DELEGATED REPORT

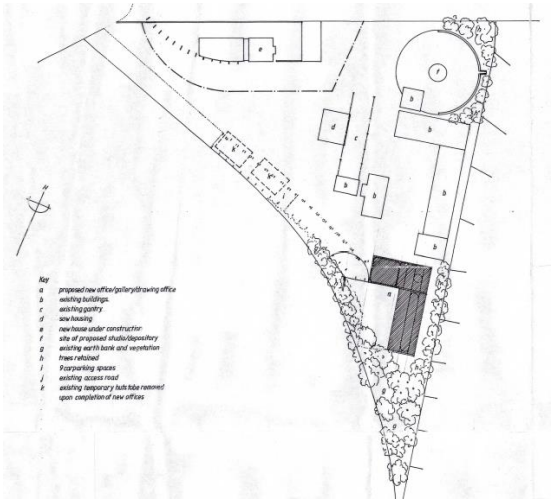
Application reference: PL/2023/01953
Application type: S73
Site address: The Stoneyard, Potley Lane, Corsham, SN13 9RX
Proposal: Variation of condition 2 of N/92/00419/F ('erection of replacement office gallery and drawing office') to allow the building to be used for mixed E(g) and B8 use
Recommendation: approve with conditions

SITE AND PROPOSAL

The site is part of a wider area in commercial use, accessed via a private road that connects to Potley Lane. To the west are other commercial enterprises, while residential properties are situated to the east. Agricultural land is to the south and a tree belt/railway line lie to the north. A dwelling occupied by the site's owner is also located to the north.

A review of the planning constraints map shows that flood zones 2 and 3 are situated to the west of the site and are technically within the application red line. The site is unencumbered by heritage constraints and the site is not safeguarded for employment use in the Development Plan, but it is part of a wider designation that safeguards the site for a new railway station and associated infrastructure under Policy CNPT4 of the Corsham Neighbourhood Plan.

The submitted planning statement and the Council's enforcement records claim that a historic permission ref. N/92/00419/F for the '*erection of replacement office gallery and drawing office*' remains extant, having been lawfully implemented. Excerpts of the approved site plan and elevation drawings are in figure 1 below.



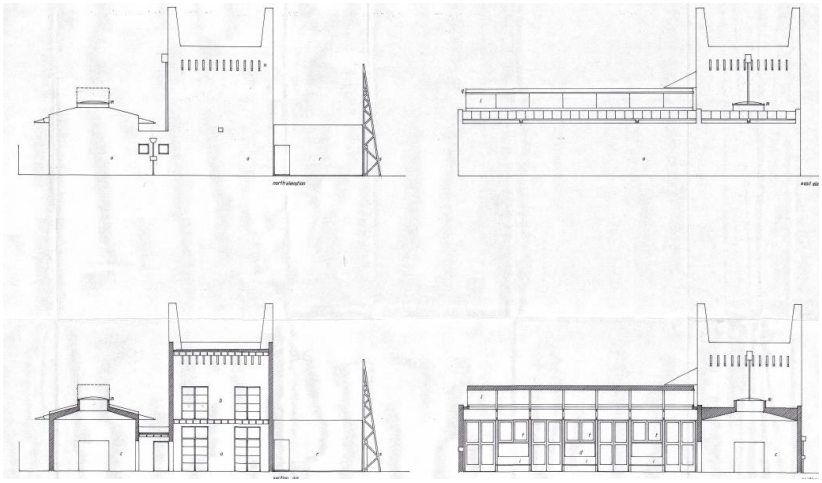


Figure 1: approved site plan and elevation drawing excerpts from consent ref. N/92/00419/F

The consent came with condition 2, which states:

'*The development hereby permitted shall be used solely for general office, reception, drawing office, gallery and related purposes associated with the stone carving and sculpting activities on the site and for no other purpose, including any other use falling within Classes B1, B2 and B8 of the Town and Country Planning (Use Classes) Order 1987, without the prior grant of planning permission in that behalf.*

Reason: for the avoidance of doubt and to ensure that inappropriate uses do not take place in this locality'.

The supporting planning statement explains that the purpose of this S73 application is to vary condition 2 and:

'*allow a commercial Class E use and a mixed storage use, within Class B8 to the Schedule to the Use Classes Order or individually as Class E or B8. The dominant use of the buildings on site at the moment is Class B2 and will be unchanged*'.

Class E of the Use Class Order is very broad, and all of its allowances would not be appropriate for this location. The applicant's agent has now confirmed that they seek a mixed E(g) and B8 use. The description of development has been amended accordingly.

By way of additional background, this application was originally submitted with the incorrect ownership certificate on the application form. It was therefore not technically valid until the correct certificate was received, which has led to a delay in its determination.

RELEVANT PLANNING HISTORY

The existing dwelling to the north was approved in 1991 under ref. N/91/00676/FUL.

Planning permission ref. N/92/00419/F was granted in May 1992, subject to seven conditions. Condition 2 forms the subject of this live application, but it is worth noting that conditions 5 and 7 were pre-commencement conditions. These required the Council's approval of landscaping and tree protection details before any works could begin. Records show that landscaping was discharged under ref. N/97/00553/DOC.

