



Report Reference Number: 2018/0697/OUTM

Agenda Item No: 6.5

To: Planning Committee
Date: 10 October 2018
Author: Paul Edwards (Principal Planning Officer)
Lead Officer: Ruth Hardingham (Planning Development Manager)

APPLICATION NUMBER:	2018/0697/OUTM	PARISH:	Sherburn in Elmet Parish Council
APPLICANT:	Bishopdyke Enterprises Ltd	VALID DATE: EXPIRY DATE:	20 June 2018 19 September 2018 Extension of time agreed until 19 October 2018
PROPOSAL:	S.73A application for outline planning approval with all matters except access reserved for the erection of 117,000 sq m (1,250,000 sq ft) of Class B1, B2 and B8 commercial floorspace without complying with Conditions 7, 9, 11, 17, 19, 29 and 38 of outline planning approval 2016/0332 granted on 10 June 2016		
LOCATION:	Land at former airfield, Lennerton Lane, Sherburn in Elmet		

This application is to be determined by the Planning Committee since the scheme of delegation requires Departure applications which are recommended to be approved to come to Committee. Although there are three previous approvals (in outline) for this development on this site there is no discretion in the Scheme of Delegation for this instance even where work has lawfully commenced under the previous consent(s). Thus this application has to be determined by Committee and it is considered that there are material considerations that would justify approving the application.

1. Introduction and Background

The Site and Context

- 1.1 The application site is the land known as 'Sherburn 2' (S2) and comprises of ~35 hectares (86.5 acres) on the south side of the B1222 Bishopdyke Road, immediately to the east of the Sherburn Enterprise Park. The site is outside of development limits and thus in the open countryside. The northern part of the site up to the Bishop Dyke and Bishopdyke Road is agricultural land whereas the

southern part is the north eastern extension of the former airfield, now no longer in use as such and which had been used for vehicle testing.

The Proposal

- 1.2 A s.73 application, in this case now a 73A application, is an application to continue a use/ development without complying with condition(s) on a previous consent.
- 1.3 The result of a successful s.73 application is to create a whole new permission and an applicant/ developer then has the option to implement either of them, provided that they can do so lawfully taking account of any pre-commencement conditions. The 'original' consent is not altered and neither is it revoked or superseded (c/f *Pye and North Cornwall*). The Council does not have the ability to revisit the principal unless there have been material changes in planning circumstances and if the existing condition(s) should remain, the s.73 should be refused. The authority is not however bound to only look at the condition(s) that the applicant has identified but can revisit, remove or add any other necessary conditions on any new approval.
- 1.4 The applicant seeks consent for a variation of conditions as identified in the description above. This is to enable the first phase Reserved Matters building application that has now been submitted (2018/0764) to be enabled to commence on site without having to address all other whole-site or pre-commencement conditions.

Relevant Planning History

- 1.5 2013/0467/OUT Outline approval for 1,250,000 sq ft of B2/B8 floorspace including the creation of a new bridge access and site infrastructure works was granted on 4 February 2014 with a ten year and two year time limit. It included a four-way planning obligation dated 3 February 2014 which provided for the approved Framework Travel Plan (TPF) and Travel Plan Monitoring Fee such that prior to the occupation of each building the owner will prepare and agree with the County Council a detailed travel plan for that building in accordance with the TPF. If certain triggers are met the owner will model the Sherburn signal junction and provide the results to the County Council. If certain other conditions are triggered a consultant will be appointed to prepare a personalised travel plan scheme.
- 1.6 2014/1235/ was a s.73 new outline to 'vary' 2013/0467 granted on 12 February 2015 again with ten year limit for RMs. This was principally to enable the installation of the new bridge access in order to access the site and to phase some of the whole site conditions.
- 1.7 2016/0332 was a s.73 new outline to 'vary' 2014/1235. Determined by Committee on 1 June 2016 with ten years for RMs 'from the grant of 2013/0467'...keeping it in line with original outline so that s.73 is not being used to extend the life of the consent (i.e. all RMs by Feb 2024). There is a Deed of Variation dated 8 June 2016 which is supplemental to the original February 2014 obligation.
- 1.8 This therefore is the fourth outline and the third s.73 to create a new outline consent and will need a further Deed of Variation.

