Advice from Climate Team to Planning

Reference: PL/2023/04768
Address: land at Methuen Park, Chippenham
Proposal: Removal of condition 16 of PL/2022/005505 (erection of 3 no. Commercial Units (Class E(g)/B2/B8) with Associated Service yard, Parking and Landscaping) – To remove the requirement for a scheme to demonstrate how the development will achieve the relevant BREEAM Excellent Standard

Applications for planning permission must be determined in accordance with the relevant policies of the development plan unless material considerations indicate otherwise (ref: Section 38(6) of the Planning and Compulsory Purchase Act 2004). Section 19 of this Act places a legal duty on development plan documents, taken as a whole, to include policies designed to secure development that contributes to the mitigation of, and adaptation to, climate change.

Development Plan:

Paragraph 1.1 is clear that *"the policies and proposals contained in this strategy, taken as a whole, constitute what sustainable development in Wiltshire means in practice for land use planning"*.

At paragraph 1.3 of the Wiltshire Core Strategy (WCS) key principles that underpin the strategy to help build more resilient communities are identified including:

- *"Providing for the most sustainable pattern of development that minimises the need to travel and maximises the potential to use sustainable transport."*
- *"Managing development to ensure that jobs and the right infrastructure are delivered at the right time to ensure that out commuting, in particular to areas outside of Wiltshire, is not increased"*
- *"Working towards lowering Wiltshire's carbon footprint through the appropriate location of development, and through renewable energy and sustainable construction."*

Paragraph 1.10 states: *"**The overarching priorities are to help build and protect resilient communities through….. tackling the causes and effects of climate change**"*

Paragraph 2.10 states: *"**Climate change is a central issue to be addressed by the WCS**….. The basis of this strategy is to achieve sustainable patterns of development in order to reduce carbon emissions."*

The WCS sets out that addressing climate change as a strategic objective stating at paragraph 3.5 that: ***"Climate change is possibly the greatest long-term challenge facing the world today."***

Paragraph 6.32 sets out that the strategy will contribute to tackling climate change through a number of different areas of policy, such as:

- focusing growth at the larger settlements to help minimise the need for travel,
- ensure new development can withstand future changes in climate and add minimally to carbon emissions,
- provide a network of green infrastructure; and
- ensure more sustainable forms of transport.

Core Policy 41 seeks to help to reduce Wiltshire's contribution to climate change through improved design and construction methods. The policy states that: *"New development, building conversions, refurbishments and extensions will be encouraged to incorporate*

design measures to reduce energy demand. Development will be well insulated and designed to take advantage of natural light and heat from the sun and use natural air movement for ventilation, whilst maximising cooling in the summer."

Furthermore, *"all non-residential development will be required to achieve the relevant BREEAM "Very good" standards, rising to the relevant BREEAM "Excellent" standards from 2019"*.

The policy allows reasonable flexibility for developers stating, *"in all cases the impact of these requirements on the viability of development will be taken into consideration"*.

Other material considerations:

As set out above planning legislation establishes that **other material considerations** should be taken into account in the determination of planning applications. As such, these need to be kept in mind as developments are planned and formulated. Other material considerations may include other local planning policy and guidance, the emerging Wiltshire Local Plan Review, UK government legislation or Written Ministerial Statements and national planning policy and guidance such as the National Planning Policy Framework.

The Council is carrying out a **Local Plan Review**. The direction of travel is reflective of wider strategic policy already adopted by Wiltshire Council, such as the **Wiltshire Climate Strategy, adopted February 2022**. This builds on the Council's February 2019 resolution to acknowledge a **climate emergency and subsequent commitment to seek to make the county carbon neutral by 2030**. Therefore, the review will likely develop a suite of replacement policies to further reduce Wiltshire's contribution to climate change and foster better community resilience to impacts from climate change. The publication of the draft is eagerly anticipated and at that stage will start to have appropriate weight as determined by the decision maker.

