

Application No: 18/1182C

Location: PLOT 63, Midpoint 18, HOLMES CHAPEL ROAD, MIDDLEWICH

Proposal: Hybrid Planning Application for the construction and operation of 8 No. B2/B8 Units (total GIA 22.918 M2) comprising two phases :-

Phase 1 - An application for Full planning permission for site re-profiling, new site access off Pochin Way and construction of 2 B2/B8 Units totalling 9.266M2 (GIA) floorspace with associated infrastructure (including hard and soft landscaping); and

Phase 2 - An application for Outline planning permission (with All Matters Reserved) for site re-profiling and construction of 6 No. B2/B8 Units totalling 13.652M2 with associated infrastructure (including hard and soft landscaping).

Applicant: Total Developments (NW) Ltd

Expiry Date: 22-Nov-2019

#### **SUMMARY:**

The application was previously considered by Strategic Planning Board in October 2018, when it was resolved to approve the application subject to several conditions and a contribution of £687,540.00 to the Middlewich Eastern Bypass.

It was considered that the proposal would bring economic benefits through the delivery of new jobs within an established industrial park where the local plan allocates such uses. It was considered to be 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 was not considered to be significant. Satisfactory access and parking provision can be provided and the development would not result in 'severe harm' on the local highway network subject to a contribution to the Middlewich Eastern by-Pass.

The ecological impacts of the development can be satisfactorily mitigated. Issues of air quality and contaminated land can be controlled by conditions. Subject to the provision of the financial contribution to the Middlewich Eastern Bypass the proposal was formerly found to be economically, socially and environmentally sustainable.

The applicant is unwilling to provide the required financial contribution. It is clear in Policy IN2 that developer contributions will be sought to make sure that the necessary physical, social, public realm, economic and green infrastructure is in place to deliver development. Contributions will be used to mitigate the adverse impacts of development (including any cumulative impact). Such contributions will help facilitate the infrastructure needed to support sustainable development. It is also clear in LPS44 that contributions to the Middlewich Eastern Bypass will be required for developments on Midpoint 18.

As the developer is unwilling to provide the required contribution, that is policy compliant and meets the requirements of the Community Infrastructure Levy Regulations (CIL) 2010, being necessary, directly related to the development and fairly and reasonably related in scale and kind to the development, the recommendation is that the application be refused for the following reason:

**Recommendation: Refuse**

## **REASON FOR ADDITIONAL REPORT**

This application was put before Strategic Planning Board on 24<sup>th</sup> October 2018, when it resolved to approve the application subject to conditions and the completion of a S106 Agreement requiring the provision of £687,540.00 to mitigate highway impacts. The minutes of that meeting are set out below:

*That for the reasons set out in the report and in the written update to the Board, the application be approved subject to the completion of a Section 106 agreement for the contribution of £687,540.00 to the Middlewich Eastern Bypass in priority and/or transport schemes to Town Bridge, the A54 corridor and Croxton Lane, with two x50% payment triggers before first occupation under the detailed and before occupation of phase 2.*

The requirement for this contribution was set out in the original report and was not questioned by the developer prior to the resolution to approve being made. In addition pre-application advice was given to the developer and this set out clearly that a contribution would be required and how it would be calculated. Subsequently the developer contacted the case officer questioning the need for the contribution and putting forward the argument that the contribution is not necessary.

It is clear in Policy IN2 that developer contributions will be sought to make sure that the necessary physical, social, public realm, economic and green infrastructure is in place to deliver development. Contributions will be used to mitigate the adverse impacts of development (including any cumulative impact). Such contributions will help facilitate the infrastructure needed to support sustainable development.

It is also clear in LPS44 that contributions to the Middlewich Eastern Bypass will be required for developments on Midpoint 18.

As the developer is unwilling to provide the required contribution, that is policy compliant and meets the requirements of the Community Infrastructure Levy (CIL) Regulations 2010, being necessary, directly related to the development and fairly and reasonably related in scale and kind to the development, the recommendation is that the application be refused.

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## **SITE DESCRIPTION AND CONTEXT**

The application site comprises 6.10 hectares of land on the Midpoint 18 employment site in Middlewich. It is an allocated Strategic Site in the Cheshire East Local Plan Strategy (LPS 44 – Midpoint 18, Middlewich).

The site would be accessed from Pochin Way and is bounded by the railway line to the west, part of Pochin Way to the east and Cledford Lane to the south. It is a relatively flat area of land and to the north is an area safeguarded for the future construction of a railway station and associated infrastructure.