2. CONSULTATION AND PUBLICITY

- 2.1 **Sherburn Parish Council** has replied that it has no objection to the (cycle/PROW) route being available and free from obstruction until an alternative is provided.
- 2.2 **Monk Fryston Parish Council** has replied with no comments or observations.
- 2.3 **Police Designing out Crime Officer** has no issues with this variation, no other comments to make.
- 2.4 **County Principal Archaeologist** has replied that the existing outline already has archaeology conditions so there are no comments to make on this variation.
- 2.5 **County Public Rights of Way Officer** requests an Informative to protect PROWs across the site.
- 2.6 **County Fire and Rescue** has no comments to make presently but may comment in detail on access and water supplies at the detailed stage
- 2.7 **North Yorkshire County Council Highway Authority** says there are no objections to the proposed variation and the conditions attached to the Highway Authority recommendation are still appropriate. The new conditions on any approval here have been shared with the Highway Authority.
- 2.8 The application has been advertised as a Departure through press and site notices and all adjoining neighbours have been notified directly. No neighbour representations have been received.

3. SITE CONSTRAINTS AND POLICY CONTEXT

- 3.1 The site is located outside the defined development limits of Sherburn without allocation and is therefore defined as open countryside by the Local Plan. The application has been advertised as a Departure from the development plan. The site does not contain any protected trees and there is no Conservation Area or local listed buildings that are affected. There are no statutory or local landscape designations. The majority of the site is situated within Flood Zone 1 with part of the north eastern corner being in Flood Zones 2 and 3.
- 3.2 Section 38(6) of the Planning and Compulsory Purchase Act 2004 states "if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise". This is recognised in paragraph 11 of the NPPF, with paragraph 12 stating that the framework does not change the statutory status of the development plan as the starting point for decision making.
- 3.3 The development plan for the Selby District comprises the Selby District Core Strategy Local Plan (adopted 22nd October 2013) and those policies in the Selby District Local Plan (adopted on 8 February 2005) which were saved by the direction of the Secretary of State and which have not been superseded by the Core Strategy.

Selby District Core Strategy Local Plan

3.4 The relevant Core Strategy Policies are as follows:

SP1: Presumption in Favour of Sustainable Development
SP2: Spatial Development Strategy
SP13: Scale and Distribution of Economic Growth
SP18: Protecting and Enhancing the Environment
SP19: Design Quality

Selby District Local Plan

3.5 The relevant Selby District Local Plan Policies are:

ENV1: Control of Development
ENV2: Environmental Pollution and Contaminated Land
EMP3: Renewal of Industrial and Business Commitments
EMP9: Expansion of Existing Employment Uses in Rural Areas
ENV28: Other Archaeological Remains
T1: Development in Relation to Highway Network
T2: Access to Roads
T7: Provision for cyclists

National Guidance and Policy – National Planning Policy Framework (NPPF), National Planning Practice Guide (NPPG)

3.6 The 2018 National Planning Policy Framework replaces the first NPPF which was issued in March 2012.

3.7 The application does not accord with the development plan; however this site has had outline consent for significant employment floorspace since 2014 which is not reflected in the Plan. The Framework's presumption in favour of sustainable development means that where there are no plan policies, or policies most important for determining the application are out of date, to grant permission unless, amongst other things, any adverse impacts of doing so would significantly and demonstrably outweigh the benefits (para 11).

3.8 The existing consent and the lack of any specific allocation for what is now a committed site is such a material consideration as envisaged in s.38(6).

3.9 In addition, the adopted Economic Development Framework 2017-2022, although not a part of the development plan, identifies S2 as a key development site with outline planning permission for 1.25m sq ft in place and ".its enormous potential to grow the Selby District economy" (Priority 1).

4. APPRAISAL

4.1 The development has been lawfully commenced with the installation of the culverted bridge crossing into the site from Bishopdyke Road and so the question on this application is quite narrow in terms of this s.73A application. The PPG now says, in addition to the Framework guidance on the six tests for the imposition of conditions (new para 55): "In deciding an application under section 73, the local planning

authority must only consider the disputed condition/s that are the subject of the application – it is not a complete re-consideration of the application”.

