

<b>Item No</b>	<b>Application No. and Parish</b>	<b>8/13 week date</b>	<b>Proposal, Location and Applicant</b>
(2)	17/03285/FUL Compton	17 January 2018	Section 73A: Variation of Condition 4: External lighting, of planning permission 00/00964/FUL – Construction of three two storey light industrial units in one block of three units.  10-12 Old Station Business Park, Compton, Berkshire.  Mr M Fenton.

To view the plans and drawings relating to this application click the following link:  
<http://planning.westberks.gov.uk/rpp/index.asp?caseref=17/03285/FUL>

**Recommendation Summary:**            **The Head of Development and Planning be authorised to grant planning permission.**

**Ward Member(s):**                            Councillor Von Celsing

**Reason for Committee Determination:**            10 letters of objection.

**Committee Site Visit:**                            15<sup>th</sup> February 2018

<b>Contact Officer Details</b>	
<b>Name:</b>	Ms Lydia Mather
<b>Job Title:</b>	Senior Planning Officer
<b>Tel No:</b>	(01635) 519111
<b>E-mail Address:</b>	Lydia.mather@westberks.gov.uk

## 1. Site History

Permission 17/03194/NONMAT, December 2017, non-material amendment to add drawings and reference numbers by way of condition in order to formally list all approved drawings of approved permission 00/00964/FUL for construction of three two storey light industrial unit in one block of three units.

Permission 00/00964/FUL, March 2002, construction of three two storey light industrial unit in one block of three units.

## 2. Publicity of Application

Press Notice Expired: \*

Site Notice Expired: 19 January 201

## 3. Consultations and Representations

**Compton Parish Council:** Comment that the high level light on the west facing elevation to be not visible from the village and conservation area.

**Highways:** No objection.

**Environmental Health:** No objection subject to condition for further lighting details.

**Public Rights of Way:** No comments received.

**Ramblers' Association:** No comments received.

**North Wessex Downs Area** No comments received.

**Of Outstanding Natural Beauty:**

**Correspondence:** 10 letters of objection. Detailed comments are available on the website. In summary the issues raised are:

- Issues with the existing units at the Business Park and comments that no further development should be permitted until the matters below have been enforced/addressed to ensure future development will be in compliance with planning legislation:
  - non-compliance with original landscaping condition and poor maintenance of what has been planted,
  - light pollution from first floor windows and external lighting, often left on overnight,
  - noise pollution from air ducts,

- traffic safety issues from variety users along the access road which is a single lane – HGVs, pedestrians using public right of way and route to school without a footpath or overhead lighting, volume of traffic associated with existing business park which will be significantly increased by additional unit,
- an occupier handles chemicals raising safety concerns and has required emergency measures on occasions.
- Validity of existing permission: footings not complete as works to bank not undertaken; 16 years elapsed since permission granted; and whether the building as permitted would now meet building standards or business needs.
- The building would be forward of the existing units. As a result it would be closer to the public footpath; require more hedge removal; raises concerns about the ground level of the building relative to the existing units and undue prominence locally.
- Any proposed new lighting should be: downward facing; on movement sensors; switched off outside business hours; not present on the west elevation towards other properties; and black out blinds installed on the first floor.

#### **4. Policy Considerations**

- 4.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that the determination of any planning application must be made in accordance with the development plan unless material considerations indicate otherwise.
- 4.2 The statutory development plan comprises:
- The West Berkshire Core Strategy 2006-2026
  - Housing Site Allocations Development Plan Document 2017
  - The West Berkshire District Local Plan Saved Policies 2007
  - The South East Plan 2009 Policy in so far as Policy NRM6 applies
  - The Replacement Minerals Local Plan for Berkshire 2001
  - The Waste Local Plan for Berkshire 1998
- 4.3 The following Core Strategy policies carry full weight and are relevant to this application:
- National Planning Policy Framework Policy
  - Area Delivery Plan Policy 1: Spatial Strategy
  - Area Delivery Plan Policy 5: North Wessex Downs Area of Outstanding Natural Beauty
  - 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 18: Green Infrastructure
- CS 19: Historic Environment and Landscape Character

4.4 The saved policies of the West Berkshire District Plan carry due weight according to their degree of conformity with the National Planning Policy Framework. The following saved policies are relevant to this application:

- TRANS.1: Meeting the Transport Needs of New Development
- OVS.5: Environmental Nuisance and Pollution Control
- OVS.6: Noise Pollution

