

REPORT FOR WESTERN AREA PLANNING COMMITTEE

Date of Meeting	18 December 2019
Application Number	19/06790/FUL
Site Address	Unit 8 Atworth Business Park, Bath Road, Wiltshire, BA12 0AN
Proposal	Retrospective change of use to B8 use and proposed extension to existing building (also for B8 use), landscaping and associated works
Applicant	Braemon Holdings, Doric House, Merling Way
Town/Parish Council	ATWORTH
Electoral Division	MELKSHAM WITHOUT NORTH – Cllr Phil Alford
Grid Ref	386,762 165,787
Type of application	Full Planning
Case Officer	David Cox

Reason for the application being considered by Committee

Cllr Phil Alford has requested that should officers be minded to approve this application, it should be brought before the elected members of the area planning committee to consider the impacts on: **visual amenity, neighbouring properties and highway safety; and the application's conformity with Core Policy 34**

1. Purpose of Report

Having assessed the merits of the proposed development and tested it against the policies of the development plan and other material considerations, officers recommend 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 main issues discussed in this report are:

- The Principle of the Development (and the impact on neighbouring amenity)
- Impact on Ecology
- Impact on the Visual Amenity
- S106 Agreement Variations

Parish Council – Supportive (please refer to section 7)

Neighbours – 30 representation letters received from 17 local residents (please refer to section 8).

3. Site Description

The application site - developed out of the former Dowty Engineering site which had operated since the 1930's - 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. The current unit has a gross internal area of 1250 square metres including a mezzanine level.

Unit 9 - currently occupied by Leafield Marine Ltd - gained planning permission in 2017 (reference 16/09685/FUL) for an extension into the former Dowty Playing fields to the rear of the site – which the plan below left illustrates (extending in a western direction). This unit is immediately adjacent to unit 8 – which is the subject of this application. The 2017 approved extension is nearing completion.

The two plan inserts illustrate the relationships and proximity that established Business Park has with numerous residential properties, and most notably for the purposes of this application, No.29a and No.30 Bath Road – which are located immediately to the west of Units 6-7; and to the north and north-west of the application site.



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. Note: A copy of the s106 legal agreement is appended to this report.

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

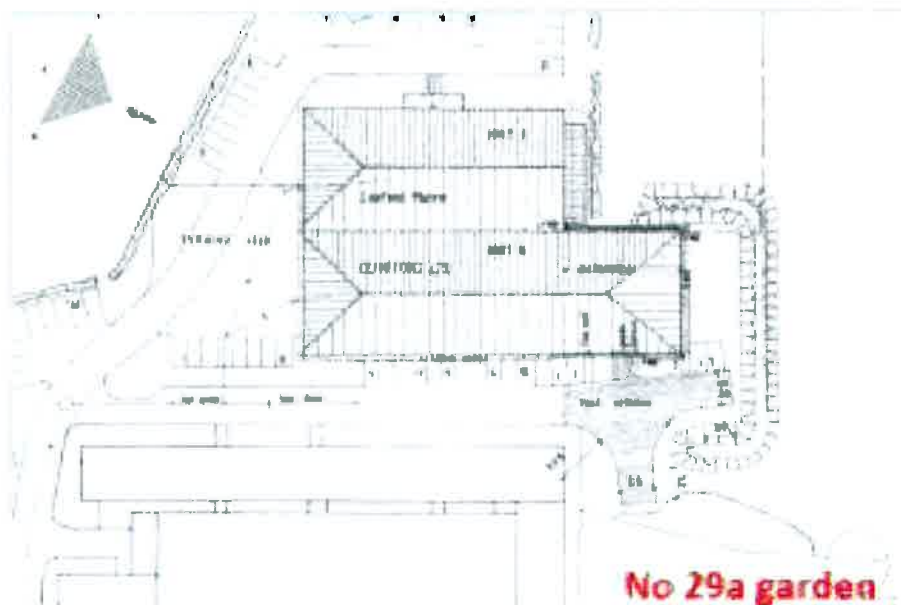
industry best practice standards and contains out of date references. Therefore, the Council has not been provided with adequate evidence and assurances that ecology has been suitably assessed through an appropriate level of survey for the purposes of formulating a robust and sufficient approach to mitigation. This is contrary to Core Policy 50 ('Biodiversity and Geodiversity') of the Wiltshire Core Strategy 2015.

It is important to note that the principle of the extension and its physical appearance were considered to be acceptable as part of the Council's appraisal of the above application.

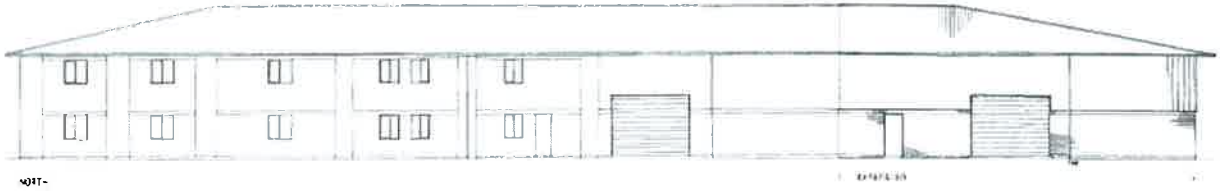
18/04589/FUL – Extension to existing building (use class B8), extension to service road, landscaping and associated works – Refused at Planning Committee on 11 May 2018 which was subsequently dismissed at appeal (under appeal ref: APP/Y3940/W/18/3216228) Note: A copy of the appeal decision is also appended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



Refused North Elevation for 18/04589/FUL

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 is currently nearing completion.

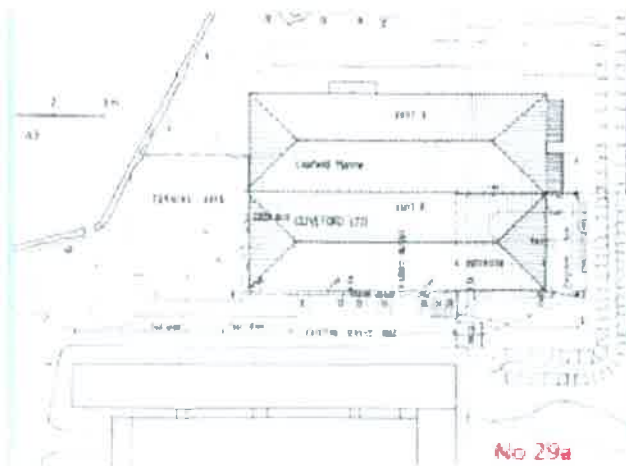
At the time of the submission of the 18/04589/FUL application, the extension at Unit 9 had not commenced on site, which explains why the extension does not appear on the proposed block plan drawing on the previous page. However, to illustrate the consented extension to Unit 9 and the proposed addition to Unit 8, the insert below left should be appraised.

5. The Proposal

This application proposal seeks planning permission to construct an extension on the western gable of Unit 8. The extension would be approximately 18-metres long and 20-metres wide and would square the building off with the extension currently being completed at Unit 9. The proposal no longer proposes a new service road or turning provision between unit 8 and No. 29a Bath Road; and the proposed development would not have a new vehicular wall opening on the extended north elevation – which were elements that formed part of the refused 2018 application – sited above.

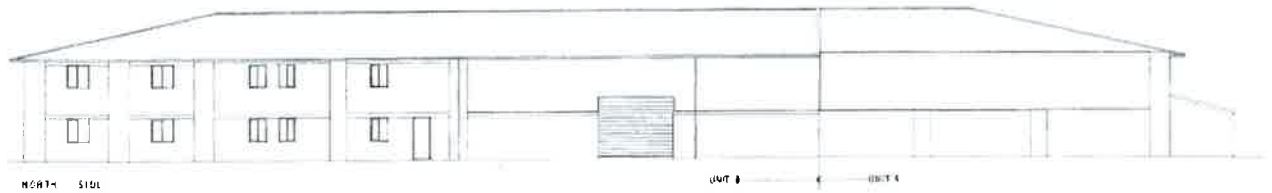
Five new parking spaces would be created at the end of the existing service road (spaces numbered 16-20). Spaces 16-18 would convert an existing grass strip alongside Unit 8 and spaces 19 and 20 would be at the end of the existing road itself. The application would also remove the existing bund and relocate it – approximately 30 metres from the existing gable of Unit 8.

The applicant’s submitted Landscape Assessment proposes to provide a 1.8m high landscaped bund. The plan also shows the retention of some existing landscaping, which understood to be the thicket with the adjoining property at No 29a Bath Road.



Proposed Site Layout





Proposed North Elevation

This application also seeks to regularise the B8 use of unit 8. This is required given that the use of Unit 8 (with or without the proposed extension) is restricted by a legal agreement that bound the approval of W/93/00116/OUT which limited the use of the business park to B1 and B2 uses only. There is no record of any permitted B8 use in the planning history for unit 8.

Any approval for Unit 8 to be used for B8 purposes would require a variation to the s106 and the recommendation to the committee as set out within section 10 reflects this additional aspect which would suspend the issuing of any grant of planning permission until the legal paperwork is completed.

The application description was varied by officers after the original validation exercise to accurately reflect the planning proposal and consultees and neighbours were re-notified accordingly.

The proposed development also seeks the Council to vary the s106 by deleting the historic reference to the provision of 'recreation sports field' – which has never been provided and is not required for planning reasons.

To support this application, and in addition to a suite of plan drawings, the applicant has submitted the following documents:

- An Extended Phase 1 Ecological Survey (Stark Ecology, dated September 2019)
- An Extended Phase 1 Ecological Survey (Stark Ecology, dated June 2018)
- A Great Crested Newt Survey (Stark Ecology, dated April 2018)
- Ecological letter regarding validity timeframe of Stark Ecology reports (Stark Ecology, dated 24 October 2019)
- Landscape and Visual Impact Assessment (Brian Wooding CMLI, August 2019)
- Revised Drainage Strategy Statement

The proposed development would dispose of surface water via a sustainable drainage system. For application 16/09685/FUL a drainage strategy was approved that restricted the discharge of surface water to 5l/per second/per hectare. This proposed development would conform to the previously approved drainage strategy.

6. Planning Policy

Wiltshire Core Strategy (WCS) 2015: CP1 Settlement Strategy; CP2 Delivery Strategy; CP15 Melksham Community Area (Atworth); CP34 Additional Employment Land; CP35 Existing Employment Sites; CP50 Biodiversity and Geodiversity; CP52 Green Infrastructure; CP57 Ensuring High Quality Design and Place Shaping; CP60 Sustainable Transport; CP61 Transport and Development; CP64 Demand Management; and 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

The Wiltshire Car Parking Strategy

Atworth Parish Plan 2010 (updated 2015)

7. Summary of Consultation Responses

Atworth Parish Council – Supports the application subject to the wildlife bund being put in place and planted with native planting, and that care is taken to mitigate against noise impacts for adjacent properties.

Wiltshire Council Ecology Officer – No objection subject to conditions

Wiltshire Council Drainage Officer – No comment to make

8. Publicity

In addition to the posted-out neighbour letters to cover the two notification processes, a site notice was displayed on a lamp post at front of the site – which resulted in 30 letters of objection/representation (from 17 residents) with some following the same template - all of which can be summarised as follows:

The Principle of Development:

- This application is a duplicate of 18/04589/FUL and like the dismissed appeal this application should be refused under policies CP1, CP2 and CP34 (including sub paragraph c)
- The proposal is also contrary to policies CP55, CP60 and CP61
- The Council will be aware, and the Inspector has given a reminder, that the Council has an obligation to be consistent in its planning decisions
- This appears to be another plan to have an extension of road access by stealth to enable property development
- There is no need for this expansion and the existing unit is empty
- Adverse increase in traffic
- This will directly compete with strategic employment sites in more sustainable locations
- Atworth Business Park is designed for starter units not for businesses of this size
- The Planning Inspector clearly stated in paragraph 26 that he has not considered all of the other points of the objection which include ecology reasons. It was not solely on amenity grounds as suggested by the applicant.
- The proposal would be of no economic and social benefit to the residents of Atworth and will not create employment opportunities for local people
- This application is not proposed out of necessity but merely through thoughtless greed and financial gain
- With just a personnel door to the extension this is the creation of a new unit
- There is a s106 on the land preventing this application

Ecology Impacts:

- The applicants Ecology survey is out of date – It says its only valid for 12 months and is dated June 2018 when this application was received in July 2019
- There have been increased bat numbers and further newts have been discovered since the last application. This proposal would be harmful to wildlife
- Atworth comes under the Bradford on Avon SAC consultation zone
- This would be contrary to Wiltshire Council's own campaign of "Put Wildlife First" where wildflower sites are encouraged to be submitted to the Council
- It is not shown in the Ecology report where the Hibernacula will be located
- The Ecology survey does not show the destruction of the thicket along the fence line of 29a Bath Road, which is important to wildlife habitat

- Wiltshire Council declared a climate emergency in February 2019 and to address climate changes, habitat destruction and resource depletion are issues that we should all be taking a stand on
- The expectation of residents is that Wiltshire Council will translate their declaration into actions
- How can a 12-month report be re-validated by a simple walk over of the site?
- Ecology protocols have not been followed
- The ecology report does not recognise the newts that neighbours find in their gardens or grass snakes

Neighbour Amenity Impacts:

- The impact on No 29a would be enormous. The building is alien and overbearing
- The building will be within 20 metres of No 29a
- The bund will allow people to look into No 29a's garden
- Increase in traffic noise for adjacent residents
- The bund will do little to prevent noise, dust, vision impediment

Other Issues:

- The landscaping conditions for W/93/00116/OUT was never implemented
- The Landscaping Impact Assessment includes the turning head and doesn't include the extension to Unit 9

Following the revision to the application description for the retrospective change of use to B8 a fresh neighbour notification exercise was undertaken – which resulted in 7 additional letters being received.

