

Item No.	Application No. and Parish	8/13 Week Date	Proposal, Location and Applicant
(2)	18/01553/OUTMAJ. Newbury Town Council.	1 st October 2018	<p>S73 application to vary conditions on approved application APP/WO340/W/14/3002040. In order to permit a phased approach [12/00772/xoutmaj refers] Land off Faraday Road, Newbury. Comprehensive redevelopment of site to include 26,554m² of floor space, providing offices, retail, financial and professional services, hotel, restaurant, hot food take-aways, motor dealership and flats [160 units] with 48 affordable, 330 car parking spaces and new junction onto the A339.</p> <p>Land Off Faraday and Kelvin Road Newbury</p> <p>Faraday Development Limited</p>

To view the plans and drawings relating to this application click the following link:
<http://planning.westberks.gov.uk/rpp/index.asp?caseref=18/01553/OUTMAJ>

Member(s): Councillors Benneyworth and Fredrickson.

Reason for Committee determination: The application is a major one and the Council is the freeholder of the application site.

Committee Site Visit: 23rd August 2018.

Recommendation. **The Head of Development and Planning be authorised to GRANT planning permission. Subject to the completion of a s106 obligation.**

Contact Officer Details	
Name:	Michael Butler
Job Title:	Principal Planning Officer
Tel No:	(01635) 519111
E-mail Address:	michael.butler@westberks.gov.uk

1. Site History

08/01255/outmaj. Mixed use development as in the current description. Approved May 2009.

12/00772/xoutmaj. Renewal of the above application. Refused in August 2014. Subsequent appeal allowed on February 1st 2016.

17/00250/pre app. Advice on s73 application - phasing. Letter response on 27th December 2017

18/01454/mdopo. Application to vary the s106 obligation attached to the appeal permission noted.

2. Publicity of Application

Site notice displayed 12th July 2018. Expiry 2nd August 2018.

Advertised as departure July 2018.

3. Consultations and Representations

Newbury Town Council No objections.

Highways No objections.

Tree officer No observations.

Archaeologist. No archaeological implications.

Public representations. None.

4. Policy Considerations

National Planning Policy Framework 2018.

National Planning Practice Guidance 2014.

West Berkshire Core Strategy 2006 to 2026.

Policies ADPP2, CS1, CS5, CS6, CS9, CS13, CS14.

West Berkshire District Local Plan 1991 to 2006. Policy OVS6.

5 Description of development.

5.1 Currently, planning permission exists for the description of development as identified in this report. This involves a substantial mixed use redevelopment of this quarter of the London Road Industrial Estate [LRIE] which lies immediately to the north of the recently constructed link road onto the A339. This permission was allowed at appeal on 1st February 2016, but has not yet been implemented. It is accordingly still extant, but due to expire on 1st February 2019, unless a reserved matters application is submitted on or before that date for the whole of the application site.

5.2 This proposal is NOT to extend the lifetime of the permission via renewal [which is not possible in any event under s73 of the 1990 Town and Country Planning Act] but to amend a number of the planning conditions attached to the original decision applied by the Inspector. The purpose of this application is to allow phasing of the development to be permitted which will enable the applicant [or indeed another developer as the permission is not a personal one] to build the scheme in phases, if required. This phasing will automatically necessitate a range of alterations to the conditions, taking into account any new policies or material

changes on the ground since the appeal decision. This is because the issue of s73 permission is a NEW permission.

- 5.3 For clarity the Council issued a screening opinion on 11th July 2018, noting that no environmental impact assessment was required to be submitted on the new application. In addition, since the current planning permission includes housing, which is a non-employment generating use, it is technically contrary to policy CS9 in the WBCS, so it has been advertised as a departure.