4.5 Other material considerations include government guidance, in particular:

- The National Planning Policy Framework 2012
- The Planning Practice Guidance Suite 2014
- Manual for Streets

4.6 In addition the following locally and regionally adopted policy documents are material considerations relevant to this application:

- The North Wessex Downs Area of Outstanding Natural Beauty Management Plan 2014-2019
- Compton Parish Plan
- Supplementary Planning Document: Quality Design 2006

## **5. Description of Development**

5.1 The application is to vary condition 4 of planning permission 00/00964/FUL. The condition states:

Details of the external lighting to be used in the areas around the building shall be submitted to and approved by the Local Planning Authority before building or other operations start, and no building shall be occupied before the lighting has been installed to the satisfaction of the Local Planning Authority.

Reason: The Local Planning Authority wish to be satisfied that these details are satisfactory, having regard to the setting of the development.

5.2 The site is to the north of existing light industrial units and would share that access off School Road and past Wilson Close to the south west. The site and wider area is within the North Wessex Downs Area of Outstanding Natural Beauty. A public right of way runs along the west of the site and joins others further south, one of which is also along the access off School Road.

5.3 The application is made under Section 73A of the Town and Country Planning Act 1990 for planning permission for work that has already been carried out. In this instance it is under sub-section (c) for development without complying with a condition subject to which planning permission was granted.

## **6. Consideration of the Proposal**

### **Status of Permission and Conditions 1 and 4 of 00/00964/FUL**

- 6.1 Condition 1 of 00/00964/FUL requires development to commence within 5 years of the permission, which would have been by February 2007, and in accordance with the approved plans. The original approved plans were not listed and a recent non-material amendment has added them as a condition to the permission.
- 6.2 In March 2004 foundation trenches were dug and infilled, and pipes laid. This was within the timescale of condition 1. Section 56 (2) of the Town and Country Planning Act 1990 states “development is taken to be begun on the earliest date on which any material operation comprised in the development begins to be carried out”.
- 6.3 A material operation includes in Section 56 (4)(b) “the digging of a trench to contain foundations, or part of the foundations of a building”, and (c) “the laying of any underground main or pipe to the foundations, or part of the foundations, of a building or to any such trench as is mentioned in paragraph (b)”.
- 6.4 On the basis of the above it is considered that a material operation began on site in March 2004, within the timescale of the permission and in the location identified on the original plans. The withdrawn application of 2017 included a site survey plan of the works and building regulation document of the time period the works were undertaken.
- 6.5 However, the commencement occurred without discharging condition 4. This condition required an external lighting strategy to be approved before building, or other operations start. It requires the lighting to be installed before the building is occupied. Section 73A of the Town and Country Planning Act allows for applications to be made where development has occurred without complying with a condition.
- 6.6 The breach of condition 4 does not go to the heart of the permission. It relates instead to a detail of the permission. External lighting is part of the operation of the site, not the ground works or construction phase of development. Condition 4 is still required, but could be varied for the lighting details to be submitted and the lighting installed prior to the first use of the building. This would rectify the breach of condition and enable compliance with the permission.
- 6.7 Comments have been made on the validity of the application where development started within the timescale of the original permission, but has not been completed. The Local Planning Authority have not issued a completion notice requiring the development to be completed. The details of the lighting condition the development is in breach of can be achieved by varying the condition. The development is capable of being lawful through the variation of condition.

### **Current Development Plan Policies**

- 6.8 Section 73 of the Town and Country Planning Act states that the Local Planning Authority shall consider “only the question of the conditions subject to which planning permission should be granted.” As a planning application under a planning act any decision needs to be in accordance with the development plan policies

applicable at this time. It is therefore necessary to review the conditions applied to the original permission.