- This application is just being represented over and over again until residents roll over. This will not happen
- Confusion as to why B8 is being retrospectively applied for now
- B8 use is forbidden by the existing s106
- The correct process to change the s106 is for a s106A application to be submitted
- The traffic associated with a B8 use compared to B1 or B2 would be harmful to residential amenity
- Why has Wiltshire Council allowed the applicants to be in breach of the s106 for all this time?
- This application will be contrary to Wiltshire Council policy to "Put Wildlife First"
- If permission is given, the conditions must be met
- The applicant cannot demonstrate that there is "*no imperative reasons of overriding public interest including those of a social or economic nature*"
- The submitted ecology information is not considered sufficient

9. Planning Considerations

9a 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 the Development (and the impact on neighbouring amenity)

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 Atworth is identified as a Large Village in the Wiltshire Core Strategy and the preamble paragraph 4.25 associated to Core Policy 2 sets out 'exception policies' which seek to respond to local circumstance and national policy, which includes the provision of 'Additional Employment Land' (which is covered under Core Policy 34).

9.1.3 The first part of Core Policy 34 states that: "Proposals for employment development (i.e. uses within classes B1, B2 or B8) will be supported *within the limits of developments of Principal Settlements and Large Villages*.

Outside the Principal Settlements, Market Towns and Local Service Centres, developments that:

- i. Are adjacent to these settlements and seek to retain or expand businesses that currently located within or adjacent to the settlements; or*
- ii. Support sustainable farming and food production or*
- iii. Are for new and existing rural based businesses within or adjacent to Large and Small Villages; or*
- iv. Are considered essential to the wider strategic interest of the economic development of Wiltshire, as determined by the Council.*

9.1.4 In determining the appeal for refused application reference 18/04589/FUL (please refer to appended appeal decision) the planning inspector appraised the extension to the business park against Core Policy 34 and duly observed within paragraphs 7 and 10 that;

"Each criterion within the first set (i-iv) is followed by the word 'or', save for the last. That indicates that whilst it is necessary for at least one of those criteria to be met, it is not necessary that more than one or that all four are satisfied.

It seems to me that the most relevant criterion, in this case, is [criterion] 'iii', which indicates that developments will be supported that 'are for new and existing rural based businesses within or adjacent to Large and Small Villages.' However, the wording does not appear to indicate a requirement to identify a specific business that is going to occupy the development or that a business should already be in occupation. Moreover, the latter would be illogical as the policy would equally apply to the construction of a new building. Therefore, given that the development

would be the extension of a unit, within an existing business park, adjacent to a 'Large Village', the development would be 'for new or existing rural based businesses'. Accordingly, I consider that the proposal satisfies criterion 'iii' of the first set of criteria."

Under the recent appeal therefore, we have an appeal decision that confirms that the extension to Unit 8 would satisfy criteria (iii) and the first part of CP34 is satisfied. There is no requirement to evidence that a specific business has to be lined up to occupy the extended unit and that requiring such confirmation would be unnecessary and unreasonable.

The representation objections that raise concerns about the need for the development without an end user being in place, cannot be sustained.

9.1.5 The second part of Core Policy Core Policy 34 then stipulates that proposals that satisfy the first part of the policy must then meet all following criteria (a-e) where they:

- a. Meet sustainable objectives as set out in the policies of this Core Strategy; and*
- b. Are consistent in scale with their location, do not adversely affect nearby buildings and the surrounding area or detract from residential amenity; and*
- c. Are supported by evidence that they are required to benefit the local economic and social needs; and*
- d. Would not undermine the delivery of strategic employment allocations; and,*
- e. Are supported by adequate infrastructure."*

It should be noted that for proposals that fail to satisfy the first part of Core Policy 34, even if a proposal satisfies the second list of criteria, the proposal would be in conflict with the Policy. In this particular, there is no such conflict.

9.1.6 For refused application reference 18/04589/FUL the appointed planning inspector focused on criteria (b) as that was the main dispute between the appellant and the Council (and objectors).

As set out in the planning history section of this report, the refused application sought to extend the service road to the west and provide a hammerhead turning area within 2m of the boundary shared with No 29a. The 18/04589/FUL application also included a large vehicular entry on the extended northern elevation that would have faced No 29a. Under this application, no service road extension or hammerhead is proposed. Two new parking spaces would be provided at the end (where the red container is in shown in the image below). This revised application also does not propose an additional vehicle entry point on the northern elevation.



Existing access road alongside Unit 8



Where the two new spaces would be created

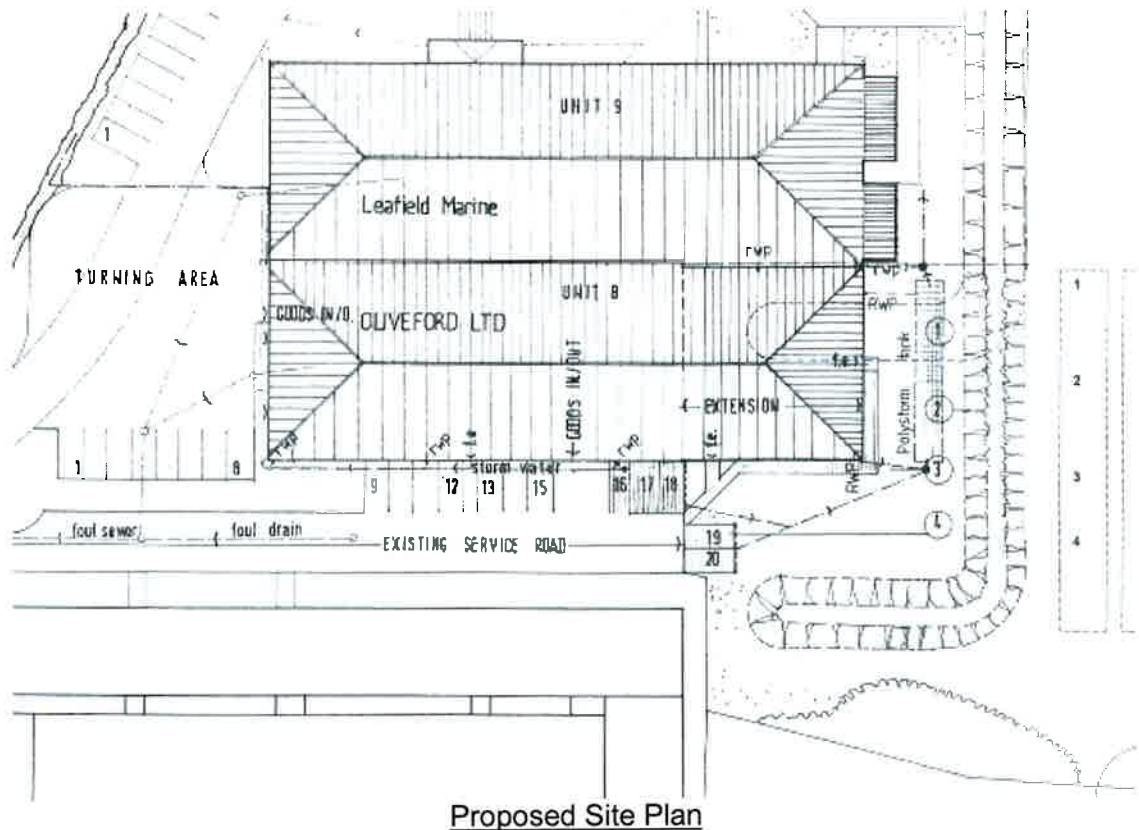
9.1.7 It is also considered important to note that the Inspector argued within paragraph 16 that:

*“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”.*

The application has been revised so that the existing access to the unit and turning area would remain in the same location (on the eastern side of the building); and it is argued therefore, that the buildings would continue to mitigate the effects of the associated business park vehicle movements on adjacent properties, including No 29a. The northern vehicle access is no longer proposed, thereby removing all potential noise, fumes and dust disturbance potential to No 29a. The only external change to the business park’s vehicle arrangements refers to the provision of five extra car parking spaces which officers conclude would cause no harm to No 29a or any other nearby land use/neighbour.



Eastern Elevation of units 8 and 9, and the loading area and car park



Proposed Site Plan

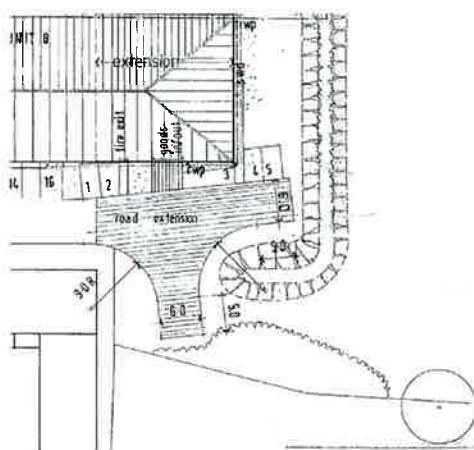
9.1.8 Officers acknowledge that delivery and vehicle patterns can be more intensive with a B8 use compared to B1 and B2. However, it should be noted that there have not been any enforcement complaints on the previous 'unauthorised' B8 use of unit 8. Within this business park setting, the proposed B8 use would be complementary rather than a harmful land use in the context of the existing business park, the site operations and the nearby neighbouring domestic properties. The applicant has informed officers that unit 8 has been used for B8 purposes for well over 10 years. Having visited the site, officers are satisfied that the proposal would not cause substantive harm to neighbouring amenity by means of disturbance from noise, dust or fumes.

9.1.9 It is considered noteworthy to mention that in dismissing the appeal for 18/04589/FUL, the planning inspector only cited noise, fumes and disturbance from commercial vehicles accessing the appeal site and maneuvering along the proposed turning head as being harmful to No 29a's "tranquil garden and patio and seating areas". The planning inspector did not reference any neighbouring harm created by the proposed extension to Unit 8. The proposed extension to unit 8 would be sited approximately 25 metres from the garden boundary of No 29a, which officers submit would be an acceptable distance to not have an adverse overbearing impact; and thus, would comply with criteria b as set out within the second part of Core Policy 34.

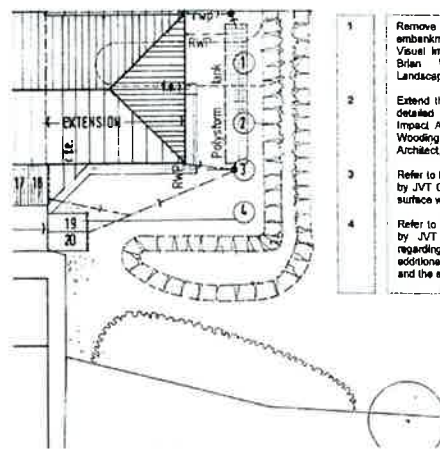
9.1.10 Moreover, the proposed 1.8-metre high landscaped bund and the physical gap to No 29a would provide an adequate buffer and mitigation. Officers recommend the imposition of a planning condition to ensure that the bund is constructed before the first occupation of the proposed extension; and that the bund is landscaped in the first planting season following the completion of the bund. It is submitted that this condition requirement would ensure that the bund that has been recently made around the extension to unit 9 would be extended and completed to enclose the extension of unit 8 and the western side of this part of the business park.

The landscaping condition would also secure and deliver essential maintenance to ensure i.e. cutting back existing overgrown landscaping. The use of a planning condition could also secure replacement landscaping to deliver biodiversity and landscape betterment.

9.1.11 The representation objections reference that people would be able to stand on the extended bund and look into the garden of No 29a. The plans show that the bund would be 1.8 metres high and would be approximately 10 metres away from the boundary and that it is proposed to be planted with new landscaping. The proposed bund is largely the same as that which was considered by the planning inspector for the 18/04589/FUL appeal. Officers submit that the proposed bund would not be any closer to No 29a and with a robust landscape treatment, the likely risks of anyone standing on the bund and detrimentally affecting third party amenity is considered negligible.



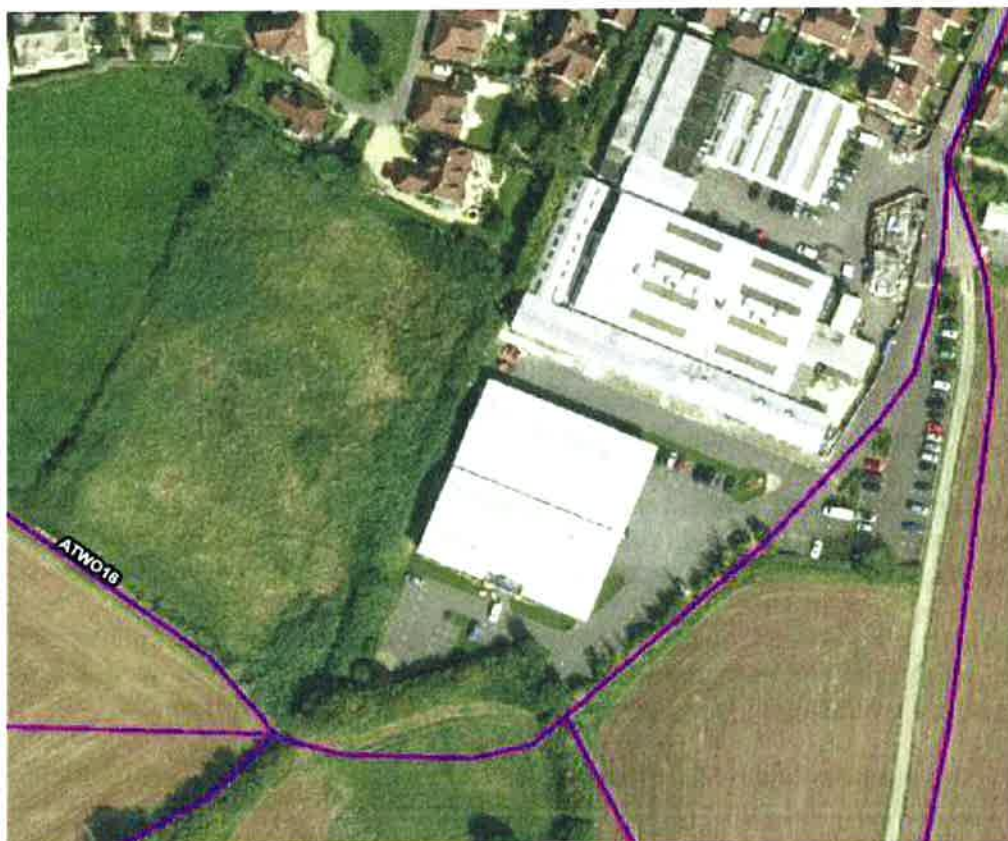
Refused Site Layout 18/04589/FUL



Proposed Site Layout Plan

- 1 Remove embankment Visual Imp Brian W Landscape
- 2 Extend the detailed in Impact Ass Wooding Architect, V
- 3 Refer to the by JVT Co surface work
- 4 Refer to the by JVT Co regarding additional p and the em

9.1.12 Officers acknowledge that public right of way ATW014 shares the access from Bath Road but passes to the east of the existing car parks and loading areas. It then joins onto ATW019 and ATW016 which passes alongside the field to which this application is extending into. Whilst the footpaths allow for access though the Business Park and past the adjacent field, it does not allow people a right to access to the field or the bund itself and remains private land. Therefore, the opportunity to use the bund in which to overlook neighbouring amenity is not considered to be very likely.



