

Application No: 17/5116C

Location: Plot 1A, Magnitude 160, Midpoint 18, Pochin Way, Middlewich.

Proposal: Erection of 2 no. employment buildings (Use Classes B2 and B8) including a security gatehouse, vehicle access off Pochin Way and ERF Way and associated car parking, trailer parking and landscaping.

Applicant: DBS Pochin LLP

Expiry Date: 24-Jan-2018

SUMMARY

This proposal would bring economic benefits through the delivery of new jobs within an established industrial park where the local plan allocates such uses. The proposal is compatible with the surrounding development and the design, scale and form of the building would sit comfortably with those within the locality.

The impact on neighbouring residential amenity would not be significant. Satisfactory access and parking provision can be provided and the development would not result in 'severe harm' on the local highway network. The ecological impacts of the development can be satisfactorily mitigated.

Issues of air quality and contaminated land can be controlled by conditions.

The scheme is therefore considered to be in accordance with development plan policies and economically, socially and environmentally sustainable.

RECOMMENDATION: Approve subject to the completion of a Section 106 Agreement for a contribution for loss of biodiversity and conditions

PROPOSAL

This application seeks full planning permission for the erection of two distribution warehouse buildings (use class B2/B8) of 13,843sqm and 3,809sqm floorspace, with office accommodation to the first floor, associated car parking service yards, trailer parking, gatehouse and landscaping.

The northern building would utilise the existing vehicular access point off Pochin Way which would serve car, pedestrians and HGVs. The proposed northern car park includes 145 parking spaces with 8 accessible spaces and 8 vehicle charging bays. Covered cycle storage

for 40 cycles is also proposed. 30 trailer parking spaces are identified for the northern building.

The southern building would utilise an access point off ERF Way providing access for HGVs and cars, cycles and pedestrians. 38 car parking spaces are proposed to serve this building including 2 accessible spaces, 2 vehicle charging bays and 5 trailer spaces. Covered cycle store for 12 cycles is also proposed to serve this building.

SITE DESCRIPTION:

The Proposed development will sit within an existing commercial estate off Pochin Way (accessed from the A54 Holmes Chapel Road), and to the north of ERF Way. The site presently comprises of scrubland but is situated on an established commercial / industrial trading estate at Midpoint 18 Industrial Park. The North East elevation will face onto an existing warehouse, the North West onto offices, to the West across open land is Brooks Lane industrial estate and to the South is a carpark and disused land. Middlewich Public Footpath no. FP19 passes across the site to the east.

RELEVANT HISTORY:

31306/3 - warehousing & distribution facility with associated offices – approved 10th January 2000

31584/1 – employment uses (B1, B2 and B8), open space along Sanderson's Brook and continuation of the Middlewich Eastern Bypass – approved 29th April 2002

37737/3 - Modifications of conditions of outline planning permission 8/31584/1 – approved 12th October 2004

15/2576C - 14,402sq m Warehouse (B2 B8) with office accommodation to the first floor - approved 18th November 2015

NATIONAL & LOCAL POLICY

National Policy:

The National Planning Policy Framework establishes a presumption in favour of sustainable development.

Of particular relevance are paragraphs 17 and 18.

Development Plan:

By virtue of Section 38(6) of the Planning and Compulsory Purchase Act 2004, the application should be determined in accordance with the development plan unless material considerations indicate otherwise.

The Development Plan for this area comprises the recently adopted Cheshire East Local Plan Strategy (CELP), and the saved policies from the Congleton Borough Local Plan First Review (2005).

POLICIES

Development Plan

Cheshire East Local Plan Strategy (CELPS)

The following are considered relevant material considerations:

PG1 – Overall Development Strategy
PG7 – Spatial Distribution of Development
PG2 – Settlement Hierarchy
EG1 – Economic Prosperity
EG3 – Existing and Allocated Employment Sites
SD1 - Sustainable Development in Cheshire East
SD2 - Sustainable Development Principles
SE1 – Design
SE2 – Efficient Use of Land
SE3 – Biodiversity and Geodiversity
SE4 – The Landscape
SE5 – Trees, Hedgerows, Woodland
SE12 – Pollution, Land Stability and Land Contamination
SE13 – Flood Risk and Water Management
IN2 – Developer Contributions
Site LPS 44 – Midpoint 18, Middlewich

It should be noted that the Cheshire East Local Plan Strategy was formally adopted on 27th July 2017. There are however policies within the legacy local plans that still apply and have not yet been replaced. These policies are set out below.