- 4.2 The advantage of a s.73 application is that there is also an opportunity for conditions to be brought up to date with good practice, remove duplications and unlawful tailpieces and take account that some of the off-site highway works have been provided.
- 4.3 The application does not comply with the locational policies in the development plan for economic development, being on an unallocated site outside of development limits. The key question is whether a new planning permission may be issued with different conditions to those on 2016/0332; since the alternative if those conditions should remain (para 1.3 above) would be to refuse this application.
- 4.4 The principal change in planning circumstances since the 2016 consent is the revised NPPF issued this July. That significant weight should be placed on the need to support economic growth remains a part of the guidance and that decisions should help create conditions in which business can invest, expand and adapt (para 80). In the context of a rural economy, there is a recognition that sites to meet local business and community needs may have to be found adjacent to or beyond existing settlements and in locations that are not well served by public transport. It will thus be important (new para 84 continues) to ensure development is sensitive to its surroundings; it does not have unacceptable impacts on local roads and exploits opportunities to make it more sustainable.
- 4.5 This application accords with the presumption in favour of sustainable development (Policy SP1). Although a Departure from the Plan, the spatial development strategy would support development in the countryside, which would contribute towards and improve the local economy (Policy SP2) and Policy SP13 similarly would support sustainable economic growth that is appropriate in scale and type to its location; whilst not harming the character of the area and giving a good standard of amenity – reflected in the Framework. The site is adjacent to the existing Sherburn Enterprise Park and the character and scale of development will not be dissimilar to the employment areas that already exist.
- 4.6 The identification of this site in the Economic Development Framework as a site to grow the local economy is further support for this development in this location.
- 4.7 Furthermore, the existing consent which has been lawfully commenced is a significant material consideration in favour of this application.

Planning obligation

- 4.8 The obligation dated 3 February 2014 will need a variation and the applicants have confirmed that a draft is being prepared to be ready in time for Committee. The applicants say that they would wish any new outline to be issued as soon as possible after Committee due to the need to seek to agree the Phase 1 approval consequently.

5. CONCLUSION

- 5.1 This application site is a significant committed employment site which has a lawful commencement and three previous outline permissions for 1.25 million sq ft of

floorspace. The matter of the principle is established and the primary consideration on this application is more to do with the nature of conditions on any approval (c/f para 4.1 above).

- 5.2 The recommended conditions will ensure that the development can be sensitive to its surroundings and continue to necessarily address the details through the imposition of the reserved matters and other detailed conditions set out in the recommendation below.

6. RECOMMENDATION

- 6.1 That, this application is recommended to be APPROVED subject to delegation being given to Officers to complete the Deed of Variation to the original Section 106 agreement and the conditions attached below:

- 1. Approval of the details of the (a) appearance, (b) landscaping, (c) layout and (d) scale (*hereinafter called 'the reserved matters'*) on any part of the site shall be obtained from the local planning authority in writing before the commencement of development on that part of the site for which approval is sought.

Reason: This is an outline permission and these matters have been reserved for the subsequent approval of the local planning authority, and as required by Section 92 of the Town and Country Planning Act 1990.

- 2. Applications for the approval of the reserved matters for all parts of the site referred to in Condition No.1 herein shall have been made before 4 February 2024 and the development to which this permission relates, on that part of the site, shall have begun not later than the expiration of two years from the final approval of the reserved matters pertaining to that part of the site or, in the case of approval on different dates, the final approval of the last such matter to be approved.

Reason: In order to comply with the provisions of Section 51 of the Planning and Compulsory Purchase Act 2004.

- 3. The development hereby permitted shall be carried out in accordance with the plans/drawings listed below:

Location Plan	1695 116
Proposed Site Plan	1695 200 Rev F
Proposed Site Access Amendments	P8576-GA-02_REV F
Indicative Diversion Easement Plan	1695 128 Rev A
Indicative A63 Junction Improvements	P8576-GA-01-D
Cycleway Works Proposed Route	SK300 D
Ecological Appraisal dated February 2013 and letter dated 30 August 2013 by Brooks Ecological	
Flood Risk Assessment dated February 2013 by Alan Wood and Partners	

Reason: For the avoidance of doubt

- 4. No development shall commence in relation to approved reserved matters for an individual building/phase until the following drawings and details have been submitted to and approved in writing by the local planning authority in relation to that building:

- (1) Detailed engineering drawings to a scale of not less than 1:500 and based upon an accurate survey showing:
 - (a) the proposed highway layout including the highway boundary
 - (b) dimensions of any carriageway, cycleway, footway, and verges
 - (c) visibility splays
 - (d) the proposed buildings and site layout, including levels
 - (e) accesses and driveways
 - (f) lining and signing
 - (g) traffic calming measures
 - (h) all types of surfacing (including tactiles), kerbing and edging.
- (2) Full highway construction details including:
 - (a) typical highway cross-sections to scale of not less than 1:50 showing a specification for all the types of construction proposed for carriageways, cycleways and footways/footpaths
 - (b) cross sections at regular intervals along the proposed roads showing the existing and proposed ground levels
 - (c) kerb and edging construction details
- (3) Details of all proposed street lighting.