Public rights of way plan

9.1.13 Officers are satisfied that the proposed development accords with CP34 criteria b.

9.1.14 The proposal must also however, satisfy criteria a), c), d) and e) in order to have principle planning support under CP34. The following passages considers each in turn

a) meet sustainable development objectives as set out in the policies of this core strategy:

The application site forms part of the existing business park and it is not seeking approval for a completely new park. CP34 iii) allows for new development or rural based businesses adjacent to large villages, and this application accords with this criterion. Atworth has immediate access to the A365 which also has direct connectivity to the A350 and the M4 to the north and to the A4 to the west. The proposal would help improve the facilities on offer for Unit 8 thereby appealing to a wider range of potential occupants who in turn could offer employment opportunities to the local and surrounding area.

c) are supported by evidence that they are required to benefit the local economic and social needs:

Officers argue that it would not be reasonable to base a refusal on existing high employment levels in Atworth. Instead, officers recognise that there is a need for additional employment in Wiltshire to assist with delivering the Council's strategic objective of delivering and supporting a thriving economy and promoting more job opportunities especially in rural locations; that could in turn,

assist with reducing the levels of out-commuting from Atworth/the Melksham Community Area and Wiltshire as a whole to the other employment locations such as Bath and Swindon. It follows therefore, that proposals such as this, which provide additional employment opportunities, should and has officer in principle support.

The Council's economic development team have not provided any comments for this application, but as part of their assessment of application 18/04589/FUL they provided the following consultation response:

"...new industrial space is needed in the north of the county. At a recent business breakfast meeting held by Business Insider focusing on Swindon and Wiltshire one of the topics brought up as a constraint on business expansion was the lack of industrial units available to rent. I am also aware of a number of companies that are looking for space in the Melksham/Chippenham area. A recent search I conducted showed only two units available at the moment, both of which according to the agent have attracted a lot of interest."

Furthermore, in paragraph 13 of the appeal for 18/04589/FUL the planning inspector stated that:

"the appellant in the appeal before me has presented a reasonable level of evidence of demand for business units of the size proposed, as evidenced in a letter from a commercial property agent and other information regarding interest from local businesses".

In paragraph 29 of the inspector's appeal decision he concluded that:

"The proposed development would offer some benefits, including an economic benefit in the provision of additional business and employment floorspace."

B8 uses allow for the storage and distribution of goods; and not the making or manufacture of goods. The timeframe associated to the storage of goods and products can vary considerably long and, in some cases, there may not be much traffic movement associated on a daily/weekly basis and in those situations, a B8 use can be quite passive when compared to a B1 or B2 use. Therefore, whilst the extension might not create a single additional new job, it would in the very least help maintain the existing business park and the level of jobs by improving the quality and amount of space within the unit, and thereby widen the appeal of the building to a broader range of potential businesses.

d) would not undermine the delivery of strategic employment allocations:

In determining the recent appeal for refused application 18/04589/FUL, the planning inspector noted that:

*"the appellant describes the scale of the extension as relatively modest which would limit the extent of that *economic* benefit, relative to that already generated by the existing unit."*

The proposed extension at approximately 378sq.m (representing a 30% increase on the existing unit) is considered comparatively small scale which would not impact the delivery of strategic employment allocations elsewhere across the County.

e) are supported by adequate infrastructure:

The application site is supported by adequate infrastructure – i.e. roads, car parking, foul sewer system and gas/water/electric connections.

9.1.15 On the basis of the above, the application proposal is considered to accord with Core Policy 34 and is compliant with Core Policies 1 and 2 by virtue of being a development being advanced as part of the Council's adopted 'exception policy'.

9.1.16 The representation objections have raised concern that this is an “*application by stealth*” and that the extended unit would only be accessible by an internal pedestrian door and would therefore constitute a new unit (which will require its own separate external access). For the avoidance of any doubt, internal works and alterations to the internal layout is not development that requires planning permission. Therefore, if permission is granted the applicant can use the internal space in any configuration they deem fit for B8 use purposes. Additionally, should the applicant wish to extend the service road or make additional external alterations this would constitute as operational development that would require further planning permission. It would also be open to the Council to consider the necessity of restricting any new openings being created on the proposed extended northern elevation under permitted development rights; and require a planning application for any such works. The applicants (and the Council) are well aware of the planning inspector’s appeal decision that proposed having industrial activity in this location of the application site adjacent to the garden boundary with No 29a. This current application cannot therefore be reasonably be considered as an “*application by stealth*”.

9.1.17 The public representations refer to paragraph 26 of the Inspector decision which states:

“A number of objectors have raised a range of issues...including effects on protected species. However, it is not necessary for me to consider those other matters in detail here, as I have dismissed the appeal on other substantive grounds.”

It must be appreciated that in dismissing the appeal, the planning inspector only identified harm to neighbouring amenity and not ecology. That said, under this fresh application, officers have re-assessed the application’s compliance with Core Policy 50 – Biodiversity and Geodiversity along with an up-to-date consultation with the Council’s ecologist and this is duly appraised next.

9.2 Impact on Ecology

9.2.1 Core Policy 50 requires development proposals to demonstrate how they protect features of nature conservation and geological value as part of the design rationale. There is an expectation that such features shall be retained and managed favourably in order to maintain their ecological value, connectivity and functionality in the long term. All development proposals shall incorporate measures to avoid and reduce disturbance of sensitive wildlife species and habitats throughout the lifetime of the development.

9.2.2. Representation objections have highlighted that the applicants submitted Ecology survey is out of date because it states that it was only valid for 12 months (as it was dated June 2018 when the application was received in July 2019). The objectors state that a new survey should be undertaken when the protected species are known to be active i.e. next year 2020.

9.2.3 The applicant’s Ecology consultant has since further clarified why the ‘*valid for 12 months*’ statement was made in their original survey which include;

- To prevent reports being used by clients in perpetuity and for evolving schemes
- The management of a site and the habitat surrounding it can change and this may have an impact on the ecological value of a site
- Survey guidelines and available information may change and so reports and advice they contain should be received and updated on a regular basis to ensure that remain current.

“Survey data is often considered valid and reliable for longer than 12 months and, in the case of survey data for great crested newt population assessment, is considered to be reliable and valid for a period of at least 2 years when applying for a Natural England great crested newt mitigation licence. Update population assessment surveys might be recommended sooner where ecological conditions have changed significantly, but where ponds and terrestrial habitat remain in the same or a similar state to that when the original surveys were carried out, update population assessment surveys would not be recommended.”

Therefore the “*valid for 12 months*” comment is not based on Ecological guidelines as is a self-imposed restriction by the applicant’s consultant ecologist. The Council’s ecologist has confirmed that ecology surveys are valid for 24 months – meaning that the June 2018 survey is valid. The Council’s ecologist has no objection to the proposal.

9.2.4 The Council’s ecologist has provided the following very detailed consultation response:

The Executive Summary to the *Extended Phase 1 Ecological Survey* (Stark Ecology, September 2019), hereafter referred to as ‘the Phase 1 report’, provides a summary of the ecological survey work undertaken since 2018 together with a rationale to explain the purpose of the 2019 update survey as follows: *‘Surveys carried out during 2018 included an emergence survey for bats and great crested newt surveys of ponds located within 500m. In September 2019 an update visit to the site was carried out to assess any change to the condition of the site and any resulting change in the potential of the site to support protected species.’*

Bats - With respect of the survey undertaken for bats, which comprised a preliminary roost assessment (PRA) (internal and external inspection) of Unit 8, and one dusk emergence survey in May 2018, I am satisfied the survey method was appropriate and in accordance with best practice survey guidelines. The PRA concluded: *‘Unit 8 is not considered to support a bat roost and no further surveys for bats are recommended prior to works to extend the building being carried out.’* This was augmented by the emergence survey as no bats were observed emerging from the building.

The Phase 1 report does highlight however that: *‘During the emergence survey in May 2018 commuting and foraging by common bat species was noted over the scrub and grassland to the west of Unit 8.’* Therefore, the reports propose the following measure with respect of lighting at the site: *‘In order to protect this resource for bats to continue to use for commuting and foraging, no new external lighting will be installed on the western face of Unit 8, or in the turning bay. This will avoid light spill onto the field to the west (and beyond) and allow bats to continue to use the site when commuting and foraging through the wider landscape.’*

The proposal to not install new external lighting is advocated in order to reduce potential for light spill on to areas of adjacent habitat that are used by commuting and foraging bats, and habitat to be created within the application site, primarily the native tree and shrub planting, that should serve as suitable foraging habitat in the long term. The response from the Council’s ecology team to application 18/04589/FUL requested a condition requiring no new external artificial lighting at the application site. **Similarly, the condition pertaining to lighting set out under the respective heading below should be included within the planning permission.**

In addition, the Design and Access Statement (DAS), *Landscape and Visual Impact Assessment* (LVIA) and Site Layout Plan (Drawing no. VL.2019/10/06, Rev. 19 August 2019) proposes the creation of a replacement 1.8m high embankment which will be enhanced by the planting of native trees and shrub, and the slopes and top of the bank will be sown with a wildflower grassland mix (Emorsgate E12). It is expected that this will provide a benefit for wildlife longer term, including commuting and foraging bats.

Reptiles - The Phase 1 report identifies that: *‘The site supports suitable habitats (grassland and scrub) for use by common reptile species and there is a recent record (May 2018) of a grass snake within 100m.’* It goes on to conclude: *‘It is assumed that a population of common reptile species is present within the development area.’*

Therefore, a mitigation strategy for reptiles is proposed within the Phase 1 report which will entail translocating reptiles from the proposed development area and will be undertaken alongside the

mitigation strategy proposed for great crested newt (discussed later in this response). **I am satisfied this approach is appropriate and request inclusion of the condition set out later in this response.**

Nesting birds - In terms of breeding birds, the Phase 1 report states: *'Little vegetation that is suitable for nesting birds has been identified within the site boundaries but a starling was noted nesting in a feature on the western aspect of Unit 8 during May 2018. Works to this area of the building must avoid the nesting season (which is March – August, inclusive) and nest boxes will be provided to compensate for the loss of this nest site.'*

The recommendation to avoid works to the area of the building known to support nesting starling during the breeding season for birds is supported. Whilst I appreciate that the Phase 1 report identifies limited suitable vegetative habitat for nesting birds, there may be potential for further scrub growth prior to the commencement of works that could result in some suitable nesting opportunities. Therefore, as per the recommendation with regards to Unit 8 and nesting birds, I suggest a similar precautionary approach is adopted with respect of the clearance of scrub and that this is avoided during the nesting season as far as reasonably practicable. Where scrub clearance within the nesting season is necessary, the absence of active nests should be confirmed by a suitably qualified and experienced ecological consultant immediately prior to the proposed clearance, or within the preceding 24 hours if this is not possible. The Phase 1 report stipulates what should be undertaken in the event that any active nests/nests under construction are found.

Compliance with this precautionary approach and the measures set out within the Phase 1 report with respect of nesting birds should be ensured by means of the condition stipulated under the respective heading below.

Given that the proposed works will result in the loss of a starling site nest site, as indicated in the extract above, it has been proposed within the Phase 1 report to install three starling nest boxes on the western aspect of the extension to Unit 8. This is welcomed; however, it appears that none of the submitted plans accompanying the application or within the Phase 1 report illustrate the incorporation of the proposed nest boxes within the built design. **Therefore, a site plan that shows the intended location of the proposed nesting provision should be secured by means of the planning condition set out below so that incorporation of these features forms an enforceable part of the planning permission.**

Badgers - With regards to the potential for the application site to support badger setts or be utilised by badger for foraging or movement across/through the site, the Phase 1 report states: *'No setts, latrines, snuffle holes or animal pathways were found within the site boundaries or in the field to the west to indicate that badgers are present at this site.'* Nonetheless, a precautionary approach and suitable mitigation measures are proposed within the Phase 1 to safeguard badgers and other animals during the construction phase of the proposed development, and this is supported. **Compliance with these measures should be ensured by means of the condition set out below which I request be attached to the planning permission.**

Great Crested Newts (GCN) - The updated Phase 1 report contains full details of the GCN survey method, results and assessment, as well as a proposed mitigation strategy. The approach to survey for GCN has comprised a Habitat Suitability Index (HSI) assessment of ponds identified within a 500m search parameter from the application site boundary. This is in line with good practice survey guidelines and standing advice from Natural England (NE) regarding the scope of assessment required to inform the collation of ecological baseline data to be used to accompany planning applications. It is noted that the application site does not contain any potential aquatic habitat for GCN.

The information presented in the Phase 1 report demonstrates that reasonable steps were taken to gain access to all ponds within 500m of the application site in order to conduct HSI assessments

and determine which ponds required targeted pond survey for the purposes of establishing the presence/likely absence status of GCN. Only access to the ponds referred to within the Phase 1 report as Pond 1 - 4 was permitted initially and as such these ponds were assessed on 14th March 2018; this therefore allowed sufficient time to commence targeted pond surveys within the appropriate survey season and in accordance with good practice survey guidelines. With regards to other ponds within 500m, the Phase 1 report explains that: *'Access to the ponds in gardens to the north of the site (ponds 5-8) was only agreed on 18th May 2018 and these ponds were assessed against the HSI criteria on this date.'*

A pond survey entailing three techniques in line with survey guidelines, comprising bottle trapping, torching and egg searching, was undertaken for Ponds 2 - 4 during the optimal survey period. An environmental DNA (eDNA) survey was also conducted for Ponds 2 and 3 which entailed collecting water samples from the ponds on 28th April 2018 for analysis.

