CASE OFFICER'S REPORT

Application Reference:	PL/2023/05273
Application Type:	Removal/variation of conditions
Site Inspection:	
Consultation ends:	30 July 2023
Case officer:	Ruaridh O'Donoghue

Site Address:	Unit A The Hatchery, Garden Trading Estate, London Road, Devizes, SN10 2HH
Proposal:	Variation of Condition 2 (drawings) and Condition 3(ii) (hardstanding use) and part removal of Condition 3(iv) (hours of PL/2022/01283 (Recladding and raising of roof to existing warehouse).
Recommendation:	Approve

Proposal and Site Description

The application relates to Unit A The Hatchery on the Garden Trading Estate, located off the London Road in Devizes. The site is surrounded to the north and west by residential development, to the east by buildings associated with the trading estate and to the south by further residential and trading estate buildings.

The DAS attached the original consent (PL/2022/01283) described the site as compromising:

"*...a 2,414sqm (GEA) former Hatchery factory, consisting of a two-storey stone clad office block with a projected flat roof, connected to a floor factory behind.*

The three truss wide factory behind is brick clad with metal roofing, and has a small suspended plant attached to the northern elevation.

Topographically the site has been locally adjusted to facilitate two rear loading bays at the front and a level access at the side. To the front and side of the site is hard standing for vehicles.

A heavily self-seeded and green boundary exist on the west and north-west boundary, with it thinning as you move eastward. Boundary fences vary from metal mesh to timber." (DAS Page 03)

The same DAS described the building as being in:

"...a state of disrepair and vandalism with windows smashed and former openings blocked up to prevent illegal entry.

The building has been undergoing part demolition (approved under PL/2021/05063) with the asbestos roof being completely removed at the date of survey." (DAS page 03)

The proposal involves the variation of Condition 2 (drawings) and Condition 3(ii) (hardstanding use) and part removal of Condition 3(iv) (hours of operation) of PL/2022/01283. This application

was for the recladding and raising of the roof to the existing warehouse. The use of the building is not changing i.e. it remains B1/B8 as previously consented. To this end, therefore, it is only necessary to consider the issues that are likely to be affected by the proposed variations outlined above. It is not necessary under a Section 73 application to revisit all the matters previously considered if they are not relevant to the changes proposed.

In terms of constraints, the following is noted:

- The site lies within the Limits of Development of Devizes
- The area around the building is susceptible to groundwater flooding

Policies

National Context:

National Planning Policy Framework (NPPF) Planning
Practice Guidance (PPG)

Local Context:
Wiltshire Core Strategy (WCS) adopted 2015:

- CP 1 – Settlement Strategy
- CP 2 – Delivery Strategy
- CP 12 – Devizes Community Area
- CP 57 – Ensuring High Quality Design and Place Shaping
- CP 61 – Transport and New Development
- CP 64 – Demand Management

Key Issues

- Principle of the development
- Visual Impact
- Neighbour impact
- Highways Impact / Parking
- Drainage

Relevant Planning History

- PL/2022/01283 - Recladding and raising of the roof to the existing warehouse. Approved with conditions.
- PL/2021/05063 - Demolition of the building which is beyond economical repair. Prior Approval is not required.
- K/33099 - Change of use to light industrial and warehousing. Approved with conditions on 22/08/1996

The applicants have confirmed that prior to closing the site was used as a Textile Recycling centre, which would correlate with B8/E use-class.

Consultation Responses

Devizes Town Council

The Town Council has no objection to this application.

Representations

No letters were received from neighbouring properties. The Trust for Devizes have however commented on the application. There comments are as follows:

"We have no comment on the substance of these proposals, but wish to comment on the approach of dealing with these changes by way of variation of conditions, rather than as a new permission for a new/revised project. All the key features of the project (the building, the hours of operation and use of exterior space) have been changed. So it is a different development from the one permitted last year. Dealing with it by way of variation of conditions seems to us an excessively complicated approach, which is legally dubious, and makes it more difficult for interested parties to engage effectively, because it requires them to look at the permitted project and conditions as well as the new/revised project."

