

**Application Number:** 19/11321 Variation / Removal of Condition

**Site:** PLOT 1, GORDLETON INDUSTRIAL PARK, HANNAH WAY,  
PENNINGTON, LYMINGTON SO41 8JD  
(PROPOSED LEGAL AGREEMENT)

**Development:** Variation of condition 19 of Planning Permission 16/10885 - not able to achieve BREEAM "Excellent" rating due to various constraints

**Applicant:** Temple Bar Development (Hampshire) Ltd

**Agent:** Simpson Hilder Associates

**Target Date:** 23/01/2020

**Case Officer:** Jim Bennett

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## 1 SUMMARY OF THE MAIN ISSUES

The following are considered to be the main issues to be taken into account when determining this application. These, and all other relevant considerations, are set out and considered in Section 11 of this report after which a conclusion on the planning balance is reached.

- 1) The Principle of Development
- 2) Consideration of development standards
- 3) Delivery of measures to be secured by Section 106 agreement

This matter is before Committee as the BREEAM standards and terms of the Section 106 agreement originally secured under ref. 13/11033 differ from those agreed by Committee on 12th February 2014. Members are therefore requested to support the revised BREEAM standard and consider the proposed changes to the previous S106, as outlined below.

## 2 THE SITE

The site is a 3.5 hectare area of flat and relatively open grassland to the south of Gordleton Industrial Estate, separated from the existing industrial buildings by a landscaped bund. A bund is also in situ along the southern boundary of the site, which lies within an area of open countryside designated as Green Belt. The site is unallocated, but benefits from outline and reserved matters planning approvals to construct industrial buildings on the land. The applicant has recently completed development on Plot 1, following receipt of the requisite approvals.

## 3 THE PROPOSED DEVELOPMENT

The purpose of the current application is to seek variation of condition number 19 applied to the outline approval under ref. 16/10885, in order to allow the development to achieve a 'very good' BREEAM standard rather than 'excellent'.

It should be noted that Plot 1 approved under ref. 16/10885 and previously under 13/11033 has been implemented and occupied following approval of reserved matters under ref. 19/10565.

This application also provides the Local Planning Authority with the opportunity to revisit the requirements that were included within the existing Section 106 agreement.

#### 4 PLANNING HISTORY

| Proposal                                                                                                                                                                                             | Decision Date | Decision Description                  | Status                 |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------|---------------------------------------|------------------------|
| 19/10786 Construct 3 buildings for industrial, storage and business use (Use Classes B1, B2, & B8) (Details of appearance development granted by Outline Permission 13/11033) and varied by 16/10885 |               |                                       | Application registered |
| 19/10565 Construct buildings for industrial, storage and business use (classes B1,B2,B8) (Details of Appearance development granted by Outline Permission 13/11033 and varied by 16/10885)           | 29/08/2019    | Granted Subject to Decided Conditions |                        |
| 19/10226 Variation of condition 2 of Planning Permission 13/11033 to allow amended plan 6421.157A to allow amended cladding and door/window positions                                                | 16/04/2019    | Withdrawn by Applicant                | Withdrawn              |
| 16/10885 Variation of Condition 2, 12, 17 & 19 of Planning Permission 13/11033 to allow new wording in order to commence work on roads & landscaping                                                 | 19/09/2016    | Granted Subject to Decided Conditions |                        |
| 13/11033 Construct buildings for industrial, storage and business use (Use Classes B1, B2, & B8) (Outline Application with details only of access, layout and scale)                                 | 13/06/2014    | Granted Subject to Decided Conditions |                        |

#### 5 THE DEVELOPMENT PLAN AND OTHER CONSTRAINTS

##### **Local Plan Part 1**

Policy ENV2: The South West Hampshire Green Belt

Policy ENV3: Design quality and local distinctiveness

Policy ECON1: Employment land and development

Policy IMPL1: Developer Contributions

Policy IMPL2: Development standards

##### **Local Plan Part 2 Sites and Development Management Development Plan Document**

None

##### **Supplementary Planning Guidance And Documents**

Hampshire County Council's Transport Contributions Policy (Oct 2007)