It is recognised that presumably in order to address the issue of late access to Ponds 5 – 8, which evidently precluded the possibility of surveying these ponds using the three survey techniques aforementioned, eDNA survey of these ponds was undertaken instead. The Phase 1 report stipulates: *'Water samples were taken from two garden ponds (ponds 5a and 7) to the north of the site on 18th May 2018.'*

The results of the pond survey and eDNA survey presented in the Phase 1 report were as follows: *'The results of bottle trapping, torchlight surveys and egg searches of ponds 2-4 identified a small population of great crested newts in pond 4 and no great crested newts in ponds 2 and 3. The negative results for ponds 2 and 3 were confirmed through eDNA tests of these waterbodies... ...Environmental DNA (eDNA)*

Ponds 5-8 were assessed by the surveyor on 18th May 2018 and eDNA tests of these ponds were carried out. It had not been possible to gain access to these ponds before this date and so the results for these ponds indicate presence/absence only and do not give an indication of population size. Ponds 5a and 5b are negative for great crested newts and pond 7 tested positive for great crested newts. eDNA tests were not conducted on ponds 6 and 8 as great crested newts were visible in the ponds at the time the surveyor visited site.'

It is deemed that the scope of survey, method and survey timing is in accordance with industry best practice and species-specific survey guidance and is compliant with NE standing advice for survey parameters for GCN assessment. Likewise, necessary and reasonable steps were taken to gain access to all ponds within the 500m survey parameter with the aim of obtaining comprehensive ecological baseline data, and that the use of eDNA survey for those ponds whereby access was granted late in the survey season was a sensible approach to at least provide presence/likely absence data in lieu of a full pond survey and population size class assessment; the latter being required if GCN are found to be present. Therefore, a sufficient level of ecological baseline data that is up to date and valid to support this application (data validity qualified later on) has been provided to the Council to enable a suitably informed response to the application from an ecological stance, and to in turn inform the planning decision.

The HSI assessment, pond survey and eDNA survey were conducted between March and May 2018. The updated Phase 1 report was produced in September 2019 and was informed by a site visit; the report states: *'The update survey on 5th September 2019 included an update walkover survey of the development site, including a building inspection for bats of Unit 8. Ponds 1-4 were visited to assess any change to the potential of these waterbodies to support great crested newts during the breeding season.'*

In terms of whether the ecological conditions at the application site were considered to have materially altered since the Phase 1 habitat survey, bat survey and GCN survey were carried out in 2018, the Phase 1 report stipulates: *'At the time of the update survey carried out in September*

2019 the terrestrial habitat the site supports continued to provide suitable habitat for great crested newts, including for hibernation. The condition of ponds 1-4 was similar to that recorded during 2018 and so the results of the surveys carried out between March and May 2018 are still considered to be accurate and reliable.'

The update Phase 1 report includes recent photographs and accompanying information and descriptions, and it is considered that the updated assessment of the terrestrial habitats within the application site, and of the aquatic habitat off-site, are sound. With regards to the assessment, conclusions and recommendations pertaining to GCN presented in the Phase 1 report, it states: *'The grass and scrub in the field immediately to the west of Unit 8, where the new extension is proposed, supports suitable terrestrial habitat for great crested newts, including hibernation opportunities in the earth bank. Surveys of ponds within 500m of the site have identified a population of great crested newts in some of these ponds and peak counts suggest that this is a "small" population (although there is anecdotal evidence that the population in pond 6 is a "medium" population).*

Under the proposals for this site, the extension to Unit 8 and associated parking/turning will result in the loss of 0.1Ha of terrestrial habitat for great crested newts within 100m of their breeding ponds. Due to the proximity of the development to ponds where great crested newts are known to be present, and the excellent habitat connectivity between the pond and the site, an offence is likely to be committed if development work is carried out without a licence from Natural England. This has been assessed using the Rapid Risk Assessment Tool provided by Natural England... It will be necessary for great crested newts to be excluded from the development area before any works commence and the exclusion will have to be carried out under licence from Natural England.'

It is considered that the above constitutes a sound assessment in accordance with industry best practice, species specific survey and mitigation guidelines and NE standing advice. I concur with the outcome of the rapid risk assessment, and the conclusion that a mitigation licence will need to be obtained from NE in order to permit the works to proceed lawfully by means of a legal derogation from the Conservation of Habitats and Species Regulations 2017 (as amended).

A GCN mitigation strategy, which will entail an exclusion and translocation exercise, is presented within the Phase 1 report. In terms of the time of year that the exclusion and translocation programme would need to take place, the report states: *'Exclusion and drift fencing and pitfall traps will be installed when newts are active and trapping will be carried out when newts are active, at a time of year when frosts or extended periods of dry weather are not anticipated.'* Whilst this is correct, a more prescriptive stipulation with respect of the active season and the period over which the works will be scheduled is needed and will be necessary for the purposes of the mitigation licence application, and to inform the applicant and their works schedule. This is necessary as the exclusion fencing/pitfall trap installation and subsequent trapping and translocation programme will need to be implemented in advance of other site works to ensure GCN are not present within the works footprint when development commences. NE standing advice stipulates that capture and release methods for the purposes of reducing the potential for GCN to be killed, disturbed or injured should entail capturing GCN during the active season, between February and October.

In terms of the proposed duration of the exclusion and translocation period, the report sets out the following approach: *'As the site is understood to support a small population of great crested newts, a minimum of 30 trapping nights will be required...If great crested newts are still being trapped towards the end of the 30 trapping nights Natural England will be contacted to request an extension to the licence and trapping will continue until there are five clear trapping nights.'*

Given the albeit unverified anecdotal evidence of a medium GCN population at Pond 6, which is acknowledged in the Phase 1 report, and the fact that only presence/likely absence status was established for Ponds 6, 7 and 8 rather than a population size estimate, it may be prudent to consider working on the basis that a minimum of 60 trapping nights would be needed in accordance

with the approach for trapping of a medium population as set out in the GCN mitigation guidelines and NE standing advice, and to complete the mitigation licence application accordingly. This may also be a more realistic timeframe for the purposes of informing the overall works schedule and I would suggest this is given consideration by the ecological consultant and applicant.

The approach to GCN mitigation presented in the Phase 1 report states: *'Animals trapped during exclusion work will be released on the off-site side of the exclusion fence. There will be sufficient terrestrial habitat for great crested newts in the field to the west of the development site when construction works are completed to retain the population in-situ.'*

The strategy proposes to translocate GCN, and likewise any reptiles encountered (as discussed earlier), to the field immediately west of the application site, however the receptor site has not been delineated on Figure 24 or any other plan submitted alongside the mitigation strategy. The Site Location Plan appears to indicate that the proposed receptor site lies within the land ownership boundary of the applicant, however this has not been clearly annotated on the plan or denoted in an associated key, and therefore confirmation should be provided by the applicant that they own this land. The Council will also need to be furnished with information to demonstrate that the proposed receptor site will be maintained and managed as suitable habitat for GCN and reptiles in the long term.

In addition, Figure 24 in the Phase 1 report indicates that three hibernacula are proposed to the immediate north of the proposed exclusion fence location, and the report states: *'Habitat piles will be created in quiet areas of the site to the north of the new extension, close to the ponds in the gardens to the north. Artificial hibernacula can be created from dead wood, rubble and other materials used during construction...'* It is assumed that these features are proposed as permanent refuge/hibernation features to serve as compensation in part (a replacement earth bund is also proposed) for the loss of the existing earth bund, and as such these features will need to be retained and available for GCN/reptiles in perpetuity. Furthermore, the construction of the hibernacula should be undertaken in advance of the exclusion and translocation exercise, particularly if the aforementioned proposed habitat features are intended to serve as suitable refuge areas in which to release any GCN that have been captured within the exclusion area, as is assumed to be the case. The approach set out in the Phase 1 report doesn't appear to stipulate when the hibernacula will be created in relation to the capture and translocation exercise and this will need to be addressed.

It is also noted that the hibernacula are proposed in close proximity to the exclusion fencing and I would highlight that the works required to install the fencing should not encroach upon or compromise the structure of the hibernacula. In addition, the close proximity of the proposed hibernacula to the northern extent of the proposed exclusion fence line may increase the risk that translocated GCN/reptiles could re-enter the exclusion area if there were to be any breaches of the fencing that are not immediately repaired. Therefore, it would be prudent to consider adjusting the proposed location for the hibernacula with a view to increasing the distance from the exclusion fencing whilst ensuring that a location still close to Ponds 6, 7 and 8 is selected; perhaps within the northwest section of the field.

To address these issues, it is requested that a condition requiring the submission of a finalised GCN mitigation strategy prior to the commencement of works, is included within any planning permission granted. The finalised strategy should clearly show the proposed receptor area on a site plan showing its location in relation to the exclusion area. The positioning of the hibernacula should be reviewed in light of the comments above and adjusted accordingly where feasible on an amended plan. The strategy should include a schedule of activities indicating the order and approximate timing of mitigation works and stipulate when capture and translocation will take place i.e. the period comprising the active season; and specifying the timeframe for creation of hibernacula in advance of the translocation of GCN and reptiles. The finalised strategy should also address the other issue raised earlier in this response regarding the advice to consider

a minimum 60 trapping night period rather than 30. The strategy should also clearly specify when supervision by and/or input from a suitably licensed, qualified and experienced ecological consultant will be undertaken and required.

Great Crested Newt Mitigation Licence - On account of the potential for the proposals put forward within this application to potentially affect the European protected species (EPS) Great crested newt, and the need for acquisition of a mitigation licence from NE, the application must be considered with regard to the three licensing or 'derogation tests' set out in Regulation 55 of the Conservation of Habitats and Species Regulations 2017 (as amended) (referred to hereafter as 'the Habitats Regulations 2017'). The three tests that must be satisfied to enable NE to grant a license are as follows:

- *Regulation 55(2)(e): [the activity to be licensed] must be for the purpose of preserving public health or public safety or other imperative reasons of overriding public interest including those of a social or economic nature and beneficial consequences of primary importance for the environment;*
- *Regulation 55(9)(a): there [must be] no satisfactory alternative; and*
- *Regulation 55(9)(b): the action authorised will not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range.*

In this particular case, it is deemed that the Council has been provided with sufficient information to facilitate an assessment of the potential effects of the development proposals upon GCN, and whether those effects can be suitably mitigated. The Council's ecology team has also been provided with adequate information to demonstrate what measures can be put in place to satisfy Regulation 55(9)(b), and to inform a judgement regarding whether a EPS mitigation licence would likely be forthcoming from NE in regards to the 'favourable conservation status' test. **Nonetheless, as also highlighted by the Council's ecology team in relation to 18/04589/FUL, the planning officer will need to consider whether sufficient evidence has been provided to demonstrate that the application will satisfy the 'imperative reasons of overriding public interest' or 'IROPI' test (Regulation 55(2)(e)) and the 'no satisfactory alternative' test (Regulation 55(9)(a)). If evidence to demonstrate that these two tests can be satisfied is considered to be lacking, the planning officer should request further information be provided by the applicant or their agent/planning consultant.**

In respect of the assessment of the potential effects upon GCN, it is considered that the development proposals could result in the contravention of the Habitats Regulations in the absence of suitable mitigation and compensation and a EPS mitigation licence. This is on account of the loss of and/or damage to terrestrial habitat within 100-250m of GCN breeding ponds that support a small, potentially albeit unverified, medium population, and the accompanying risk of injury to and/or killing of, any animals using that habitat. Nonetheless, the implementation of the mitigation and compensation measures proposed within the Phase 1 report including three hibernacula, and the creation of a replacement earth bund which will be planted with native trees and shrubs, and sown with a wildflower grassland mix, can reasonably be expected to offset the potential loss of the existing earth bund. Moreover, the existing earth bund comprises a relatively small area of terrestrial habitat in comparison to other suitable habitat which is also present with the 250-500m range that GCN will disperse over from their breeding ponds, and which also have connectivity with Ponds 6, 7 and 8. In addition, it is understood that the existing earth bund to be lost, constitutes a relatively recent feature, and the description in the Phase 1 report of the scrub and vegetation on the bund suggests a lack of structure and maturity.

The main issue appears to be the proximity of the existing bund to Ponds 6, 7 and 8 and the risk of injuring and/or killing any GCN that may be using the bund and surrounding habitat during the

proposed works, rather than pertaining to the loss of significant areas of habitat. This is considered especially likely given that the proposals indicate the vegetation along the northern boundary of the field west of Unit 8 will be retained and therefore still available to GCN. This vegetated field boundary lies in closer proximity to Ponds 6, 7 and 8 than the existing earth bund, and a review of aerial imagery indicates that it affords suitable terrestrial habitat for GCN. Furthermore, the vegetation along the northern boundary of the field has connectivity with the hedgerow delineating the western boundary of the field, and this will also be unaffected by the proposed development. These field boundaries will therefore continue to be available as foraging/refuge/hibernation habitat, and to function as a potential dispersal route facilitating movement of GCN from their breeding ponds through the landscape.

Thus, on the basis that the mitigation and compensation measures submitted to the Council for consideration are strictly adhered to, it is assessed that the development proposals will not detrimentally affect the conservation status of the species. It follows, therefore, as per the conclusion also put forth in the Council's ecology team response to application 18/04589/FUL, that the third licensing test can be met, and that the favourable conservation status of GCN can be maintained, subject to securing the mitigation, compensation and enhancement measures proposed within the Phase 1 report and LVIA, by means of the condition set out under the respective heading below.

