

Item No	Application No. and Parish	Proposal, Location and Applicant
(3)	15/01982/COMIND Hungerford Town Council	Section 73 - Application for variation of Condition (19) BREEAM of planning permission 13/00773/COMIND Garden Art, Barrs Yard, Bath Road, Hungerford, RG17 0HE Garden Art Ltd

To view the plans and drawings relating to this application click the following link:
<http://planning.westberks.gov.uk/rpp/index.asp?caseref=15/01982/COMIND>

Recommendation Summary: To **DELEGATE** to the Head of Planning & Countryside to **REFUSE PLANNING PERMISSION** for the following reason set out in Section 8.1.

Ward Members: Councillors Hewer and Podger

Reason for Committee Determination: At the Development Control Manager's request to allow Members to assess the proposal with regard to the positive support that exists for the scheme.

Committee Site Visit: 11th February 2016

Contact Officer Details	
Name:	Samantha Kremzer
Job Title:	Senior Planning Officer
Tel No:	(01635) 519111
E-mail Address:	skremzer@westberks.gov.uk

1. Site History

134867	Replacement of sawmill and store. Approved 21.06.1989
142317	Garden art centre. Approved 22.05.97
05/00884/FUL	Change of use to include present business but include retail bathroom and conservatory outlet. Approved 28.09.05
06/01153/FUL	Retrospective - Change of Use - Railway carriage to office / showroom. Approved. 03.08.2006
11/01954/FUL	Change of Use : Railway carriage as site office for business. Approved. 05.12.2011
13/00773/COMIND	Proposed development of an "Artisans Collective" comprising the erection of B1 units with ancillary retail (to include the retention of the existing Garden Art business and up to 20% A1 retail) together with site access, car parking, circulation area and landscaping. Approved. 18.12.2013

2. Publicity of Application

Site Notice Expired:	28 th August 2015
Neighbour Notification Expired:	19 th August 2015
Advertised in the Newbury Weekly News:	6 th August 2015

3. Consultations and Representations

3.1 Consultations

Town Council: Strong Support.

Planning Policy: The position has not changed. The requirement to build to BREEAM excellent is in the local policy and the developer should have known this from the outset. They should have included the costs of building to this standard from the outset.

I am concerned that the supporting letter from the Blewburton Partnership states "we have to conclude that it is not possible to achieve Excellent or indeed any other rating while continuing to deliver the development that is proposed".

It is simply not acceptable to not deliver a BREEAM rating just because the business model they choose to implement. BREEAM includes shell only options.

The letter states that the developer “is keen to embrace the principles of sustainability in this development” but provides no real details.

The agents need to supply evidence on the rental rates and why this is an issue (this standard can, for example have benefits such as resulting in lower running costs) and WBC would need to establish why they’d want to reduce the standard so much. We would want to find out which elements they could and could not meet to the excellent standard.”

Highways: No objection.

Environmental Health: No comments.

3.2 Representations

No letters of representation received.

4 Planning Policy

4.1 The statutory development plan comprises the West Berkshire Core Strategy 2006-2026, July 2012 and those saved policies within the West Berkshire District Local Plan 1991-2006 (Saved Policies 2007) (WBDLP).

4.2 Other material considerations include government guidance, in particular:

- The National Planning Policy Framework (March 2012) (NPPF)
- National Planning Policy Guidance (March 2014)
- North Wessex Downs Area of Outstanding Natural Beauty Management Plan (2014-2019)
- Hungerford Town Plan Refresh 2013
- By Design: urban design in the planning system: towards better practice (DETR/CABE)

4.3 The policies within the West Berkshire Core Strategy (2006-2016) July 2012 attract full weight. The following policies are relevant to this application:

- Area Delivery Plan Policy 1 Spatial Strategy
- Area Delivery Plan Policy 5: North Wessex Downs Area of Outstanding Natural Beauty
- CS 5: Infrastructure Requirements and Delivery
- CS 6: Provision of Affordable Housing
- CS 9: Location and Type of Business Development
- CS 10: Rural Economy
- CS 11: Hierarchy of Centres
- CS 13: Transport
- CS 14: Design Principles
- CS 15: Sustainable Construction and Energy Efficiency

- CS 16: Flooding
- CS 17: Biodiversity and Geodiversity
- CS 19: Historic Environment and Landscape Character

