

Application Number: 15/10392 Variation / Removal of Condition

Site: Plot G3, AMPRESS LANE, LYMINGTON SO41 8QF

Development: Variation of Condition 6 of Planning Permission 12/98611 to allow occupation achieving a BREEAM 'very good' standard

Applicant: Westfield Properties (Hampshire) Ltd

Target Date: 15/05/2015

1 REASON FOR COMMITTEE CONSIDERATION

Contrary to Town Council View

2 DEVELOPMENT PLAN AND OTHER CONSTRAINTS

Built-up area

3 DEVELOPMENT PLAN, OBJECTIVES AND POLICIES

Core Strategy

Objectives

- 2. Climate change and environmental sustainability
- 4. Economy

Policies

CS4: Energy and resource use

Local Plan Part 2 Sites and Development Management Development Plan Document

LYM07: Ampress Park, Southampton Road

4 RELEVANT LEGISLATION AND GOVERNMENT ADVICE

Section 38 Development Plan
 Planning and Compulsory Purchase Act 2004
 National Planning Policy Framework

5 RELEVANT SUPPLEMENTARY PLANNING GUIDANCE AND DOCUMENTS

None

6 RELEVANT PLANNING HISTORY

1 block of 4 industrial units (Use Classes B1, B2 & B8); bike and bin store; parking; associated external works (12/98611) - granted 14/12/12

7 PARISH / TOWN COUNCIL COMMENTS

Lymington & Pennington Town Council:- Recommend refusal - agreement to this reduction in standard would set a dangerous precedent

8 COUNCILLOR COMMENTS

None

9 CONSULTEE COMMENTS

9.1 Environment Agency:- No comment

9.2 Natural England:- No comment

9.3 Land Drainage:- No comment

9.4 Environmental Health (contaminated land):- No concerns

9.5 Policy:- In this instance, so long as the structural elements of the building can meet the 'excellent' BREEAM standard, then this would be a satisfactory interpretation of policy. Given that the BREEAM policy was adopted back in 2009 we would normally expect new proposals to have factored this into the specifications for new development.

10 REPRESENTATIONS RECEIVED

1 letter of support from neighbouring business unit: - although not wishing to see a precedent set, considers that the developer should be supported in completing the project to the best possible standard within practicable and viable limits of expectation.

11 CRIME & DISORDER IMPLICATIONS

No relevant considerations

12 LOCAL FINANCE CONSIDERATIONS

Local financial considerations are not material to the decision on this application

13 WORKING WITH THE APPLICANT/AGENT

In accordance with paragraphs 186 and 187 of the National Planning Policy Framework and Article 35 of the Town and Country Planning (Development Management Procedure) (England) Order 2015, New Forest District Council take a positive and proactive approach, seeking solutions to any problems arising in the handling of development proposals so as to achieve, whenever possible, a positive outcome.

This is achieved by

- Strongly encouraging those proposing development to use the very thorough pre application advice service the Council provides.
- Working together with applicants/agents to ensure planning applications are registered as expeditiously as possible.
- Advising agents/applicants early on in the processing of an application (through the release of a Parish Briefing Note) as to the key issues relevant to the application.
- Updating applicants/agents of issues that arise in the processing of their applications through the availability of comments received on the web or by direct contact when relevant.

- Working together with applicants/agents to closely manage the planning application process to allow an opportunity to negotiate and accept amendments on applications (particularly those that best support the Core Strategy Objectives) when this can be done without compromising government performance requirements.
- Advising applicants/agents as soon as possible as to concerns that cannot be dealt with during the processing of an application allowing for a timely withdrawal and re-submission or decision based on the scheme as originally submitted if this is what the applicant/agent requires.
- When necessary discussing with applicants/agents proposed conditions especially those that would restrict the use of commercial properties or land when this can be done without compromising government performance requirements.

In this case, additional information has been sought from the applicant since the application was registered, and as all the above apply and as the application was otherwise acceptable as submitted, no specific further actions were required.

