

## PLANNING COMMITTEE – 21 OCTOBER 2021

### PART I - DELEGATED

5. **20/2659/RSP – Retrospective: Change of use for open storage of builder's machinery, equipment and material at MAPLE LODGE, DENHAM WAY, MAPLE CROSS, HERTS, WD3 9XD**  
(DCES)

Parish: Non-Parished

Ward: Chorleywood South and Maple Cross

Expiry of Statutory Period: 30.06.2021

Case Officer: Matthew Roberts

EOT: to be confirmed

Recommendation: That Retrospective Planning Permission be Refused.

Reason for consideration by the Committee: Called in by three Members of the Planning Committee given the concern locally over the storage use of the wider site.

#### 1 **Relevant history at application site and wider site:**

- 1.1 8/97/78: Extension to form offices accommodation and car parking area. Permitted, temporary and personal permission to Thames Water.
- 1.2 01/01721/OUT: Mixed use scheme comprising 150 bedroom hotel, 18,580sq m office development, environment centre, park/land/meadows and landscaping. Refused.
- 1.3 17/0045/COMP: Unauthorised material change of use of land. Pending consideration, enforcement notice served on part of the wider site (land enclosed in blue on submitted location plan).
- 1.4 20/2827/RSP: Retrospective: Change of use to a concrete mixing demonstration facility including the display and exhibition of concrete making machinery and equipment. Refused, for the following reasons:

*R1: The concrete plant and equipment (including associated silos) arising from the material change of use constitute inappropriate development within the Green Belt and therefore are, by definition, harmful to the Green Belt. In addition, by virtue of their height, industrial design, scale and siting they have a significant impact on the openness of the Green Belt. No very special circumstances of sufficient weight are considered to exist to outweigh the inappropriateness of the development and identified harm to openness. The concrete plant and equipment therefore fails to comply with Policies CP11 of the Core Strategy (adopted October 2011), Policy DM2 of the Development Management Policies LDD (adopted July 2013) and the NPPF (2019).*

*R2: The concrete plant and equipment (including associated silos) arising from the material change of use by virtue of their height, industrial design, scale and siting have an adverse impact on the visual amenity of the locality and character of the area. The concrete plant and equipment therefore fails to comply Policy CP12 of the Core Strategy (adopted October 2011).*

*R3: It has not been demonstrated that the activities arising from the material change of use do not adversely impact on the quality of local groundwater quality and that the risk to potable water can be safely managed given the application site's location within Source Protection Zone 1. The development therefore fails to accord with Policy DM9 of the Development Management Policies LDD (adopted July 2013) and the NPPF (2019).*

R4: *It has not been demonstrated that the development would not be subject to unacceptable levels of air pollutants through on-site activities and vehicular movements. In the absence of an Air Quality Assessment the development is contrary to Policy DM9 of the Development Management Policies LDD (adopted July 2013) and the NPPF (2019).*

R5: *In the absence of sufficient information it cannot be demonstrated that on-site parking levels are acceptable and that parking would not overflow onto the adjacent service road thereby impacting the usability of the pedestrian pavement and also adversely affecting the visual amenity of the area through the presence of on-street parking. The development is therefore contrary to Policy CP12 of the Core Strategy (adopted October 2011) and Policies DM13 and Appendix 5 of the Development Management Policies LDD (adopted July 2013).*

An appeal was lodged against the decision to refuse planning permission and was turned away by the Planning Inspectorate on 6 October 2021 - APP/P1940/W/21/3273755).

- 1.5 20/0068/ENFNOT: Enforcement Notice Appeal against Unauthorised material change of use of land to open storage. PINS reference: APP/P1940/C/20/3265160. Pending consideration.
- 1.6 21/0424/RSP: Retrospective: Change of use of hanger for the maintenance and repair of lorries. Pending consideration.
- 1.7 20/2774/RSP: Retrospective: Change of use of the site for vehicle hire along with the processing of construction waste materials aggregates and soil. Pending consideration.
- 1.8 20/2831/RSP: Part Retrospective: Change of use to self-contained offices and use of hanger building for car maintenance and repairs. Withdrawn (use now ceased).