Congleton Borough Local Plan First Review (CBLPFR)

PS4 Towns
GR5 Landscaping
GR6 Amenity and Health
GR9 Accessibility, servicing and provision of parking
NR3 Habitats

The Draft Middlewich Neighbourhood Plan has yet to reach Regulation 14 Stage. Accordingly, no weight can be attached to the Plan.

CONSULTATIONS:

Highways: No objection

Natural England: No objection.

Flood Risk Management: no objection subject to conditions for finished floor levels, compliance with FRA, approval of finalised drainage strategy, retention of ponds in the approved drainage scheme and demonstration that drainage scheme will accommodate storm events with no run off to neighbouring land.

Environmental Health: No objection subject to conditions/informatives relating to noise and disturbance, air quality and land contamination.

Public Rights of Way Unit: No objection subject to conditions for a public rights of way scheme of management, marking out of the footpath, pre/post completion surveys and restoration of any degraded footpaths.

Environment Agency: No objection

Canal and Rivers Trust: No objection.

Cheshire Brine Compensation Board: The site is within an area that has previously been affected by brine subsidence and future residual movements cannot be completely discounted. BGS geological mapping also indicates the presence of subsidence features in the vicinity of the site. Require a condition securing the use of raft foundations.

Health and Safety Executive: No objection.

Middlewich Town Council: None received at the time of report writing.

Moston Parish Council: No objection

REPRESENTATIONS:

None received at the time of report writing.

APPRAISAL:

Principle of Development

The proposal is for 17,652sqm of floor space for a distribution warehouse (B2/B8). The site would sit amongst other commercial and industrial uses and therefore would conform to the surrounding land uses.

The site is located within an existing employment area within the Middlewich Settlement Boundary and forms part of the Cheshire East Local Plan Strategy Strategic Site 'LPS44 Midpoint 18'. In respect of this the CELP identifies that the development will be achieved with (amongst other things) phased delivery of up to 70 hectares of employment land, including the development of existing undeveloped sites: Midpoint 18 (Phases 1 to 3). Policy EG1 of the CELP also states that proposals for employment development (use classes B1, B2, B8) will be supported in principle within key service centres (which includes Middlewich) as well as on employment land allocations in the Development Plan.

At a national level the NPPF also requires Local Planning Authorities to adopt a positive and constructive approach towards planning applications for economic development, and planning applications that encourage sustainable economic development should be treated favourably. The proposal is therefore acceptable in principle subject to compliance with other relevant considerations.

Design and Landscape

Policy SE1 of the CELP advises that the proposal should make a positive contribution to their surroundings in terms of sense of place, design quality, sustainable architecture, liveability/workability and safety.

The buildings would comprise built up cladding panels on a steel frame and composite cladding panels to the office elevations. The floor-space will be distributed across 2 floors. The northern building would be 180m by 71m and 16.5m in height (to ridge) whilst the southern building would be 72m by 49m and 14m in height (to ridge). The scale of the buildings reflects that consented under 15/2576C for a similar warehouse building and there is no increase in the height of the buildings from the consented scheme. The overall floorspace does increase across the site by 3,250sqm from the earlier approval but in the context of the site it is not considered to be significantly different.

The character of the street is one of industrial premises with similar arrangements and similarly designed frontages. The buildings are uniform and utilitarian in appearance and are designed for functionality rather than form. The proposed buildings are similar in design and size to other units in the vicinity, albeit on a larger scale, and it is considered that it will not appear as an alien or incongruous feature within the street-scene.

With regards to layout, the buildings would be well set back into the site with the foreground given over to ecological areas. The buildings would be adjacent to the eastern boundary with the larger building positioned to the north. Both building would lie parallel with the B&M unit on the adjacent land. The HGV docking area, HGV access and circulation, and HGV parking would be situated to the west, with the car parking areas situated on northern and southern areas of the site.