## **DETAILS OF PROPOSAL**

This is a hybrid (part outline, part full) planning application for the construction and operation of 8 No. B2/B8 (general industrial/storage and distribution) units (total GIA 22.918sqm ) comprising two phases :-

Phase 1 - An application for full planning permission for site re-profiling, new site access off Pochin Way and construction of 2 No B2/B8 units, totalling 9.266sqm (GIA) floorspace with associated infrastructure (including hard and soft landscaping); and

Phase 2 - An application for outline planning permission (with all matters reserved) for site re-profiling and construction of 6 No. B2/B8 units, totalling 13.652sqm with associated infrastructure (including hard and soft landscaping).

## **RELEVANT HISTORY**

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

34743/3 – Development without compliance with condition 11 of application No. 31584/1 – Approved 2<sup>nd</sup> September 2002

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

07/0323/OUT – Midpoint 18 Phase 3 – employment, leisure and tourism and completion of MEBP – Approved 3<sup>rd</sup> June 2008

09/0738W - Erection of energy from waste facility with associated buildings, car parking and hard standing areas – Refused 29<sup>th</sup> April 2010 – Appeal dismissed 20<sup>th</sup> July 2012

11/0899C – Extension of time to 07/0323/OUT – Approved 12<sup>th</sup> July 2011

16/2006C – Variation on conditions on Application No. 11/0899C – Approved 22<sup>nd</sup> June 2016

## **NATIONAL & LOCAL POLICY**

### **National Policy:**

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

### **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 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)**

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 27<sup>th</sup> 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** (MNP) has reached Regulation 14 Stage and therefore carries limited weight.

DH1 General Principles  
DH2 Sustainable Design  
T1 Middlewich Eastern Bypass  
T3 Rail Station  
E1 Employment Land Strategy  
E2 Employment Land  
E3 Midpoint 18  
ECHW6 Protecting Local Biodiversity.

## **CONSULTATIONS:**

### **Highways:**

No objection subject to a contribution of £687,540.00 to the Middlewich Eastern Bypass.

### **Natural England:**

No objection.

### **Flood Risk Management:**

No objection subject to conditions.

### **Environmental Health:**

No objection subject to conditions/informatives relating to air quality, contaminated land and noise and disruption.

### **Environment Agency:**

No objection.

### **Health and Safety Executive:**

No objection.

### **Middlewich Town Council:**

None received at the time of report writing.

### **Network Rail:**

Object on technical matters.

### **National Grid:**

No objection.

## **REPRESENTATIONS:**

None received at the time of report writing.

## **APPRAISAL:**

### **Principle of Development**

The application is in hybrid form, being partly for full planning permission and partly outline planning permission. In total it would create 22,918sqm of internal floor space.

Phase 1 is the element of the application for which full planning permission is sought and comprises the re-profiling of the site, creation of the new access from Pochin Way and the erection of 2, B2/B8 units with a total internal floor space of 9,266sqm with associated infrastructure.

Phase 2 is in outline form with all matters reserved for 6, B2/B8 units with a total internal floor space of 19,652sqm with associated infrastructure.

The site is located within an existing employment area within the Middlewich Settlement Boundary and forms part of the Cheshire Local Plan Strategy Strategic Site 'LPS 44 Midpoint 18'. In respect of this the CELPS 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 CELPS also states that proposals for employment development (use classes B1, B2 and 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: *“create the conditions in which businesses can invest, expand and adapt. Significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development.”*

The proposal is therefore acceptable in principle subject to compliance with other relevant considerations including the contribution to the MEBP.

### **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, livability/workability and safety.

The character of the Midpoint 18 employment site is one of industrial premises of designs in keeping with their use. 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, and it is considered that it will not appear as an alien or incongruous feature within the street-scene.

Detailed landscaping plans should be controlled by condition on the part of the application for full planning permission and should form part of the reserved matters for the outline element of the site.

## Amenity

Policy GR6 of CBLP and Policy SE12 of CELP require development to ensure that there would be no unduly 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 subject to appropriate conditions.

A full detailed air quality assessment has been submitted in support of the application. Environmental Protection originally recommended refusal of the application due to lack of information in this regard. The report considers whether the development will result in increased exposure to airborne pollutants, particularly as a result of additional traffic and changes to traffic flows. The assessment uses ADMS Roads to model NO<sub>2</sub> and PM<sub>10</sub> impacts from additional traffic associated with this development and the cumulative impact of committed development within the area.

A number of modelled scenarios have been considered within the assessment. These were:

- 2017 baseline – model verification
- 2018 – Opening year do-nothing (should the proposal not proceed)
- 2018 – Opening year do-something (should the proposal go ahead)

The assessment concludes that the impact of the future development on the chosen receptors will be **significant** with regards to NO<sub>2</sub> concentrations unless appropriate mitigation measures are put in place. Five of the receptors modelled are predicted to receive a moderate severe impact, whilst eight are predicting a slightly adverse impact. One of the tube locations modelled is also predicted to experience a substantial adverse impact, whilst another is predicting a moderately adverse impact. Some of these receptors are in and around the Chester Road AQMA and it is this department's opinion that any increase in concentrations within an AQMA is considered significant as it is directly converse to our local air quality management objectives, the NPPF and the Council's Air Quality Action Plan.

