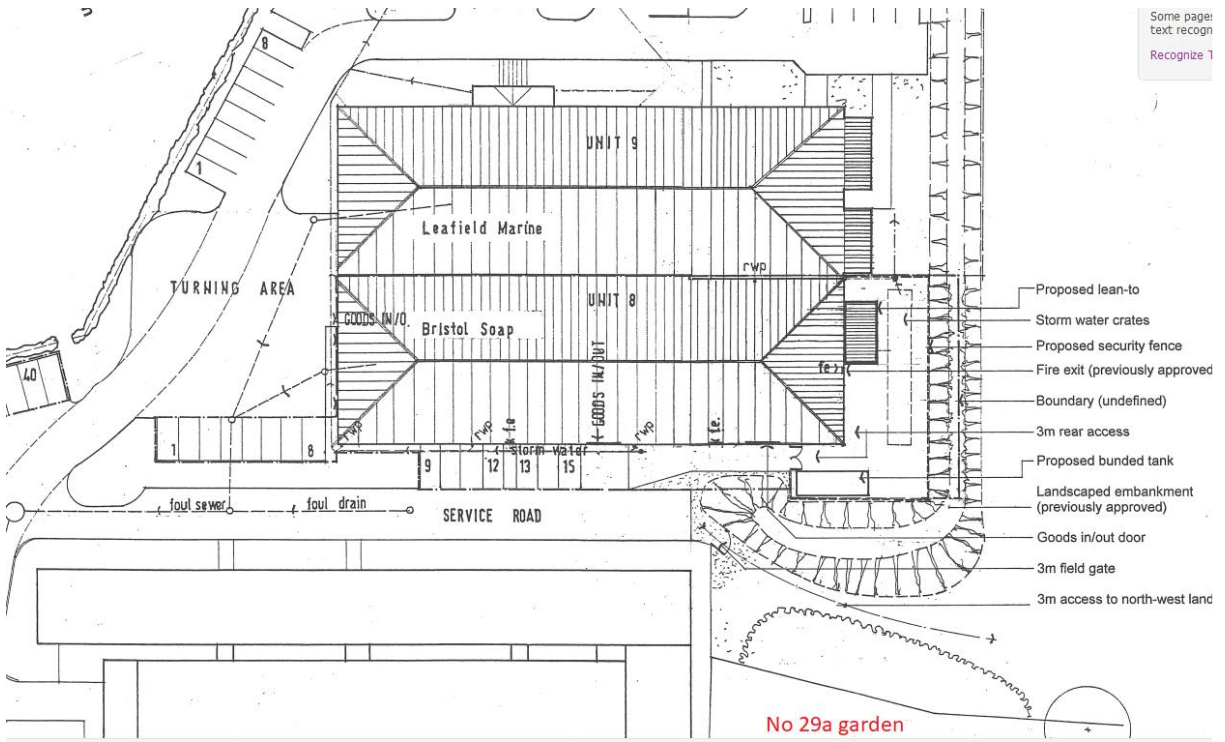
20/11497/FUL - Extension and alteration to existing building, bunded tank, lean to plant room and security fence – withdrawn by applicant 26 January 2021 – This proposal included the new goods in/out door on the northern elevation of the extended unit.

5. The Proposal

This application seeks full planning permission for the change of use of the whole of unit 8 to light industrial (Class E – formerly B1c) and to vary conditions 10 and 12 of application 19/06790/FUL. For the avoidance of any doubt conditions 10 and 12 relate to restricting the use of the unit to B8 only and not having any door or opening on the northern or western elevations.



Proposed North Elevation



Proposed Site Plan

The main aspect of this application involves the provision of a 4-metre-high goods in and out door from the extension to unit 8 but with only a narrow 3 metre wide access to it from the existing service road (which can be seen in the image below). There is no new turning area adjacent to No 29a, and the bund has been extended approximately 6-8 metres to the east built over where the turning head was proposed in application 18/04589/FUL.



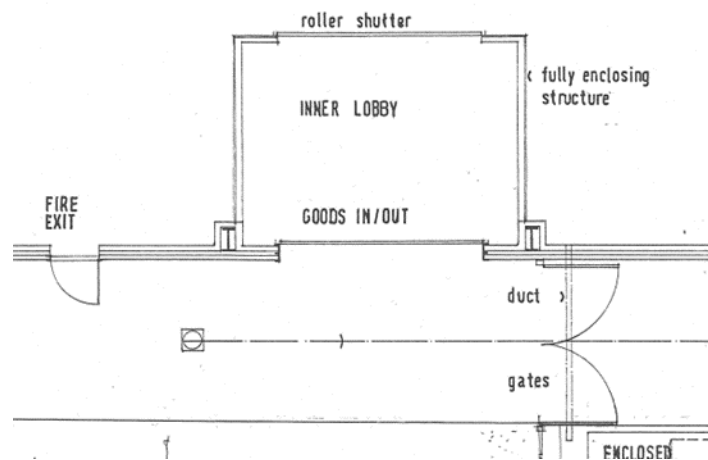
Existing goods in and our door, the extension and new goods in/out door and the bund

The proposal also includes the construction of a 3m x 8m lean to plant room on the western end elevation adjacent to unit 9 (the hardstanding can be seen alongside No 9's own lean-to extension in the image below). The proposal also includes a bunded tank (8m x 3m x 3m) with a volume of approximately 33,000 litres) on a fixed base. As shown on the site plan, the tank would be enclosed by the bund and would be just opposite the new goods in/out door.



