

REPORT TO THE WESTERN AREA PLANNING COMMITTEE

Date of Meeting	4 February 2015
Application Number	14/10385/VAR
Site Address	Land South West of 429 Redstocks, Melksham, SN12 6RF
Proposal	Variation of conditions of W/12/01907/FUL to allow changes to storage of fencing materials and ancillary landscaping materials
Applicant	Mr A Turner
Town/Parish Council	MELKSHAM WITHOUT
Ward	MELKSHAM WITHOUT SOUTH
Grid Ref	393203 162772
Type of application	Full Planning
Case Officer	James Taylor

Reason for the application being considered by Committee

This application has been called to committee by Councillor Roy While on the grounds that it is *“inappropriate development given the poor condition/narrowness of the access road and the additional large vehicles using the road.”*

1. Purpose of Report

The purpose of the report is to set out the proposals, the relevant material planning considerations, explore and assess the merits of the case and make a recommendation to members of the planning committee.

2. Report Summary

This report recommends that planning permission be granted. This is an application to vary the planning conditions imposed on the planning permission ref: W/12/01907/FUL granted in February 2013 so as to allow further areas of storage for fencing materials and ancillary landscaping materials. A key issue in this matter is highway safety. Highway officers initially raised objection to the proposals, although they acknowledged that defending a refusal on highway grounds would be “difficult” and latterly removed their objection after reflecting upon the planning history of the site. Whilst highway officers do not object their concern is duly acknowledged. Your planning officers have taken a balanced view in light of all material planning considerations including the economic dimensions of sustainable development, the highway officer comments and the highway tests as set out at paragraph 32 of the National Planning Policy Framework; and recommend that the application should be approved subject to revised conditions.

3. Site Description

This is a retrospective application concerning a site that has been visited on several occasions by Council officials (most recently on 17 November 2014). The use of the site and on-site storage arrangements were duly noted with the submitted plans found to be an accurate reflection of the current use.

The site is located in open countryside which is not subject to any specific planning designations. It is accessed via a 'dead-end', rural, single width road (Redstocks) which has informal passing places along its length. This joins the wider road network at a junction with the A365 Bath Road further to the south.

Adjacent to the west is an agricultural yard beyond a drainage ditch that denotes a boundary of the site. Mature hedges exist to the northern and eastern boundary. There are residential properties in the vicinity and these include dwellings beyond the boundary hedge on the opposite side of Redstocks to the east of the application site.

4. Planning History

W/12/01907/FUL - Change of use from agriculture to a mixed use for agriculture and for the storage of fencing materials required for use in association with landscaping business – Permission granted 28.02.2013.

5. The Proposal

This is a retrospective proposal for the variation of planning conditions to the original permission (W/12/01907/FUL) and the developer has stated that the development has been taking place since 1 March 2013 – a few days after the original permission (which was also retrospective) was approved.

The application seeks “variation of conditions of W/12/01907/FUL to allow changes to storage of fencing materials and ancillary landscaping materials”.

The original permission imposed conditions limiting storage to fencing materials and the storage to a specific part of the site through acknowledging that there were localised highway issues; but at the same time, being fully aware that there was a lawful turf cutting operation adjacent to the site, and that the storage of fencing materials was associated with that lawful activity, and that the lawful use of the site was as a agricultural yard (and would have been /could be a traffic generator in its own right).

With the principle use of the site established, this application seeks to vary the conditions to allow a greater area of the site to be used for storing ancillary landscaping materials whilst retaining sufficient space for parking and turning associated vehicles. This is a retrospective proposal and the situation has been in existence since March 2013.

Condition 2 imposed on w/12/01907/FUL read:

“The development shall be completed in accordance with the hereby approved plans: Site location plan; and Drawing: LDC.1672.001.

REASON: In order to define the terms of this permission”.

It is proposed to vary this condition to replace drawing LDC.1672.001 with LDC.1672_DOC_01 which shows additional areas for the storage of fencing and other materials ancillary to the lawful use of the site by a landscaping business.

Condition 3 imposed on w/12/01907/FUL read:

“Fencing materials may only be stored in the area annotated for “fencing materials store” on drawing LDC.1672.001.

REASON: In order to define the terms of this permission and allow the Council reasonable opportunity to consider any intensification of this activity.

POLICY: West Wiltshire District Plan 1st Alteration (2004) E6”.

It is proposed to vary this condition to allow for the storage of other materials ancillary to the landscaping business other than fencing materials such as plants and landscaping materials as per

the revised plan. The varied condition would be for the same reason as the original condition but also to respect the interests of highway and landscape amenity.