To further underline this the **Climate change act 2008 (2050 Target Amendment) Order 2019** raised the **duty of the Secretary of State to ensure that the net UK carbon account for the year 2050 is at least 100% lower than the 1990 baseline** (previously 80%).

The **National Planning Policy Framework (July 2021)** (NPPF) sets out the UK government's position on planning in England.

Paragraph 7 of the NPPF states: *"The purpose of the planning system is to contribute to the achievement of sustainable development"* and paragraph 8 makes it clear that **mitigating and adapting to climate change is a core planning objective**.

Paragraph 152 states: *"The planning system should support the transition to a low carbon future in a changing climate…. It should **help to: shape places in ways that contribute to radical reductions in greenhouse gas emissions**, minimise vulnerability and improve resilience; encourage the reuse of existing resources, including the conversion of existing buildings; and support renewable and low carbon energy and associated infrastructure."*

Paragraph 154 states that: *"**New development should be planned for in ways that:***
*a) **avoid increased vulnerability to the range of impacts arising from climate change.** When new development is brought forward in areas which are vulnerable, care should be taken to ensure that risks can be managed through suitable adaptation measures, including through the planning of green infrastructure; and*
*b) **can help to reduce greenhouse gas emissions, such as through its location, orientation and design**. Any local requirements for the sustainability of buildings should reflect the Government's policy for national technical standards."*

Paragraph 157 goes on: *"In determining planning applications, local planning authorities should* ***expect new development to…… take account of landform, layout, building orientation, massing and landscaping to minimise energy consumption****"*

In terms of the future national direction of travel the **10 Point Plan**, **Net Zero Strategy**, **Heat and Buildings Strategy** and the **Sixth Carbon Budget** are very clear. The intentions include:

- More journeys by public transport, walking and cycling;
- More electric cars; and
- More renewable energy and storage technologies.

Comments on the submission:

Core Policy 41 of the development plan is the starting point for decision makers in relation to sustainable construction in Wiltshire. This is a key element of the development plan having, when read as a whole, policies designed to secure development that contributes to the mitigation of, and adaptation to, climate change. This is a statutory duty under section 19 of the Planning and Compulsory Purchase Act 2004. If the policy is set aside then the development as a whole will not be as successful at addressing climate change. Since 2015 the climate change emergency has been acknowledged by Wiltshire Council indicating that we need to be ramping up our approach to transitioning to a low-carbon future, not reigning back.

CP41 is states that *"all non-residential development will be required to achieve the relevant BREEAM "Very good" standards, rising to the relevant BREEAM "Excellent" standards from 2019".* As such, the imposition of condition 16 on LPA decision notice PL/2022/05505 is entirely in accordance with the policies of the development plan. No other material considerations have been brought forward such as to indicate that a decision should be made otherwise. Therefore, in accordance with the statutory duty set out at section 38 of the Planning and Compulsory Purchase Act 2004 granting planning permission with this condition demonstrates a positive and proactive approach to delivering sustainable development for Wiltshire.

The condition is necessary to ensure compliance with the policies of the development plan and meet the s38 statutory duty of the decision maker – to rely on building regulations alone will not address climate change and does not reflect sustainable development within a Wiltshire context (ref: Para 1.1 of the Wiltshire Core Strategy). The condition is relevant to planning as it seeks to ensure a form of development that will help to mitigate and adapt to climate change through the delivery of enhanced sustainable construction measures. The condition is relevant to the development permitted as it is requiring that the development is delivered with policy compliant levels of sustainability. The condition is enforceable and precise as it clearly sets out what is required in a measurable and monitorable way. The condition is reasonable in all other respects as there are no relevant considerations to conclude that a decision should be reached otherwise than in accordance with the development plan. Additionally, both the policy and the condition provide a mechanism for allowing a lower standard where viability issues can be demonstrated.