There are concerns raised by the Councils landscape and design officers regarding the proposed layout of the site given that the HGV docking, circulation and parking areas would be west facing onto Pochin Way.

In the light of these concerns, additional proposed landscaping of the site has been requested from the developer and Members will be updated on this matter prior to the committee meeting.

Subject to the additional landscaping being considered suitable, the design and layout of the development are considered to be acceptable.

Amenity

Policy GR6 of CBLP and Policy SE12 of CELP require development to ensure that there would be no undue detrimental effects on amenity due to loss of privacy, loss of sunlight and daylight, visual intrusion, environmental disturbance or pollution, traffic generation, access and parking. Policy SE12 also requires development to ensure that it is designed and located so as not to result in a harmful or cumulative impact upon air quality. This is in accordance with paragraph 124 of the NPPF and the Government's Air Quality Strategy.

The area is predominately industrial in character being positioned on the edge of Midpoint 18. There are no residential properties in the immediate vicinity of the site and as such, no significant adverse impacts are anticipated in respect of noise and disruption, visual intrusion and loss of daylight/sunlight or privacy.

Policy SE12 of the Local Plan states that the Council will seek to ensure all development is located and designed so as not to result in a harmful or cumulative impact upon air quality. This is in accordance with paragraph 124 of the NPPF and the Government's Air Quality Strategy.

When assessing the impact of a development on Local Air Quality, the Council has regard to (amongst other things) the Council's Air Quality Strategy, the Air Quality Action Plan, Local Monitoring Data and the EPUK Guidance "Land Use Planning & Development Control: Planning for Air Quality May 2015)

Environmental Health Officers initially recommended refusal due to insufficient information relating to the Chester Road AQMA. However, further information has now been submitted to alleviate these concerns regarding the impacts on the Chester Road AQMA so the recommendation of refusal on these grounds has now been removed. Conditions would be required relating to travel planning, electrical vehicle infrastructure, low emission boilers and dust control.

Highways

There are separate access points to each of the buildings, the larger building will be accessed off the existing Pochin Way junction and the smaller building from a new access point off ERF Way. The proposed accesses to the sites are acceptable in the locations proposed and have sufficient visibility available.

The larger unit has 145 No. parking spaces that includes 8 electric charging points and the smaller unit 38 No. spaces with 2 electric charging points. There is no disabled spaces indicated and some of the spaces should be amended for disabled use. It is considered that there is an adequate number of car parking spaces being provided for the proposed uses.

A LinSig assessment has been used to assess the capacity of the Leadsmithy/A54 signal junction, the model results indicate that the junction will be operating considerably above capacity in the Base 2023 and queues will only marginally increase with the development trips added.

It is applicant's view that the additional development trips would have negligible effect on the operation of the junction even with the full development added. Whilst, it can be agreed that the increase of 8 trips for the full development and 2 to 3 trips for net new floorspace travelling through the junctions in the peak hour does not materially affect the operation of the junction, it has to be recognised that traffic queues are already extensive and all new development would only increase delays at the junction.

It is Council's view that congestion and queue lengths are already severe and it is clear that to support further major developments that have a direct impact on the centre of Middlewich,

mitigation measures are required either to improve the operation of the existing Leadsmithy/A54 signal junction or to remove traffic from the junction by means of the MEBP.

Therefore, the principle of seeking contributions for mitigation measures as part of this development has been established. However, in relation to this particular site there is an extant consent for 14,402 Sq.m that was approved without an infrastructure contribution. This application is to increase the floorspace to 17,668 Sq.m an increase of 3266 Sq.m

In regard to this application, it is appropriate to consider the net increase in floorspace and whether it would have a significant additional impact on the road network. The traffic generation produced from the additional floorspace is low and has a negligible impact and it is not considered that this warrants securing a financial contribution to the MEBP or for improvements to the local highway network.