### **Constraints**

Planning Agreement  
Plan Area

### **Plan Policy Designations**

Green Belt  
Countryside

## **6 RELEVANT LEGISLATION AND GOVERNMENT ADVICE**

### **Relevant Advice**

NPPF Chap 6 - Building a strong, competitive economy  
NPPF Chap 12: Achieving well designed places  
NPPF Chap 13 - Protecting Green Belt Land

## **7 PARISH / TOWN COUNCIL COMMENTS**

**Lymington & Pennington Town Council** - PAR1: Recommend Permission.

## **8 COUNCILLOR COMMENTS**

No comments received

## **9 CONSULTEE COMMENTS**

The following is a summary of the representations received:

New Forest National Park Authority - No objections

Southern Water - No objections

HCC Highways - No objections

Southern Gas Networks - Give informatives

*Comments in full are available on website.*

## **10 REPRESENTATIONS RECEIVED**

None

## **11 OFFICER COMMENTS**

### **Introduction**

The purpose of the current application is to seek variation of condition number 19 applied to the outline approval under ref. 16/10885, in order to allow the development to achieve a 'very good' BREEAM standard rather than 'excellent'. It also presents an opportunity to secure measures identified by the Section 106 agreement in 2014, which were omitted from the 2016 Section 73 (variation) application.

## **Relevant Considerations**

### The Principle of Development

It should be noted that Plot 1 approved under outline ref. 16/10885 and previously under 13/11033 has been implemented and occupied following approval of reserved matters under ref. 19/10565. The principle of the form of development proposed is therefore acceptable.

The only matters for consideration now are whether it is acceptable for the development to achieve BREEAM 'very good' rather than 'excellent' and whether the full terms of the Section 106 agreement associated with outline ref. 13/11033 are still necessary and reasonable.

### Consideration of development standards

Condition no. 19 of outline planning permission 16/10885 requires the development to meet BREEAM excellent standard, as then required by Policy CS4 of the Core Strategy and Policy IMPL2 of the Local Plan Part 1. These policies require new commercial developments over 1000 sq.m to achieve BREEAM 'excellent' standard. A BREEAM Pre-assessment Report has been submitted with the application which indicates that the buildings would achieve a 'very good' rating (62%), rather than the 'excellent' standard (70%).

The Pre-Assessment states that the requirements for a BREEAM Excellent rating cannot be achieved by the proposed development, largely down to the location of the development and disproportionate costs associated with achieving credits for a development of this nature, ie portal framed industrial buildings. From the Local Planning Authority's perspective, it is acknowledged that achieving the 'Excellent' standard in portal framed buildings, intended for industrial purposes has proved problematic in the past, although each case must be considered on its own merits. In this instance the design team have demonstrated that a significant number of credits amounting to 62.3% can be achieved, equating to a comfortable 'very good' BREEAM rating. The LPA concurs with the conclusions of the BREEAM statement, which states that the development can achieve 62.3%, where 'excellent' is 70%. The lower end of 'very good' is 55%, so the proposal makes a good effort at achieving excellent and is well above the lower end of 'very good'.

### Delivery of measures to be secured by Section 106 agreement

As a Section 73 variation application, if the Council is minded to approve the applicant's request, any approval will result in a new planning permission which will be subject to similar conditions as 16/10885. The proposal will also need to be subject to a revised Section 106 agreement to ensure that the benefits identified by the original outline approval are delivered.

The legal position is that when determining a s.73 application, the local planning authority is required to consider, amongst other things, whether it wishes to impose the same or different conditions and the same or different s.106 obligations to those imposed on the original consent. It is a matter for the planning authority to decide on the planning obligations to be imposed and the Council has the ability to amend these, provided they meet the tests listed within the legislation.