View from the top of the bund with the thicket adjacent to No 29a on the left and the view towards unit 9 on the right

The supporting design and access statement states that only forklift trucks will use the goods in/out door. There is also an internal shutter door that would remain closed when the outside door is open during deliveries (to help prevent escape of plant noise). The applicant states that there would be never any direct opening into this part of the building. The existing forklift trucks are electric and don't have to have reversing buzzers or beepers. Officers witnessed them in use and confirm that their operation is very quiet. For the avoidance of any doubt, Officers did not witness any actual loading or unloading.



Extract from the proposed floor plan showing the internal lobby from the new goods door

The design and access statement confirms that the main unloading area will remain at the eastern end of the unit (see 'turning area' on the site plan) and then items are taken down the service road and into the new 3-metre-wide access into the new goods in/out door. There are on average 6 deliveries per day, where it takes 6 forklift trips to unload the goods into the building taking approximately 10 minutes each time.

In the design and access statement the applicants state that they were happy for a delivery hour restriction and the use of the new goods in/out door of 07:30 to 18:00, but via emails have subsequently agreed to limiting the whole operation of the unit from 07:30 to 19:00 Monday to Friday and 09:00 to 16:00 on Saturday.

For the avoidance of any doubt the original (and smaller) existing goods in/out door on the northern elevation is actually blocked by the presence of an internal mezzanine floor and existing plant and machinery within the unit as witnessed on site by the Council's case officer and Environmental Health Officer.

The applicants have also submitted a supporting noise report.

6. Planning Policy

National Context:

The National Planning Policy Framework 2021 (NPPF), The Noise Policy Statement for England (NPSE) and Planning Practice Guidance (PPG)

Local Context:

The Wiltshire Core Strategy CP1 – Settlement Strategy; CP2 – Delivery Strategy; CP15 – Melksham Community Area; CP34 -Additional employment land; CP35 Existing Employment Sites; CP50 - Biodiversity and geodiversity; CP57 – Ensuring High Quality Design and Place Shaping; CP60 – Sustainable Transport; CP61 – Transport and New Development; CP64 – Demand Management; CP67 – Flood Risk

West Wiltshire District Plan 1st Alteration, 2004 - Saved Policy U1a Foul Water Disposal; Saved policy U2 Surface Water Disposal

Leisure and Recreation Development Plan Document – January 2009

Atworth Parish Plan 2010 (updated 2015)

7. Consultations

Atworth Parish Council – Objects based on the following:

The new submissions do not appear to provide the noise outputs of the proposed new plant, the noise report seems to focus on ambient noise. The applicant needs to clearly explain new noise emission levels and any appropriate mitigation.

It appears that the doors towards the rear of the new factory were put in because the applicants designed the new internal operational layout with this new access an integral part, ignoring the planning history and the fact that this access was not deemed acceptable.

The retrospective nature of this application is unfortunate because if the applicants had addressed planning and applied in a timely manner they would not now be having to contemplate reorganising the internal layout and operations of their factory.

There does not appear to be any gate blocking the side access as claimed in the supporting information.

The Parish Council whilst supporting this business in principle, still objects to the lack of information on noise and to the new service access.

Wiltshire Council Environmental Health Officer – No objection.

An investigation has been carried out into recent complaints received about night-time noise from Unit 8 at Atworth Business Park and following investigations it has been confirmed that the noise does not relate to any activity at Bristol Soaps Ltd and this subject property at Unit 8. Instead, it has been observed that the

night-time noise relates to a compressor at a neighbouring unit. After three visits including during the night the public protection officer confirmed that there was no noise from unit 8.

The public protection officer is content with a planning condition being imposed to restrict the working hours at unit 8 as they have proposed which will continue to ensure local amenity is protected during the night-time. A condition to restrict any further construction work necessary to within our standard hours is also requested.

In respect of the general activity at the site; the content of the noise reports have been carefully appraised and in addition to a joint site visit on 18 November 2021 to meet with both the General Manager and the Finance Director of the Parent Company and the site managers, a further noise assessment was carried out. During the visit, the site manager was asked to turn on all the noise generating plant equipment.

The public protection officer monitored noise levels from outside and confirmed being satisfied that under normal operating conditions there were no significant noise impacts that would otherwise affect local amenity.