Planning Considerations and Assessment

Section 70(2) of the Town and Country Planning Act 1990 and section 38(6) of the Planning and Compulsory Purchase Act 2004 require that the determination of planning applications must be made in accordance with the Development Plan, unless material considerations indicate otherwise.

Principle of Development:

This matter is as discussed under the original application PL/2022/1283. The changes proposed do not affect the principle of the proposal.

Design and Visual Impact:

The proposed changes to the building do not significantly alter the assessment made under the original proposal. The existing flat-roofed office area is being removed and the roof ridge remains the same as the extant permission albeit it will be in a slightly different form. These changes, in the context of a wider industrial estate, do not result in a building design that is at odds with the area or indeed harmful to its character and appearance. In any event, the building in its current state is a detraction from the amenities of the area.

The introduction of a modest number of photovoltaics on the southeastern roof slopes will not introduce a feature within the urban fabric of the town that would be alien or indeed visually harmful.

The application does seek to introduce outside storage which was previously restricted via a planning condition on the original consent for the change of use. The applicants wish to allow outside storage to a max height of 4.8m. In principle, the Council has no issue with this. It is noted that Jewsons who operate on the same trading estate have permission for outside storage up to 5.5m for pallets and 4.8m for brick packs. Outside storage will not have a detrimental impact on the visual amenities of the area given that it is an industrial estate where this type of storage is not uncommon.

Neighbour Amenity:

It was concluded previously that as the building has an established B1/B8 use (planning app: K/33099), bringing the building back to life would not have introduced any amenity impacts in so far as noise and disturbance are concerned that could be considered under that planning application i.e. the fallback position was the established B1/B8 that had various restrictions on operation placed upon it by planning permission K/33099 (e.g. hours of operation, no outside storage or outside industrial operations and measures to reduce noise from any external plant). However, the current application seeks to vary some of these restrictions which must now be looked into with regards to amenity impacts on nearby residential properties to see if they are acceptable. The two proposed changes to the previous conditions on K/33099 are as follows.

1. The applicants wish to have outside storage in a specified yard area up to 4.8m in height.
2. The applicants also wish to have unrestricted operating hours.

With regard to point 1, this is considered acceptable. There is permitted outside storage elsewhere on the trading estate up to 5.5m in height (Jewsons). Given it is restricted to a certain area of the site and set at a height limit of just 4.8m, it is not considered that this storage will have an adverse impact by reason of loss of light or overshadowing to the nearby residential properties. The condition that was attached to K/33099 can be modified to reflect this. No storage will be allowed outside of the yard area detailed on the site plan.

In relation to point 2, this is more contentious and it is noted that the Public Protection Officer (PPO) does not accept unrestricted operating hours. On discussion with the PPO, they are happy to see the hours extended beyond the current restrictions to the following:

INTERNALLY
0730-1900 Mon-Fri
0800-1600 Saturday
No operation on Sundays or Bank Holidays

EXTERNALLY
0800-1900 Mon-Fri
0800-1600 Saturday
No operation on Sundays or Bank Holidays

Agreement to these hours has been confirmed by the applicant. It is therefore accepted that the condition can be amended to reflect these operational hours and, that these operational hours will not give rise to unacceptable levels of noise or disturbance to nearby residential properties. Their reasonable living conditions are thus maintained. Given the application originally proposed unrestricted hours, there is no need to consult upon this change as it is a restriction to operating hours that provides betterment in amenity terms for local residents.

The ridge height remains the same as assessed under the original application (PL/2022/01283). As such, whilst the roof form will differ a little from that originally approved the impacts upon neighbouring properties will be no greater. As such, the assessment made under the previous application stands. For clarity, the assessment was as follows:

"However, the building is being raised by 3m and this naturally has the potential to impact the adjoining residents along White Horse Way and Combe Walk by reason of loss of light, overshadowing or overbearing impacts. This is noted by the number of objections that have been received regarding these points. To this end, the LPA requested a BRE Lighting Assessment to be carried out by the applicants to assess the impacts that raising the ridge and eaves height of the building may have upon these residents. As this is a technical document being provided as an aid to the decision-maker, it was not considered necessary to reconsult. The application proposals remain as originally submitted.