## AMENITY

- 6.9 Environmental Health have been consulted on the application. They do not object to the variation of the lighting condition. They would require as part of future details to be submitted information on the relationship with other properties.
- 6.10 Environmental Health commented on the previous application in 2017 which was withdrawn. They advised the potential impacts with regard to land contamination, noise, light and construction. Given that development has commenced on site without a condition on land contamination some opportunity to mitigate any land contamination has passed. However, the site has become partially overgrown and there remains some opportunity to mitigate land contamination which may be encountered in clearance, continuation of development and connection to services. Therefore it is not possible to apply the full land contamination condition previously advised by Environmental Health. Instead an unforeseen land contamination condition is recommended to ensure any contamination found during the remaining works to be carried out can be mitigated prior to the occupation of the building.
- 6.11 The proposal includes use class B1(c) which is light industrial uses appropriate in a residential area. Environmental Health previously advised a condition for details of any external plant machinery associated noise assessment to be submitted and approved, an hours of work during construction condition and an hours of operation condition once the development is occupied. These were not conditions with the original permission.
- 6.12 The development plan and national guidance has changed since the original permission and now includes the more holistic policy CS 14 of the Core Strategy where all development shall make a positive contribution to quality of life. The NPPF also requires all development to be environmentally and socially sustainable. It is not considered that the suggested conditions would be onerous as they seek to ensure any future occupier has an acceptable impact on other land uses and occupiers near the site in accordance with the permitted use class. As such it is recommended that they be applied.
- 6.13 Comments regarding potential air pollution were provided to Environmental Health on the application withdrawn in 2017. Their response was that the occupier would need to comply with a B1(c) light industrial use that is appropriate in a residential area. Furthermore, any polluting processes would require a permit (Pollution Prevention and Control Act) to control emissions.

## HIGHWAYS

- 6.14 The Council's Highways were consulted on the application and raised no objections. In addition to an approved plans condition it would be current practice to apply a parking layout condition so that the car parking on site is provided prior to the occupation of the building in the interest of highway safety. The amount of car parking to be provided remains in accordance with the Council's saved policy for B1 uses. A car parking layout condition is therefore recommended to be applied.

## GREEN INFRASTRUCTURE

- 6.15 Policy CS 18 of the Core Strategy seeks to ensure the conservation of public rights of way and other green infrastructure by development. Policy CS19 also relates to the sensitivity of the area to change and landscaping can mitigate the impact of development. The policies were not adopted at the time of the previous permission. Nevertheless a landscaping scheme was included within the original permission and condition 3 requires that the landscaping scheme be undertaken.
- 6.16 Condition 3 is not as precisely worded as a current landscaping condition. It is therefore considered necessary to vary the condition to ensure the trigger to provide the landscaping is more precise and include the current development plan policies.
- 6.17 Public Rights of Way have not commented on the application but informatives that the public right of way remain unobstructed during construction and available for public rights of way users at all times are recommended in line with current policy.

## 7. Conclusion

- 7.1 A material operation commenced on site within the timeframe of the original permission and in the location identified on the plans. The condition the development is in breach of relates to a detail and does not go to the heart of the permission. The condition is capable of being complied with by the proposed variation to its wording for details to be submitted and installed prior to the first use of the building.
- 7.2 Conditions to mitigate the impact of the development under current development plan policies have been identified as a parking provision, land contamination, plant machinery, hours of work during construction, hours of operation, landscaping, and informatives on the public right of way. These meet the tests for conditions as being necessary, relevant to planning and the development, specific, enforceable, and reasonable in all other respects.

## 8. Full Recommendation

The Head of Development and Planning be authorised to grant planning permission subject to conditions.

### Conditions

#### 8.1 Approved plans

The development shall be carried out in accordance with drawings 1391/50, 1391/52, 1391/53 rev B, 1391/54 rev B, 1391/56, 1391/57, 1391/58 received on 21 November 2017.

Reason: To ensure that the development is carried out in accordance with the submitted details assessed against the National Planning Policy Framework 2012, Policies ADPP1, ADPP5, CS 9, CS 13, CS 14, CS 18 and CS 19 of the West Berkshire Core Strategy 2006-2026, policies OVS.5, OVS.6 and TRANS.1 of the West Berkshire District Local Plan Saved Policies 2007.

#### 8.2 Materials

The materials to be used in the construction of the external surfaces of the building shall match the existing units within the Old Station Business Park to the satisfaction of the Local Planning Authority.

Reason: To ensure that the external materials are visually attractive and respond to local character in accordance with the National Planning Policy Framework 2012, policies ADPP1, ADPP5, CS14 and CS19 of the West Berkshire Core Strategy 2006-2026, and the Quality Design Supplementary Planning Document 2006.

### 8.3 Landscaping

All landscape works shall be completed in accordance with the submitted plans, and supporting information. The approved landscape works shall be implemented within the first planting season following the first use of the development or in accordance with a programme submitted prior to the first use of the development and approved in writing by the Local Planning Authority.

Any trees, shrubs, plants or hedges planted in accordance with the approved scheme which are removed, die, or become diseased or become seriously damaged within five years of completion of the approved landscaping scheme shall be replaced within the next planting season by trees, shrubs or hedges of a similar size and species to that originally approved.