## **2 Description of Application Site**

- 2.1 The application site relates to a small parcel of land located within the south eastern part of a commercial yard (formerly owned and used by Thames Water), positioned on the northern side of the Thames Water service road which is accessed via Denham Way to the north west, in Maple Cross.
- 2.2 The wider site as enclosed in blue on the submitted location plan comprises a hanger type building and open yards, all of which are being used by a variety of different businesses, without planning permission. The elevated parcel of the wider site (referred to as Site 6 on the submitted location pan) is currently subject to an enforcement notice and appeal concerning unauthorised parking.
- 2.3 The application site is physically enclosed from the wider site (as enclosed in blue on the submitted location plan) which forms a commercial yard by metal fencing which also runs along the service road frontage. The application site has a single vehicular access point from the service road with the site used for open storage. Within the site there are two containers used as an office/storage (although only one container is shown on the submitted plans).
- 2.4 With regards to policy designations the application site falls within the Metropolitan Green Belt, Source Protection Zone 1, Flood Zone 1 and a Secondary Centre. It is also located opposite an allocated employment site (E(d)).

## **3 Description of Proposed Development**

- 3.1 This application seeks retrospective planning permission for the change of use for open storage of builder's machinery, equipment and material, activities which would appear to fall within Use Class B8 (storage).

- 3.2 The submitted planning statement sets out that the site is used by Newtownstewart Construction Ltd, a building and civil engineering contractor. The application site is used by them to store construction related machinery, equipment and materials and to enable prompt despatch when required. The type of storage ranges from fencing, construction materials and a digger.
- 3.3 The use operates between the hours of 7am to 6pm Monday to Friday and between 8am and 1pm on Saturday, with it being closed on Sundays and Bank Holidays.
- 3.4 There is no full or part time member of staff on-site.

## 4 Consultation

### 4.1 Statutory Consultation

#### 4.1.1 Environment Agency: [Objection]

*We **object** to this retrospective planning application, as submitted, because the applicant has not supplied adequate information to demonstrate that the risks posed to groundwater resources can be satisfactorily managed.*

*The site is located within an inner groundwater protection zone (SPZ1) relating to a groundwater abstraction borehole located approximately 350m north east of the site.*

*Areas in SPZ1 are the catchment areas for sources of potable water, high quality water supplies usable for human consumption. Groundwater at this location is therefore particularly vulnerable to polluting uses on the surface.*

*The proposed use of the site for the storage of building material and equipment is potentially contaminative and may be a detriment to groundwater quality. We note that the nature of the material to be stored on site has not yet been characterised.*

*This objection is in line with paragraph 170 of the National Planning Policy Framework (NPPF) and Policy DM9 of the Three Rivers Local Plan (2013).*

#### 4.1.2 Highway Authority (HCC): [No objection]

*The application site is located within a larger industrial area on the north-east side of Maple Cross and approximately 200m from the nearest highway on Denham Way, which is designated as a classified A (A412) main distributor road and subject to a speed limit of 40mph.*

##### *Access and Parking*

*The application site is accessed via a private industrial access road and then an existing dedicated gated vehicle access into site itself. The application does not include any new or altered access.*

*There are existing footways on Denham Way in addition to a footway on the south side of the private access road. HCC as Highway Authority would be supportive of measures to restrict vehicles from parking on the private footway to encourage and promote a safe and easy route for pedestrians to and from the site (and neighbouring properties). It is acknowledged however that the nature of the current use would limit the number of people walking to and from the site.*

*The submitted Planning Statement states that "the site can accommodate sufficient car parking space to cater for the needs of the business with 2/3 parking spaces available within*

*the site". HCC would therefore not have a specific objection to the application in this respect. Nevertheless TRDC would ultimately need to be satisfied with the overall level of parking.*

#### *Trip Generation*

*Following consideration of the size of the application site, with a number of vehicular trips of approximately 2-4 per month, any impacts from the trip generation from the site itself are not considered to be significant or severe enough to recommend refusal from a highways perspective.*

#### *Conclusion*

*HCC as Highway Authority would not wish to object to the granting of planning permission for this site. Nevertheless it is recommended that appropriate Transport Statements / Assessments are submitted for the adjacent sites (as previously responded to in relation to consultations for the adjacent sites) and to assess any cumulative impacts.*

4.1.3 Thames Water: [No comments received. Any comments received will be verbally updated at the Committee meeting]

4.1.4 Affinity Water: [No comments received. Any comments received will be verbally updated at the Committee meeting]

4.1.5 National Grid: [No comments received. Any comments received will be verbally updated at the Committee meeting]

## 4.2 **Public/Neighbour Consultation**

4.2.1 Site Notice: Expired 16.06.2021.

4.2.2 Press Notice: Not applicable.

4.2.3 Number consulted: 17

4.2.4 No of responses received: 0

4.2.5 Summary of Responses: None.

## 5 **Relevant Planning Policy, Guidance and Legislation**

### 5.1 National Planning Policy Framework and National Planning Practice Guidance

On 20 July 2021 the National Planning Policy Framework was revised. This is read alongside the National Planning Practice Guidance (NPPG). The determination of planning applications is made mindful of Central Government advice and the Local Plan for the area. It is recognised that Local Planning Authorities must determine applications in accordance with the statutory Development Plan, unless material considerations indicate otherwise, and that the planning system does not exist to protect the private interests of one person against another. The 2021 NPPF is clear that "existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of this Framework. Due weight should be given to them, according to their degree of consistency with this Framework".