Condition 4 imposed on w/12/01907/FUL read:

"The site shall be used for the mixed use of agriculture and storage of fencing materials only and for no other purpose.

REASON: The proposed use is acceptable but the Local Planning Authority wish to consider any future proposal for a change of use having regard to the circumstances of the case.

POLICY: West Wiltshire District Plan 1st Alteration (2004) E6".

It is proposed to vary this condition to allow for the storage of other materials ancillary to the landscaping business than fencing materials such as plants and landscaping materials as per the revised plan.

6. Planning Policy

The Wiltshire Core Strategy (WCS) was adopted at a special council meeting on January 20th 2015 and as such, it can be afforded 'Full Weight' in planning terms although it is still subject to a 6-week potential challenge. The following WCS policies have full weight: CP2 (Delivery Strategy); CP34 (additional employment land); CP48 (Supporting rural life); CP50 (biodiversity and geodiversity); CP51 (landscape); CP52 (green infrastructure); CP57 (Ensuring high quality design and place shaping); and CP67 (Flood risk).

The National Planning Policy Framework (NPPF) acts as a principal material consideration in the determination of planning applications. It introduces the presumption in favour of sustainable development at paragraph 14 as a 'golden thread' running through plan making and decision taking. The NPPF is clear in stating that *'planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise'*. The NPPF does not change the statutory status of the development plan as the starting point for decision making. Proposed development that accords with an up-to-date Local Plan should be approved and proposed development that conflicts should be refused unless other material considerations indicate otherwise. Paragraph 17 of the NPPF sets out the core planning principles and paragraphs 18-219 constitute what sustainable development means in practice. Paragraph 32 is also critical in terms of asserting that local planning authorities should only refuse applications on transport/highway safety grounds where *"the residual cumulative impacts of development are severe"*.

Planning Practice Guidance (PPG) is also of material consideration.

7. Consultations

Melksham Without Parish Council: Objects *"...as it considers that since the original application (W/12/01907/FUL) was made, activity on this site has dramatically increased and therefore this business has outgrown its site, in particular the volume, size and frequency of vehicles using the single track road. Additionally residents report that previous conditions imposed by Wiltshire Council, namely restrictions on operating hours and the size of fencing materials storage area, have not been adhered to."*

Environmental Health Officer: No objection.

Highways Officer: No objection. Final comments received on 12 January 2015 which read:

"I have consistently objected to the commercial activity at this site. The size and frequency of vehicles associated with the site travelling along the Redstocks Road and through the junction with the A365 raises highway safety concerns. However, planning permission was granted for the use of the site against the recommendation of the Highway Authority. I acknowledge that this

application is for a variation of conditions and that the turf and fencing business is already approved and established. On reflection, and given that my previous highway concerns were overlooked, I am prepared to withdraw my recommendation for refusal in this instance. I therefore wish to raise no objection."

Members are advised that the highway officers initial observations dated 16 December 2014 read: *"The previous planning application (W/12/01907) attracted an adverse highway recommendation due to the unsuitable nature of the access road and the impact that the commercial vehicles were having on this road. It was accepted that the growing, cutting and lifting of turf is an agricultural activity most likely to be located in a rural location, and that this activity was relatively low key. Of particular concern however were the commercial vehicles and HGVs accessing the site in relation to the fencing business. It was considered that the fencing business could be run from other more suitable premises served by roads which can readily accommodate the associated delivery vehicles. I have considered this latest submission and I have no reason to change my general view from that formed in 2013."*

The proposal is to vary conditions 2,3 and 4 of the Decision Notice dated 28 February 2013 and I shall address each condition in turn, below:-

Condition 2 - Whilst I am not in support of the HGVs accessing the site, I acknowledge that previous permission has been granted. The improved circulatory scheme to allow vehicles to move around the site and exit / enter the highway in a forward gear is accepted in the interests of highway safety. The surfacing and drainage works and defined parking spaces are also welcomed. I regret however that I would not wish to support the proposal for additional areas for storage of fencing and other materials as this represents an intensification in use of the site, over and above that for which permission has been granted.

Condition 3 - The success of TW Landscapes has resulted in the need for an increased amount of materials to be stored at the site. The additional materials entering and leaving the site can only result in an increase in vehicle activity and/or larger vehicles accessing the site, both of which raises highway safety concerns. The large articulated lorries are taking over the whole width of the road, and are over-running the adjacent verges leaving them in a poor condition. This is impacting on local residents who wish to walk or drive along the access road without having to negotiate around HGVs on a regular basis.