The development of each individual plot shall thereafter only be carried out in full compliance with the approved drawings and details.

Reason: In accordance with policies ENV1, T1 and T2 of the Local Plan and to secure an appropriate highway constructed to an adoptable standard in the interests of highway safety and the amenity and convenience of highway users.

5. No phase or part of the development to which this permission relates shall be brought into use until the carriageway and any footway/footpath from which it gains access has been constructed to basecourse macadam level and/or block paved and kerbed and connected to the existing highway network with street lighting installed and in operation.

Reason: In accordance with Policies ENV1, T1 and T2 of the Local Plan and to ensure safe and appropriate access and egress to the premises, in the interests of highway safety and the convenience of prospective users of the highway.

6. No part of the development shall be brought into use until details of a programme to secure the permanent closure of the existing access onto Bishopdyke Road other than for emergency vehicles and by farm traffic serving the site and for access provision to TMD Friction until such time as alternative access provision for these on site activities has been submitted to and approved by the local planning authority.

Reason: In accordance with Policies ENV1, T1 and T2 of the Local Plan and in the interests of highway safety.

7. No more than 4,700 sq m (50,000 sq ft) of floorspace hereby approved shall be occupied before the design drawings and safety audits have been prepared for the works to widen the approach arms and roundabout at the A162/A63 junction and a

programme for the implementation of the scheme have been submitted to and approved by the local planning authority.

Reason: In accordance with Policies ENV1, T1 and T2 of the Local Plan and to ensure that the details are satisfactory in the interests of the safety and convenience of highway users.

8. There shall be no access or egress by construction vehicles between the application site and the public highway other than by using the newly formed culverted access onto Bishopdyke Road.

Reason: In accordance with Policies ENV1, T1 and T2 of the Local Plan and in the interests of the safety and convenience of highway users.

9. The development shall not be brought into use until the following highway works have been constructed in accordance with the details approved in writing by the Local Planning Authority:
 - a. Provision of a combined footway/cycleway and crossing points as shown on Drawing No. SK300 D.

Reason: In accordance with Policies ENV1, T1 and T2 of the Local Plan and in the interests of the safety and convenience of highway users.

10. No development shall commence in respect of each of the approved reserved matters phases until a Construction Management Plan to include hours of construction working, on-site parking capable of accommodating all staff and sub-contractors vehicles clear of the public highway, on-site materials storage area capable of accommodating all materials required for the operation of the site, mitigation and monitoring in respect to the construction works relating to that part of the site including any construction works to its access. The approved plan shall be implemented throughout the construction phase of that part of the site to which the plan relates.

Reason: This is a pre-commencement condition for each phase since it is necessary to have this information before substantial works commence and in accordance with Policies ENV1, T1 and T2 of the Local Plan and in the interests of highway safety and the general amenity of the area.

11. No development shall take place within a phase until measures to divert or otherwise formally close the sewers and water mains that are laid within that phase have been implemented in accordance with details that have been submitted to and approved by the local planning authority.

Reason: This is a pre-commencement condition for each phase since it is necessary to have this information before substantial works commence in the interests of satisfactory and sustainable drainage and to maintain the public water supply.

12. No development shall take place on an individual plot or phase until details of the proposed means of disposal of foul water drainage including details of any balancing works and off-site works have been submitted to and approved by the local planning authority.

Reason: This is a pre-commencement condition for each phase since it is necessary to have this information before substantial works commence to ensure that the development can be properly drained.

13. No development shall take place on an individual plot until a surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development, has been submitted to and approved in writing by the Local Planning Authority. The drainage strategy should demonstrate the surface water run-off generated up to and including the 1 in 100 critical storm will not exceed the run-off from the undeveloped site following the corresponding rainfall event. The scheme shall subsequently be implemented in accordance with the approved details before the development is completed.