The report has looked at No.'s 53-63 White Horse Way to assess whether the proposed changes to the height of the roof would have an adverse impact on the levels of light received to these dwellings and their gardens. The report has concluded in paragraphs 7.2-7.5 that:

"The VSC results show that all 39 windows (100%) tested will meet the BRE guidelines criteria by either obtaining 27% VSC, or by retaining at least 0.8 times their former values.

The daylight distribution results show that all 34 rooms tested (100%) will continue to enjoy good levels of daylight distribution, in excess of the BRE guidelines.

The APSH results show that 37 out of 39 windows tested (95%) adhere to the BRE guidelines criteria for sunlight, by obtaining APSH levels of at least 25, including at least 5% in the winter months in the proposed condition. The other 2 windows that do not adhere to the BRE guidelines obtain reductions between 0.73 and 0.76 their former values, which are only marginally below the recommended guidelines.

The overshadowing results show that all amenity areas tested, will continue to receive direct sunlight for at least 2 hours to over 87% of the garden areas on 21st March, which exceed the 50% target set by the BRE guidelines."

It is also noted that the 2 windows that do not quite meet BRE guidelines for sunlight are partly obstructed by projecting extensions of the respective dwellings (e.g., a garage). In such circumstances, a higher relative reduction of sunlight may be unavoidable and these impacts can therefore be considered acceptable under BRE guidelines and testing.

With the above conclusions in mind, it is considered that the scheme will not cause adverse loss of light or overshadowing, nor will it have an overbearing impact on the properties factored into this test (53-63 White Horse Way). Whilst noting the concerns of neighbouring properties regarding the effects of loss of light etc. upon their homes, the above assessment is in line with BRE guidelines to which such issues are measured. It is accepted that loss of light and overbearing impacts are perceived differently between people, i.e. what is considered unreasonable to some isn't to others. It is fair to say that there is some subjectivity around the

subject. However, in the interests of consistency in decision making there needs to be some quantifiable way of measuring these impacts and this is where BRE guidelines come into play.

Whilst the LPA is sure that the results of the BRE light assessment will be disappointing to those properties which are affected by the development, the findings do not suggest that the impacts would be unreasonable or adverse. It would be difficult for the LPA to sustain an objection on such grounds on appeal when it has made the applicants conduct a lighting assessment that concludes differently and that has been carried out to BRE guidelines.

In respect of the flats on Combe Walk, these are located at their closest point to an area of the warehouse where the roof is not being altered. The decision not to raise the end two bays in the northeastern corner was a deliberate design ploy to ensure the amenities of these properties are preserved (as explained earlier). With no increase in the eaves or ridge height to this corner of the building, the status quo remains in respect of issues regarding light, overbearing impacts and overshadowing."

No other properties stand to be affected by the proposal in a harmful manner. The nearest properties in Roundway Park and Flax Mill Park are of sufficient distance away to not be materially impacted by the proposed changes to this development.

Highways Safety/Parking:
None of the proposed changes affect the highway impacts of the development. The assessment as made under PL/2022/01283 stands. For clarity, the following was stated:

"As previously mentioned, there is an established B1/B8 use for the site. Therefore bringing the building back into use is not going to introduce new impacts with respect to highway matters i.e. the site is authorised for B1/B8 use subject to the conditions set out in planning permission K/33099. Furthermore, it is noted that no fundamental changes to the site layout are proposed. Parking is arranged to allow a vehicle turning point and access remains off the Graden Trading Estate road. Accordingly, it is considered that the proposal will not have a material impact on the highway network.

Whilst noting the Trust for Devizes' comments on the need for a TA, it is considered the building has not been abandoned and therefore, the fall-back position is valid i.e. operating the building after repair works only. In any event, even if it could be considered to be an abandoned use, the previous use would be a significant material consideration and the traffic associated with that use was not a problem. In addition to the above, it is not noted that there is no increase in floor space e.g. through the addition of a mezzanine floor.