Condition 4 - As above, the proposed additional use of the site will lead to an increase in vehicle movements and / or size of delivery vehicles in connection with materials both arriving and leaving the site.

To summarise, there are elements within the variation of conditions application which are considered acceptable bearing in mind the previous consent. It is evident that the main changes are to allow additional areas for storage as a result of the continuing success of the business. As a consequence the vehicle activity is likely to increase, as are the size of vehicles. Having regard to my previous recommendation, I have no option but to adhere to my previous highway recommendation for refusal."

Rights of Way Officer: No objection.

8. Publicity

This application was advertised by way of a site notice and individual neighbour notification letters. Following the public notification, 4 letters of objection were received which may be summarised as follows:

- Since their last application there has been a vast increase in their traffic, speed of their vehicles, mud on the single track road in the winter and dust in the summer, constant noise of bleeping machinery, rattling trailers and the Company operating outside of their time constraints (includes weekends, early mornings and evenings);
- Highway officers have previously raised objection to use of the site by the business given the suitability of the road and the planning officer found it to be a finely balanced case and felt conditions could control the situation – this has not worked;
- Congestion on the lane in the mornings with their delivery lorries and transit & trailers;
- The increase in traffic is already creating a severe and significant road safety issue;
- Creates a disincentive for walking, cycling and bus use;
- Business could be located anywhere – does not need to be next to the turf operations or in this residential area;
- Loss of amenity from noise and traffic;
- Operating hours not being complied with;
- Restrictions on storage not being complied with; and
- Selling turf to the public and other landscapers from their yard directly.

9. Planning Considerations

9.1 Principle of development.

Section 70(2) of the Town and Country Planning Act 1990 and section 38(6) of the Planning and Compulsory Purchase Act 2004 requires the determination of planning applications to be made in accordance with the Development Plan, unless material considerations indicate otherwise. The current situation regarding the Development Plan is set out in section 6 above. The Wiltshire Core Strategy is now the adopted development plan and can be afforded full weight and should be the starting point for determining applications.

Core Policy 34 of the emerging Wiltshire Core Strategy replaced Policy E6 of the former West Wiltshire District Plan 1st Alteration (2004). This is a policy relating to additional employment land proposals and as this is an application for an intensification rather than new employment land then the policy is not directly applicable. WCS CP35 deals with existing employment land, but focuses on the protection of employment sites and B-class activities from other development; rather than intensification in the use.

A further material consideration is the NPPF which whilst it must be read in its entirety has a pro-growth agenda and sets out a presumption in favour of sustainable development. It sets out that sustainable development is a multi-faceted concept with interrelated themes of economic, social and environmental.

The expansion of an existing business in a rural area is considered to be acceptable in principle with due weight being attached to the economic benefits of such proposals. Consideration should be given to social and environmental impacts, but given the planning site history, officers assert that demonstrable harm would need to be identified which would also need to outweigh the economic positive attributes, to justify any refusal.

9.2 Highway Safety.

Previously highway safety has proven to be the most contentious issue with this development site and it has been acknowledged that Redstocks Road is narrow, has limited passing places and that these places are quite informal and poor. The NPPF sets out at paragraph 32 the relevant test to be applied when considering highway safety:

“Development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe.”

Whilst the highway officer did raise objection to the original application and initially raised an objection to this application they subsequently removed the objection in light and recognition of the planning history and permission in place. They have also acknowledged that defending an appeal citing transport grounds would be “difficult”. Officers would highlight since the publication of the NPPF in 2012, there have been numerous examples of planning applications being refused in full or in part for highway safety reasons and, it has to be said that the percentage of those successfully defended is low. The NPPF sets a very high bar by which to assess whether planning permission may be withheld on the basis of highway considerations. Planning Inspector decisions where the issue of highway safety is raised, are consistently driving home the message that any impacts must be “severe” to justify refusing any application.

The applicant claims that generally only 2 HGV movements per month can be expected at the site in light of the existing storage and site activity. This has been the case since March 2013 whilst they have been in breach of the conditions. They claim that the aggregation of storage and increased storage will actually reduce vehicle movements in total. On a scheme of this scale it would not be reasonable to require a transport survey and it is considered that a subjective assessment has to be made. In doing so, it is necessary to be mindful of the anecdotal reports received from 4 parties that have written to object whom state that the applicant has wilfully under represented the traffic movements including HGV movements.