The plant proposed for the lean-to outside to support the water tank was very quiet in operation; and when operating, a conversation could be had beside it, and accordingly no noise related concerns are highlighted pursuant to the external plant in terms of impacts to local amenity. Should any noise problems arise in the future, the public protection team would investigate and, if necessary, take action applying the statutory nuisance legislation.

It is worth noting that during the site visits, the two loudest events observed were associated to the compressor at Unit 9 and a worker who moved a small load along the roadway between units 7 and 8 using a small noisy trolley. The employee apparently works in one of the other units but uses that roadway and trolley to move things about. The noise from this was far louder than the electric forklifts which use the same route to serve Unit 8.

A further complaint about the extraction to Unit 8 has also been investigated with no further action required and following a concern raised about security lighting on Unit 8, following the night-time inspection visit, it was observed that the lighting at unit 8 does not justify any action and it was observed that other units within the business park have much brighter lighting than unit 8..

Wiltshire Council Drainage Officer - Insufficient information has been provided to support the proposed drainage strategy. Evidence of soakaway testing is required and there should be no onward disposal from porous paving to a watercourse.

NOTE: Officers note that for application 19/06790/FUL (for the extension to unit 8, Drainage Officers provided 'no comment' and didn't request additional information or conditions.

Wiltshire Council Landscape Officer - As stated in the LVIA, the application site has the benefit of a previously approved landscape scheme for a perimeter bund and native species woodland edge planting. The work is to be carried out according with application reference number 19/06790/FUL and the Soft Landscape Plan BW/VL/ATUNIT8/19L3. However, there will be a potential impact on:

- Intrusion into the open countryside and loss of rural character
- Scale of development and consistency with its location
- Residential amenity of private houses on the south side of Atworth
- Further expansion of the industrial area and encroachment into open countryside

The proposed provision of the extra goods in/out door on the side could increase the activity of the site which could potentially increase the intrusion of noise, motion and light pollution in this area. It will take the planting some time to mature to provide mitigation. Although the LVIA mentions that there will be 5-year management plan no details of this management plan have been submitted such as a maintenance schedule and aftercare etc. A detailed lighting plan should also be submitted, and external lighting should be designed to minimise light pollution.

8. Publicity

In addition to the posted-out neighbour letters to cover the two notification processes, a site notice was sent to the applicant's agent to erect on site which resulted in 22 letters of objection from 9 different people.

Neighbouring amenity impacts:

- Concerns over noise and whether new guidance from Defra has been taken into account?
- Serious concerns over noise impact on neighbouring residents
- Promises and assurances over the hours of operation to the service doors are not persuasive. They have set a precedent for non-compliance with conditions which the Council should take into account.
- What is the difference between this application and that dismissed at appeal in the 2018 application?
- Have adequate measures on the compressor on the bunded tank been considered? This has been missed out of the noise report
- Bunded tank: What is it going to store, will there be any noise or smells associated with the stored material, pumping it in/out of the tank, how will it be filled/emptied? In addition to noise, I would also urge that greater attention is paid to its refilling arrangement to prevent potential ecological impact to these potential toxic fluids entering our fragile ecosystem. The spill plan etc. appears lacklustre relative to the ecological setting as identified by previous application. The report still feels light in this regard, against the backdrop of a re-wilding area of Dowty Fields.
- Plant room: what process is the water di-ionising equipment used for? How noisy is this going to be, what access is required for maintenance etc. On grounds of amenity, the plant room door should also be reorientated by 180degrees to face away from residential area. The ventilation exhaust moved to the Eastern end of the building away for residential and routed internally.
- The statements in the noise survey don't match up with the design and access statement and therefore the results cannot be relied upon

Ecology impacts:

- No evidence that the LEMP has been complied with - 3 new Hibernaculae should have been constructed; none are in place. 2 bird boxes and 1 bat box should have been mounted on the corner of the new build; none are in place. The bund should have received extensive planting with native trees, shrubs and wildflower grass mix; the bund has been left as rough subsoil and clay with no planting.
- Will the bunded tank harm wildlife?

Other issues:

- There have been many breaches of condition of 19/06790/FUL including No 7 – the bund has not been finished despite occupation of the unit. Condition 13 prohibits outside storage yet there are large containers and skips
- The planning department must uphold consistency in forming their planning decisions in this connection and refer to correspondents between the case officer and the applicant in January 2021 where it was made clear that conditions relating to the use of the goods in/out door could not be managed nor enforced.
- There shouldn't be an access behind the bund and no gate has been erected yet.

Two letters of support from two different contributors

- Bristol Soap is a supplier to us and we understand that they need to upgrade their facilities to meet requirements for ourselves and other customers. This involves a planning application to create additional space. We support their application from a commercial point of view.
- It is vitally important for local businesses to support each other and during the last 18 months (Aug 2021) many businesses have faced unprecedented challenges and Bristol Sap have played an important role in ensuring organisations could continue to function.