Concluding Comments - It is deemed that a suitable level of ecological information has been submitted to the Council to inform the determination of the planning application, and that an appropriate and robust approach to assessment and mitigation has been undertaken in line with industry best practice and good practice survey guidelines. It should be noted that I objected to application 17/05785/FUL in 2017 that formed the sole reason for refusal of that application. As such, the current application has been reviewed with due regard to the comments I provided in relation to the aforementioned application, with a view to ensuring that the current application addresses all previous concerns; an approach also adopted by my colleague during the review of application 18/04589/FUL in 2018. Furthermore, application 18/04589/FUL was not subject to an objection from the ecology officer, and the current application does not significantly differ in scope from that application.

On the basis that the proposed development is undertaken in strict accordance with mitigation measures proposed within the submitted ecology reports in respect of GCN and other protected species that are known to occur, or have potential to occur at the application site, including reptiles and nesting birds, and that a GCN mitigation licence is obtained from Natural England, it is deemed that the application does not contravene the National Planning Policy Framework (NPPF) 2019 or Core Policy 50 (CP50) of the Wiltshire Core Strategy (adopted January 2015). The development can proceed without contravention of relevant wildlife legislation, primarily the Habitats Regulations 2017 and Wildlife and Countryside Act 1981 (as amended), providing a GCN mitigation licence is obtained from Natural England prior to commencement of development works and the consented mitigation strategy is strictly adhered to; and the planning conditions set out below are fulfilled.

Furthermore, the proposed replacement earth bund, to be planted with native trees and shrubs and sown with a wildflower grassland mix as indicated in the LVIA, together with the ecological compensation and enhancement measures proposed within the Phase 1 report, including hibernating and refuge habitat for GCN and reptiles, and nesting provision for birds, should provide a gain for biodiversity in the longer term.

As is the duty of the local planning authority's ecology team, the application has been considered with respect of the third licensing or 'derogation test' under the Habitats Regulations 2017, and it is judged that Natural England would likely grant a mitigation licence to allow the works to proceed lawfully. It should be noted that a EPS mitigation licence will not be granted by Natural England until planning permission has been given and all relevant planning conditions have been discharged.

Validity of Ecological Survey Data - An updated Extended Phase 1 habitat survey was undertaken in September 2018 to verify that ecological conditions within the application site, and at the ponds within 500m, had not substantially or materially altered since the 2018 ecological surveys. This updated report served to augment the data collated and submitted in 2018.

A letter has been submitted to the Council by Stark Ecology Ltd (Stark Ecology Ltd, 24th October 2019) which provides a rationale for the caveat stipulated in the ecology reports regarding the report being valid for twelve months. This is a common and prudent caveat placed on ecological reports by most consultancies for the reasons clearly specified within the aforementioned letter. The letter also highlights that the twelve-month validity period relates to the report itself to ensure it isn't used in perpetuity, rather than pertaining to the validity of the survey data contained therein.

The letter also specifies: *'Survey data is often considered valid and reliable for longer than 12 months and, in the case of survey data for great crested newt population assessment, is considered to be reliable and valid for a period of at least 2 years when applying for a Natural England great crested newt mitigation licence. Update population assessment surveys might be recommended sooner where ecological conditions have changed significantly, but where ponds and terrestrial habitat remain in the same or a similar state to that when the original surveys were carried out, update population assessment surveys would not be recommended.'*

The timeframe over which ecological survey data submitted in support of planning applications can be considered as valid by local planning authorities is not defined in legislation. Therefore, the approach adopted at Wiltshire Council is that ecological data submitted in support of planning applications is generally considered valid for a maximum of two years. However, there are instances whereby ecological data may be considered invalid or 'out of date' before two years lapses, such as when there have been material changes to conditions at the application site or within the potential zone of influence, and in these cases the Council's ecology officer will use professional judgement to determine whether the submission of updated ecological survey data will be requested.

The approach adopted by the Council's ecology team, and the period of time that ecological data is deemed to be valid by the Council for the purposes of supporting planning applications accords with guidance from the Chartered Institute of Ecology and Environmental Management (CIEEM)¹ and industry best practice as set out in Section 8 of BS 42020:2013.

9.2.5 Given the Council's ecologist's full and robust consultation response above, planning officers argue that the application is acceptable and in conformity with Core Policy 50 and the NPPF, subject to the recommended conditions.

9.3 Impact on Visual Amenity

9.3.1 In design terms, the proposed small extension would 'sit' alongside the already permitted extension to Unit 9 which is under construction and that the proposed development would match it in terms of design and materials. The elongation of the existing building and its detailed design are appropriate for an employment building in this setting. The proposal would, therefore, comply with CP57 of the Wiltshire Core Strategy.

9.4 S106 Agreement Variations

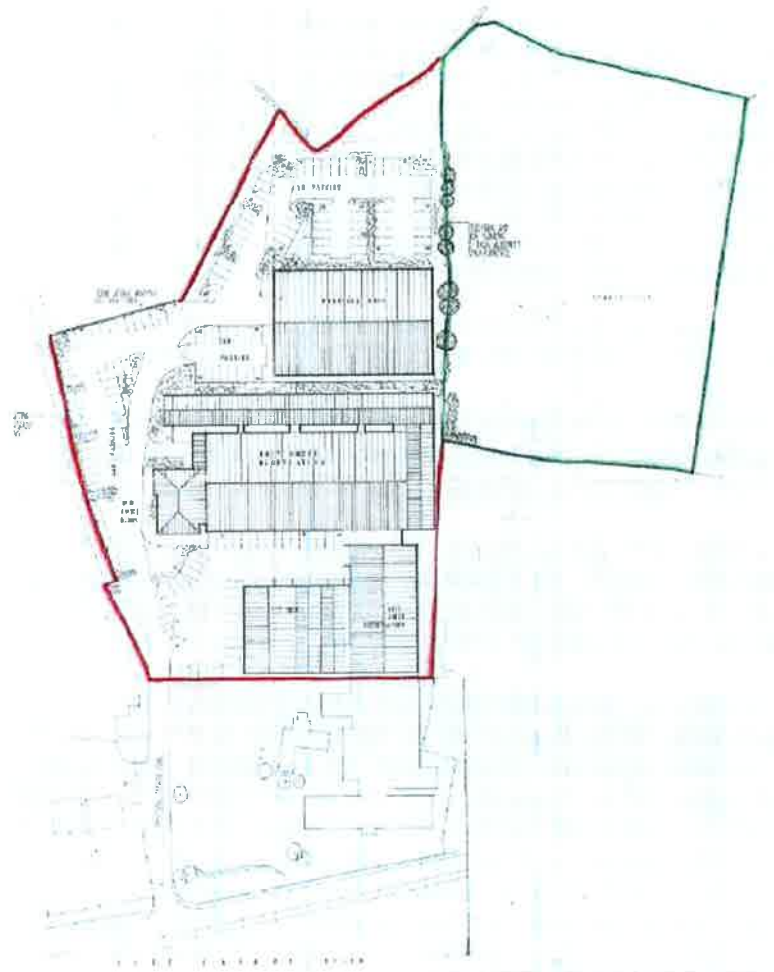
9.4.1 Members are advised that the original application that application W/93/0116/OUT was subject to a s106 agreement which was signed and sealed on 22 September 1994. A full copy of the s106 is appended to the report. It is noteworthy to report that the s106 contained two restrictive clauses which are reproduced below, that covenanted the owner to retain land edged in green – which is the adjacent field (located to the west of Units 8 and 9 and to the south of No 29a and No

30 Bath Road) in perpetuity for the purposes of providing sports and recreation (Clause 2a) and, that all the units to be delivered in the business park pursuant to the 1993 outline were restricted in terms of land use to B1 and B2 only (clause 2b). Officers submit that Clause 2a should be discharged and Clause 2b to be varied.

2. The Owner covenants with the Council as follows:-

a) The land edged green on the attached plan shall be retained ⁱⁿ perpetuity for the purposes of providing sports and recreation

b) The land edged pink on the attached plan shall be used solely for the uses contained within Class B1 and B2 of the Town and Country Planning (Use Classes) Order 1987 as written at the date of this Agreement notwithstanding any modification or repeal thereof



Site Plan in the s106

9.4.2 Planning Practice Guidance paragraph 020 Reference ID: 23b-020-20190315 advises that:

“Planning obligations can be renegotiated at any point, where the local planning authority and developer wish to do so. Where there is no agreement to voluntarily renegotiate, and the planning obligation predates April 2010 or is over 5 years old, an application may be made to the local planning authority to change the obligation where it “no longer serves a useful purpose” or would continue to serve a useful purpose in a modified way”.

The statutory provisions underpinning this guidance is set out within Section 106 A (6) of the Town and Country Planning Act, 1990 which states that:

“ Where an application is made to an authority [under subsection (3)], the authority may determine (a) that the planning obligation shall continue to have effect without modification; (b) if the obligation no longer serves a useful purpose, that it shall be discharged; or (c) if the obligation continues to serve a useful purpose but would serve that purpose equally well if it had effect subject to the modifications specified in the application, that it shall have effect subject to those modifications.

9.4.3 Officers are aware that clause 2a associated to the aforesaid s106 was previously reported to committee when application 18/04589/FUL was subject to member consideration. The 2018 committee report stated the following:

9.7 Section 106 Agreement

The application site is subject to a Section 106 (S106) agreement made in 1994 restricting the use of the land to the rear of the estate (including the land proposed to be used for the erection of the extension), to sports and recreation purposes. The land was historically used until 1992 as a private sports ground, ancillary to the use of the then adjacent works. The Section 106 agreement made no provision for public use of the site for recreational purposes. The then District Council subsequently sought to designate the land as recreation space in the West Wiltshire District Plan in 2004 but the Local Plan Inspector recommended modifying the plan by removal of the proposed designation as it served no useful purpose and there was a suitable public recreation facility close by. This was accepted by the District Council. Subsequently, the District Council produced a Leisure and Recreation Development Plan Document in 2009 that sets out existing sports and recreation facilities that should be protected. This site was neither identified nor included in that plan. There are no planning policies in the development plan that protects the site for recreation purposes.

In view of this, and because the land has now not been used for sports or recreation purposes for c. 25 years, the S106 no longer serves a useful purpose here.

The recorded committee minutes for the meeting held on 17 October 2018 confirm that along with the considering the key planning issues, members considered the aforesaid s106 restriction. The minutes for reported application reference 18/04589/FUL record the following:

Following the public forum, Members requested to ask further technical questions, which the Chairman accepted. Further details were sought on: whether a S106 was still active on the land which had been designated for recreational use and the planning history of the property.

In response, it was noted that part of the application site was subject to a S106 agreement, which was made in 1994, which restricted the site to sports and recreational purposes. The Section 106 agreement made no provision for public use of the site for recreational purposes. In 2004 the Local Planning Inspector recommended modifying the plan by removal of the proposed designation as it served no useful purpose and there was a suitable public recreation facility close by. This had been accepted by the District Council. Subsequently, the District Council produced a Leisure and Recreation Development Plan in 2009 which set out existing sports and recreation facilities that would be protected. The application site was neither identified or included in that plan. For these reasons the S106 no longer served any useful purpose. It was also noted that not all of the planning history had been included. In the report, only the planning history relevant to the application.

9.4.4 Officers acknowledge that the October committee minutes do not detail the merits that existed back in 1994 to explain the justification for securing the retention of the sports field. It is however clear from accessing the Council's 2001-2014 aerial photographs that the "sports / recreation use" was never maintained. At the 17 October 2018 western area planning committee members were informed that the sports field allocation no longer served a useful purpose. Officers continue to assert this view and submit that there are no justifiable grounds to continue with clause 2a and that it should be discharged from the s106 (and thereby necessitate a deed of variation) as part of the determination of this current application.

9.4.5 It is also important to report that the case officer for application 18/04589/FUL failed to reference clause 2b of the s106 which restricted the business park units permitted originally under the 1993 application to B1 and B2 uses only.

9.4.6 Notwithstanding the previous oversight, officers have no objection to varying s106 clause 2b to allow for B8 uses as well as the B1 and B2 referenced uses, as B8 use classes are common place within existing employment/business parks. Furthermore, it is relevant to draw reference to Wiltshire Core Strategy Core Policies 34 and 35 which combine use classes B1, B2 and B8 together as being complementary uses for employment business parks. Officers have no reason to object to the proposed additional reference to B8 use being tied to the varied s106. Furthermore, members are advised that in varying the s106, the associated site plan can be amended to accurately reflect the site boundary of the business park (noting that the 1994 sealed copy is not complete and in approving this application, the boundary of the business park should be extended to include the extensions and any required external plant – but the bund to the west of Units 8 and 9 should be identified as being within the open countryside).

10. Conclusion (The Planning Balance) - This application proposal seeks to extend Unit 8 in the same way as Unit 9 – which is nearing completion. The proposed development would be not be demonstrably harmful to residential amenity or to the visual amenity of the area from the extension itself due to the separation distance and from the proposed bund and landscape mitigation. It is also argued that by removing the service road extension, the turning area and the external building entrance on the northern elevation of the building facing No 29a, the potential harmful impacts that led to the recent appeal being dismissed have been removed from the application proposal; and, officers submit that the application satisfies the Core Strategy and NPPF policy requirements.

This application has also been carefully considered by the Council's ecologist who reports that the submitted surveys are valid and that the proposal would not cause adverse harm to protected species.

If minded to approve this application, members are advised to agree to varying the 1994 sealed s106 so that:

1. Clause 2a be deleted from the agreement as it has never been implemented and not considered necessary in planning terms.
2. The B8 use is included within clause 2b (to become clause 2a)
3. The site plan is amended to accurately define the business park boundary.

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 the above referenced variations required to the 1994 legal agreement being completed as summarised in paragraph 10 above.

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:

Planning Design and Access Statement, Landscape and Visual Impact Assessment, Drainage Strategy Statement, Ecology Report (April 2018), Extended Ecology Survey (June 2018), Access and Highway Assessment, Site Location Plan, Existing Site Plan, Proposed Site Plan, Existing Ground Floor Plan, Proposed Ground Floor Plan, Proposed Elevation Plan, Proposed Drainage Strategy Plan, Proposed Drainage Porous paving attenuation arrangement plan, Porous Paving design system – all received 15 July 2019 and; the Updated Ecology Report (September 2019) – received on 11 September 2019 and Additional Ecology Letter – received 24 October 2019.