Also there is a need for the Local Planning Authority to consider the cumulative impact of a large number of developments in a particular area. In particular, the impact of transport related emissions on Local Air Quality. Taking into account the uncertainties with modelling, the impacts of the development could be significantly worse than predicted.

As mentioned above, Middleswich has an Air Quality Management Area, and as such the cumulative impact of developments in the town is likely to make the situation worse, unless managed.

It is therefore considered that conditions should be imposed relating to electric vehicle charging points, low emission boilers and travel planning in order to offset any adverse impacts.

## **Highways**

The proposed development is a commercial and industrial development B2 and B8, providing a total floorspace of 22,918sqm consisting of 8 units. Phase 1 is a detailed application and Phase 2 is in outline with only access to be determined.

### Access

Both Phase 1 and Phase 2 is served from a single access point off Pochin Way, the access is an industrial standard 7.3m wide with 15m entry radii and adequate visibility is provided at the access point. Each individual unit would have its own access point onto the main access road that serves all the proposed units.

### Car Parking

Each unit has its own car parking and HGV parking areas within the site, there are a total of 338 spaces across the site. The car parking provision is below current CEC standards for B2/B8 although the applicant has undertaken vehicle parking accumulation assessments that indicate that 338 spaces would be sufficient. It is considered that the level of car parking is sufficient for the proposal and given the location of the site any on-street parking would not cause any highway problems.

### Development Traffic Impact

The predicted traffic generation arising from the development has been derived using the Trics database for both all vehicles and HGV vehicles in both am and pm peak hours 08.00 - 09.00 and 16.00 – 17.00. The peak traffic demand is in the am peak with 138 two way movements arising from the site.

The applicant has undertaken only one capacity assessment on the local highway network and this has been undertaken at the roundabout junction at the A54/Pochin Way/ B5309 Centurion Way. The assessment has been undertaken in the 2018 base and also in the future year 2023 with the development flows, committed development traffic and growth added.

The results of the capacity assessment shows that the roundabout junction will operate within capacity in 2023 with some spare capacity. The operation of this roundabout as standalone junction is not the major concern of the Highway Authority; it is existing congestion in Middlewich especially at the Leadsmithy Street/Kinderton Street signal junction that has long traffic queues that needs to be addressed.

The distribution of the trips submitted has indicated the majority of vehicles will route from the east on the A54 to and from the M6 but a sizeable number 51 am and 36 pm peak hour trips will travel through Middlewich on the A54 and numerous trips over a 24hr period.

It is applicant's view that the additional development trips would have a negligible effect on the operation of the local highway network. However, it is the Council's view that congestion and queue lengths are already at significant levels and it is clear that to support further major developments such as this development, 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 Middlewich Eastern By-pass (MEBP).

The MEBP would link Pochin Way with the A533 and will provide much improved access to Midpoint 18 and also will reduce traffic congestion levels in Middlewich. Policy LPS 44 of the CEC Local Plan has indicated that contributions to the MEBP will be required as part of development on the Midpoint 18 site and in regard to this particular application a contribution is required of £687,540 based upon the gross floor area.

In summary, this is an allocated employment site with its main access taken from Pochin Way; the site will generate significant levels of traffic throughout the day and would add to existing congestion problems in Middlewich. Therefore, a contribution to the MEBP is warranted as the by-pass will provide mitigation for the Midpoint 18 site.

The head of Strategic Infrastructure has no objections, subject to the financial contribution as detailed above, being secured in a S106 Agreement.

## **Ecology**

### Statutory Designated Sites

The application site falls within Natural England's SSSI impact risk zones. Natural England have been consulted and raised no objection to the proposals in respect of SSSIs. No further action in respect of statutory designated sites is therefore required.

### Non-statutory Designated Sites

The application site is located adjacent to Cledford Lane Lime Beds Local Wildlife Site. It is considered that the proposed development is unlikely to have any significant long term impacts upon this locally designated site.

### Grassland Habitats

An acceptable botanical survey has been undertaken of the grassland habitats on site. The grassland habitats within the red line of the application do not present a constraint on the proposed development.

### Great Crested Newts

This protected species is known to occur at a number of ponds throughout Midpoint 18. A small breeding population of this species has been known to be present at the on-site pond for a number of years. The latest surveys have not recorded the species at the on-site pond; however this is likely to be due to the pond drying as a result of the lack of rain through the summer.