BREEAM is a well-established industry recognized tool for delivering sustainable construction. It takes a holistic approach that goes beyond Building Regulations Part L requirements – which are the government's minimum national standards for the conservation of fuel and power only. BREEAM considers, for example, climate change adaptability, whole life performance approaches and water conservation. No tool is perfect and BREEAM certification can be expensive. However, there is no other industry accepted tool for

assessing the sustainability of non-residential development. Furthermore, it provides a mechanism to validate sustainability claims through its certification. Therefore, BREEAM remains, as it was when CP41 was adopted in 2015, the best-known industry tool for achieving enhanced levels of sustainable construction in non-residential development. This is essential in the transition to a low-carbon future with broader sustainability goals including nature-based solutions.

The applicant's submission has been considered carefully, and it is noted that they made representations during the course of the application. Concerns were raised at application stage by Chippenham Town Council and in the officers delegated report. I would support the issues raised by the town council and case officer and which led to the condition. The pragmatic approach taken in the planning authority's decision, inserting condition 16, shows a positive and proactive approach.

Furthermore, I have taken a review of the referenced planning history. Whilst I stress that the maxim of assessing each case on its merits should be applied, there appear to be good reasons why BREEAM would not be applied in the majority of these examples. The remainder does not set a precedent for allowing this development without compliance with the relevant policies of the development plan because each case will have its own particular circumstances and considerations. For example, whilst the development plan does not set a threshold for applying BREEAM, it makes allowance for viability. Assessing viability of itself can be expensive and onerous and so an informal rule of thumb evolved shortly after the policy adoption to set an informal threshold of 1,000sqm. Furthermore, it makes little sense to apply it to agricultural development given the nature of the buildings. Finally, it simply cannot be applied to prior approval cases.

LPA reference	Comments
PL/2021/11498	The case officer addresses sustainable construction and takes a planning judgement not to apply CP41 requirements.
PL/2022/02698	Below 1,000sqm so BREEAM not required.
PL/2022/08662	Below 1,000sqm so BREEAM not required. Also a CoU.
PL/2022/02498	Below 1,000sqm so BREEAM not required.
PL/2022/09580	Prior approval so BREEAM not required.
21/01207/FUL	Appears that CP41 and BREEAM should have been considered but were not addressed.
21/00083/FUL	Change of use, so applying BREEAM would not be reasonable.
20/09720/FUL	Change of use, so applying BREEAM would not be reasonable.
20/09087/FUL	Below 1,000sqm so BREEAM not required.
20/04521/FUL	Development that is not agricultural or a CoU of existing is below 1,000sqm so BREEAM not required.
20/03604/FUL	Below 1,000sqm so BREEAM not required.
14/12118/OUT (NMA)	Limited paperwork on file, but note condition related to CfSHL4 as well as BREEAM "Very Good". CfSHL4 requirements should be deleted. Furthermore the condition did not require certification and so could have been deemed to fail the test of being necessary.

Whilst I would acknowledge that building regulations standards have been ramped up since the adoption of the development plan, there is no evidence to indicate that Part L has in anyway superseded BREEAM "Excellent" standards. So, this change in circumstance does not justify removal/variation of the condition.

It is noted that the applicant suggests a compromise might be to remove the requirement to gain certification. This approach is problematic as there is no means then to be sure that the

development has been carried out to meet the requirements of the condition. This would undermine the merit of the condition and would not be likely to meet the first test of necessity. Similarly, the applicant suggests that the condition could be replaced by a requirement to adhere to building regulations. Based on the information available I assume that the development needs to be carried out to such a standard under other legislation anyway, so such a condition would not be necessary.

Climate change is the central issue to be addressed by the development plan. The direction of travel since its adoption in 2015 is very clear with the Council's adopted Climate Strategy in 2022 setting a framework for reducing carbon emissions in Wiltshire and for making the county resilient to climate change. Furthermore, the NPPF states that planning needs to shape places in ways that contribute to radical reductions in greenhouse gas emissions.

Therefore, in conclusion the climate team objects to the proposal to remove the condition and objects to the suggested variations to the condition as well. This would undermine the spatial objective of the development plan to address climate change.

Date: 5 July 2023

James Taylor BA(Hons) MA MRTPI
Climate Officer
Environment
Wiltshire Council

James.taylor@wiltshire.gov.uk
01225 716727