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

3. No development shall commence on site, including vegetation clearance, site clearance, boundary treatment works, building conversion and/or any demolition works, until a finalised Great crested newt mitigation strategy shall be submitted to, and approved in writing by the local planning authority. The strategy shall include and expand upon all the recommendations and measures stipulated in the Discussion and Conclusions section of the Extended Phase 1 Ecological Survey (Stark Ecology, September 2019). The strategy shall include comprehensive and final details of all mitigation, compensation and enhancement measures to be implemented to avoid/mitigate and compensate for potential direct and indirect effects on Great crested newts; and this shall be illustrated on an accompanying site plan(s). The site plan shall clearly show the proposed receptor area in relation to the exclusion area; and shall illustrate appropriate locations for the proposed hibernacula. The strategy shall include a schedule of activities indicating the order and approximate timing of mitigation works and stipulate when capture and translocation will take place i.e. the period comprising the active season; and will specify the timeframe for creation of hibernacula in advance of the translocation exercise. The finalised strategy shall propose a minimum trapping night period; and shall clearly specify when supervision by and/or input from a suitably licensed, qualified and experienced ecological consultant will be undertaken and required.

Thereafter, development shall be carried out in strict accordance with the approved strategy, unless superseded by the required European Protected Species Mitigation Licence, and with supervision and input from a suitably licensed, qualified and experienced professional ecological consultant and maintained as such at all times thereafter.

REASON: To ensure compliance with the Conservation of Habitats and Species Regulations 2017 and the Wildlife and Countryside Act 1981 (as amended), and the NPPF 2019 and Core Policy 50 of the Wiltshire Core Strategy (Adopted January 2015); and to ensure appropriate and adequate mitigation and compensation to safeguard Great crested newts.

4. No development shall commence on site including vegetation clearance, site clearance, boundary treatment works, building conversion and/or any demolition works, a Landscape and Ecology Management Plan (LEMP) 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, August 2019).
- 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 and the mechanism for securing the implementation of these activities.

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. The development shall be undertaken in strict accordance with the Discussion and Conclusions section of the Extended Phase 1 Ecological Survey (Stark Ecology, September 2019), the Landscape and Visual Impact Assessment (Prepared by Brian Wooding CMLI, August 2019) and Site Layout Plan (Drawing no. VL.2019/10/06, Rev. 19 August 2019).

The development shall also be undertaken in strict accordance with the pending finalised Great crested newt mitigation strategy and Landscape and Ecology Management Plan 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).

6. The materials to be used in the construction of the external surfaces of the development hereby permitted shall match in material, colour and texture those used in the existing building.

REASON: In the interests of visual amenity

7. The hereby permitted extension to Unit 8 shall not be brought into use until the bund as shown on the proposed site plan and on page 18 of the Landscape Assessment, has been fully completed on site.

REASON: In the interests of visual amenity

8. All soft landscaping (comprised in the approved details of condition 4a) 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.

9. No demolition, site clearance or development shall commence on site, and; no equipment, machinery or materials shall be brought on to site for the purpose of development, until a hedge/thicket Protection Plan and their protective fencing in accordance with British Standard 5837: 2012: "Trees in Relation to Design, Demolition and Construction -Recommendations"; has been submitted to and approved in writing by the Local Planning Authority, and;

The protective fencing shall be erected in accordance with the approved details. The protective fencing shall remain in place for the entire development phase and until all equipment, machinery and surplus materials have been removed from the site. Such fencing shall not be removed or breached during construction operations.

No retained hedgerow shall be removed, uprooted or destroyed, nor shall any retained hedgerow be topped or lopped other than in accordance with the approved plans and particulars. Any topping or lopping approval shall be carried out in accordance British Standard 3998: 2010 "Tree Work – Recommendations" or arboricultural techniques where it can be demonstrated to be in the interest of good arboricultural practise.

If any retained tree/hedgerow is removed, uprooted, destroyed or dies, another tree shall be planted at the same place, at a size and species and planted at such time, that must be agreed in writing with the Local Planning Authority.

No fires shall be lit within 15 metres of the furthest extent of the canopy of any retained trees or hedgerows or adjoining land and no concrete, oil, cement, bitumen or other chemicals shall be mixed or stored within 10 metres of the trunk of any tree or group of trees to be retained on the site or adjoining land.

[In this condition “retained tree” means an existing tree which is to be retained in accordance with the approved plans and particulars; and paragraphs above shall have effect until the expiration of five years from the first occupation or the completion of the development, whichever is the later].

REASON: The application contained insufficient information to enable this matter to be considered prior to granting planning permission and the matter is required to be agreed with the Local Planning Authority before development commences in order that the development is undertaken in an acceptable manner, to enable the Local Planning Authority to ensure the retention of trees on the site in the interests of visual amenity.

10. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or re-enacting or amending that Order with or without modification), Unit 8 shall be used solely for purposes within Class B8 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended) (or in any provisions equivalent to that class in any statutory instrument revoking or re-enacting that Order with or without modification).

REASON: The proposed use is acceptable but the Local Planning Authority wish to consider any future proposal for a change of use, other than a use within the same class(es), having regard to the circumstances of the case.

11. 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 Professionals: Guidance Notes for the Reduction of Obtrusive Light GN01:2011; 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 site.

12. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any 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.

13. 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 outside of Unit 8.

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

Informatives to Applicant:

The applicant is advised that the acquisition of a mitigation licence for Great crested newts from Natural England is essential in order to allow this development to proceed lawfully, and that planning permission does not override the statutory instruments in place that afford legal protection to the aforementioned European Protected Species. It should also be noted that it will be the applicant's responsibility to ensure compliance with the mitigation licence and to arrange an application for any modifications to the licence, where applicable.

The applicant is advised that all British birds (while nesting, building nests and sitting on eggs), their nests and eggs (with certain limited exceptions) are protected under the Wildlife and

Countryside Act 1981 (as amended) and the Countryside and Rights of Way Act 2000. Planning permission for a development does not provide a defence against prosecution under these Acts. Therefore, removal of hedgerows, trees, shrubs and scrub (including bramble), or works to or demolition of buildings or structures that may be used by breeding birds should take place outside the breeding season, unless a suitably qualified and experienced professional ecological consultant has undertaken a careful, detailed check for active bird's nests immediately prior to clearance of vegetation and confirmed absence. The breeding season is generally accepted to comprise the period between 1st March and 31st August, however some species are known to breed outside this period.



Appeal Decision

Site visit made on 9 April 2019

by JP Tudor Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: 04 June 2019

Appeal Ref: APP/Y3940/W/18/3216228

Unit 8 Atworth Business Park, Bath Road, Atworth SN12 8SB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Oliveford Ltd against the decision of Wiltshire Council.
 - The application Ref 18/04589/FUL, dated 11 May 2018, was refused by notice dated 17 October 2018.
 - The development proposed is extension to existing building (Use Class B8), extension to service road, landscaping and associated works.
-

Decision

1. The appeal is dismissed.

Procedural Matters

2. Although the original applicant has since vacated the appeal site, the application and this appeal has proceeded on behalf of the freehold owner of the business park, who has a relevant legal interest in the property.
3. An updated version of the National Planning Policy Framework (the Framework) was published in February 2019, after the application was determined by the Council. However, as the alterations are minor, it was not necessary to revert to the parties for comment.

Main Issue

4. The main issue is whether the proposal would be in accordance with the spatial strategy for the area, including with reference to its effect on the living conditions of nearby residential occupiers.

Reasons

Spatial strategy

5. The Wiltshire Core Strategy (CS)¹ comprises a spatial strategy which aims to achieve a sustainable pattern of development by directing development to existing settlements. It does that through Core Policy 1: Settlement Strategy (CP1) and Core Policy 2: Delivery Strategy (CP2). The settlement strategy identifies 4 tiers of settlements: Principal Settlements; Market Towns; Local Service Centres; and, Large and Small Villages.

¹ Adopted January 2015

6. It is proposed to extend an existing building, which forms Unit 8 at the Atworth Business Park, on the edge of the village. Atworth is within the Melksham Community Area and is defined in the CS as a 'Large Village'. CP1 of the CS says that development at 'Large and Small Villages' will be limited to that needed to help meet the housing needs of the settlement and to improve employment opportunities, services and facilities. Although the appeal site is within an existing business park, it is outside the 'limits of development' of the village. CP2 of the CS indicates that development will not be permitted outside the 'limits of development' other than in circumstances permitted by identified 'exception policies' in the CS, which seek to respond to local circumstance and national policy.
7. One of the 'exception policies' is Core Policy 34: Additional Employment Land (CP34), which says that outside the Principal Settlements, Market Towns and Local Service Centres, developments will be supported subject to two sets of criteria, detailed at 'i-iv' and 'a-e'. Each criterion within the first set (i-iv) is followed by the word 'or', save for the last. That indicates that whilst it is necessary for at least one of those criteria to be met, it is not necessary that more than one or that all four are satisfied.
8. The Council takes the view that the proposal does not fully meet any of the criteria, listed from 'i-iv'. Both parties agree that criterion 'ii', which relates to farming and food production, is not met or relevant. The Council's view, in relation to criteria 'I' and 'iii', is that the proposal does not seek to expand an existing business on the edge of a larger settlement and does not relate to a new or existing rural based business, as the unit is unoccupied with the previous tenant having left during the course of the application process. It says that the proposal is speculative, as there is no defined end user.
9. As the second reason for refusal in the Council's decision notice refers to non-compliance with criterion 'iv', I will address that aspect. I agree that a proposal for a modest extension of one unit in a business park could not reasonably be considered of such importance as to be '*essential to the wider strategic interest of the economic development of Wiltshire.*' Therefore, I agree with the Council on that point but, as stated above, there is no requirement in CP34 for a proposal to meet all of the criteria listed from i-iv.
10. It seems to me that the most relevant criterion, in this case, is 'iii', which indicates that developments will be supported that '*are for new and existing rural based businesses within or adjacent to Large and Small Villages.*' However, the wording does not appear to indicate a requirement to identify a specific business that is going to occupy the development or that a business should already be in occupation. Moreover, the latter would be illogical as the policy would equally apply to the construction of a new building. Therefore, given that the development would be the extension of a unit, within an existing business park, adjacent to a 'Large Village', the development would be 'for new or existing rural based businesses'. Accordingly, I consider that the proposal satisfies criterion 'iii' of the first set of criteria.
11. In reaching that finding, I have considered the views of the Council and representations from third parties, as well as the appellant, regarding the interpretation of CP34 and its requirements. The supporting text to the policy acknowledges that: '*The evidence indicates that Wiltshire does not have land available in the right location at the right time to meet business needs and this*

could result in Wiltshire losing business to other locations'.² As a result, CP34 broadly supports the delivery of opportunities for the provision of employment land, in addition to that allocated in the CS, mostly within the Principal Settlements, Market Towns and Local Service Centres but also, outside those settlements, within or adjacent to Large and Small Villages, subject to additional limiting criteria, at 'a-e'.

12. The appellant has also drawn my attention to a planning permission relating to Land North West of Dunkirk Business Park at Southwick.³ That proposal related to the expansion of an existing rural business park, considered to be closely related to a Large Village, with the addition of two units. The relevant Council Officer's Report has been supplied and compliance with criterion 'iii' of CP34 was accepted. Whilst the Officer's Report also refers briefly to supporting evidence of demand for the type of units proposed, that does not appear to have been integral to its analysis of whether the proposal complied with CP34.
13. In any event, the appellant in the appeal before me has presented a reasonable level of evidence of demand for business units of the size proposed, as evidenced in a letter from a commercial property agent⁴ and other information regarding interest from local businesses. Similarly, although I do not agree with all of its conclusions, the Council Officer's Report relating to the appeal proposal recommended approval and found compliance with CP34.
14. Whilst I have found that, a criterion ('iii') in the first set of criteria is met, as required, it is still then necessary to consider whether the proposal meets the second set of criteria in CP34 of the CS, listed from 'a-e'. There, each criterion, save the last, is followed by the word 'and', which indicates that all of them need to be satisfied. The dispute between the parties centres on criterion 'b'. Criterion 'b' indicates that developments will be supported where, amongst other things, they do not '*detract from residential amenity*'. I will consider those aspects below.

Living conditions of nearby residential occupiers

15. The building and the associated service road would be extended to the west, outside the existing boundary of the business park and into part of an adjoining field, to the south of existing residential properties. The existing Class B8 use for storage or as a distribution centre would not change, but it would take place within an expanded building.
16. At present, vehicle movements associated with this part of the business park 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.
17. The extended service road would also incorporate a new turning head to enable vehicle maneuvering, 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

² Paragraph 6.9

³ 18/06221/FUL

⁴ Carter Jonas: Letter dated 30 August 2018

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.⁵

18. I had the benefit of assessing the proposal both from the appeal site and from the garden of No 29A. The dwelling is located at the end of a quiet cul-de-sac, well away from the main road running through the village. Whilst the house is further away, the tranquil garden has patio and seating areas, including some towards its southern boundary, adjacent to the turning head. 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 maneuvering 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. It would also have some negative effects within the house, especially during the summer months when windows or doors to the garden are more likely to be open.
19. 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. The occupiers of No 29A have also strongly objected to the proposed development, principally because of vehicle noise and fumes.
20. The Council's appeal statement suggests that there would be negative effects on occupiers of the dwelling at 30 Bath Road, albeit to a lesser degree. However, as that property is to the north west and would be further away from the service road and turning head, I am satisfied that the effects would not be significant.
21. Although the appellant refers to the '*limited number of vehicles that are likely to be associated with this size of unit*', that is not quantified or evidenced in any meaningful way and, given that the future occupier of the site is unconfirmed, I do not find that submission persuasive. The appellant has also suggested, at the appeal stage, the possibility of an acoustic fence to be secured by condition, but limited details and little specific evidence about the efficacy of such an approach has been submitted. Given the position of the turning head there would also be little room for any additional planting. Restrictions on delivery and despatch times were suggested by the Council's Public Protection Officer to be secured by condition, but such a condition could not be too restrictive without potentially compromising efficient business operations at the site.
22. Furthermore, 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

⁵ Figure 3: Landscape and Visual Impact Assessment (May 2017) prepared by Brian Wooding CMLI

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.