In summary, although developments on Midpoint 18 are expected to make contributions to the MEBP, it is recognised that this site has extant planning approval and that the proposal only seeks a small increase in floorspace. It is therefore considered that a contribution in this case is not warranted and no highway objections have been raised by the Head of Strategic Infrastructure.

Given the relatively small increase in proposed floorspace, it is not considered that requiring a contribution to the bypass would meet the requirements of paragraph 204 of the NPPF or the CIL Regulations as it would not be *“fairly and reasonably related in scale and kind to the development”*.

Public Right of Way

Middlewich Public Footpath FP19 crosses directly through the north of the site. The proposals include for a 3m wide corridor to accommodate the footpath adjacent to the north/eastern boundary of the site.

The public rights of way unit raise no objection subject to conditions requiring:

- A public rights of way management and enhancement scheme to include an additional footpath at the south eastern corner of the site to link ERF Way, assessment of measures to deliver facilities to improve pedestrian and cycle crossing of Pochin Way and ERF Way and removal of the boundary fence and style between the site and the adjacent landholding.
- Demarcation of footpath during construction
- Pre/post condition surveys and repairs of any degradation caused by the development

The proposal is therefore acceptable and will not have an adverse impact on the Public Right of Way.

Ecology

This application falls within Natural England’s SSSI impact risk zones. Natural England has been consulted on this application and has not raised any objections in respect of statutory designated sites.

Great Crested Newts (GCN) were recorded at ponds on and adjacent to this site in 2014 and an updated survey completed in 2017 confirmed the continued presence of this species.

Following the grant of a previous planning application at this site (15/2576C) GCN were removed and excluded from the majority of the current application site and replacement ponds have been created under the terms of a Natural England license. The ecological assessment submitted in support of this application states that a small part of the current application site is located outside the existing boundary of the newt exclusion fence, but this loss is offset by the retention of an additional small area of habitat that was previously proposed as hard standing.

Consented planning application 15/2576C retained a corridor of habitat towards the south eastern part of the site in order to retain connectivity between the on-site mitigation ponds and the offsite ponds which are also known to support breeding GCN. Under the previous layout proposed as part of this application two access roads onto ERF Way and a pedestrian footpath are proposed in this section of site. These access points would fragment the available terrestrial habitat for GCN. The latest layout has however removed one of these access roads.

The currently proposed layout, in the absence of mitigation, would still result in the isolation of the mitigation ponds from the surrounding pond network but the reduction in the number of access roads from the initial submission in this part of the site does represent a significant reduction in the potential impacts of this scheme and so does represent a more favourable alternative.

The UK implemented the EC Directive in the Conservation (natural habitats etc) regulations which contain two layers of protection:

- A licensing system administered by Natural England which repeats the above tests
- A requirement on local planning authorities ("lpas") to have regard to the directive's requirements.

The Habitat Regulations 2010 require local authorities to have regard to three tests when considering applications that affect a European Protected Species. In broad terms the tests are that:

- The proposed development is in the interests of public health and public safety, or for other imperative reasons of overriding public interest, including those of a social or economic nature and beneficial consequences of primary importance for the environment
- There is no satisfactory alternative
- There is no detriment to the maintenance of the species population at favourable conservation status in its natural range.

Current case law instructs that if it is considered clear or very likely that the requirements of the directive cannot be met because there is a satisfactory alternative, or because there are no conceivable "other imperative reasons of overriding public interest", then planning permission should be refused. Conversely, if it seems that the requirements are likely to be met, then there would be no impediment to planning permission being granted. If it is unclear

whether the requirements would be met or not, a balanced view taking into account the particular circumstances of the application should be taken.

Test 1: Overriding Public Interest

The impacts of the development on the GCN population have previously been considered acceptable in the grant of previous planning permissions. The development would provide social and economic benefits in the form of employment and economic development. Given these benefits the development proposal contributes to meeting an imperative public interest, and that the interest is sufficient to override the protection of, and any potential impact on great crested newts, setting aside any mitigation that can be secured.

Test 2: No satisfactory alternative

The site is allocated in the local plan for employment development and therefore has been assessed as being the most appropriate place for this form of development. As such it is considered that there would be no satisfactory alternative.