A s106 agreement was completed in respect of the original outline approval under ref. 13/11033, which secured the following measures:

- The land directly to the south of the proposal site to be transferred to New Forest District Council as an open area to be used only for purposes appropriate to the Green Belt, as defined by paragraph 89 of the National Planning Policy Framework.
- To secure mitigation measures in the form of off-site highway works to be delivered, the developer having first entered into a Section 278 Agreement with HCC. The S.278 highway works would be:
  - Footway link between the site access and bus stop on south side of Sway Road;
  - Sway Road/Ramley Road junction improvement shown on drawing no. 120393/A/08 Rev B;
  - Sway Road/Mount Pleasant Lane junction improvement shown on drawing no. 120393/A/03 Rev A;
  - Sway Road kerb re-alignment at Little Orchard Corner shown on drawing no. 120393/A/10.

A subsequent application to vary the original outline was made under ref. 16/10885, but unfortunately, the above measures were not secured by a Section 106 agreement. The development approved under 16/10885 was therefore able to come forward without delivering the benefits identified by the original s.106.

A second variation of the outline application was made under ref. 19/11321 (current application), primarily to address the BREEAM matter, but which also provided an opportunity to secure the highway works. The applicant has agreed to enter into a new s.106, but following extensive negotiations, there is an impasse over the land to the south of the development site.

The impasse relates to the condition of the land and in particular, the potential for the land to be contaminated and any future liability that may arise. The original agreement covenanted that the land would be transferred in a clean condition to the Council.

The applicant is seeking to alter the terms of the agreement and are proposing that the risk of contamination on the land be passed to the Council together with an indemnity policy for 5 years. The Council is advised that to take ownership and responsibility for the land, without confirmation that there is no contamination would not be acceptable.

The discussions around the transfer of the land has required officers to consider whether the gifting of the land to the Council is reasonable or necessary in order for the development to be brought forward. In this instance Section 122 of the Community Infrastructure Levy Regulations provides clear advice on the limitation of the use of planning obligations and identify the 3 relevant tests:

- necessary to make the development acceptable in planning terms;
- directly related to the development; and
- fairly and reasonably related in scale and kind to the development

The transfer of the land to the council was originally intended to assist with maintaining a strategic gap in the Green Belt, through Council ownership. This was not based upon any policy requirement, but was identified by the officer as a benefit that could be achieved. It is considered that this objective will still be

achieved as any further development would be the subject of a planning application and will be considered against all policies, including those specific to the Green Belt.

Most importantly the highway improvements, to make the industrial development on this site acceptable will be delivered in full, which is considered by officers to be of greatest importance here.

On balance, officers consider the highway improvements are necessary to make the development acceptable, but that the Council's control of the land to the south is not necessary. Consequently Members are requested to agree to variation of the s.106 agreement to exclude the land clause, but to retain the highway clause to allow those works to come forward.

If Members are minded to accept the recommendation, the varied s.106 agreement may be completed under delegated authority.

## **12 CONCLUSION ON THE PLANNING BALANCE**

The principle of industrial development has previously been established on this site by the outline permission, the only matters to consider are whether BREEAM excellent needs to be achieved and whether the s.106 can be varied.

On balance it is considered that sufficient evidence and information has been put forward by the applicant to demonstrate why BREEAM excellent cannot be achieved and that the development would make good use of available land to bring significant benefits to the local economy in terms of new employment opportunities and highway improvements, which weighs in its favour.

Furthermore, it is considered that the transfer of the land at the rear, into the ownership of the council is not necessary to make this development acceptable and therefore it would be unreasonable to require this through a legal agreement.

Accordingly the proposal is recommended for approval, subject to conditions.

## **13 RECOMMENDATION**

Delegated Authority be given to the Executive Head of Planning, Regeneration and Economy to **GRANT PERMISSION** subject to:

- i) the completion by of a planning obligation entered into by way of a Section 106 Agreement to secure the highway improvements.
- ii) the imposition of the conditions set out below.