6 Consideration of the application

- 6.1.1 The application needs to be considered under the following issues. The merits of phasing the application, any more consequent changes required, and any s106 obligation implications.
- 6.1.2 The NPPF of 2018 makes it clear that Local Planning Authorities should encourage sustainable development where possible and appropriate: in this case the scheme will be a significant catalyst to the regeneration of part of the LRIE, being brownfield, lying in a highly accessible location. It will create significant new employment and [inter alia] 160 new dwellings, 30% of which will be affordable. Consequently, it is recommended that any variation to the extant permission which will assist in the future implementation of this important scheme, should be supported. The only “downside” of this approach is that the permission could extend the time it will take to build out the whole scheme in a comprehensive fashion: this is a matter which the Committee will need to take into account.
- 6.1.3 Since the planning appeal decision was made the new link road into the site from the A339 has been built. This new link road was [and still is] an integral component of the mixed use scheme before the Committee. Accordingly, condition 9 on the appeal decision, which corresponds to access will need to be re worded. This relates to the provision of the new road, which of course is no longer required to be built, but is clearly still required to serve the future development. This latter point needs to be acknowledged in the new permission.
- 6.1.4 Application 18/01454/mdopo has been submitted by the same applicant as a partner application to this current one. This seeks to modify the present Unilateral Undertaking attached to the appeal decision, which currently does not allow any subsequent s73 permissions to be bound by the Undertaking. If this were to remain the case then the build out of the fresh permission would mean the applicant would not need to provide the 48 affordable units. Clearly this cannot be permitted given the very great need for such housing in the Town and beyond. Accordingly if this s73 application is approved by Committee tonight, no permission will be granted until the mdopo is sealed and completed, thus ensuring the future provision of the affordable units.
- 6.1.5 In order that the Committee can be clear on how the conditions are to be altered the following provides a summary of the main changes:-

Condition 1 - Insert 1st February 2019 in the condition so as not to extend the life time of the permission.

Condition 2 - Approved plans. Amended to exclude the illustrative drawings [as advised in the NPPG] and to exclude the new access link drawings. Also insert date of 1st February 2019 for consistency with the new wording of condition 1. [Since this is a fresh permission].

Condition 6 - Deleted. New condition inserted, which allows for the submission of a phasing programme to be submitted, indicating the location and number of affordable units to be supplied in each phase, to be agreed in writing by the LPA, before development commences.

Condition 9 - Access. Needs to be significantly reworded in order to reflect the build out of the new access road on site.

Other conditions to be amended to allow for phasing e.g. No. 27 relating to a CEMP.
The four contamination conditions are now condensed into one in accord with Council practice.

7 Conclusion.

7.1 In terms of the **planning balance** the Committee should take into account the following material considerations:-

a - If the current application were refused, this would not alter the lifetime or detail of the present extant permission – the same time limits still apply.

b - If the current application is approved this will allow greater flexibility for the applicant [or another developer] in terms of options as to how the scheme is built out over time. Providing such flexibility is encouraged by the NPPF guidance for local planning authorities, in determining such applications.

c - the corollary of the above is that if the developer elects to implement this latter permission, this will potentially extend the lifetime of the actual build out of the scheme, which could be disadvantageous in terms of the social benefits [in terms of the affordable housing] and the clear economic benefits of the mixed use scheme.

7.1.2 On balance the application is duly recommended for approval, having regard [in part] to the Inspector's views in his decision letter about the Council being more pro-active about the future vision for development at the LRIE in general.

8. Recommendation.

Committee grant the application, with conditions varied, subject to the first completion of the s106 obligation as amended under 18/01454/mdopo.

CONDITIONS.

Time

1. The development hereby permitted shall be begun on or before whichever is the later of the following dates:
 - i. on or before 1st February 2019.
 - ii. the expiration of two years from the final approval of the reserved matters [as phased] or, in the case of approval on different dates, the final approval of the last such matter approved.

Reason: To clarify the planning permission in accord with the advice in the DMPO of 2015.

Reserved Matters

2.Full details of the appearance, landscaping and layout of the building(s) (the 'reserved matters') shall be submitted to the Local Planning Authority not later than 1st February 2019 and shall be approved in writing by the Local Planning Authority before any building or other operations start on site having due regard to the parameters and principles for such matters as contained or referred to in the approved drawings originally forming part of planning permission 12/00772/OUTMAJ which is replaced by this permission .

Reason. To clarify the permission in accord with the advice in the DMPO of 2015.

Build out

3. The development must be carried out in accordance with the reserved matters approvals obtained in accordance with condition 2 and other relevant approvals to be obtained from the Local Planning Authority in accordance with the conditions set out in this permission.

Reason: To ensure the correct development is built out on site in accord with the advice in the NPPF2.

Height

4. No building, hereby permitted, shall be higher than 26m above the agreed prevailing ground level of the existing site within the application site area.