9. Planning Considerations

Section 70(2) of the Town and Country Planning Act 1990 and section 38(6) of the Planning and Compulsory Purchase Act 2004 require that the determination of planning applications must be made in accordance with the Development Plan, unless material considerations indicate otherwise. In this case, the Wiltshire Core Strategy, including those policies of the West Wiltshire District Plan that continue to be saved and enshrined within the WCS, constitutes the relevant development plan for the Melksham area.

9.1 Principle of Development

9.1.1. The application site (and all of the industrial units within the Business Park) are located in 'countryside' outside of the limits of development of Atworth (which is identified by the black line in the image insert below).



9.1.2. Unlike the recent 18/04589/FUL and 19/06790/FUL applications which in part, related to extensions to Unit 8, this application seeks permission for the change of use of an existing unit from B8 to Class E. As the application site is part of the Atworth Business Park where a mixture of Class E manufacturing already takes place, and is a use that was previously captured by B1 land use, the principle of the proposed change of use is supported by officers. This application seeks to formally change the use of unit 8 from B8 (storage and distribution) to Class E (business use).

9.1.3. For the avoidance of any doubt, the s106 that covers the business park and allows for B1, B2 (now class E) and B8 uses, a modification to the legal agreement is recommended as a planning informative to update the agreement to reflect current legislative regulations.

9.2 Impact on neighbouring amenity

9.2.1. Neighbouring amenity is protected under Core Policy 57 vii) where development must “*have regard to the compatibility of adjoining buildings and uses, the impacts on the amenities of existing occupants, including the consideration of privacy, vibration and pollution.*”

9.2.2. Officers recommended planning conditions 10 and 12 for application 19/06790/FUL following the dismissed appeal decision for application 18/04589/FUL. Officers considered that whilst a B8 unit (condition 10) could cause some noise through the distribution of goods from a warehouse, another use like B1c) light

industry or B2 industrial, could result in more noise disturbance due to the actual manufacturing process. Condition 12 was imposed to require the applicant to apply for planning permission for another proposed additional wall opening. For the avoidance of any doubt, applicants can apply to vary or remove planning conditions which should be assessed fairly and on their own merits.

9.2.3. The unit forms a part of the established business park located immediately adjacent to existing residential development. Whilst the business park was an engineering, manufacturing and warehousing site since the 1930's residents have become concerned that since units 8 and 9 were permitted in 1993, the business park has expanded and there remain concerns that it may extend to the west and enclose more residential properties in the process. However, the extensions to units 8 and 9 have not substantively changed the character of the business park.

9.2.4. The dismissed appeal for 18/04589/FUL is a key consideration for the assessment of this application. It is important to note that the refused application sought to extend the service road to the west and to provide a hammerhead turning area within 2m of the boundary shared with No 29a. The 18/04589/FUL application also included a large vehicular goods in and outdoor on the extended northern elevation that would have faced No 29a.

9.2.5. In paragraphs 16 and 17 of the appeal decision the Inspectorate observed;

*“At present, vehicle movements associated with this part of the business park (*Units 8 and 9*) take place behind or between the buildings comprising the existing units, mitigating any effects on nearby residential properties. However, the proposal would extend the service road, beyond the elongated building and the footprint of units 6 and 7 and provide some additional parking spaces. The extended building, with its increased capacity, could also increase the potential number of vehicle movements, over and above that which serviced the unit in the past.*

The extended service road would also incorporate a new turning head to enable vehicle manoeuvring, adjacent to a ‘goods in/out’ entrance and additional parking spaces on the northern side of the building. According to the appellant, the turning head would, at its closest point, be just 2 metres away from the boundary of the rear garden of the dwelling at 29A Bath Road, the nearest house. There is an existing thicket of vegetation to the south of the garden boundary fence of that property, but a section of this would be removed, reducing its depth, to accommodate the turning head.”

Paragraphs 18 and 19 of the same appeal decision continued;

“I had the benefit of assessing the proposal both from the appeal site and from the garden of No 29A. The close proximity of the turning head and service road to the garden would be likely to result in noise and disturbance from commercial and other vehicles accessing the appeal site and manoeuvring in the turning head. There would also be noise from vehicle engines and negative effects from vehicle fumes. That would significantly disturb the peace and enjoyment of occupiers of No 29a, when using their garden.

As part of the thicket would be removed to accommodate the turning head, any protection that it could provide would be reduced. The position of the proposed earth bund and associated planting would not assist in mitigating the adverse effects of the turning area close to the garden.”

Paragraph 24 concludes by saying;

“Therefore, I conclude that the proposed development would harm the living conditions of nearby residential occupiers at No 29A, with particular regard to noise, disturbance and fumes from vehicles.”

9.2.6. Compared to the aforementioned appeal, there are material differences with this application. Firstly, the consented end elevation extension has been built as shown on the next page (and retrospective permission is sought for the goods in and outdoor). The access road has not been extended and the delivery of the landscaped bund remains extant. The access road still terminates at the same position which corresponds with the former rear western end elevation of unit 8. No concerns are raised from officers about the use of the of hardstanding access that is used by forklifts to serve the side door opening in unit 8.