The NPPF states that 'good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities'. The NPPF retains a presumption in favour of sustainable development. This applies unless any adverse impacts of a development would 'significantly and demonstrably' outweigh the benefits.

### 5.2 The Three Rivers Local Development Plan

The application has been considered against the policies of the Local Plan, including the Core Strategy (adopted October 2011), the Development Management Policies Local Development Document (adopted July 2013) and the Site Allocations Local Development Document (adopted November 2014) as well as government guidance. The policies of Three Rivers District Council reflect the content of the NPPF.

The Core Strategy was adopted on 17 October 2011 having been through a full public participation process and Examination in Public. Relevant policies include PSP3, CP1, CP6, CP9, CP10, CP11 and CP12.

The Development Management Policies Local Development Document (DMLDD) was adopted on 26 July 2013 after the Inspector concluded that it was sound following Examination in Public which took place in March 2013. Relevant policies include DM2, DM4, DM6, DM9, DM13 and Appendix 5.

### 5.3 Other

The Localism Act received Royal Assent on 15 November 2011. The growth and Infrastructure Act achieved Royal Assent on 25 April 2013.

The Wildlife and Countryside Act 1981 (as amended), the Conservation of Habitats and Species Regulations 2010, the Natural Environment and Rural Communities Act 2006 and the Habitat Regulations 1994 may also be relevant.

The Community Infrastructure Levy (CIL) Charging Schedule (adopted February 2015).

Policy SA2 (Site E(d)) of the Site Allocations Local Development Document (SALDD) (adopted November 2014).

Online National Planning Practice Guidance.

## 6 **Reason for Delay**

- 6.1 Allowed time to enable applicant to address technical objection from the Environment Agency however this has not progressed.

## 7 **Planning Analysis**

### 7.1 Overview

- 7.1.1 Following reports concerning a breach of planning control relating to unauthorised uses spanning the application site and wider site an enforcement case was opened and assigned the reference 17/0045/COMP. After site visits a number of Planning Contravention Notices were issued to various businesses operating from the site. From July 2019 all unauthorised uses ceased from the elevated parcels of land (outside the application site). One use recommenced and is subject to an enforcement notice and subsequent enforcement appeal which is currently pending with The Planning Inspectorate.

- 7.1.2 This application has been submitted (utilising section 73A of the TCPA 1990) after the land owner was made aware that the current use constituted a material change of use.

- 7.1.3 It is noted that the application site was formally used by Thames Water for commercial purposes when in their ownership.

### 7.2 Principle of development

- 7.2.1 The application site falls within a Secondary Centre as set out within PSP3 of the Core Strategy. This policy states that development in such centres will enhance employment

opportunities. The site is also located opposite an employment site (E(d) and falls within previously developed land by virtue of the presence of permanent structures / hard surfacing which formed part of a historic use by Thames Water. The historic use of the site was by Thames Water contractors linked to their function as a statutory undertaker and operated under permitted development.

7.2.2 As a result of the site circumstances a commercial presence within the application site is not unacceptable in principle, and clearly some weight must be given to its character which is dominated by existing buildings and hard surfacing. Nevertheless, the above view is caveated against other material planning considerations set out below which may make the development unacceptable.

### 7.3 Impact on Green Belt and openness

7.3.1 The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the most important attribute of Green Belts is their openness. Green Belts can shape patterns of urban development at sub-regional and regional scale, and help to ensure that development occurs in locations allocated in development plans. They help to protect the countryside, be it in agricultural, forestry or other use. They can assist in moving towards more sustainable patterns of urban development

7.3.2 Policy CP11 of the Core Strategy sets out that there is a general presumption against inappropriate development that would not preserve the openness of the Green Belt or which would conflict with the purposes of including land within it. Policy CP11 pre-dates the NPPF; however, it is considered to be consistent with the aims of national policy and thus can be given weight.

7.3.3 Policy DM2 of the Development Management Policies LDD is also a Green Belt local plan policy, however, it is silent with regards to 'material change of uses.'

7.3.4 Within the NPPF at paragraph 147 it states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. It also states that local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. 'Very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.