Reason: To ensure the future visual impact of the scheme is acceptable having regard to the advice in policy ADPP2 in the WBCS of 2006 to 2026.

Floor levels

5. No phase of the development shall commence until details of floor levels, in relation to existing and proposed ground levels have been submitted to and approved in writing by the Local Planning Authority; that phase of the development shall be carried out in accordance with the approved levels.

Reason: To ensure potential visual impact of the scheme is acceptable having regard to policy ADPP2 in the WBCS of 2006 to 2026.

Phasing.

6. Within one month of the date of this decision a phasing programme of works shall be submitted to and approved in writing thereafter by the Council. Each phase shall indicate the location and number of affordable units to be provided on site. The development shall then be carried out in strict accord with this phasing plan, unless otherwise agreed in writing by the LPA. For clarity this condition relates to all of the scheme as permitted, not just the residential element.

Reason: To facilitate the implementation of the scheme in accord with the advice in the NPPF2.

Limits on floor space

7. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015, none of the uses permitted by this planning permission shall exceed the following specified gross external floor-space:

- i. the floor-space for B1 office uses shall not exceed 7,234m²,
- ii. the floor-space for Class A1 retail uses shall not exceed 2,200m² and the combined floor-space for use classes A1 and A2 shall not exceed 3,984 m²,
- iii. the floor-space for A3 and A5 uses shall not exceed a combined total of 1,376m², and
- iv. the floor-space for C1 hotel uses shall not exceed 3,562m² or 100 bedrooms.

For clarity and the avoidance of doubt the floor-space specified above relates to the gross external area of buildings (or parts of buildings) used for the specified purpose.

No more than 330 car parking spaces shall be provided.

Reason. To specify the application approved in accord with the advice in the DMPO of 2015.

Total space permitted.

8. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015, the total gross external floor-space of the buildings permitted by this decision shall not exceed 26,554m².

Reason: To clarify the permission in accord with the advice in the DMPO of 2015.

Access Link.

9. The development hereby permitted shall be accessed off Faraday Road, Kelvin Road, and Fleming Road - the latter as now reconfigured in accordance with planning permission number 14/03039/ful as shown on plan number 3595/PL21.

Reason. To ensure that the expected traffic generation and accessibility of the scheme is acceptable in accord with the advice in policy CS13 in the WBCS of 2006 to 2026, and the original parameters of the planning permission 12/00772/xoutmaj.

Drainage Strategy

10. No phase of development shall commence until a drainage strategy detailing any on and/or off site drainage works has been submitted to and approved in writing by,[for the particular phase in question,] the Local Planning Authority. No discharge of foul or surface water from the site shall be accepted into the public sewer system, from the phase in question, until the approved drainage works have been completed

Reason: The site must be drained satisfactorily, in accord with the advice in policy CS16 in the WBCS of 2006 to 2026.

Flooding

11. The development permitted by this planning permission shall only be carried out in accordance with the approved Flood Risk Assessment (FRA) dated March 2012, and produced by SMA, and the following mitigation measures detailed within the FRA:-

- i. limiting the surface water run-off generated by the 1:100 year critical storm event plus 30% (to allow for climate change) so that it will not exceed the greenfield run-off from the undeveloped site and not increase the risk of flooding off-site:-
- ii. plus identification and provision of safe route(s) into and out of the site to an appropriate safe haven.

Reason: The development must not place future occupants at risk of flooding or adjacent land occupiers, in accord with the advice in NPPF2.

SUDS

12. No phase of the development shall commence until a surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development, has been submitted to and approved in writing by the Local Planning Authority, for that phase alone. That phase of the scheme shall subsequently be implemented in accordance with the approved details before the development is first occupied and where appropriate shall continue to be implemented after occupation. The scheme shall also include details of how the scheme shall be maintained and managed after it is occupied, SUDS selection based on the management train outlined in the FRA, measures to ensure there are no soak-aways through contaminated land and where soak-aways are shown to be suitable they shall

be constructed such that they do not penetrate the water table, and they shall not in any event exceed two metres in depth below existing ground levels.

Reason: To ensure the scheme complies with policy CS16 in the WBCS of 2006 to 2026.

Piling

13. Piling or any other foundation designs using penetrative methods will not be permitted other than with the express written consent of the Local Planning Authority, which may be given for those parts of the site where it has been demonstrated that there is no resultant unacceptable risk to groundwater. The relevant part of the development shall be carried out in accordance with the approved details.