The applicant has stated that in the last 3 months of 2014, the site received 15 deliveries; 12 of those in rigid 7.5 tonne vehicles and the other 3 in articulated HGV's. They do acknowledge that deliveries have been higher in the past as they were not receiving deliveries in bulk and they were growing turf over 15 acres only. They now receive deliveries in bulk and turf growing is across 40 acres of land since approximately April 2014. This, they state, reduces the need for deliveries to the site. As such, the deliveries in the last quarter of 2014 may be representative of future movements.

The activity is retrospective and has been occurring since March 2013; which whilst regrettable has inadvertently provided a ‘test period’. Based on the increase in turf growing land and use of bulk deliveries much of the ‘test period’ would have been when deliveries were higher than they now are. Highway officers were asked to check records for any reported highway incidents between the site and the junction with the A365 during this period; and they confirmed that whilst there have been no accidents on Redstocks Road in the past 3 years, but there have been 2 accidents on the junction of Redstocks Road and the A365.

The first record dates from 21 July 2012 and the second from 23 January 2014 – with one recorded accident since the current unlawful activity has been taking place. The accident data reveals that a westward travelling car on the A365 entered the right turn lane intended for cars travelling the opposite way on the A365. The right turn lane already had stationary vehicles in it. The car then turned right and collided with an eastward travelling vehicle going straight ahead of the A365. It is considered that this accident account was due to driver error rather than an evident fault with the highway. It does not indicate that the highway arrangements are dangerous or that any intensification in its use would result in a “severe” impact. Furthermore it is noted that both incidents recorded “cars” being involved only and there is no evidence to suggest that the commercial operation of the application site was implicated. Your officers conclude that the ‘test period’ indicates that no ‘severe’ highway impact has occurred.

It is not considered that the changes to the storage on the site have had a severe impact in terms of highway matters. The original planning approval required improvements to site drainage and access surfacing – which have been complied with and these have helped mitigate the original highway officer's concerns. There are no further reasonable highway improvements available.

Whilst the width of Redstocks road is not ideal, and there may well be some pedestrian / traffic frustrations and inconvenience, but there is no evidence of severe harm.

9.3 Impact on the character and appearance of the countryside.

The proposed variations to the existing permission would not have any harmful impact on the character and appearance of the countryside over and above the lawful situation. The site has been visited and this is a retrospective application. It has therefore been possible to see the visual impact first hand, and it is assessed to cause no harm to the rural scene and countryside. The yard condition has improved with hard standing evident at the entrance apron which has resulted in the road having much reduced levels of mud on it. Over and above a concentrated farming activity that could occur at this point, the visual impact is considered to be negligible.

Officers have considered the merits and necessity about placing a restriction on the height of storage at this site. However after careful consideration, officers submit that it would not be necessary through appreciating the existing landscaping and the type of storage uses taking place. To stack any fencing materials securely would likely require some form of operational development, which would fall within the Council's reasonable control should an application be submitted for it in the future. Conditioning such controls at this stage would therefore be unnecessary.

9.4 Neighbouring Amenity.

The changes proposed in terms of storage of materials ancillary to the lawful landscaping business use of the site would not cause any substantive harm to residential amenity over and above the lawful situation. It is noted that environmental health officers have raised no objection stating that they have "*no adverse comment*" regarding the proposals. Whilst the neighbour objections in regards to the operating hours, vehicular movements and machinery noises – including the health and safety bleeping noise of fork-lift trucks is duly noted; it is not considered that the additional storage development sought under this application, would cause harm. It is also important to record that the applicant does not propose to vary the operating hours and it is beyond the reasonable scope of this application to consider such matters.

9.5 Rights of Way.

Public footpath (MELW23) runs through the site from the access to the west where there is a crossing point over the boundary drainage ditch. The path should be accessible and safe for the public to use and should not be obstructed. It is duly recorded that the rights of way officer raises no objection; and your planning officers find no reason to disagree.

9.6 Drainage.

Previous conditions regarding surface water drainage and hard standing at the access have helped to address and limit the amount of mud being brought onto the public highway and it has achieved its intention. Conditions within the site remain quite poor but ultimately, this is considered to be a site operation / maintenance issue beyond the control of planning.

9.7 Other material considerations.

If members are minded to approve this application it is necessary to consider the other conditions (beyond 2, 3, and 4) imposed on the original application; and whether they need to be re-applied at all, and if so whether they need to be varied.

Condition 1 – This required development to be carried out within 3 years and is no longer required as the development is entirely retrospective. The condition can be deleted.