It is also noted that this is not a change of use application and merely one to take account of operational development. As stated previously, the conditions on the 1996 application remain applicable. However, it should be noted that since that permission was granted, the site has been subdivided and part of it sold off. Condition No. 3 of the 96 permission requires the provision of 53 car parking spaces on site. This condition is no longer necessary or relevant for the following reasons:

- *the site has been subdivided and so not the same area to calculate parking standards off*

- *the Council now has maximum parking standards to which 53 spaces would be well in excess of the requirements for this site under Wiltshire Local Transport Plan 2011- 2026 Car Parking Strategy*
- *the application has provided 26 spaces which more than meets the current standards."*

Drainage and Flood Risk:
Assessment remains as per PL/2022/01283. In any event, the original application was not proposing any changes to the existing drainage arrangements on the site.

S106 contributions/CIL:
The development is not CIL liable. In any event, there is no net increase in floor space or change of use to consider. No s106 contributions are sought or indeed necessary to make the development acceptable in planning terms.

Conclusion:
The application is considered to comply with the relevant policies of the development plan and as such, it is recommended that planning permission be granted.

Conditions: (4)

1 The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

REASON: To comply with the provisions of Section 91 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

2 The development hereby permitted shall be carried out in accordance with the following approved plans and documents:

- Drg Ref: Application Form
- Drg Ref: Site Location Plan BPB-22-005_DR001a
- Drg Ref: Proposed Site Plan BPB-22-005_DR030e
- Drg Ref: Proposed Ground Floor Plan BPB-22-005_DR031f
- Drg Ref: Proposed Roof Plan BPB-22-005_DR032e
- Drg Ref: Proposed Elevations BPB-22-005_DR033c

REASON: For the avoidance of doubt and in the interests of proper planning.

3 No outside storage (including but not limited to raw materials, products of any description, skips, containers, scrap, or waste materials) is permitted on the site except for the yard area marked No. 9 on drawing No. BPB-22-005 Rev E. The maximum storage height within this

yard area shall not exceed 4.8m as denoted on the same drawing.

REASON:
To safeguard the amenities and character of the area.

4 The use hereby permitted shall only take place:

1. inside the building between the hours of 0730 and 1900 from Monday to Fridays (inclusive) and between 0800 and 1600 on Saturdays. The use shall not take place at any other time or on Bank Holidays.
2. inside the yard area between the hours of 0800 and 1900 from Monday to Fridays (inclusive) and between 0800 and 1600 on Saturdays. The use shall not take place at any other time or on Bank Holidays.

REASON:
To protect the amenities of nearby residential properties.

Informatives: (1)

5 The applicant's attention is drawn to the following conditions attached to planning permission K/33099 which remain extant:

The premises to which this permission relates shall be used solely for purposes within Class(es) B1 & B8 of the Schedule to the Town and Country Planning(Use Classes) Order 1987; or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification).

REASON:
The proposed use is acceptable but the local planning authority wish to consider any future proposal for a change of use, other than a use within the same Class(es), having regard to the circumstances of the case.

No industrial processes shall be carried on within the site except within the building.

REASON:
To safeguard the amenities and character of the area.

If it is at any time proposed to carry out any process or install any machinery that may be detrimental to the amenity of the area by reason of noise, vibration, smell, fumes,

dust, or. any other emissions, steps shall be taken to eliminate the nuisance by the insulation of the building and/or plant. Details of the steps proposed shall be submitted to and approved by the local planning authority and the necessary works carried out before the use of the site for that process commences or the machinery is first brought into use.

REASON:
To protect the amenities of this primarily residential area.

Before any plant or machinery is used on the premises it shall be enclosed with sound insulating material and mounted in a way which will minimise the transmission of structure borne sound in accordance with a scheme to be approved in writing by the local planning authority.

REASON:
In order to protect the amenities of nearby residential properties.