23. I am aware that the application, which has led to this appeal, is a resubmission of a previous proposal⁶ refused for a different reason, relating to inadequate information about effects on protected species. However, that application was refused, and I do not have full details of the extent of the Council's reasoning, when considering that proposal with respect to effects on living conditions. Although the Council Officer's Report relating to the appeal proposal recommended approval, the Council's Planning Committee reached a different conclusion, including with regard to the effects on the living conditions of neighbouring occupiers. Therefore, whilst consistency in public decision making is important, it is also important and legitimate for me to apply my own planning judgement to this appeal proposal, based on the evidence before me, relevant development plan policies and any other material considerations, which is what I have done.
24. 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. It follows, that the proposal conflicts with the CS spatial strategy, set out within CP1 and CP2, as it does not comply with criterion 'b' of 'exception policy' CP34. The proposal would also conflict with paragraph 127. f) of the Framework, which seeks to promote health and well-being and ensure a high standard of amenity for existing and future users.

Other Matters

25. Whilst approval was given for a similar extension to the adjacent unit 9⁷, that is further to the south with its service road and parking area beyond. Therefore, there would not be adverse effects from vehicles or any turning areas equivalent to the appeal proposal.
26. A number of objectors have raised a range of issues, in addition to those dealt with above, including effects on protected species. However, it is not necessary for me to consider those other matters in detail here, as I have dismissed the appeal on other substantive grounds.

Planning Balance and Conclusion

27. The CS and the Framework offer support for business and for a prosperous rural economy. Framework paragraph 83.a) encourages the sustainable growth of all types of businesses in rural areas both through conversion of existing buildings and well-designed new buildings.
28. Paragraph 84 of the Framework says that: *'Planning policies and decisions should recognise that sites to meet local business and community needs in rural areas may have to be found adjacent to or beyond existing settlements and in locations that are not well served by public transport. In these circumstances it will be important to ensure that development is sensitive to its surroundings, does not have an unacceptable impact on local roads and exploits any opportunities to make a location more sustainable (for example by*

⁶ 17/05785/FUL

⁷ 16/09685/FUL

improving the scope for access on foot, by cycling or by public transport). The use of previously developed land, and sites that are physically well-related to existing settlements, should be encouraged where suitable opportunities exist.'

29. The proposed development would offer some benefits, including an economic benefit in the provision of additional business and employment floorspace. However, the appellant describes the scale of the extension as relatively modest which would limit the extent of that benefit, relative to that already generated by the existing unit. It is also suggested that the extension of the service road and the turning head would improve the safety of vehicle manoeuvres within the site. However, that could potentially be achieved by an alternative proposal or design. Overall, those and other benefits associated with the proposal do not outweigh the harm that I have identified to the living conditions of nearby residential occupiers and the associated conflict with CP34 of the CS.
30. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

JP Tudor

INSPECTOR

To appreciate the present make-up of the business park, the applicant's planning agent was asked to provide an up-to-date account of the tenants which are listed below:

Atworth Business Park

UNITS 1A & 1B	INTERCONICS	Electrical Board Manufacturers
UNIT 2	NYQUIST SOLUTIONS LTD	Hardware & Software Engineers
UNITS 3 & 4	BRISTOL SOAP	Soap Manufacturer
UNIT 5	BRISTOL SOAP	Soap Manufacturer
UNITS 6 & 7	SKY INTERIORS	Kitchen Installations
UNIT 8	VACANT	B8 Tenancy Agreed Subject to FUL
UNIT 9	LEAFIELD MARINE LTD	Manufacturer and design valve & inflation systems



Wiltshire Core Strategy

Adopted January 2015

Start-up or incubator units should be supported by shared business infrastructure relevant to the use class. Design and build options should also be considered and all businesses should prepare green travel plans.

- 6.8 Research undertaken on behalf of the Wiltshire Military/Civilian Integration Programme⁷² has identified the value that Wiltshire's significant military presence brings to the local economy. However, changing requirements mean that a number of MoD sites in Wiltshire could become surplus or due for release during the plan period. The Core Strategy's approach to the re-use of military establishments is set out in Core Policy 37.

Core Policy 34: Additional employment land



- 6.9 The evidence⁷³ indicates that Wiltshire does not have land available in the right location at the right time to meet business needs and this could result in Wiltshire losing business to other locations where a more favourable business and regulatory environment exists. Core Policy 34 therefore supports the delivery of opportunities for the provision of employment land that may come forward in the Principal

Settlements, Market Towns and Local Service Centres of Wiltshire, in addition to the employment land which is allocated in the Core Strategy. These opportunities will need to be in the right location and support the strategy, role and function of the town, as identified in Core Policy 1 (settlement strategy) and in any community-led plans, including neighbourhood plans.

- 6.10 A number of target sectors⁷⁴ have been identified for Wiltshire in order to promote the move towards a higher-value economy. These include:
- advanced engineering and manufacturing
 - business services
 - Bioscience
 - environmental technologies
 - food and drink
 - ICT and creative industries
 - agriculture and land-based industries
 - tourism.
- 6.11 Proposals which support these target sectors will be supported providing they meet the requirements of Core Policy 34.
- 6.12 Core Policy 34 aims to support the rural way of life through the promotion of modern agricultural practices, appropriate diversification of the rural economy and provision of broadband. The policy includes criteria to be met for proposals relating to the retention or expansion of existing businesses within or adjacent to the Principal Settlements, Market Towns, Local Service Centres and Large and Small Villages.
- 6.13 Core Policy 34 also includes an element of flexibility to allow new employment opportunities to come forward outside but adjacent to the Principal Settlements, Market Towns and Local Service Centres, and in addition to the employment land allocated by this Core Strategy, where such proposals are considered to be essential to the economic development of Wiltshire. It also allows for the possibility of development essential to the wider strategic interest of the economic development of Wiltshire. In considering criterion viii of Core Policy 34 any such proposals should be supported by evidence to justify that they would not have a significant adverse impact upon existing, committed and planned public and private investment at sites



identified in the Plan for employment development at Principal Settlements or Market Towns. Support for such proposals will be an exception to the general approach, and any applications of this nature will need to be determined by the relevant planning committee (and not by officers using delegated powers).

Core Policy 34

Additional employment land

Proposals for employment development (use classes B1, B2 or B8) will be supported within the Principal Settlements, Market Towns and Local Service Centres, in addition to the employment land allocated in the Core Strategy. These opportunities will need to be in the right location and support the strategy, role and function of the town, as identified in Core Policy 1 (Settlement Strategy) and in any future community-led plans, including neighbourhood plans, where applicable.

Proposals for office development outside town centres, in excess of 2,500sq metres, must be accompanied by an impact assessment which meets the requirement of national guidance and established best practice, and demonstrate that the proposal will not harm the vitality or viability of any nearby centres. All such proposals must also comply with the sequential approach, as set out in national guidance, to ensure that development is on the most central site available.

Outside the Principal Settlements, Market Towns and Local Service Centres, developments will be supported that:

- i. are adjacent to these settlements and seek to retain or expand businesses currently located within or adjacent to the settlements; or
- ii. support sustainable farming and food production through allowing development required to adapt to modern agricultural practices and diversification; or
- iii. are for new and existing rural based businesses within or adjacent to Large and Small Villages; or
- iv. are considered essential to the wider strategic interest of the economic development of Wiltshire, as determined by the council.

Where they:

- a. meet sustainable development objectives as set out in the policies of this Core Strategy and
- b. are consistent in scale with their location, do not adversely affect nearby buildings and the surrounding area or detract from residential amenity and
- c. are supported by evidence that they are required to benefit the local economic and social needs and
- d. would not undermine the delivery of strategic employment allocations and
- e. are supported by adequate infrastructure.

Core Policy 35: Existing employment sites

6.14 Achieving the strategic objective to deliver a thriving economy which provides a range of job opportunities in Wiltshire depends on retaining the availability of and enhancing existing employment sites, as well as creating new opportunities in appropriate locations. The Core Strategy seeks to protect Wiltshire's most sustainable and



valued employment areas by applying policies to favour employment uses on these sites. On some of these employment areas there are strong redevelopment pressures for other uses, notably residential and retail.

DATED

September 2nd 1994

WEST WILTSHIRE DISTRICT COUNCIL

and

BRAEMON HOLDINGS

A G R E E M E N T

Re Land at Atworth Business Park

S J Aley LL.B DipLG
Solicitor to the Council
West Wiltshire District Council
Bradley Road
Trowbridge
Wiltshire BA14 ORD

access to the Development

IT IS AGREED AS FOLLOWS:-

1. THIS Agreement is made pursuant to section 106 of the Act which section shall apply to the covenants hereinafter contained
2. The Owner covenants with the Council as follows:-
 - a) The land edged green on the attached plan shall be retained ⁱⁿ perpetuity for the purposes of providing sports and recreation
 - b) The land edged pink on the attached plan shall be used solely for the uses contained within Clas B1 and B2 of the Town and Country Planning (Use Classes) Order 1987 as written at the date of this Agreement notwithstanding any modification or repeal thereof
3. In the interpretation of this Agreement (a) all references to the Owner shall where the context so admits be deemed to include his successors in title and assigns and (b) so far as the context requires
 - (i) all references to the Owner in the singular shall include the plural
 - (ii) words importing the masculine gender shall include the feminine and
 - (iii) the persons named as Owner (if more than one) shall be treated as jointly and severally liable in respect of the above covenant
4. The Council covenants with the Owner to register this Agreement as a local land charge

22nd September
TD THIS AGREEMENT is made the day of 1994 BETWEEN RODERICK DONALD

W.H.1776 SA
TIMBRELL-WHITE and STEVEN ARTHUR ROGERS trading as BRAEMON HOLDINGS of Abacus House, 1 Newlands Road, Corsham in the county of Wilts (the Owner) of the first part and WEST WILTSHIRE DISTRICT COUNCIL of Council Offices, Bradley Road, Trowbridge in Wiltshire BA14 ORD (the Council) of the second part

WHEREAS

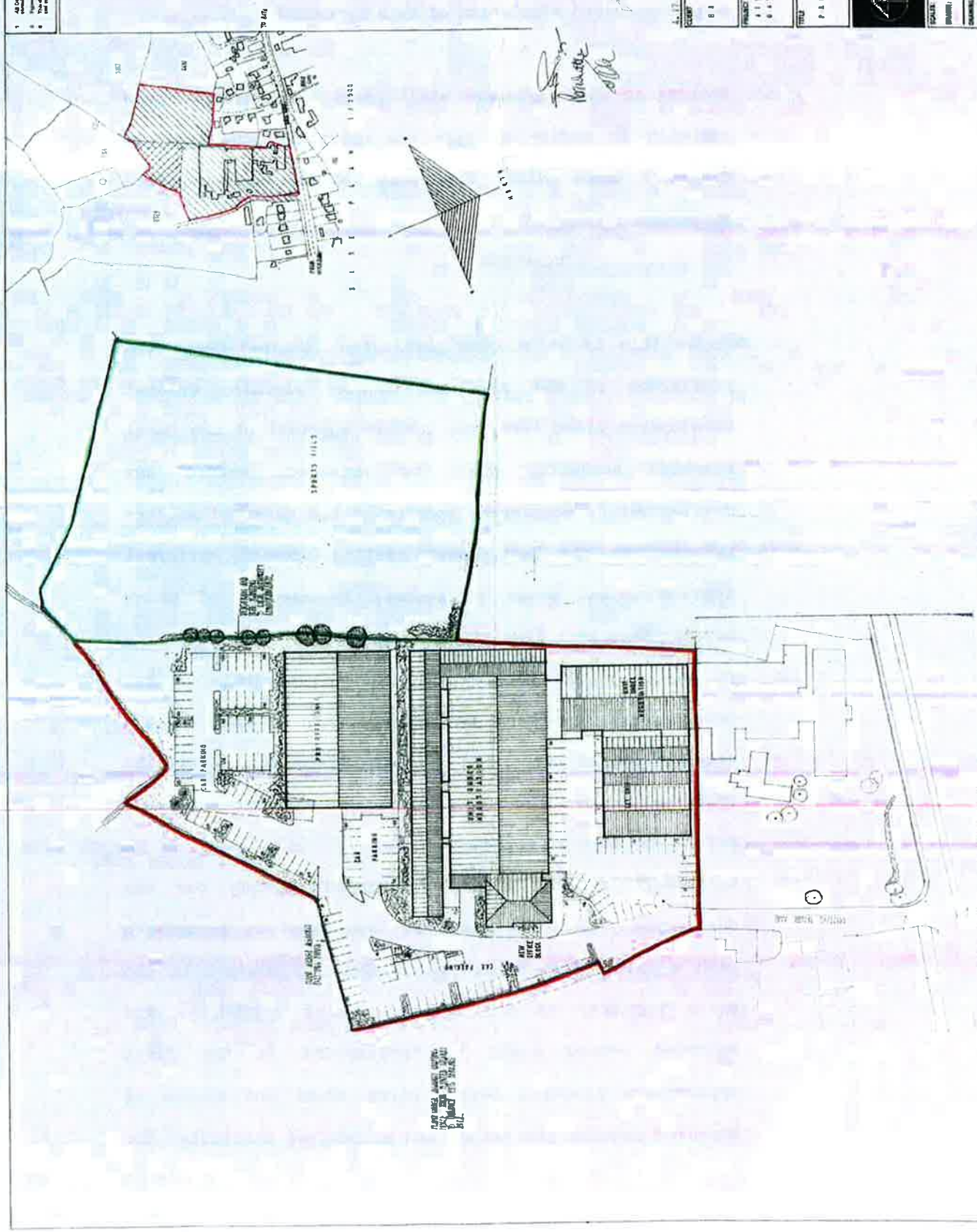
- (1) The Council is the Local Planning Authority for the land hereinafter mentioned for the purposes of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991
- (2) The Owner is the estate owner in fee simple in possession of the land (the Land) situate at Atworth near Melksham in the county of Wilts and shown edged red on the inset to the attached plan for the purposes of identification only
- (3) An application for planning permission has been made to the Council dated the 1st day of February 1993 Reference Number W93/0116 for the demolition of a sports pavillion and erection of a general industrial building and office block on the land edged and marked red on the said inset to the attached plan (the Development) on the Land
- (4) The Council have resolved to grant planning permission for the Development subject to conditions set out in the Schedule hereto provided that the Owner enter into an agreement hereinafter contained and subject to the Owner entering into a separate agreement with the Wiltshire County Council if required by the said County Council with regard highway visibility splays in connection with

5. The Council acknowledges receipt of £ 275.00 paid to the Council by the Owner herewith in consideration of the preparation and completion of this Agreement _____
6. Nothing in this agreement shall prevent the parties from agreeing to modify or vary the covenants contained in Clause 2 above within five years of the date of this agreement _____

SCHEDULE

1. Because this is an outline permission, granted under the provisions of the Town and Country Planning General Development Order 1988, the further approval of the Local Planning Authority shall be obtained, before any development is commenced, concerning the reserved matters relating to the development (siting, design, external appearance and means of access) in respect of which details have been given in the application. _____
2. To ensure visual harmony with the surroundings of the development a sample of the materials to be used in the external walls and roof of the development shall be submitted to and approved by the Local Planning Authority before any work is commenced. _____
3. To ensure a satisfactory landscaped setting for the development, the site shall be landscaped in accordance with a landscaping scheme which shall be subject to the prior approval of the Local Planning Authority. The approved scheme shall be implemented in the first appropriate planting season using trees and shrubs of approved species and height and maintained thereafter for

- 1 All dimensions to be indicated on all drawings unless otherwise noted.
- 2 All dimensions to be indicated on all drawings unless otherwise noted.
- 3 The owner shall verify all dimensions and locations of existing structures and utilities.
- 4 The owner shall verify all dimensions and locations of existing structures and utilities.