7.3.5 The NPPF makes certain exceptions for development in the Green Belt and these are set out within paragraph 149 with a number of requirements also set out at paragraph 150. At paragraph 150, it states that certain other forms of development are not inappropriate in the Green Belt provided they preserve its openness and do not conflict with the purposes of including land within it. One such exception paragraph 150(e) is listed as 'material changes in the use of land'.

7.3.6 As such, subject to preserving openness and not conflicting with the purposes of Green Belts (paragraph 138) the proposed change of use of land to a storage use is considered appropriate.

7.3.7 The Planning Practice Guidance (PPG) states that when assessing the impact of a proposal on the openness of the Green Belt, this requires a judgement based on the circumstances of the case. It goes on to state that the courts have identified a number of matters which may be taken in account, such as, the spatial and visual aspects arising from the development, the duration of the development and the degree of activity.

7.3.8 The application site is limited in size and is enclosed to the north and east by a bank of mature trees and metal fencing with the wider site and service road. It also falls on a site which historically was used for commercial purposes by Thames Water. Due to the size constraint of the site, the amount of storage possible is relatively minimal in scale and does

not currently exceed the height of the metal boundary fencing. Further, there are low levels of vehicular movements and on-site activity. As a result of the site's locational context, limited visibility from outside the site and limited levels of storage and activity, it is not considered that the use (including stationing of two shipping containers) has a harmful impact on the openness of the Green Belt. Conditions controlling the height of storage, lighting (of which there is none at present) and hours of use are important to ensure that the use continues to preserve the openness of the Green Belt.

7.3.9 Due to the locational context of the site, it would not conflict with any of the purposes of the Green Belt. Accordingly, the material change of use would meet one of the requirements at paragraph 150(e) and thus would be appropriate development within the Green Belt. As it is considered appropriate development there would be no harm to openness as a direct result.

#### 7.4 Impact on local character:

7.4.1 Policy CP1 of the Core Strategy seeks to promote buildings of a high enduring design quality that respect local distinctiveness and Policy CP12 of the Core Strategy relates to design and states that in seeking a high standard of design the Council will expect development proposals to 'have regard to the local context and conserve or enhance the character, amenities and quality of an area'.

7.4.2 Due to the storage nature of the development, there is a visual impact. However, given its locational context and the size of the site it is not considered that the impact is harmful to the character of the area. As highlighted above, conditions are to be recommended, if approved, to ensure the storage levels on site are appropriate in terms of their height. As such, there would be no conflict with Policies CP1 or CP12 of the Core Strategy.

#### 7.5 Impact on neighbouring amenity:

7.5.1 Policy DM9 of the Development Management Policies LDD states that planning permission will not be granted for development which has an unacceptable impact on the indoor and outdoor acoustic environment of existing or planned development.

7.5.2 Due to the location of the application site it is not considered that the activity arising from the application site is and will be harmful to local residents or nearby businesses.

7.5.3 It is recognised that residential properties (Froghall Farm) are located to the north; however, there is a substantial distance and varying land levels between which would largely mitigate any noise as a result of the use. To the south, and some distance away (over 200m) is Longmore Close.

7.5.4 Given the size constraints of the site and the limited levels of activity, it does not result in unacceptable harm. The hours of use are also not excessive and will be controlled by the imposition of a condition, if approved.

#### 7.6 Parking and Access

7.6.1 Policy CP10 of the Core Strategy (adopted October 2011) states that all development should be designed and located to minimise the impacts of travel by motor vehicle on the District and demonstrate that it provides a safe and adequate means of access.

7.6.2 The NPPF states that "Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe". The site is served by a formal access so no concerns are raised in this respect.

7.6.3 With regards to parking standards Appendix 5 of the Development Management Policies LDD states that for storage uses 1 space per 75sqm gross floor area (1 lorry space per 200sqm). No building exists on site; however there is adequate space on site for parking when required. The adjacent service road falls outside the controls of the applicant and is privately enforced by the land owner, Thames Water. There is also no highway objection.

7.6.4 Due to the nature of the development, it does not require cycle provision; however, space exists for such, if required.

## 7.7 Contamination

7.7.1 The application site falls within Source Protection Zone 1 relating to a groundwater abstraction borehole located approximately 350m north east of the site. The site is also potentially on or within close proximity to a historic landfill.

7.7.2 Paragraph 183(a) of the NPPF states that planning decisions should ensure that a site is suitable for its proposed use taking account of ground conditions and any risks arising from instability and contamination and after remediation, as a minimum, land should not be capable of being determined as contaminated land under Part IIA of the Environmental Protection Act 1990. Additionally, paragraph 183(c) states that adequate site investigation information, prepared by a competent person, is available to inform these assessments.