View of the western end extension of unit 8 and unit 9's existing lean to extension

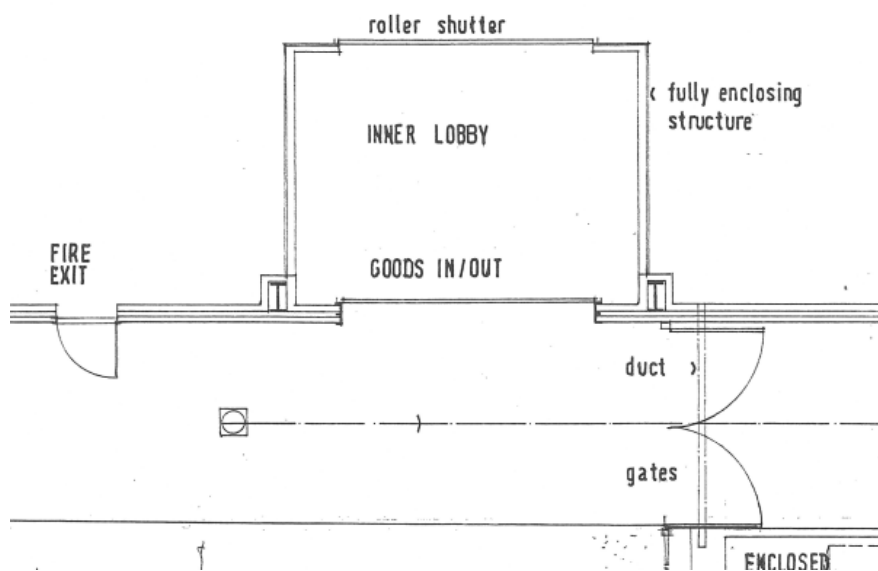
9.2.7. It continues to be the case that HGV vehicles use the main turning area within the business park (as shown below) and do not traverse the area of hardstanding between units 7 and 8. At the front of unit 8 there is a large apron allowing drivers sufficient space for manoeuvring around the site. The access road to the northern side elevation of unit 8 is about 6 metres wide and although wide enough to accommodate an HGV, it would require some significant manoeuvres and with the absence of a turning area at the end, the use of forklifts to move bulky items appears to be a logical and effective use of moving product in and out of the building into the retrospective goods in/out door on the northern elevation facing No 29a.



Front elevation of units 8 and 9 with the turning area

9.2.8. The applicant makes use of electric forklifts which were witnessed by officers during site inspections, and these do not produce harmful levels of noise. Whilst the use of electric forklifts cannot be enforced by condition there is no likelihood that the use of forklifts will be abandoned by the applicants. Indeed, electric vehicles are expected to become more commonplace as we approach 2030 and beyond as the country moves away from fossil fuel dependency. The use of electric forklifts accessing and exiting the goods in/out door, deserves to be given due weight in the planning balance.

9.2.9. The applicant has confirmed that there are about 6 deliveries each day to the premises, which in the context of the established business park is not considered significant. The following plan insert illustrates the presence of the consented internal shutter door which is kept shut when not in use which would mitigate against noise pollution and neighbouring impacts for when deliveries are transported from the main turning area, down the access road and into the retrospective goods in/out door.



Extract from the proposed floor plan showing the internal lobby from the new goods door

9.2.10. The noisiest operations associated to loading and unloading of HGV's occur in the turning area at the front of Unit 8 and sufficiently well away from residential properties. The transportation of the goods by electric forklifts along the access road is a relatively muted operation and no officer objection is raised. It should be noted that the Council's public protection team were consulted on this application and no objections were raised.

9.2.11. When withdrawn application 20/11497/FUL was first received the proposed site plan was not clear if the access road was going to be extended and the bund was also kept in its 19/06790/FUL position, effectively being 'held back' from the access road which could have allowed for a turning head to appear or be applied for afterwards. This led to some critical comments being sent to the applicant's agent which have been mentioned in the objection letters. However, for the avoidance of any doubt those officer comments related to the withdrawn application which have been addressed with the clarification that the bund has already been extended up to where the service road ends.

9.2.12. Whilst the goods in and out door could create some additional noise in and around unit 8 through the movement of products by the forklifts and any noise leakage from internal plant, officers are satisfied that sufficient mitigation will exist to safeguard neighbouring amenity through the completion and landscaping of the bund (which is identified for a bespoke condition) and the retention and ongoing protection of the thicket hedge which in combination should provide sufficient mitigation to safeguard neighbouring amenities from noise pollution.

9.2.13. In light of the above, the retrospective wall opening to form the goods in/out door is considered acceptable in terms of design and neighbouring impact.

9.2.14. Officers are also satisfied that the proposed Class E use with the internal and external plant and the manufacturing processes are compatible uses for this business park setting (when compared to the consented general storage and distribution use).