4.4 Paragraph 215 of the NPPF advises that due weight should be given to relevant policies in existing plans according to their degree of consistency with the framework. The following saved policies from the Local Plan are relevant to this application:

- OVS 5: Environmental Nuisance and Pollution Control
- OVS 7: Hazardous Substances
- OVS 8: Hazardous Substances
- ENV 20: The Redevelopment of Existing Buildings in the Countryside
- HSG 1: The Identification of Settlements for Planning Purposes
- TRANS 1 : Meeting the Transport Needs for New Development

4.5 In addition, the following locally adopted policy documents are relevant to this application:

- Supplementary Planning Document Quality Design (June 2006)

5. Description of Development

5.1 The application site is set outside the settlement boundary for Hungerford. As such the site is deemed to be within the countryside and also forms part of the wider North Wessex Downs Area of Outstanding Natural Beauty. The site has had a varied planning history and at present is utilised by Garden Art for the sale of various ornamental garden features. The site is in a prominent location and does form part of an important gateway to Hungerford. There is development to the north of the site on the opposite side of Bath Road, however to the south and east of the site development is much more restricted and thus there is a greater rural feel, particularly as part of this area forms Hungerford Park.

5.2 This Section 73 application seeks to remove Condition 19 (BREEAM) of planning permission 13/00773/COMIND. The original application granted permission for the redevelopment of the site with a contemporary one and a half storey structures to form groups of buildings around an entrance court yard, for 22 units (1,100 sqm) of B1 Light Industrial units with 20% being for A1 retail, proposed for non-ancillary retail use.

5.3 Condition 19: BREEAM

“The buildings shall achieve Excellent under BREEAM (or any such equivalent national measure of sustainable building which replaces that scheme). No building shall be occupied until a final Certificate has been issued certifying that BREEAM (or any such equivalent national measure of sustainable building which replaces that scheme) rating of Excellent has been achieved for the development, has been issued and a copy has been provided to the Local Planning Authority.

Reason: To ensure the development contributes to sustainable construction. This condition is imposed in accordance with the National Planning Policy

Framework (March 2012), Policy CS15 of the West Berkshire Core Strategy (2006-2026) and Supplementary Planning Document Quality Design (June 2006)."

- 5.4 While the application and supporting documents make reference to a "modified BREEAM" no indication of a lower level has been given and the application has been assessed on the basis of the removal of Condition 19.

6. Consideration of the Proposal

Section 73 of the Town and Country Act 1990 enables applications to be made to remove or vary conditions imposed on an extant planning permission. On such an application the local planning authority shall consider only the question of the conditions subject to which planning permission should be granted.

The main issues raised by the proposal are:

- The principle of development,
- BREEAM.
- Community Infrastructure Levy (CIL).
- Presumption in favour of sustainable development,

6.1 Principle of development

- 6.1.1 The development which this application under Section 73 seeks to amend has by definition been judged to be acceptable in principle at the time of the original application. In accordance with Section 38(6) of the Planning and Compulsory Purchase Act 2004, these applications should be determined in accordance with the Development Plan unless material considerations indicate otherwise. However, in making their decisions, local planning authorities should focus their attention on national or local policies or other material considerations which may have changed significantly since the original grant of permission, as well as the changes sought.

6.2 BREEAM

- 6.2.1 Application 13/00773/COMIND was accompanied by a BREEAM pre-assessment by the Blewburton partnership (dated February 2013) and it was noted in the committee report (July 2013) the case officers stated:

A BREEAM pre-assessment report and covering letter have been submitted with the application. This notes that the pre-assessment demonstrates that the developer has the intention to include sustainable features as far as the nature and functionality of the new buildings allow. In his opinion, it would be able to score an Excellent rating but not without compromising viability and implementing measures that will not serve any purpose from a sustainability viewpoint. This arises largely because, as yet, there is not a BREEAM scheme that suits a development of this somewhat individual nature.

Overall, the report and letter shows that an 'Excellent' rating can be achieved but may have to be a bespoke full assessment. Therefore a planning condition would be considered an appropriate measure if approved.

6.2.2 Policy CS15, Sustainable Construction and Energy Efficiency required:

New non-residential development will meet the following minimum standards of construction:

- *Minor development - BREEAM Very Good*
- *Major development - BREEAM Excellent*
- *From 2013: All development - BREEAM Excellent*

6.2.3 The explanatory text for the policy goes on to state (5.96-5.97):

Carbon reduction is a key issue for West Berkshire. Sustainable construction and renewable energy generation can help in achieving emissions reduction. Cost implications of installing CO2 emissions reduction measures from the start of the development are less than if they were retro-fitted afterwards. In addition, the benefits derived by the end user in relation to reduced heating and fuel bills will be enhanced.