## Proposed Conditions:

1. The development permitted shall be constructed and maintained in accordance with the following approved plans:

6421 101 (Site Location Plan)  
6421.165A (Block Plan)  
6421.CL1 (Concept Site Plan)  
BREEAM Report by Scott White and Hookins dated 18/10/2019

Reason: To ensure satisfactory provision of the development.

2. The development shall only be implemented in accordance with the agreed details of the means of disposal of surface water from the site outlined in the GTA Civils letter dated 20 December 2017 (ref 6105/2.7) previously agreed under ref.16/10885, unless otherwise approved in writing by the Local Planning Authority.

Reason: In order to ensure that the drainage arrangements are appropriate and in accordance with the New Forest District Council and New Forest National Park Authority Strategic Flood Risk Assessment for Local Development Frameworks.

3. The development shall only be implemented in accordance with the agreed details of the future maintenance of the drainage system approved under condition 5 above, being those previously agreed under ref.16/10885, unless otherwise approved in writing by the Local Planning Authority.

Reason: In order to ensure that the drainage arrangements are appropriate and in accordance with the New Forest District Council and New Forest National Park Authority Strategic Flood Risk Assessment for Local development Frameworks.

4. If unexpected contamination is found, development must be halted on that part of the site affected by the unexpected contamination to the extent specified by the Local Planning Authority in writing until condition 7 (relating to the reporting of unexpected contamination) has been complied with in relation to that contamination.

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 in accordance with Policy CCC1 of the Local Plan Part 1 for the New Forest District outside the National Park.

5. The development shall only be implemented in accordance with the investigation and risk assessment incorporated within the Ground Investigation Report dated July 2014 undertaken by Geo-Environmental, previously agreed under ref.16/10885, which establishes that the potential pollutant linkages have a low / negligible risk to human health or the environment for the proposed use of the site and therefore that a remediation scheme is not required.

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 in accordance with Policy CCC1 of the Local Plan Part 1 for the New Forest District outside the National Park.

6. Any approved remediation scheme must be carried out in accordance with its terms prior to occupation of each unit within the development, unless otherwise agreed in writing by the Local Planning Authority. The Local Planning Authority must be given two weeks written notification of commencement of any remediation scheme works. Following completion of measures identified in any approved remediation scheme, a verification report that demonstrates the effectiveness of the remediation carried out must be produced, and is subject to the approval in writing of the Local Planning Authority.

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 in accordance with Policy CCC1 of the Local Plan Part 1 for the New Forest District outside the National Park.

7. 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, 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.

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 in accordance with Policy CCC1 of the Local Plan Part 1 for the New Forest District outside the National Park.

8. The development shall only be implemented in accordance with the street lighting layout shown on drawing no. 6421.120 and incorporating 6m high DW Windsor Kirium Pro lighting columns, to control light spillage from that part of the development, which was previously agreed under ref.16/10885. The scheme shall not exceed the obtrusive light limitations for Environmental Zone E2 as stated in the 'Institution of Lighting Engineers' Guidance Notes for the Reduction of Obtrusive Light' 2005.



Reason: To safeguard the visual amenities of the area / the amenities of nearby residential properties in accordance with Policy ENV3 of the Local Plan Part 1 for the New Forest District outside the National Park.

9. No goods, plant, or machinery shall be stored in the open on the site and no work shall be undertaken outside the buildings without the express planning permission of the Local Planning Authority.

Reason: In the interest of the amenities of the locality in accordance with Policy ENV3 of the Local Plan Part 1 for the New Forest District outside the National Park.

10. The level of noise emitted from the site as measured at the boundary of the closest residential properties in the specified direction shall not exceed the values in the table below:

| <u>Plant Noise Limit<br/>LAeq (dBA)</u> | <u>Daytime<br/>LAeq 1hr</u> | <u>Evening<br/>LAeq 1hr</u> | <u>Night LAeq<br/>5 mins Receptor</u> |
|-----------------------------------------|-----------------------------|-----------------------------|---------------------------------------|
| Dwellings to the west and north         | 35                          | 33                          | 30                                    |
| Dwellings to the east                   | 36                          | 31                          | 30                                    |

Reason: To safeguard the amenities of nearby residential properties in accordance with Policy ENV3 of the Local Plan Part 1 for the New Forest District outside the National Park.