9.2.15. When this application was received, whilst a noise survey reported on the noise levels experienced at the boundary with the nearest residential receptor at No 29a, the survey only measured up to 4.20pm (with no explanation being given for the cut off time). Furthermore, in relation to the bunded tank the noise survey only stated that it would contain a “*8kw electric pump, located inside its own metal cabinet inside the larger tank cabinet and uses a maximum of a couple of times a week and so would not be operating continuously.*” There was no actual estimate of what the decibel level would be at 1m from the pump or at the boundary with No 29a in which to compare the recorded background noise level.

9.2.16. Officers insisted on a 24-hour noise survey and to evaluate the data from the original survey to measure the noise impacts at the boundary with No 29a. The applicants submitted a full 24-hour background noise survey, which was undertaken between 15:10 on Thursday 15 July 2021 and 15:40 on Friday 16 July 2021. The survey revealed that during the daytime, the noise levels were generally in the 40-50dBA range (Leq). During the evening hours this decreased to 20-25dBA (Leq). The noise report was clear that unit 8 was not in use overnight on the survey date and asserted that the original noise report had made an assumption that the unit would only be in operation during the daytime. There was also no indication or estimation within the noise report of what could be heard at the boundary with No 29a with unit 8 in full use overnight.

9.2.17. Following further negotiation between the applicant and officers, the applicant agreed to the imposition of a planning condition that would restrict use of the premises to the hours of 7.30am to 7pm, which has the support of planning and public protection officers.

9.2.18. Officers are fully mindful of paragraph 22 of the planning appeal decision for 18/04589/FUL whereby the planning inspector observed:

“...standard restrictions on operating hours, such as during the day and on Saturday mornings, appear to be based partly on an assumption that residential occupiers are more likely to be out of the house or at work during such hours, at least from Monday to Friday. However, that would not necessarily be effective in preventing harm to, for example, retired occupiers enjoying their garden or workers with less conventional working hours. Moreover, Saturday mornings are a time when people are reasonably entitled to expect some respite. Therefore, whilst I have considered if imposing conditions could make the proposal acceptable, given the close proximity of the turning area to the residential garden of No 29A, I am not persuaded that they would sufficiently mitigate the adverse effects.”

9.2.19. It is clear from the above quoted passage that an hours of operation condition was not considered acceptable to the planning appeal inspector for the previous proposal which included an extended turning head – which would have introduced more traffic closer to the boundary with No 29a. However, in this instance officers submit that the use of the goods in door is sufficiently far away enough away from the boundary with No 29a and since forklifts are used to move bulky items about, officers are satisfied that the ongoing use of the premises does not result in substantive harm to neighbouring amenities.

9.2.20. Finally, as can be seen by reading the Environmental Health Officers consultation response within section 7, the applicant was asked to turn on all internal machines with the goods doors closed, and from his external inspection, the public protection officer could only just make out the noise of the internal plant, and that in such circumstances, there would be no substantive reason to refuse the application. It has been observed that the electric pump for the bunded tank could cause some noise, but it is expected to be used infrequently and the pump would be enclosed within an enclosure, and would have the bund and thicket to help mitigate noise.

9.2.21. The public protection officer has also confirmed that he has investigated numerous noise complaints at the site and not found any of them to be associated with unit 8.

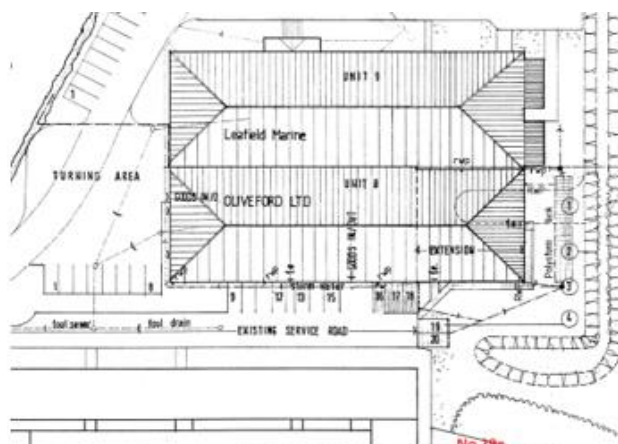
9.3 Other issues:

9.3.1. The Council's Drainage Officer has submitted a holding objection regarding the proposed drainage from the site. However, perhaps not appreciated by the Drainage Officer that previously there was 'no comment' from Drainage for the 19/06790/FUL application; and that this proposal is only proposing small physical changes to the bund and the creating of the narrow 3 metre wide access and hard standings for the bunded tank and extension. It would be expected for the external perimeter of the building to have hard standings anyway (for any required pedestrian emergency escape) and that this request for additional information cannot be reasonably requested at this time. Furthermore, drainage has not presented itself as an issue in the previous applications.