Condition 5 – This stated that *“in the event that the turf cutting operations cease, then the storage of fencing materials at the site shall also cease.”* For the avoidance of doubt it would be necessary to vary this condition to encompass the ancillary landscape storage as well.

Condition 6 – This sought access improvements which have been carried out. Therefore, the condition can be deleted.

Condition 7 – This sought drainage works which have been carried out and, this condition can also be deleted.

Condition 8 – This imposed commercial hours of use – this is instructive and no variation is sought. It should be re-imposed.

Members are further advised that the applicant’s agent has agreed to the above approaches.

9.8 Sustainable Development

Economic Impacts– The proposal if approved, would help ensure that a successful and expanding local business continues to operate and provide employment in a rural area. This is considered to have significant weight in favour of the proposals. However there will be a tipping point potentially when such drivers do not outweigh other themes and material considerations.

Social Impacts – The activity on the site provides rural employment; however it is evident that it is having negative social implications for some local residents as a result of noise and vehicular movements. Whilst it has been raised as a concern, it is important to be clear that this application does not seek to amend the operating hour restrictions as previously imposed. Officers fully recognise and have duly considered that highway safety does have a social dimension as a severe highway safety risk may pose a risk to well being.

Environmental Impacts – The proposed variation application would have a negligible environmental impact having little or no impact on ecological issues. No landscaping been removed from the site as a consequence of the development. Anecdotally it has been suggested that verges have been damaged along Redstocks Road which could be classed as a negative impact and it is appreciated that local residents may well be disinclined to walk or cycle along a road that has increased traffic movements. However, due regard must be given to the rural context of the site and its surroundings and a degree of realism applied to how often people will use sustainable travel modes. In the absence of empirical evidence to record otherwise, officers would assume most traffic movements made by local residents along Redstocks Road would be by private car.

Taking all three dimensions of sustainability into account, it is assessed that on balance, the economic dimensions outweigh any negatives and that this variation proposal may be assessed to be a relatively sustainable development within the NPPF’s meaning.

10. Conclusion (The Planning Balance)

The proposed revisions to the conditions would regulate the existing operations and development at the site without significant demonstrable harm to any planning interests. The proposal is minor in scale and it is for the intensified use of a site approved for restricted storage. There are economic benefits to take into account in terms of supporting an existing and successful business and this contributes to the sustainability of the scheme. The detailed areas of concern focus on highway and amenity considerations. With regards to amenity, no environmental health based objection was received; and, the application does not seek to vary the limitations on hours of operation. With regard to transport matters, whilst highway officers did raise an initial objection, this was later redacted in recognition of the extant lawful use for the site; and accepting that the implications from this development do not amount to a *severe* impact. Refusing the application would require

demonstrable severe harm to be identified. Failure to do so, if the application is appealed, may place the Council at risk of costs being awarded against it for unreasonable behaviour (which would very likely include the recovery of the costs incurred by an appellant commissioning a traffic impact assessment). Any relatively minor residual concern over and above the lawful position is outweighed by the economic benefits of supporting a business which remains a key priority. The application is therefore recommended for approved.

RECOMMENDATION

That planning permission be granted subject to the following conditions:

1. The development shall be completed in accordance with the hereby approved plans:

Drawing: Site Location Plan; and Drawing: LDC.1672_DOC_01

REASON: In order to define the terms of this permission.

2. Fencing materials and other materials ancillary to the landscaping business may only be stored in the areas identified for such use on drawing LDC.1672_DOC_01.

REASON: In order to define the terms of this permission; to allow the Council reasonable opportunity to consider any intensification of these activities and in the interest of highway and landscape amenity.

3. The site shall be used for the mixed use of agriculture, and the storage of fencing and other materials ancillary to landscaping only and for no other purpose.

REASON: The proposed use is acceptable but the Local Planning Authority wish to consider any future proposal for a change of use having regard to the circumstances of the case.

4. In the event that the turf cutting operations cease, then the storage of fencing materials and other materials ancillary to landscaping at the site shall also cease.

REASON: The storage of fencing materials and other materials ancillary to landscaping on the site has been accepted on the particular justification presented by the applicant which, from a business perspective, is intrinsically linked to the lawful turf cutting operation.

5. The use hereby permitted shall only take place between the hours of 07:30 and 18:00 from Mondays to Fridays and between 08:00 and 13:00 on Saturdays. The use shall not take place at any time on Sundays and Bank or Public Holidays. No delivery loading or unloading shall take place outside these hours of operation.

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.