14 ASSESSMENT

14.1 The application site, which measures 0.29 hectares, is situated on the eastern edge of the Ampress Business Park. In April 2012, Planning permission was granted at this site for a block of 4 industrial units and associated external works. The approved development is now nearing completion. The industrial units have been built and the associated external works are being finished off. The site's surroundings have a mixed character. To the south side of the site is the Lymington Hospital, which is set within its own fairly generous spatial setting. To the west side of the site are other industrial units. The land to the north side of the site (Plot G2) is used for hospital parking while to the east of the site is an area of mature riverside woodland, which is outside of the built-up area and within the New Forest National Park. This adjacent land to the east forms part of a Site of Special Scientific Interest (SSSI) and a Special Protection Area (SPA). There is also a public footpath just outside the site, which runs adjacent to the site's eastern boundary.

14.2 The 2012 planning permission was subject to a number of conditions. Condition 6 states that:-

"The building hereby approved shall achieve a BREEAM 'excellent' standard. The building shall not be occupied until a final BREEAM certificate has been submitted to and approved in writing by the Local Planning Authority certifying that the building has achieved a BREEAM 'excellent' standard.

The stated reason for the condition was:-

"In the interests of sustainable development, including resource use and energy consumption, in accordance with Policy CS4 of the Core Strategy for the New Forest District outside the National Park."

14.3 The application that has now been submitted seeks to vary the aforementioned condition. Instead of complying with the BREEAM 'excellent' standard the application proposes that the development complies only with the lesser BREEAM 'very good' standard.

- 14.4 To support their proposal, the applicants have set out why they are unable to achieve a BREEAM 'excellent' standard. Current market conditions mean that the applicant is offering the building as a 'shell and core' development. Due to the nature of the assessment regime, the applicant has suggested that it is unviable to achieve a 'BREEAM 'excellent' standard, although they are able to achieve a reasonably high score within the 'very good' bracket of the BREEAM standards. A report suggests that the developer has incorporated all possible sustainability and energy efficiency measures across the whole build. This includes the provision of a 60 kW Photo Voltaic system and the incorporation of the most energy efficient pre-insulated panel system currently available on the market. Accordingly, the development scores very highly in a number of areas, but because of the Shell and Core build and because site specific credits like transport connections cannot be achieved on account of the location of the site, a requirement to achieve "Excellent" is felt to be unachievable as this would have a negative impact on the viability of the development. The applicants also feel that if the condition is not varied, the building is likely to remain empty, which would be detrimental to the Council's economic goals. The applicants have also pointed out that the as-built building is less than 1000 square metres and is therefore below the policy threshold where BREEAM would apply. The approved building had a gross internal floorspace of 1008 square metres. However, it is understood that a small mezzanine floor area shown on the original plans has not been built, in which case the building would indeed fall below the 1000 square metres where BREEAM applies.
- 14.5 Had the Local Planning Authority approved a building of less than 1000 square metres, a BREEAM condition would not have been imposed. The as-built building is apparently less than 1000 square metres due to the exclusion of a mezzanine area, in which case the building in its current condition should not be subject to a BREEAM condition. This is an important consideration, but it is also relevant to note that the missing mezzanine floor could potentially still be created at some point in the future. Therefore, it is not felt the BREEAM condition can be waived completely. However, given the clear difficulties in achieving an 'excellent' rating in this particular instance, and the obvious efforts the applicants have made to ensure the building is energy efficient, it is felt that there would be a reasonable justification to accept occupation of the building on the basis that it meets a BREEAM 'very good' rating rather than a BREEAM 'excellent' rating, taking into account the particular economic and viability considerations that have been put forward by the applicants.
- 14.6 Overall, the proposed development would not be wholly consistent with the Council's Core Strategy objectives. However, balancing sustainability objectives against economic objectives, it is felt that there is a reasonable justification to vary the condition in line with what the applicants have requested, taking into account the specific circumstances that apply in this case.
- 14.7 In coming to this recommendation, consideration has been given to the rights set out in Article 8 (Right to respect for private and family life) and Article 1 of the First Protocol (Right to peaceful enjoyment of possessions) of the European Convention on Human Rights. Whilst it is recognised that there may be an interference with these rights and the rights of other third parties, such interference has to be balanced with the like rights of the applicant to develop the land in the way proposed.

In this case it is considered that the protection of the rights and freedoms of the applicant outweigh any possible interference that may result to any third party.

15. RECOMMENDATION

GRANT the VARIATION of CONDITION

Proposed Conditions:

1. The building hereby approved shall achieve a BREEAM 'very good' standard. The building shall not be occupied until a final BREEAM certificate has been submitted to and approved in writing by the Local Planning Authority certifying that the building has achieved a BREEAM 'very good' standard.