Reason: To ensure that there is no risk of harm or noise to adjacent land occupiers, in accord with the advice in the NPPF2.

Noise

14. No phase of the development shall commence until a scheme of works for protecting the occupiers of the development from externally generated noise has been submitted to and approved in writing by the Local Planning Authority. The details submitted need only relate to the phase in question. All works forming part of the approved scheme shall be completed before any dwelling is first occupied. There shall be no open balconies overlooking the western boundary of the site onto the A339. Noise levels in any amenity area provided shall not exceed $Leq=55dB(A)$, as recommended in WHO guidance. No residential facade shall be less than 10m from the edge of the A339.

Reason: To protect future occupiers from external noise nuisance, in accord with policy OVS6 in the WBDLP of 1991 to 2006.

Noise

15. No phase of the development shall commence until the following has been submitted to the Local Planning Authority:-

- i. the findings of a noise survey (undertaken in accordance with BS 4142 (or such other standard acceptable to the Local Planning Authority) to determine noise levels in the vicinity of the proposed development;
- ii. written details and calculations showing the likely impact of noise from the development;
- iii. a scheme of works or such other steps as may be necessary to minimize the effects of noise from the development;
- iv. written approval of a scheme under (iii) above has been given by the Local Planning Authority.

All works forming part of the scheme shall be completed before any of the dwellings are first occupied, in that phase only.

Reason: To protect surrounding amenity in accord with policy OVS6 in the WBDLP of 1991 to 2006.

Noise

16. The daytime internal noise level (0700-2300) arising from external sources shall not exceed $Leq=40dB(A)$ within any bedroom of the hotel development. The internal night time noise level (2300-0700) arising from external sources shall not exceed $Leq=35dB(A)$ within any bedroom of the hotel. Individual noise events measured with F-time weighting, during the night time period, shall not exceed $Lmax=45dB(A)$. Details of compliance with this standard shall be submitted to the

Local Planning Authority prior to any part of the hotel being occupied. Where compliance to this standard is only achievable with windows closed, an alternative scheme of ventilation shall be submitted to and approved by the Local Planning Authority.

Reason: To protect future occupiers of the hotel from external noise nuisance in accord with policy OVS6 in the WBDLP 1991 to 2006.

Air handling plant

17. No phase of the development on those parts of the scheme where air handling plant is to be incorporated and used shall commence until details of the following have been submitted to the Local Planning Authority:-

a. written details concerning any proposed air handling plant associated with the relevant part of 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. calculations showing the likely impact of noise from the relevant part of the development;

c. a scheme of works or such other steps as may be necessary to minimise the effects of noise from the relevant part of the development;

The relevant part of the development shall not commence until written approval of a scheme prepared under (c) above has been given by the Local Planning Authority. All works forming part of the scheme shall thereafter be completed before any of the development is first occupied, within the relevant phase/part of the scheme.

Reason: To ensure that there is no undue noise nuisance arising from air handling plant, in accord with policy OVS6 in the WBDLP 1991 to 2006.

Odour and Noise Suppression – Preparation of Food.

18. No phase of the development, where relevant, shall commence until the applicant has submitted to the Local Planning Authority a scheme of works or such other steps as may be necessary to minimise the effects of odour and noise from the preparation of food associated with the development. The relevant part of the development shall not commence until written approval has been given by the Local Planning Authority to any such scheme of works. The scheme once approved shall be implemented and maintained on the site. For clarity the details submitted need only relate to that phase in question.

Reason: To protect local amenity in accord with the advice in the NPPF of 2018.

Tree Protection.

19. No phase of the development shall commence until a scheme for the protection of trees to be retained has been submitted to and approved in writing by the Local Planning Authority. Such a scheme shall include a plan showing the location of the protective fencing, and shall specify the type of protective fencing, all in accordance with BS 5837:2005. Such fencing shall be erected prior to any development works taking place and at least two working days notice shall be given to the Local Planning Authority that it has been erected. It shall be maintained and retained for the full duration of works or until such time as agreed in writing with the Local Planning Authority. No activities or storage of materials whatsoever shall take place within the protected areas without the prior written agreement of the Local Planning Authority.