West Berkshire District is one of the highest electricity users in the south east, and is in the upper quartile of local authorities for CO2 emissions within the region. Fuel poverty levels in West Berkshire are also high, compared to other authorities. This is clear evidence and justification that West Berkshire needs to do more to meet national targets in relation to CO2 emissions reduction.

6.2.2 The current application is accompanied by a statement from the Blewburton Partnership and following the Planning Policy comments the agents submitted an analysis illustrating areas where the development could target BREEAM credits and a response which illustrates the business case with supporting and evidenced assumptions with regard to rental rates, the agent concludes:

- *Meeting BREEAM Excellent requirements adds approximately 12% to the construction cost of the project,*
- *The project is not commercially viable with full BREEAM compliance and will result in an annual deficit in Years 1 – 7,*

6.2.3 The supporting evidence has been assessed, as had the response from Planning Policy and the subsequent additional information provided by the applicant.

6.2.4 On a fine balance of the considerations, and with particular regard to the level of support that exists for the redevelopment of the site in the way that has been promoted, the development control manager considered it was appropriate for the committee to have the opportunity to scrutinise what would otherwise be a delegated refusal.

6.2.5 BREEAM requirements have been relaxed in the past but those causes have generally has very specific building, use and/or located influences that have made those variations appropriate.

6.2.6 Consideration of those matters is much more finely balanced in this instance.

6.4 Community Infrastructure Levy (CIL)

6.4.1 Contributions were requested as part of the previous application and a section 106 agreement was completed. Under the definitions section of the legal agreement, developer contributions section 1.1.19 it states "the planning permission for the development subject to conditions to be granted by the Council pursuant to the application and including any subsequent permissions to vary the conditions therein under Section 73 and Section 73A of the Act". As there is no change to the buildings on site CIL is not payable.

6.4 Presumption in favour of sustainable development

6.4.1 The NPPF places a strong emphasis on sustainable development. All planning applications must result in sustainable development being achieved with consideration being given to economic, social and environmental sustainability aspects of the proposal.

6.4.2 In contributing to the economic role of sustainable development the expansion of the Garden Art business into the proposed enterprise would aid in supporting the rural economy. The increase in workshop units and retail activity on the site would support local jobs and the rural industry. The location is appropriate for such an enterprise, and although outside the settlement boundary of Hungerford, is acceptable without resulting in harm to highway safety.

6.4.3 In contributing to the social role the proposal would provide facilities for craft/leisure works to be created or enhanced. In contributing to the environmental role, while the appearances of the new structures are considered to be appropriate in the site context however there was a strong case made in putting forward the original application with regard to the sustainable and "collective" strength of the proposal.

6.4.4 Removal of the controls, provided by condition 19, to secure the "excellent" level of construction and service of the buildings, does potentially affect the whole basis of the original proposal and approved.

6.4.5 For the above reasons it is considered that the proposed development does not comply with the presumption in favour of sustainable development.

7. Conclusion

7.1 Having taken account of all the relevant policy considerations and the other material considerations referred to above, it is considered that having regard to the reasons to object to the proposal, the removal of conditions (19) BREEAM of planning permission 13/00773/COMIND is unacceptable and should be refused for the reason set out below.

8. FULL RECOMMENDATION

DELEGATE to the Head of Planning & Countryside to **REFUSE PLANNING PERMISSION** subject to the reasons for refusals (Section 8.1):-

8.1 Reasons for refusal.

1. Permission is sought for the removal of Condition 19 of planning permission ref. 13/00773/COMIND. If allowed, the removal of condition would allow the new building to be constructed without the need to comply with BREEAM Standards.

This proposal for the removal of Condition 19 would be contrary to the aims of the NPPF and contrary to Policy CS15 of the West Berkshire Local Plan Core Strategy (2006-2026) and Supplementary Planning Document Quality Design June 2006 which requires that all new non-residential development achieves BREEAM Excellent

The application has not sufficiently demonstrated the need for the removal of the condition given the current policy context and the proposal is therefore considered to be unacceptable.

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