11. The development shall only be implemented in accordance with the method statement for ecological enhancement measures, as outlined in the Ecological Method Statement for Gordleton Industrial Park prepared by Lyndsay Carrington Ecological Services and dated October 2017, which was previously agreed under ref.16/10885.

Reason: To safeguard protected species in accordance with Policy DM2 of the Local Plan Part 2 for the New Forest District outside the National Park.

12. The development shall only be implemented in accordance with the ecological mitigation scheme for protected species on and around the site, as outlined in the Ecological Method Statement for Gordleton Industrial Park prepared by Lyndsay Carrington Ecological Services and dated October 2017, previously agreed under ref.16/10885.

Reason: To safeguard protected species in accordance with Policy DM2 of the Local Plan Part 2 for the New Forest District outside the National Park.

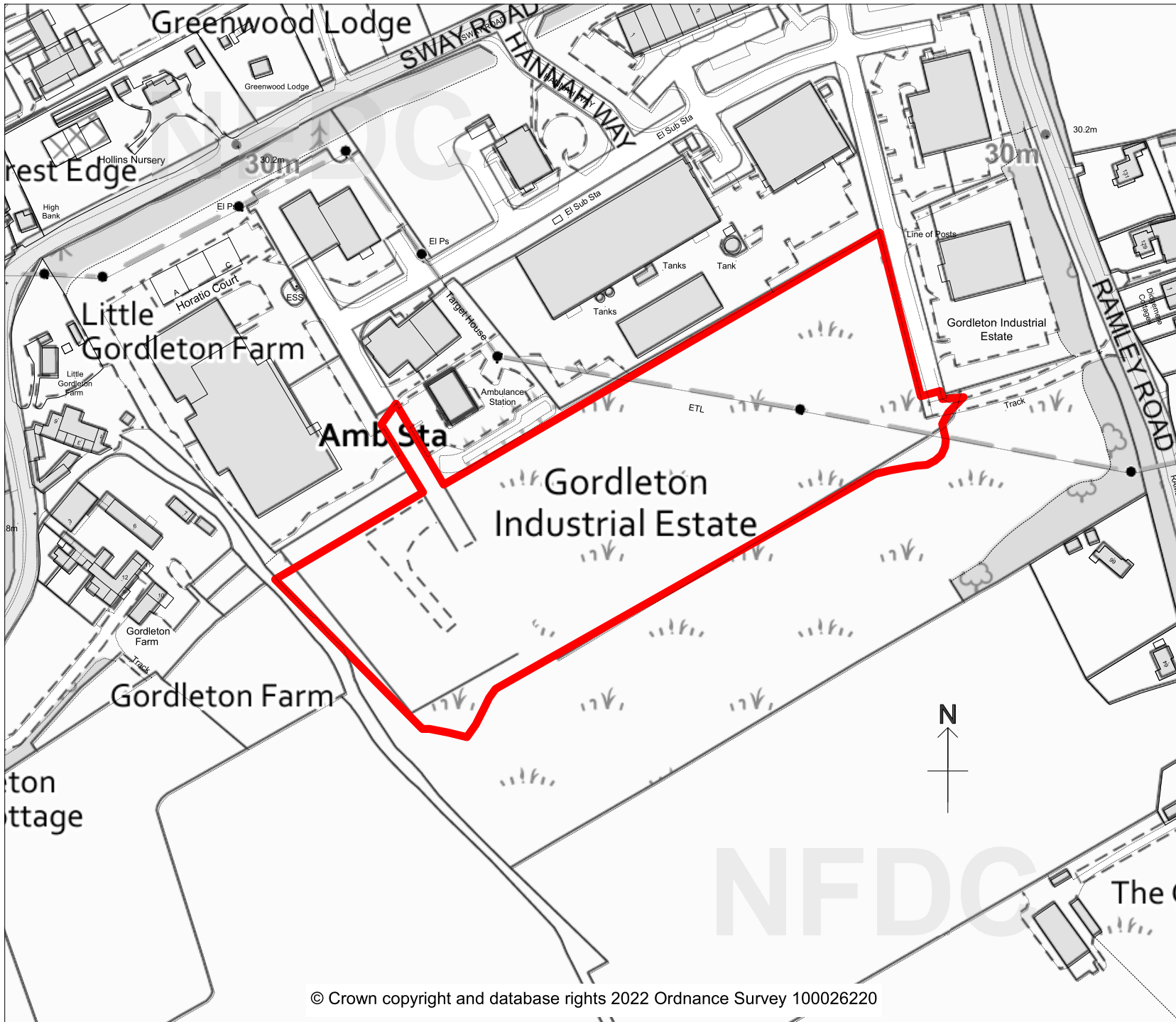
13. The development shall be implemented and thereafter operated in accordance with the Framework Travel Plan previously agreed under ref.16/10885.
- Reason: To ensure the development accords with sustainable transport policies, to reduce reliance upon the private motor car for access and in the interests of highway safety, in accordance with Policy CCC2 of the Local Plan Part 1 for the New Forest District outside the National Park.
14. With the exception of Plot 1 shown on drawing no. 6421.165A (Block Plan) no other individual unit within the development hereby approved shall exceed an internal floor area of 288 sq. m.
- Reason: In order to control heavy goods vehicle movements to and from the site, in the interests of highway safety, in accordance with Policy CCC2 of the Local Plan Part 1 for the New Forest District outside the National Park.
15. All buildings will be required to achieve a BREEAM 'very good' standard as outlined within the BREEAM Report by Scott White and Hookins dated 18/10/2019. Other than Plot 1, prior to the commencement of work on each building an interim certificate shall have been submitted to and approved in writing by the Local Planning Authority. Within six months of occupation of any building on the site, a final BREEAM certificate shall have been submitted to and approved in writing by the Local Planning Authority certifying that the buildings have achieved a BREEAM 'very good' standard.