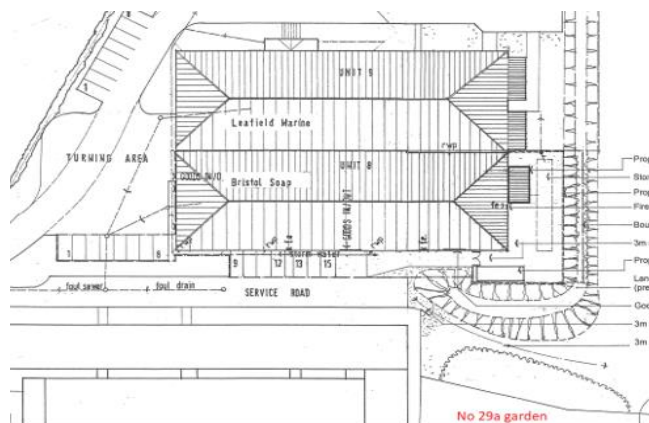
9.3.2. The consultation response received from the Council's landscape officer can be addressed by planning condition.

9.4 Updated Conditions:

9.4.1. Several of the letters of representation have raised issue with non-compliance with the conditions for application 19/06790/FUL in relation to ecology and landscaping. The applicants have verbally stated that the bund has not been completed because they are awaiting the outcome of this application so that they can then complete development and finish regrading the bund to match that on the proposed site plan. It is considered that this is reasonable as access for construction would be potentially tight otherwise.



Approved Site Plan for 19/06790/FUL



Proposed Site Plan

9.4.2. The above inserts reveal that the proposed landscape bund would be brought closer to Unit 8 compared to what was previously consented under application 19/06790/FUL (3.8m compared to 9.5m) and it would also be extended to the east by about 6-8 metres. An updated Landscape and Ecology Management Plan (LEMP) and Landscape Impact Assessment are required; and planning conditions are recommended along with there being a bespoke clause within an updated S106 to secure the completion of the bund extension. The applicant and landowner has been made aware of these requirements and they are agreeable to these obligations.

9.4.3. In the representation letters it is claimed that the Great Crested Newts condition (condition 3 of 19/06790/FUL) has not been complied with, including the construction of three hibernacula. However, photos of the hibernacula's have been submitted to the Council (and will be included in the Committee presentation). Furthermore, the applicants have had to comply with the licence they obtained from Natural England, where the newts were collected by a licensed ecologist, moved from the site, with fencing and other measures installed to prevent them coming back to the site of the bund works. It is therefore considered that condition 3 of 19/06790/FUL has been complied with, and a planning informative can reinforce the applicants obligations.

9.4.4. There is a complex planning history for this site, but it is important that the application before the committee is assessed on its merits. Whilst retrospective planning applications are never welcome, the impacts of the new wall opening on the north elevation of unit 8 has been thoroughly appraised by planning and public protection officers and it has been found to be acceptable. The proposed Class E use of the premises would be compatible with the existing land uses and the proposed plant and associated works are not case of concern to officers.

9.4.5. The bund as shown in the site photograph below is still to be completed and a condition is recommended to secure its completion should this application be supported by the committee.



Picture of the bund looking due south with units 8 and 9 to the left and open countryside to the right

10. Conclusion

This application seeks to regularise the formation of the goods in/out door wall opening on the northern elevation of unit 8 and to build a lean-to extension and incorporate a bunded tank. It is submitted that the proposal is acceptable in planning terms and the proposed change of use from B8 to Class E would not be demonstrably harmful to residential amenity or to visual amenity. The necessary extension to the bund requires a planning condition along with the landscape planting. The site has been visited several times by both the planning case officer and the public protection team and no material noise pollution was observed associated to the operations at unit 8. Consequently, officers submit that the application satisfies the Core Strategy and NPPF policy requirements.

11. Recommendation – Through taking into account all the material planning considerations outlined in this report, it is recommended that the Committee delegates and defers authority to the Head of Development Management to grant planning permission subject to the planning conditions and informatives listed below following securing an amendment to the legal agreement that binds the site which was varied in March 2020 to include the provision of a Class E land use and to secure the completion of the landscaped bund within 3 months of the completion of the rear (western) lean-to extension and installation of the bunded tank.

Planning Conditions:

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

REASON: To comply with the provisions of Section 91 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

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

Site Location Plan, Existing Floor Plan, Existing Elevations, Landscape and Visual Impact Assessment and Noise Assessment – all received 25 May 2021; Existing Site Plan, Proposed Site Layout (VL2020/12/04 B), Proposed Floor Plan, Proposed Site Layout (coloured), Proposed Elevations and Internal Layout Plan – all received 9 June 2021; Updated Design and Access Statement, additional noise report and 'Extract Site Plan' showing additional rail – all received 29 July 2021; and hours of operation agreement email dated 2 November 2021.

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

3. The manufacturing use hereby permitted shall only take place between the hours of 0730 and 1900 Mondays to Fridays and between 0900 and 1600 on Saturdays. The use shall not take place at any time on Sundays and Bank or Public Holidays.

REASON: To ensure the creation/retention of an environment free from intrusive levels of noise and activity in the interests of the amenity of the area.