It is considered that in the absence of mitigation, the proposed development will have a 'Medium' magnitude adverse impact upon Great Crested Newts as a result of the loss of a significant area of low value terrestrial habitat located in close proximity to the breeding pond.

The development would also pose the risk of killing or injuring any newts present within the footprint of the development when site clearance works are undertaken.

### Habitat Regulations

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 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.

#### 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 current proposals would result in the retention of the existing breeding pond and the applicant's ecological consultant has recommended that an area of retained habitat be enhanced in order to compensate for that lost.

The applicant has confirmed that they have no plans at present to extend Pochin Way and that there is no intention to utilise the retained pond as part of the drainage scheme for the proposed development.

The submitted outline Great Crested Newt mitigation would be adequate to maintain the favourable conservation status of the local Great Crested Newt population.

### 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 Great Crested Newts, setting aside the proposed mitigation. It is considered that Natural England would grant a licence in this instance.

### Reptiles

Reptiles are known to occur in this broad locality. It is considered that the proposed development will result in the loss of an area of low quality habitat for reptile species. The mitigation measures developed at this site in respect of Great Crested Newts would also address the impacts of the scheme on reptiles.

### Badgers

Badgers are active on the site, but no setts were recorded within the red line of the application site. The submitted report however refers to a potential sett located on the adjacent railway embankment. This sett is located on the opposite side of the railway and so is unlikely to be affected by the proposed development. The proposed development will result in the localised loss of badger foraging habitat, but this is unlikely to be significant.

If planning permission is granted it is recommended that a condition be attached to ensure that an updated Badger Survey is undertaken and submitted prior to the commencement of development.

### Wintering and Breeding Birds

A snipe was recorded on site during the Phase One Habitat Survey. This species was associated with a small wet depression that would be lost as a result of the proposed development. Features that support this species regularly (over a number of years) are considered to be of nature conservation value in the county context.

It is therefore recommended that a similar wetland feature be created in the ecological mitigation area or offsite to compensate for this loss.

No breeding bird surveys have been undertaken to inform this current application. Surveys undertaken a number of years ago recorded a small number of priority bird species. This included a small number of Skylark, a ground nesting bird associated with open habitats. It is recommended that this species is likely to be adversely affected by the proposed development. The applicant should provide some form of compensation to address this impact. This could take the form of offsite habitat creation to provide enhanced habitat for ground nesting birds.

Standard conditions would be required to safeguard nesting birds in the event that planning permission is granted.

#### Otter and Water Voles

No evidence of these protected species was recorded during the recent survey. I therefore advise that these species are unlikely to be present or affected by the proposed development.

#### Lighting and Bats

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 it is recommended that if planning permission is granted a condition should be attached requiring any additional lighting to be agreed with the Local Planning Authority.

#### **Flood Risk**

The Council's Flood Risk Manager has assessed the application and is satisfied that, subject to conditions, the proposal is acceptable in flood risk terms.

#### **Network Rail**

Network Rail has submitted a holding objection to the proposal. However this relates to the developer entering into a Basic Asset Protection Agreement with Network Rail, to ensure that works are carried out correctly and that Network Rail does not have to fund boundary works that may be necessary as a result of the development. This is not a material planning consideration.

#### **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 the Middlewich Eastern By-Pass is necessary, directly related to the development and fairly and reasonably related in scale and kind to the development.

## **CONCLUSIONS**

It is clear in Policy IN2 that developer contributions will be sought to make sure that the necessary physical, social, public realm, economic and green infrastructure is in place to deliver development. Contributions will be used to mitigate the adverse impacts of development (including any cumulative impact). Such contributions will help facilitate the infrastructure needed to support sustainable development.

It is also clear in LPS44 that contributions to the Middlewich Eastern Bypass will be required for developments on Midpoint 18.

As the developer is unwilling to provide the required contribution, that is policy compliant and meets the requirements of the Community Infrastructure Levy (CIL) Regulations 2010, being necessary, directly related to the development and fairly and reasonably related in scale and kind to the development, the recommendation is that the application be refused.

## **RECOMMENDATION:**

**Refuse for the following reason:**

- 1. The proposed development would fail to provide contributions to the Middlewich Eastern Bypass in priority and/or transport schemes to Town Bridge, the A54 corridor and Croxton Lane, with two x50% payment triggers before first occupation under the detailed and before occupation of phase 2. The proposal is therefore contrary to Policy IN2 and the requirements set down in LPS44 of the Cheshire East Local Plan Strategy.**

**In order to give proper effect to the Committee's intentions and without changing the substance of the decision, authority is delegated to the Acting Head of Planning, in consultation with the Chair (or in his absence the Vice Chair) of Southern Planning Committee, 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 Acting Head of Planning 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.**