Reason: To protect trees on the site in accord with policy CS17 in the WBCS of 2006 to 2026.

For clarity the details submitted need only relate to the phase in question.

Ecology

20. No part of the development, hereby permitted, shall be occupied until a scheme to position 10 bat and 10 swift nest boxes of a type to be agreed has been submitted to, and approved in writing by, the Local Planning Authority. Such approved plans will be implemented and the features shown maintained thereafter.

Reason: To conserve local ecology in accord with policy CS17 in the WBCS of 2006 to 2026.

Land contamination

21. No phase of the development shall commence until full details of how the spoil in that phase will be removed from the site have been submitted to and approved in writing by the Local Planning Authority. The spoil shall be disposed of in accordance with these approved details. No phase of the development shall commence until two copies of a contaminated land assessment and associated remedial strategy, together with a timetable of works, has been submitted to and approved in writing by the Local Planning Authority. The contaminated land assessment shall include a desk study, details of investigative works and sampling, a risk assessment and a remediation strategy:-

- i. the desk study shall detail the history of the site uses and propose a site investigation strategy based on the relevant information discovered by the desk study;
- ii. a suitably qualified Consultant shall be appointed to investigate the nature and extent of any contamination, if any, in, on or under all parts of the land to which this permission refers. All investigative works and sampling on site, together with the results of analysis must be submitted to the Local Planning Authority; if a hazard or hazards are identified from such investigations, a site specific risk assessment shall be undertaken to consider risks to wildlife, livestock, ecosystems, building materials, water resources, the future users of the site, surrounding land and any other persons. Approved remediation works shall be carried out in full on site. If during any works any significant underground structure or contamination is discovered which has not previously been identified then the additional structure or contamination shall be fully assessed. No further remediation works shall take place until a report detailing the nature and extent of the previously unidentified structures and contamination, together with a further remedial action plan has been submitted to and approved in writing by the Local Planning Authority. Thereafter, all further remediation works shall be undertaken in accordance with the most recent approved remediation action plan. On completion of all remediation works in each phase, a closure report shall be submitted to and approved in writing by the Local Planning Authority. The report shall make reference to all published information associated with the development and shall demonstrate compliance with the remediation strategy. It shall include the following: details of quality assurance certificates to show that all works have been carried out in full and according to best practice; consignment notes demonstrating the removal of contaminated materials; certification to show that new material brought to the site is uncontaminated; and details of any on-going post remediation monitoring and sampling, including a reporting procedure to the Local Planning Authority.

For clarity the details to be submitted need only relate to the specific phase in question.

Reason: To ensure protection of public health in accord with the advice in the NPPF of 2018.

Hours of working.

22. The hours of work for all contractors (and sub-contractors) for the duration of the site development shall, unless otherwise agreed in writing by the Local Planning Authority, be limited to

07.30hrs to 18.00hrs on Mondays to Fridays, 07.30hrs to 13.00hrs on Saturdays, and NO work shall be carried out on Sundays or Bank Holidays.

Reason: To protect local amenity in accord with policy OVS6 in the WBDLP of 1991 to 2006.

Control of dust.

23. No phase of the development shall commence until the applicants have submitted to the Local Planning Authority a scheme of works or such other steps as may be necessary to minimise the effects of dust from the development. Development shall not commence until written approval has been given by the Local Planning Authority to any such scheme of works. The scheme once approved shall be implemented and maintained on the site. For clarity the details to be submitted need only relate to that phase in question.

Reason: To protect local amenity, in accord with the advice in the NPPF2.

CEMP

24. No phase of the development shall commence until a Construction Environmental Management Plan has been submitted to the Local Planning Authority for both the preparatory and construction works. The Plan should detail items such as phasing of construction, lorry routing and potential numbers, types of piling rig, pneumatic breakers and earth moving machinery to be implemented and measures proposed to mitigate the impact of construction operations. In addition the Plan should make note of any temporary lighting that will be used during the preparatory and construction phases of the development. The Plan shall be implemented in full and retained until the development has been fully constructed. Any deviation from the Plan shall be first agreed in writing with the Local Planning Authority. For clarity the details to be submitted need only relate to the phase in question.

Reason: To ensure that the development is built out in a manner which will not disrupt local traffic flows or local amenity in accord with the advice in policy CS13 in the WBCS of 2006 to 2026.

DC