NEW ADJACENT PARKING
 200' WIDE, 200' DEEP
 20' WIDE DRIVEWAY

Handwritten signature/initials

PROJECT	BLISSWOOD BOLLINGS
PREPARED BY	WINN & ASSOCIATES ARCHITECTS INC.
DATE	10 JAN 1993
SCALE	AS SHOWN
DRAWING NO.	1155 12 50 1 P
DATE	10 JAN 1993

Winn & Associates
Design Group
 ARCHITECTS & INTERIOR DESIGNERS

a period of not less than five years. Any trees and shrubs which fail within that period shall be replaced to the satisfaction of the Local Planning Authority and maintained for a further period of five years.

4. To enable the Local Planning Authority to ensure these integral and essential features of the development are in existence when they are needed, the parking spaces shown on the approved and certified plan, together with any access thereto, shall be provided concurrently with the development to which they relate.

5. In the interests of highway safety visibility shall be provided and maintained thereafter at a height of one metre above road level at the entrance of the site onto Bath Road, from a point 4.5 metres back from the carriageway edge to the boundary of the existing site frontage.

IN WITNESS whereof the Owner has signed this agreement as a Deed and the Council has caused its common seal to be hereunto affixed the day and year first before written

SIGNED as a DEED

by the said RODERICK DONALD TIMBRELL-WHITE

in the presence of:-

SIGNED as a DEED

by the said STEVEN ARTHUR ROGERS

in the presence of:-

[Redacted signatures]

A
rvHITLLC
[Redacted signatures]

[Redacted signature]

THE COMMON SEAL OF WEST)

WILTSHIRE DISTRICT COUNCIL)

was hereunto affixed in the)

presence of:-)

[REDACTED]



10722A

Member

Solicitor to the Council

Appeal Decision

Site visit made on 9 April 2019

by **JP Tudor Solicitor (non-practising)**

an Inspector appointed by the Secretary of State

Decision date: 04 June 2019

Appeal Ref: APP/Y3940/W/18/3216228

Unit 8 Atworth Business Park, Bath Road, Atworth SN12 8SB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Oliveford Ltd against the decision of Wiltshire Council.
 - The application Ref 18/04589/FUL, dated 11 May 2018, was refused by notice dated 17 October 2018.
 - The development proposed is extension to existing building (Use Class B8), extension to service road, landscaping and associated works.
-

Decision

1. The appeal is dismissed.

Procedural Matters

2. Although the original applicant has since vacated the appeal site, the application and this appeal has proceeded on behalf of the freehold owner of the business park, who has a relevant legal interest in the property.
3. An updated version of the National Planning Policy Framework (the Framework) was published in February 2019, after the application was determined by the Council. However, as the alterations are minor, it was not necessary to revert to the parties for comment.

Main Issue

4. The main issue is whether the proposal would be in accordance with the spatial strategy for the area, including with reference to its effect on the living conditions of nearby residential occupiers.

Reasons

Spatial strategy

5. The Wiltshire Core Strategy (CS)¹ comprises a spatial strategy which aims to achieve a sustainable pattern of development by directing development to existing settlements. It does that through Core Policy 1: Settlement Strategy (CP1) and Core Policy 2: Delivery Strategy (CP2). The settlement strategy identifies 4 tiers of settlements: Principal Settlements; Market Towns; Local Service Centres; and, Large and Small Villages.

¹ Adopted January 2015

6. It is proposed to extend an existing building, which forms Unit 8 at the Atworth Business Park, on the edge of the village. Atworth is within the Melksham Community Area and is defined in the CS as a 'Large Village'. CP1 of the CS says that development at 'Large and Small Villages' will be limited to that needed to help meet the housing needs of the settlement and to improve employment opportunities, services and facilities. Although the appeal site is within an existing business park, it is outside the 'limits of development' of the village. CP2 of the CS indicates that development will not be permitted outside the 'limits of development' other than in circumstances permitted by identified 'exception policies' in the CS, which seek to respond to local circumstance and national policy.
7. One of the 'exception policies' is Core Policy 34: Additional Employment Land (CP34), which says that outside the Principal Settlements, Market Towns and Local Service Centres, developments will be supported subject to two sets of criteria, detailed at 'i-iv' and 'a-e'. Each criterion within the first set (i-iv) is followed by the word 'or', save for the last. That indicates that whilst it is necessary for at least one of those criteria to be met, it is not necessary that more than one or that all four are satisfied.
8. The Council takes the view that the proposal does not fully meet any of the criteria, listed from 'i-iv'. Both parties agree that criterion 'ii', which relates to farming and food production, is not met or relevant. The Council's view, in relation to criteria 'I' and 'iii', is that the proposal does not seek to expand an existing business on the edge of a larger settlement and does not relate to a new or existing rural based business, as the unit is unoccupied with the previous tenant having left during the course of the application process. It says that the proposal is speculative, as there is no defined end user.
9. As the second reason for refusal in the Council's decision notice refers to non-compliance with criterion 'iv', I will address that aspect. I agree that a proposal for a modest extension of one unit in a business park could not reasonably be considered of such importance as to be '*essential to the wider strategic interest of the economic development of Wiltshire.*' Therefore, I agree with the Council on that point but, as stated above, there is no requirement in CP34 for a proposal to meet all of the criteria listed from i-iv.
10. It seems to me that the most relevant criterion, in this case, is 'iii', which indicates that developments will be supported that '*are for new and existing rural based businesses within or adjacent to Large and Small Villages.*' However, the wording does not appear to indicate a requirement to identify a specific business that is going to occupy the development or that a business should already be in occupation. Moreover, the latter would be illogical as the policy would equally apply to the construction of a new building. Therefore, given that the development would be the extension of a unit, within an existing business park, adjacent to a 'Large Village', the development would be 'for new or existing rural based businesses'. Accordingly, I consider that the proposal satisfies criterion 'iii' of the first set of criteria.
11. In reaching that finding, I have considered the views of the Council and representations from third parties, as well as the appellant, regarding the interpretation of CP34 and its requirements. The supporting text to the policy acknowledges that: '*The evidence indicates that Wiltshire does not have land available in the right location at the right time to meet business needs and this*

could result in Wiltshire losing business to other locations.² As a result, CP34 broadly supports the delivery of opportunities for the provision of employment land, in addition to that allocated in the CS, mostly within the Principal Settlements, Market Towns and Local Service Centres but also, outside those settlements, within or adjacent to Large and Small Villages, subject to additional limiting criteria, at 'a-e'.

12. The appellant has also drawn my attention to a planning permission relating to Land North West of Dunkirk Business Park at Southwick.³ That proposal related to the expansion of an existing rural business park, considered to be closely related to a Large Village, with the addition of two units. The relevant Council Officer's Report has been supplied and compliance with criterion 'iii' of CP34 was accepted. Whilst the Officer's Report also refers briefly to supporting evidence of demand for the type of units proposed, that does not appear to have been integral to its analysis of whether the proposal complied with CP34.
13. In any event, the appellant in the appeal before me has presented a reasonable level of evidence of demand for business units of the size proposed, as evidenced in a letter from a commercial property agent⁴ and other information regarding interest from local businesses. Similarly, although I do not agree with all of its conclusions, the Council Officer's Report relating to the appeal proposal recommended approval and found compliance with CP34.
14. Whilst I have found that, a criterion ('iii') in the first set of criteria is met, as required, it is still then necessary to consider whether the proposal meets the second set of criteria in CP34 of the CS, listed from 'a-e'. There, each criterion, save the last, is followed by the word 'and', which indicates that all of them need to be satisfied. The dispute between the parties centres on criterion 'b'. Criterion 'b' indicates that developments will be supported where, amongst other things, they do not *'detract from residential amenity'*. I will consider those aspects below.

Living conditions of nearby residential occupiers

15. The building and the associated service road would be extended to the west, outside the existing boundary of the business park and into part of an adjoining field, to the south of existing residential properties. The existing Class B8 use for storage or as a distribution centre would not change, but it would take place within an expanded building.
16. At present, vehicle movements associated with this part of the business park 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.
17. 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

² Paragraph 6.9

³ 18/06221/FUL

⁴ Carter Jonas: Letter dated 30 August 2018

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.⁵

18. I had the benefit of assessing the proposal both from the appeal site and from the garden of No 29A. The dwelling is located at the end of a quiet cul-de-sac, well away from the main road running through the village. Whilst the house is further away, the tranquil garden has patio and seating areas, including some towards its southern boundary, adjacent to the turning head. 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. It would also have some negative effects within the house, especially during the summer months when windows or doors to the garden are more likely to be open.
19. 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. The occupiers of No 29A have also strongly objected to the proposed development, principally because of vehicle noise and fumes.
20. The Council's appeal statement suggests that there would be negative effects on occupiers of the dwelling at 30 Bath Road, albeit to a lesser degree. However, as that property is to the north west and would be further away from the service road and turning head, I am satisfied that the effects would not be significant.
21. Although the appellant refers to the '*limited number of vehicles that are likely to be associated with this size of unit*', that is not quantified or evidenced in any meaningful way and, given that the future occupier of the site is unconfirmed, I do not find that submission persuasive. The appellant has also suggested, at the appeal stage, the possibility of an acoustic fence to be secured by condition, but limited details and little specific evidence about the efficacy of such an approach has been submitted. Given the position of the turning head there would also be little room for any additional planting. Restrictions on delivery and despatch times were suggested by the Council's Public Protection Officer to be secured by condition, but such a condition could not be too restrictive without potentially compromising efficient business operations at the site.
22. Furthermore, 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

⁵ Figure 3: Landscape and Visual Impact Assessment (May 2017) prepared by Brian Wooding CMLI

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.

23. I am aware that the application, which has led to this appeal, is a resubmission of a previous proposal⁶ refused for a different reason, relating to inadequate information about effects on protected species. However, that application was refused, and I do not have full details of the extent of the Council's reasoning, when considering that proposal with respect to effects on living conditions. Although the Council Officer's Report relating to the appeal proposal recommended approval, the Council's Planning Committee reached a different conclusion, including with regard to the effects on the living conditions of neighbouring occupiers. Therefore, whilst consistency in public decision making is important, it is also important and legitimate for me to apply my own planning judgement to this appeal proposal, based on the evidence before me, relevant development plan policies and any other material considerations, which is what I have done.
24. 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. It follows, that the proposal conflicts with the CS spatial strategy, set out within CP1 and CP2, as it does not comply with criterion 'b' of 'exception policy' CP34. The proposal would also conflict with paragraph 127. f) of the Framework, which seeks to promote health and well-being and ensure a high standard of amenity for existing and future users.

Other Matters

25. Whilst approval was given for a similar extension to the adjacent unit 9⁷, that is further to the south with its service road and parking area beyond. Therefore, there would not be adverse effects from vehicles or any turning areas equivalent to the appeal proposal.
26. A number of objectors have raised a range of issues, in addition to those dealt with above, including effects on protected species. However, it is not necessary for me to consider those other matters in detail here, as I have dismissed the appeal on other substantive grounds.

Planning Balance and Conclusion

27. The CS and the Framework offer support for business and for a prosperous rural economy. Framework paragraph 83.a) encourages the sustainable growth of all types of businesses in rural areas both through conversion of existing buildings and well-designed new buildings.
28. Paragraph 84 of the Framework says that: *'Planning policies and decisions should recognise that sites to meet local business and community needs in rural areas may have to be found adjacent to or beyond existing settlements and in locations that are not well served by public transport. In these circumstances it will be important to ensure that development is sensitive to its surroundings, does not have an unacceptable impact on local roads and exploits any opportunities to make a location more sustainable (for example by*

⁶ 17/05785/FUL

⁷ 16/09685/FUL

improving the scope for access on foot, by cycling or by public transport). The use of previously developed land, and sites that are physically well-related to existing settlements, should be encouraged where suitable opportunities exist.'

29. The proposed development would offer some benefits, including an economic benefit in the provision of additional business and employment floorspace. However, the appellant describes the scale of the extension as relatively modest which would limit the extent of that benefit, relative to that already generated by the existing unit. It is also suggested that the extension of the service road and the turning head would improve the safety of vehicle manoeuvres within the site. However, that could potentially be achieved by an alternative proposal or design. Overall, those and other benefits associated with the proposal do not outweigh the harm that I have identified to the living conditions of nearby residential occupiers and the associated conflict with CP34 of the CS.
30. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

JP Tudor

INSPECTOR