

Application Number: 16/03023/FUL

Demolition of existing B8 storage and distribution warehouse, and erection of a new B8 storage and distribution warehouse with ancillary B1 floorspace and associated works

AT Blakelands 1, Yeomans Drive, Blakelands

FOR [REDACTED]

Ward: Newport Pagnell South

Parish: Great Linford Parish Council

1.0 Recommendation

It is recommended that a section 102 order is served in accordance with the condition set out in this report at paragraph 7.0.

Matters for Consideration

- 2.0 Planning permission for the site was originally granted in January 2018 subject to a s106 agreement, which was signed by the developer on 17 January 2018, requiring a carbon neutrality contribution and public art and the developer is required to comply with these obligations. A number of conditions were unfortunately missed from this planning permission, including noise, landscaping and lighting amongst others. In order to resolve this unfortunate error, officers worked with the developer and a second full application was submitted to the Council under reference 18/02341/FUL, to include the missing conditions. This second application came before the Development Control Committee on 8th November, subject to conditions and a s106 agreement. It was resolved that planning permission be granted subject to the conditions in the committee report and a s106 agreement that included a clause that required the revocation of the extant planning permission granted in January 2018.
- 3.0 Unfortunately, following the Development Control Committee the developer has refused to enter into the s106 agreement. Therefore the Council is unable to issue the decision notice, which would have included all of the missing conditions. It was therefore necessary for the Council to seek urgent legal advice from Counsel.
- 4.0 Advice from Counsel is to issue a section 102 order under the Town and Country Planning Act 1990 (the Act). This is known as a discontinuance order, but allows for a local planning authority to impose conditions on the order for the continuance of works. As the developer has the benefit of extant planning permission under reference 16/03023/FUL dated January 2018, the

Council has the ability to impose such conditions as deemed necessary for the continuance of works under section 102 of the Act. However, such an order attracts compensation and it is vital that this is taken into consideration when considering which conditions ought to be imposed on the order.

5.0 Compensation following the service of a section 102 order is measured under section 115 of the Act. It is calculated as the damage suffered in consequence of the order, by depreciation of the value of an interest in the land, or by being disturbed in the enjoyment of the land; and any person who carries out any works in compliance with the order is entitled to recover from the local planning authority any expenses incurred by him. It is important that the Council works to reduce the level of compensation that would fall due under section 102 of the Act and it is for this reason careful thought is required when considering which conditions should be imposed on an order.

6.0 In considering conditions, the Council needs to think about the harm to the amenity of the neighbouring residents and how this can be reduced, whilst bearing in mind the risk and level of compensation that may become payable. Counsel has advised that in addressing amenity, this needs to be viewed objectively and which aspects of amenity that would cause harm. The condition recommended to be proposed is to control the most immediate impact. If in future further conditions are required for tighter control, the Council could look to impose these, but all the while would need to be mindful of any compensation that may become payable. In discussions with Counsel it was noise, landscaping and lighting conditions which were most prevalent. Counsel provided advice on which of these conditions should and should not be imposed. These are discussed below:

7.0 **Lighting** – it was considered necessary that lighting at the site, could cause a detrimental impact to the amenity of neighbouring residents if lighting at the site remains on at night. It was therefore considered that the harm could be mitigated by requiring that external lighting be turned off in conjunction with the hours of HGV operations at the site. This would be imposed by condition in the section 102 order. The condition would be as follows:

“All external lighting within the site shall be turned off outside of the hours of 07:00 to 21:00 Monday – Friday and 10:00 to 16:00 on Saturdays, Sundays and Bank Holidays.

Reason: to protect the amenity of adjacent residential properties from adverse noise pollution”

8.0 As lighting would be required at the site in any event, Counsel opinion is that no compensation would become payable. This is because the requirement to stop HGV movements outside the same hours proposed, being imposed in the lighting condition, would mean that the use of external lighting is unnecessary for profit generation.

- 9.0 **Noise** - It is not proposed that a noise condition is attached to the section 102 order at this time. There is currently a noise barrier at the site, which is operational and working. There have been no objections from the Council's Environmental Health department in respect of noise. Therefore the inclusion of a noise condition, could attract considerable compensation for the Council, as the person with an interest in the land has the ability, as set out above, to recover any expenses incurred by him.
- 10.0 **Landscaping** – it is not proposed that a landscaping condition is attached to the order. Again the imposition of a landscaping condition would attract considerable compensation for example, the cost of all the landscaping works would fall to the Council as an expense incurred by the developer.
- 11.0 At this stage officers do not intend to take any further action on the latest planning permission reference 18/02341/FUL. As the developer has refused to sign up to the s106 agreement, any further action will require a resolution of the Development Control Committee; this will be revisited as required.