Reason: To ensure the implementation of a satisfactory scheme of landscaping in accordance with the National Planning Policy Framework 2012, Policies CS14, CS18 and CS19 of the West Berkshire Core Strategy 2006-2026, and Supplementary Planning Document Quality Design 2006.

### 8.4 External Lighting

The use shall not commence until details of the external lighting to be used in the areas around and on the building, including details of their relationship to/impact on nearby residents have been submitted to and approved in writing by the Local Planning Authority. The external lighting shall be installed in accordance with the approved scheme before the use is commenced. No external lighting shall be installed except for that expressly authorised by the approval of details as part of this condition.

Reason: To protect the amenities of nearby land users and the character of the area. Inappropriate external lighting would harm the special rural character of the locality. This condition is imposed in accordance with the National Planning Policy Framework 2012, Policies ADPP5, CS14 and CS19 of the West Berkshire Core Strategy 2006-2026, and OVS.5 of the West Berkshire District Local Plan Saved Policies 2007.

### 8.5 Hours of Work

No construction works shall take place outside the following hours:

7:30am to 6:00pm Mondays to Fridays;  
8:30am to 1:00pm Saturdays;



nor at any time on Sundays or Bank Holidays.

Reason: To safeguard the amenities of adjoining land uses and occupiers. This condition is imposed in accordance with the National Planning Policy Framework 2012, Policy CS14 of the West Berkshire Core Strategy 2006-2026 and Policy OVS.6 of the West Berkshire District Local Plan Saved Policies 2007.

#### 8.6 Land Contamination

Should any unforeseen contamination be encountered during the development, the developer shall inform the Local Planning Authority immediately. Any subsequent investigation/remedial/protective works deemed necessary by the Local Planning Authority shall be carried out to agreed timescales and approved by the Local Planning Authority in writing. If no contamination is encountered during the development, a letter confirming this fact shall be submitted to the Local Planning Authority upon completion of the development.

Reason: To protect the amenities of future occupiers of the site in accordance with policy CS14 of the West Berkshire Core Strategy 2006-2026, policy OVS.5 of the West Berkshire District Local Plan Saved Policies 2007, and the National Planning Policy Framework 2012.

#### 8.7 Parking

The use shall not commence until the vehicle parking and turning space have been surfaced, marked out and provided in accordance with the approved plans. The parking and turning space shall thereafter be kept available for parking (of private motor cars and/or light goods vehicles) at all times.

Reason: To ensure the development is provided with adequate parking facilities, in order to reduce the likelihood of roadside parking that would adversely affect road safety and the flow of traffic. This condition is imposed in accordance with the National Planning Policy Framework 2012, Policies CS13 and CS14 of the West Berkshire Core Strategy 2006-2026 and Policy TRANS.1 of the West Berkshire District Local Plan Saved Policies 2007.

#### 8.8 Plant Machinery

No plant shall be installed on site until details have been submitted to and approved in writing by the Local Planning Authority. The plant and measures to minimise the effect of noise shall be installed prior to the operation of the plant in accordance with the approved details. Details of the plant shall include:

(a) written details concerning any proposed air handling plant associated with the development including

(i) the proposed number and location of such plant as well as the manufacturer's information and specifications

(ii) the acoustic specification of the plant including general sound levels and frequency analysis under conditions likely to be experienced in practice.

(iii) the intended operating times.

(b) The findings of a noise survey to determine noise levels in the vicinity of the proposed development and calculations showing the likely impact of noise from the development;

(c) a scheme of works or such other steps as may be necessary to minimize the effects of noise from the development;

Reason: To protect the amenity of residents and nearby land users in accordance with the National Planning Policy Framework 2012, Policies CS14 and CS19 of the West Berkshire Core Strategy 2006-2026, and Policies OVS.5 and OVS.6 of the West Berkshire District Local Plan Saved Policies 2007.

## 8.9 Hours of Operation

The use of the premises shall not operate outside the following hours:

07:00 to 21:00 Mondays to Fridays, 08:00 to 18:00 on Saturdays and not at any time on Sundays and Bank or Statutory Holidays.

Reason: To protect the amenity of residents and nearby land users in accordance with the National Planning Policy Framework 2012, Policies CS14 and CS19 of the West Berkshire Core Strategy 2006-2026, and Policy OVS.6 of the West Berkshire District Local Plan Saved Policies 2007.

### **Informatives**

## 8.10 Public Rights of Way

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