The scheme shall also include:

- i. A maximum surface water discharge rate equating to 1.4l/s/ha for the developed site (27l/s)
- ii. Sufficient attenuation storage for up to and including a 1 in 100 year storm, with an allowance for climate change
- iii. details of oil interceptors prior to being discharged into a watercourse
- iv. Details of how the scheme shall be maintained and managed after completion.

Reason: This is a pre-commencement condition for each phase since it is necessary to have this information before substantial works commence to prevent the increased risk of flooding, both on and off site.

14. Prior to the commencement of development on an individual plot details of a scheme of archaeological investigation to provide for:
- (i) The proper identification and evaluation of the extent, character and significance of archaeological remains within an individual plot;
 - (ii) An assessment of the impact of the proposed development on the archaeological significance of the remains, and
 - (iii) proposals for the preservation in situ, or for the investigation, recording and recovery of archaeological remains and the analysis and publishing of the findings

shall have been submitted to and approved in writing by the local planning authority. The works shall thereafter proceed in accordance with the approved details.

Reason: This is a pre-commencement condition for each phase since it is necessary to have this information before substantial works commence since site is of archaeological importance.

15. Applications for the approval of the Reserved Matters for any part of the site referred to in Condition Nos 1 and 2 shall be carried out in accordance with the design specifications set out in the letter, dated 19 September 2013, from Sherburn Aero Club Ltd to Iain Bath Planning and as shown on drawing no. 1695 127.

Reason: In the interests of aviation safety.

16. No development shall take place on an individual phase until a remediation strategy that includes the following components to deal with the risks associated with contamination of the site have been submitted to and approved in writing by the local planning authority:
- A site investigation scheme, based on the desk study to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site.
 - The results of the site investigation and the detailed risk assessment referred to in and, based on these, an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken.
 - A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in the remediation strategy in (2) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

The strategy shall be implemented as approved.

Reason: This is a pre-commencement condition for each phase since it is necessary to have this information before substantial works commence in order to take account of the potential contamination of the site in order to comply with local plan Policy ENV1.

17. In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken in accordance with the requirements of the previous condition, and where remediation is necessary a remediation scheme must be prepared, which is subject to the approval in writing of the Local Planning Authority. Following completion of measures identified in the approved remediation scheme a verification report must be prepared, which is subject to the approval in writing of the Local Planning Authority in accordance with the condition 26.

Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors.

18. The Reserved Matters to be submitted for each phase of the site pursuant to Conditions 1 and 2 shall include a Noise Impact Assessment in line with relevant guidance in force at the time* and pre-agreed noise monitoring methodology and criteria** in order to protect residential receptors adjacent to the site such that the need for mitigation can be designed for each building/phase as the site develops taking account of the previous approved phase and mitigation. The designed mitigation shall ensure that the cumulative impact of the site shall not exceed 5dB above the pre-agreed noise criteria. All works which form part of the approved scheme for each phase shall be completed before any part of that phase is first occupied and shall thereafter be retained and maintained as such.

Reason: To protect the residential amenities of the area and the local environment from adverse impacts in order to accord with local plan Policy ENV1.

19. The B2 use of the site shall not exceed 30% of the 117,000 sq m (1,250,000 sq. ft) gross floor space hereby permitted.

Reason: In the interest of highway safety as the highway impacts of the development have been assessed on the basis that B2 use of the site shall not exceed 30% of the 117,000 sq m (1,250,000 sq. ft) gross floor area.

Informative 1: The existing Public Right of Way which crosses the access to the site must be protected and kept clear of any obstruction at all times until such time as any alternative route has been provided and confirmed under an Order made under the Town and Country Planning Act 1990.

Informative 2: In respect of Condition 18 *The relevant guidance is likely to be BS4142:2014 *Methods for rating and assessing industrial and commercial sound*, or any updating or revision thereof.

Informative 3: In respect of Condition 18 **The pre-agreed noise criteria at nearby sensitive receptors is agreed as follows:

NSR	Address	Day (dB _{LA90,1hour})	Night (dB _{LA90,15mins})	Rating Level Criteria (dB)
1	Lennerton House Farm, Lennerton Lane	TBC	TBC	TBC
2	West End Lodge, Lennerton Lane	TBC	TBC	TBC
3	Bishopdyke Road	TBC	TBC	TBC

Contact Officer: Paul Edwards, Principal Planning Officer

Appendices: None