7.7.3 Policy DM9 of the Development Management Policies LDD states that the Council will only grant planning permission for development, on, or near to, on land suspected to be contaminated, where the Council is satisfied that:

- i) There will no threat to the health of future users or occupiers of the site or neighbouring land; and
- ii) There will be no adverse impact on the quality of local groundwater or surface water quality

7.7.4 The Environment Agency (EA) have commented that given the change of use involves the storage of building material and equipment it is potentially contaminative and may be detrimental to groundwater quality. Due to the site's location within Source Protection Zone 1, this is particularly important. Due to the absence of a Groundwater Risk Assessment the LPA and EA are unable to conclude that the risks to potable water can be safely managed, contrary to DM9 of the Development Management Policies LDD and the NPPF.

## 7.8 Air quality:

7.8.1 The NPPF at paragraph 185 states that planning decisions should ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment. Paragraph 186 also states that decisions should sustain and contribute towards compliance with relevant limit values or national objectives for pollutants, taking into account the presence of Air Quality Management Areas and Clean Air Zones, and the cumulative impacts from individual sites in local areas. Opportunities to improve air quality or mitigate impacts should be identified, such as through traffic and travel management, and green infrastructure provision and enhancement.

7.8.2 Policy DM9 of the Development Management Policies LDD states that development will not be permitted where it would have an adverse impact on air pollution levels, particularly where it would adversely affect air quality in an Air Quality Management Area and/or be subject to unacceptable levels of air pollutants or disturbance from existing pollutant sources.

7.8.3 The application site does not fall within an Air Quality Management Area. Unlike other businesses operating from the wider site, the activity relating to the application site is

extremely limited. As such, it is not considered that the development unacceptably impacts air quality.

## 7.9 Ecology impacts

7.9.1 Section 40 of the Natural Environment and Rural Communities Act 2006 requires Local Planning Authorities to have regard to the purpose of conserving biodiversity. This is further emphasised by regulation 3(4) of the Habitat Regulations 1994 which state that Councils must have regard to the strict protection for certain species required by the EC Habitats Directive. The Habitats Directive places a legal duty on all public bodies to have regard to the habitats directive when carrying out their functions.

7.9.2 The protection of biodiversity and protected species is a material planning consideration in the assessment of this application in accordance with Policy CP9 of the Core Strategy and Policy DM6 of the Development Management Policies document. Paragraph 170 of the NPPF states that planning decisions should contribute to and enhance the natural and local environment by proposals minimising impacts on and providing net gains for biodiversity, including by minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures.

7.9.3 A Local Biodiversity Checklist has been completed by the applicant and submitted with the application.

7.9.4 Due to the previously developed nature of the site it is not considered that any harm results to biodiversity. In order to minimise any impact, it would be appropriate to control external lighting.

## 7.10 Flooding and drainage

7.10.1 Policy DM9 of the Development Management Policies LDD states that development will only be permitted where it would not be subject to unacceptable risk of flooding; and would unacceptably exacerbate risk of flooding elsewhere.

7.10.2 The application site is located in Flood Zone 1; however, it is at medium to low risk of surface water flooding. The current surface of the site is partially hard surfaced; however, there is clear evidence from site visits that parts of the site are prone to a build-up of surface water and greater drainage could be implemented.

7.10.3 Due to the concerns regarding groundwater quality, it is considered that improvements to the surface are likely to be required which will enhance drainage across the site.

## 8 **Recommendation**

8.1 That RETROSPECTIVE PLANNING PERMISSION BE REFUSED for the following reason:-

It has not been demonstrated that the activities arising from the change of use which involves the storage of building material and equipment does not adversely impact on the quality of local groundwater and that the risk to potable water can be safely managed given the application site's location within Source Protection Zone 1. The development therefore fails to accord with Policy DM9 of the Development Management Policies LDD (adopted July 2013) and the NPPF (2021).

## 8.2 **Informative:**

11 The Local Planning Authority has been positive and proactive in considering this planning application in line with the requirements of the National Planning Policy

Framework and in accordance with the Town and Country Planning (Development Management Procedure) (England) Order 2015. The Local Planning Authority encourages applicants to have pre-application discussions as advocated in the NPPF. The applicant and/or their agent did not have formal pre-application discussions with the Local Planning Authority and the proposed development fails to comply with the requirements of the Development Plan and does not maintain/improve the economic, social and environmental conditions of the District.