Test 3: “the action authorised will not be detrimental to the maintenance of the species concerned at a favourable conservation status in their natural range”.

The revised GCN strategy includes proposals for the enhancement of a pond adjacent to the proposed access roads, the creation of an additional pond and the installation of amphibian tunnels under the proposed access roads. These features have been proposed to minimise the fragmentary effects of the proposed access roads.

The effectiveness of amphibian tunnels is not fully understood. However considering the distance between the existing ponds, the numbers of GCN recorded on site and the proposals to create and enhance ponds, the use of amphibian tunnels in this instance is acceptable. It is advised that in the event planning permission is granted the proposed mitigation strategy is acceptable and is likely to maintain the favourable conservation status of GCN.

Habitat Regulations Conclusion

Overall, therefore it is considered that the development contributes to meeting an imperative public interest, there are no satisfactory alternatives, and that the interest is sufficient to override the protection of, and any potential impact on GCN, setting aside the proposed mitigation. It is considered that Natural England would grant a licence in this instance.

Grass Snakes and Common Toads were previously likely to occur on site. However that the presence of the amphibian fence means that it is unlikely that these species would now be able to access the site. The proposed development is therefore not likely to have an effect on these species.

An acceptable survey/assessment for Lesser Silver Diving Beetles was undertaken in respect of the earlier application at this site and it is considered that this species is unlikely to be present or affected by the proposed development.

An outlying Badger sett was previously recorded on this site. This sett is now inactive. The application site is likely to be used by badgers for the purposes of foraging on an at least occasional basis. It is considered that the proposed development will have a localised impact

on Badgers as a result of the loss of foraging habitat. This impact could be partly addressed through the incorporation of fruit trees to provide a seasonal food source for badgers. This matter could be dealt with by means of a planning condition.

As the level and type of badger activity on a site can change within a short timescale, a condition should be attached requiring a further badger survey be undertaken and submitted to the LPA prior to the commencement of development.

No evidence of Kingfishers, Otters or Voles was recorded during the submitted surveys. Water Voles are not reasonably likely to be present or affected by the proposed development. Otters were however recorded on Sanderson's Brook about 7 years ago and so there is the possibility that this species may occur on the brook in the future. This similarly applies to Kingfishers as the brook does appear to provide suitable nesting sites. Therefore a condition should be attached requiring a further Otter and Kingfisher survey to be undertaken and submitted to the LPA prior to any works being undertaken within 20m of the brook.

Whilst the application site offers limited opportunities for roosting bats, bats are likely to commute and forage around the site to some extent. To avoid any adverse impacts on bats resulting from any lighting associated with the development a condition should be attached requiring any lighting to be agreed with the LPA.

Birds are likely to be breeding on this site potentially including the more widespread priority species. Therefore if planning consent is granted standard conditions will be required to safeguard nesting birds.

The habitats on site, with the exception of the brook, are not of priority habitat quality and do not present a significant constraint upon development. The habitats on site do however support a number of species indicative of better quality habitats and the development proposals may still result in an overall loss of biodiversity. A commuted sum of £11,010.67 was secured through a unilateral undertaking in respect of application 15/2576C and this should also be a requirement for this development. The applicant is currently undertaking an assessment of the residual ecological impacts of the proposed development using the Defra 'metric' methodology, and the amount of the contribution will be reported to Committee in an update

An assessment of this type will quantify the residual ecological impacts of the development and calculate in 'units' the level of financial contribution which would be required to 'offset' the impacts of the development to enable the total ecological impacts of the development to be fully addressed in a robust and objective manner. Any commuted sum provided would be used to fund habitat creation/enhancement works locally.

Planning consent 15/2576C included a commitment to the management of the retained habitat located between the application site and the river as a means of providing some compensation for the loss of habitat associated with the development. The plans show the site edged red and other land in the control of the applicant edged blue therefore a condition should be imposed requiring the same as in the previous application.