- Reason: In the interests of sustainable development, including resource use and energy consumption, in accordance with Policy IMPL2 of the Local Plan Part 2 for the New Forest District outside the National Park.
16. Deliveries shall only be permitted between the hours of 07:00 hours and 19:00 hours Monday to Friday and 08:00 hours and 13:00 hours on Saturdays with no deliveries permitted on Sundays or Bank Holidays.
- Reason: In the interest of the amenity of surrounding neighbouring residential properties in accordance with Policy ENV3 of the Local Plan Part 1 for the New Forest District outside the National Park.
17. All external works (hard and soft landscape) shall be carried out in accordance with the approved scheme of landscaping outlined on drawing numbers L90 300, L90 301, L90 302, L90 303, L90 304, L90 305 and details (previously agreed under ref.16/10885). These works shall be carried out in the first planting and seeding seasons following the completion of each plot within the development and maintained thereafter as built and subject to changes or additions (including signage) only if and as agreed in writing with the Local Planning Authority. Any trees or plants within a plot which die, are removed or become seriously damaged or diseased within five years of the date of their planting, shall be replaced in the next planting season with others of similar size or species, unless the LPA gives written consent to any variation.

Reason: To ensure that the development takes place in an appropriate way and to comply with Policy ENV3 of the Local Plan Part 1 for the New Forest District outside the National Park.

**Further Information:**

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# New Forest

DISTRICT COUNCIL

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Claire Upton-Brown  
 Executive Head of Planning,  
 Regeneration and Economy  
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 SO43 7PA

## PLANNING COMMITTEE

September 2022

Plot 1 Gordleton Industrial Park  
 Hannah Way  
 Pennington, Lymington  
 19/11321

Scale 1:2700

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