

Application No: 12/4326C

Location: POOLWOOD COTTAGES, HOLMES CHAPEL ROAD, SOMERFORD, CONGLETON, CHESHIRE, CW12 4SN

Proposal: Change of use of land to allow use for contracting and plant hire use together with associated works to the land including earth bund and laying hardcore.

Applicant: James Ashbrook, J K Ashbrook Ltd

Expiry Date: 22-Apr-2013

**SUMMARY RECOMMENDATION:** Approve subject to completion of the Unilateral Undertaking and conditions.

**MAIN ISSUES:** Principle, highways and landscaping

## **DESCRIPTION OF SITE AND CONTEXT**

This application relates to site 1.08 hectares in size, situated on the northern side of Holmes Chapel Road, Somerford. In 2012 temporary consent was granted for the change of use of the shed and hard standing for agricultural contracting and plant. Development was not carried out in accordance with the approval. The site was considerably increased in size and bunds were put in around it that also did not have the benefit of planning permission.

The site is designated as being within the Open Countryside in the adopted local plan.

## **DETAILS OF PROPOSAL**

This application seeks full planning permission for a permanent change of use of the land to contracting and plant hire, creation of an earth bund, laying of hardcore and erection of modular office buildings

## **RELEVANT HISTORY**

12/0867C 2012 Approval for temporary change of use of existing agricultural shed and hard standing for agricultural contracting and plant.

09/1802C 2009 Withdrawn application for change of use to offices

## **POLICIES**

### **National**

National Planning Policy Framework

Local

PS8 – Open Countryside

GR1 - General criteria for new development

GR6 – Amenity

GR9 – Highways

GR4 - Landscaping

E5 – Employment development in open countryside

NR2 & NR3 - Habitats

## **CONSULTATIONS (External to Planning)**

### **Highways:**

The plan submitted by the applicant clearly demonstrates that there is sufficient control of land for a 10 metre kerb radii.

The plan submitted however shows the 10 metre radii drawn to the back of footpath line rather than to the existing carriageway kerb line. It will therefore be necessary to attach a condition to the application which requires a detailed design plan for the proposed change to the access and prior to first development and to the satisfaction of the LPA. In addition a condition should be attached requiring full construction of the improvement to this access prior to first use.

The Strategic Highways Manager also recommends that the following informative be attached to any permission which may be granted for this development proposal:

Informative: Prior to first development the developer will enter into and sign a Section 184 Agreement under the highways Act 1980 and provide a new vehicular crossing over the highway verge in accordance with Cheshire East Council specification.

Subject to these requirements the Strategic Highways Manager would find this development proposal acceptable.

### **Jodrell Bank:**

No objection.

### **Environmental Health:**

Recommend conditions relating hours of construction and compliance with the recommendations contained within the submitted contaminated land report.

### **VIEWS OF THE PARISH / TOWN COUNCIL:**

The Parish Council objected to the proposal originally, however since amendments have been made, the following comments were submitted:

*“Members are pleased with the recent amendments to the site regarding the site entrance and exit for highway purposes. Mr Ashbrook has visited our Parish Council meetings and has listened to concerns and reacted positively. “*

### **OTHER REPRESENTATIONS:**

At the time of report writing 2 objections have been received and 9 expressions of support for the proposal.

The objectors express the following concerns

- Loss of agricultural land
- Inappropriate development in open countryside
- Noise
- Highway safety
- Drainage and flooding
- Letters of support being submitted by residents of the parish where the business currently operates from

The supporters are all from the parish of Goostrey and state that the Poolwood site would be better than the existing site in Goostrey due to better access and fewer residential properties in the vicinity. Goostrey Parish Council has also supported the proposal.

## **OFFICER APPRAISAL**

### **Principal**

The proposal is for the permanent change of use of the site to the operation of agricultural contracting and plant business within land designated as open countryside in the adopted local plan; as such the relevant policies in the adopted local plan are PS8 and E5.

Policy PS8 states that inter alia, development will only be allowed for the purposes of agriculture or forestry. The Design and Access Statement states that the business undertakes tasks that could be considered as agricultural; however the definition of agriculture in Section 336 of the Town and Country Planning Act 1990, does not include agricultural contracting businesses.

Policy E5 allows for the expansion or redevelopment of an existing business in the open countryside. Whilst it is acknowledged that the business had been operating on the site before the granting of temporary permission, this was not with the benefit of planning permission. The applicant subsequently developed the site not in accordance with the temporary permission, thus rendering the temporary permission invalid.

Whilst Policy E5 allows for the expansion or re-development of an *existing* business in the open countryside, this business was not based on this site originally and the proposal therefore does not comply with this policy. As such the scheme would not accord with current local plan policy.

In March 2012 the Government introduced the National Planning Policy Framework (NPPF), in which paragraph 19 states that significant weight should be placed on the need to support economic growth through the planning system. In addition paragraph 28 requires that Local Planning Authorities (LPA) should support the growth and expansion of all types of business in rural areas. As such it is considered that the development could be considered to comply with the more recent requirements of the and that this would supersede the Local Plan designation. While clearly a balanced judgement based upon other factors the principle of the development is therefore considered to be acceptable.