Flood Risk

Sanderson's Brook (designated main river) runs along the Western boundary of the site and a small part of the western extent of the application site is located within Flood Zone 2. Despite this, the flood risk assessment (FRA) demonstrates that the proposed built development is located wholly within Flood Zone 1. As such the Environment Agency and Council Flood Risk Management unit raise no objection subject to conditions relating to implementation of measures identified in the FRA, approval of the drainage strategy with a maintenance schedule where necessary and retention/provision of ponds, set finished floor levels, and demonstration that the drainage system can adequately cope with storm events and exceedance flows will be dealt with on site.

Subject to imposition of these conditions the proposal is considered to accord with planning policy in terms of locating development outside the flood zone and not presenting unacceptable risk of flooding on or off site.

S106 contributions:

In order to comply with the Community Infrastructure Levy (CIL) Regulations 2010 it is now necessary for planning applications with legal agreements to consider the issue of whether the requirements within the S106 satisfy the following:

- (a) necessary to make the development acceptable in planning terms;
- (b) directly related to the development; and
- (c) fairly and reasonably related in scale and kind to the development.

In this case, the contribution to loss of biodiversity is necessary, directly related to the development and fairly and reasonably related in scale and kind to the development.

CONCLUSIONS

This proposal would bring economic benefits through the delivery of new jobs within an established industrial park where the local plan allocates such uses. The proposal is compatible with the surrounding development and the design, scale and form of the building would sit comfortably with those within the locality.

The impact on neighbouring residential amenity would not be significant. Satisfactory access and parking provision can be provided and the development would not result in 'severe harm' on the local highway network. The ecological impacts of the development can be satisfactorily mitigated.

Issues of air quality and contaminated land can be controlled by conditions.

The scheme is therefore considered to be in accordance with development plan policies and economically, socially and environmentally sustainable.

RECOMMENDATION:

Approve subject to the completion of a Section 106 Agreement for a contribution for loss of biodiversity and the following conditions:

1. **Standard time limit (3 years)**
2. **Accordance with plans**
3. **Accordance with submitted materials**
4. **Parking provided prior to first use**
5. **Accesses constructed in accordance with submitted details prior to first use**
6. **A scheme for improvements to Footpath F19 to be submitted for approval and implemented**
7. **Prior to commencement a detailed GCN Mitigation Strategy to be submitted for approval and implemented**
8. **Survey for nesting birds**
9. **A further otter and kingfisher survey to be undertaken and submitted to the LPA prior to any works being undertaken within 20m of the brook.**
10. **Submission of an updated Badger survey including the planting of fruit trees prior to commencement of development**
11. **Submission of a lighting scheme in relation to impact on bats**
12. **Details of enhancements and a 10 year management plan of habitats on site, including the area of the site edged blue**
13. **Submission of a Framework Travel Plan**
14. **Provision of electric vehicle infrastructure**
15. **Provision of low emission boilers**
16. **Submission of a scheme to minimise dust emissions**
 If during the course of development, contamination not previously identified is found to be present, no further works shall be undertaken in the affected area and the contamination shall be reported to the Local Planning Authority as soon as reasonably practicable (but within a maximum of 5 days from the find). Prior to further works being carried out in the identified area, a further assessment shall be made and appropriate remediation implemented in accordance with a scheme also agreed in writing by the Local Planning Authority. Prior to first occupation/use of the development, confirmation should be provided to the LPA that no such contamination was found, and if so what remedial measures were agreed and implemented.
17. **Details of foundations**
18. **Compliance with the flood risk assessment**
19. **Implementation of landscaping scheme**
20. **Landscape implementation**
21. **Piling and method statement**
22. **Floor floating method statement**

In order to give proper effect to the Board's intentions and without changing the substance of the decision, authority is delegated to the Head of Planning (Regulation), in consultation with the Chairman (or in her absence the Vice Chairman) of the Strategic Planning Board, to correct any technical slip or omission in the wording of the resolution, between approval of the minutes and issue of the decision notice.

Should this application be the subject of an appeal, authority be delegated to the Head of Planning (Regulation) in consultation with the Chairman of the Strategic Planning Board to enter into a planning agreement in accordance with the S106 Town and Country Planning Act to secure the Heads of Terms for a S106 Agreement.