4. Within 1 month of the date of this permission and prior to any further works commencing on re-grading the bund, an updated Landscape and Ecology Management Plan (LEMP) detailing the extended bund, shall be submitted to the local planning authority for approval in writing. The LEMP shall include, but not be limited to including, the following:

- a) Comprehensive finalised details of landscaping, planting including tree planting and grass seed sowing, together with a planting schedule and specification, an accompanying landscape plan(s) and details of ongoing management.
- b) Details of the 5-year landscape maintenance schedule cited in the Landscape and Visual Impact Assessment (Prepared by Brian Wooding CMLI, December 2020).
- c) Details of all proposed ecological enhancement features including bird nesting provision and habitat for Great crested newts and reptiles, with the proposed number and location of features shown on a plan; together with details of the maintenance and monitoring arrangements for these features.
- d) Details of the proposed maintenance and management of the site including the safeguarding of the thicket hedge and the mechanism for securing the implementation of the above mitigation.

Thereafter, the development shall be completed in accordance with the approved details and the site shall be managed and maintained in accordance with the measures set out in the approved LEMP in perpetuity unless otherwise agreed in writing with the local planning authority.

REASON: To ensure that the proposed landscaping and tree planting is appropriate to the locality, will be accommodated within the scheme layout and will serve a function for ecology and landscape; and to ensure the appropriate maintenance and management of habitats that provide a function in terms of landscape and

biodiversity, and incorporation of features within the scheme design and layout that will contribute to delivering biodiversity gain at the application site in accordance with the NPPF 2019, Core Policy 50 of the Wiltshire Core Strategy (Adopted January 2015) and Section 40 of the NERC Act 2006.

5. Within 1 month of the date of this permission and prior to any further works taking place pursuant to re-grading of the bund, an updated Landscape and Visual Impact Assessment shall be submitted to the local planning authority for its written approval.

REASON: To ensure that the proposed landscaping and tree planting is appropriate to the locality and to help mitigate the intrusion of noise, motion and light pollution in this area, will be accommodated within the scheme layout and will serve a function for ecology and landscape; and to ensure the appropriate maintenance and management of habitats that provide a function in terms of landscape.

NOTE: The above updated LVIA shall revise the figures showing the bund to accurately reflect the approved site plan VL2020/12/04 B

6. The re-grading of the bund shall be undertaken in strict accordance with the Discussion and Conclusions section of the Extended Phase 1 Ecological Survey (Stark Ecology, September 2019), the pending updated Landscape and Visual Impact Assessment (Prepared by Brian Wooding CMLI, December 2020) and Site Layout Plan (Drawing no. VL.2020/12/04 B received 9 June 2021).

The development shall also continue be undertaken in strict accordance with the finalised Great crested newt mitigation strategy as discharged in application 20/03763/DOC and the pending updated Landscape and Ecology Management Plan (LEMP) once submitted to and approved in writing by the local planning authority.

The development shall be undertaken with liaison with, and supervision by a suitably licensed, qualified and experienced professional ecological consultant.

REASON: To ensure that appropriate and adequate protection, mitigation and compensation for ecological receptors including protected and priority species and their habitats, is implemented in accordance with the NPPF 2019 and Core Policy 50 of the Wiltshire Core Strategy (Adopted January 2015), and to ensure compliance with the Conservation of Habitats and Species Regulations 2017, the Wildlife and Countryside Act 1981 (as amended) and Section 41 of the NERC Act (2006).

7. All soft landscaping (comprised in the approved details of conditions 4a and 5) shall be carried out in the first planting and seeding season following the completion of the bund; 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. All hard landscaping shall also be carried out in accordance with the approved details prior to the occupation of any part of the development or in accordance with a programme to be agreed in writing with the Local Planning Authority.

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

8. Notwithstanding the provisions of the Town and County Planning (General Permitted Development) (England) Order 2015 (or any other order revoking or re-enacting or amending that order with or without

modification), no windows, doors, or other form of openings other than those shown on the approved plans, shall be inserted in the northern or western end elevation(s) of the development hereby permitted.

REASON: In the interests of residential amenity

9. No external lighting on the recently extended section of unit 8 (as approved under application 19/06790/FUL) or on the lean-to extension subject to this application, shall be installed 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 Professionals: Guidance Notes for the reduction Obtrusive Light GN01:2021; 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 protecting protected species and the amenities of the area and to minimise unnecessary light spillage above and outside the development.

10. No materials, goods, plant, machinery, equipment, finished or unfinished products/parts of any description, skips, crates, containers, waste of any other item whatsoever shall be placed, stacked, deposited or stored outside the extension of Unit 8 permitted under application 19/06790/FUL.

REASON: In the interests of the appearance of the site and neighbouring amenity

11. No construction works shall be undertaken outside the hours of 0700 to 1800 Monday to Friday and 0900 to 1600 on Saturdays and at no time on a Sunday or Bank Holiday.

REASON: In the interests of neighbouring amenity