### **Amenity**

The site is in close proximity to residential properties, including that of the applicant and Environmental Protection has recommended a condition restricting the hours of construction. It should be noted that the application is retrospective and no further construction is proposed at the site.

The previous temporary consent did not include any conditions relating to hours of operation for the business; however the applicant has stated that he would be happy to accept a condition restricting the hours of operation at the site. These would be 7am to 6pm, Monday to Friday, half a day Saturday and no working on Sundays or Public Holidays. Given the proximity of the site to residential properties, it is considered that such a condition would be reasonable.

### **Highways**

The business has been operating from this site since early 2012 using the existing access. The Strategic Highways Manager originally expressed concerns about the access and subsequently amended plans have been submitted showing a 10 metre radius turning splay. This is possible to achieve as the land is in the ownership of the applicant. Following the submission of the amended drawings the SHM is satisfied that the access is acceptable. The proposal is therefore in compliance with Policy GR9 of the adopted Local Plan.

### **Landscaping**

When temporary consent was first granted, earth bunds were specifically excluded as it was considered that they were unnecessary due to the temporary nature of the permission. The applicant subsequently created earth bunds in contravention of the approval and the site was also significantly increased in size. These bunds screen the site in an effective way and reduce its impact on the openness of the countryside. Plans have been submitted showing the planting of native species and it is considered that these proposals, including the bunds, would be appropriate.

Fencing that has been erected at the site is considered to be stark and prominent in the landscape and it is considered that it should be stained in a colour to be agreed in writing with the LPA in order to lessen this impact.

### **Impact on the Openness of the Countryside**

As discussed above, the earth bunds that have been put in place were specifically excluded from the temporary consent. Having regard to their impact on the openness of the countryside, it is considered that their impact is not significant and that the planting proposed would enable them to blend into the existing landscape.

The fencing does have some impact on openness; however as stated above this could be mitigated by the application of a suitable coloured staining in.

### **Ecology**

Great Crested Newts are known to occur at two ponds in close proximity to the proposed development. The Council has sufficient survey data to assess the potential impacts of the proposed development.

The application site offers limited potential habitat for newts however the continued operation of the site may pose the risk of killing/injuring any animals present.

To mitigate the potential impact of the development upon Great Crested Newts the applicant's ecologist has submitted a mitigation strategy in order to ensure the favourable conservation status of this protected species. This should be controlled by a condition requiring compliance with the mitigation strategy.

**EC Habitats Directive**  
**Conservation of Habitats and Species Regulations 2010**  
**ODPM Circular 06/2005**

The UK implemented the EC Directive in The Conservation (Natural Habitats etc) Regulations 1994 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.

Circular 6/2005 (dated 16 August 2005) advises LPAs that:

*"It is essential that the presence of protected species , and the extent that they may be affected by the proposed development, is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision."*

In the absence of mitigation / compensation, the proposed development would have a significant adverse impact upon bats through the loss of the habitat currently utilised by the bats.

Regulation 9(5) the 2010 Habitats Regulations places an obligation upon planning authorities to give consideration to European protected species in the exercise of their functions. The recent 'Whooley' and 'Morge' judicial reviews have clarified the position of planning authorities in respect of this legislation.

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 be 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.

#### *Overriding Public Interest*

The site is housing a business which supports the employments of several people and is therefore of positive benefit to the community and the local economy.

#### Alternatives

There is an alternative scenario that needs to be assessed, this is:

- Siting the development elsewhere

#### *Siting the Development Elsewhere*

The applicant has been unable to locate a suitable and available alternative site for the development.

#### *Favourable conservation status*

In line with guidance in Circular 6/2005, appropriate mitigation should be secured if planning permission is granted. The proposed replacement mitigation is considered to be acceptable by the Councils' Ecologist.

#### **Other Matters**

The applicant has submitted a draft Unilateral Undertaking with the application. This would ensure that the applicant could no longer operate the business from Barnshaw Bank Farm. Whilst this is to be welcomed, it must be noted that this site would still benefit from the same use class and it is possible that another similar business could operate from the site in the future.

#### **CONCLUSIONS**

In conclusion, for the reasons set out above and having due regard to all other material considerations, it is considered that the use would be acceptable and in compliance with the relevant policies contained within the adopted local plan and the National Planning Policy Framework. The application is therefore recommended for approval subject to completion of the Unilateral Undertaking and the following conditions:

1. Development in accordance with the approved plans.
1. Compliance with the recommendations contained within the submitted ground investigation report.
2. Compliance with the mitigation strategy contained within the Great Crested Newt Mitigation Strategy –Supplementary Report.
3. Submission and implementation of a scheme of landscaping that includes the recommendations within the Newt Mitigation Strategy – Supplementary Report.
4. Submission and implementation of a detailed design for the access on to the highway.
5. Submission and implementation of details of staining of boundary fencing.
6. Restriction of working hours as follows:

Monday to Friday  
Saturday

7am to 6pm  
8am to 2pm

Sunday & Public Holidays

No working

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