Reason: In the interests of sustainable development, including resource use and energy consumption, in accordance with Policy CS4 of the Core Strategy for the New Forest District outside the National Park.

2. The development hereby permitted shall be carried out in accordance with the approved Flood Risk Assessment (FRA), produced by Gyoury Self Consulting Engineers, project ref. F15762 and dated 23/03/2012 and the following mitigation measures detailed within the Flood Risk Assessment:-

- a) Compensatory Flood Storage shall be provided at Plot G1 Ampress as set out within Section 5 of the FRA, on a level for level and volume for volume basis to compensate for any loss of storage volume at Plot G3.
- b) The Finished floor levels of the approved building shall be set no lower than 3.3 metres above Ordnance Datum (AOD).

These mitigation measures shall be fully implemented prior to the first occupation of the approved development unless an alternative timescale for implementing the mitigation measures is otherwise agreed in writing with the Local Planning Authority.

Reason: To prevent flooding elsewhere by ensuring that compensatory storage of flood water is provided and to reduce the risk of flooding to the proposed development and future occupants and to comply with Policy CS6 of the Core Strategy for New Forest District outside the National Park.

3. The development hereby permitted shall not be occupied until the approved arrangements for the parking of vehicles (cars, motor-cycles and cycles) on site have been implemented. These approved areas shall be kept available for their intended purposes at all times.

Reason: To ensure adequate parking provision is made in the interest of highway safety, to promote sustainable modes of travel and to comply with Policies CS2 and CS24 of the Core Strategy for New Forest District outside the National Park.

4. All doors and windows on the south elevation of the approved building shall remain closed at all times except for emergency access and egress.

Reason: To minimise the impact of potential noise on the adjacent hospital and to comply with Policy CS2 of the Core Strategy for New Forest District outside the National Park.

5. No goods, plant, or machinery shall be stored in the open on the site unless details of the precise location and the maximum height of any open storage area has first been submitted to and approved in writing by the Local Planning Authority.

Reason: In the interest of the amenities of the locality and to protect the visual amenities of the adjacent New Forest National Park, in accordance with policies CS2 and CS3 of the Core Strategy for the New Forest District outside the National Park.

6. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner. Any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size or species, unless the Local Planning Authority gives written consent to any variation.

Reason: To ensure the appearance and setting of the development is satisfactory and to comply with Policy CS2 of the New Forest District outside the National Park Core Strategy.

7. The development hereby approved shall be carried out strictly in accordance with the recommendations of the Ecosa Phase 1 Ecological Survey dated April 2012 (Specifically recommendations 4.4.3, 4.5.3, 4.7.3 and 4.8.3) unless otherwise agreed in writing with the Local Planning Authority.

Reason: To protect ecological interests in accordance with Policy CS3 of the Core Strategy for New Forest District outside the National Park.

8. The surface water drainage arrangements, the foul sewerage disposal arrangements, the bike/bin store details, the tree protection details, the Cellular Confinement details, the landscaping details, and the external lighting details shall be fully in accordance with those details approved under planning permission 12/98611.

Reason: To safeguard the amenities of the area in accordance with policies CS2 and CS6 of the Core Strategy for New Forest District outside of the National Park.

9. The development permitted shall be carried out in accordance with the following approved plans: 019/D101, 019/D102, 019/D103, 019/D104, 019/D105 rev B, 019/D106, 019/D107 rev B, 019/D108 rev C, 019/D109, 019/D110, 403.02 rev A, 403.01 rev B, LP 019 01.

Reason: To ensure satisfactory provision of the development.

Notes for inclusion on certificate:

In accordance with paragraphs 186 and 187 of the National Planning Policy Framework and Article 35 of the Town and Country Planning (Development Management Procedure) (England) Order 2015, New Forest District Council takes a positive and proactive approach, seeking solutions to any problems arising in the handling of development proposals so as to achieve, whenever possible, a positive outcome by giving clear advice to applicants.

In this case, additional information has been sought from the applicant since the application was registered, and as the application was otherwise acceptable as submitted no specific further actions were required.

Further Information:

Major Team

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**Planning Development
Control Committee**
June 2015

Item No: 3p
Plot G3
Ampress Lane
Lymington
App No 15/10392
SZ3197

Scale 1:1250

N.B. If printing this plan from
the internet, it will not be to
scale.