In 2008, consent was granted under ref. N/08/01445/S73A for the '*change of use from stonemasons to B8 with associated retail*'. An excerpt of the approved location plan is provided in figure 2 below. It shows that the area where the use was approved for B8 storage includes the area relating to this live application.



Figure 2: N/08/01445/S73A approved location plan excerpt

In 2013, consent ref. 13/03007/FUL allowed for the siting of 15 storage units to the west.

In 2017, planning permission was granted under ref. 17/08020/FUL for the siting of 22 metal storage units 2.5m in height. The case officer's report noted how the 2013 permission had been implemented, effectively keeping the storage element of the planning unit alive. An excerpt of the approved site plan is provided in figure 3 below, showing how storage units with the letter C were located in the position of the 1992 approval.

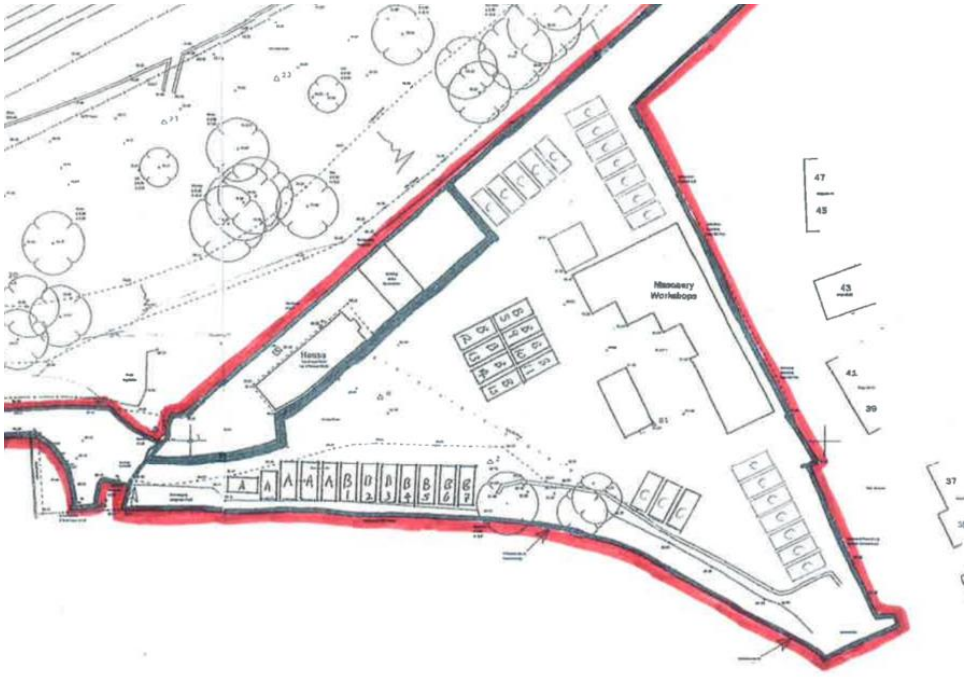


Figure 2: approved site plan from 17/08020/FUL showing the locations for storage units

In 2022, a certificate of lawfulness ref. 21/02142/CLE was refused for the '*use of land for storage (Class B8); use of existing building for light industrial use (Class E(g)(iii) and siting of 3no. portable storage shelters*'. An appeal, which was later dismissed in June 2022, had PINS ref. APP/Y3940/X/22/3292467. The appeal also considered an enforcement notice ref. 21/00066/ENF issued by the Council in March 2022, relating to the '*erection of three white-coloured buildings*'.

Of particular relevance is that the Council's appeal statement makes a clear distinction between the northern and southern land parcels insomuch that the 2008 permission deliberately bisected them. The statement confirms that this changed the use of the land to the south, whereas to the north, the land remained in what the Council concluded, on the balance of probability, was a B2 stonemasonry use:

'*the planning history clearly confirms that the permitted use of the southern part of the CLUED land is for B8 storage and distribution and for the Northern element would remain Class B2 general industrial (ie. the stone masonry activity – although there is no planning history confirming this historic use, on the balance of probabilities, the activity is likely given the mining history of the town and the preponderance of sites near to the railway line)*'.

Importantly, the Council observed that the 2013 and 2017 permissions did not reference the change of use of the land, such that the uses remained as per the 2008 permission.

The inspector noted at paragraph 9 of their decision the difficulty in defining the site's use because its entirety should be taken as the planning unit. The difficulty arises from the various premises that occupy the site and share the access, outside areas and toilet, such that a mixture of uses occurs. Paragraph 11 goes on to acknowledge that storage (a B8 use) is '*one component of a multiplicity of activities and uses within the planning unit*'.

The inspector concluded at paragraph 14 how, at the time the CLE application was made, the site '*was in mixed or composite use, and that this use did not fall within any of the classes of the Use Classes Order… Nor is the mixed use lawful by virtue of a planning permission covering the planning unit*'.

Most recently, planning permission was refused under ref. PL/2022/03399 for the '*erection of storage building*' in the same location as this live S73 application. The Council's concerns were fourfold, relating to the site's status as safeguarded land in the Development Plan for a new railway station, which the development would prejudice; neighbour amenity; ecology; and carparking/turning space. An excerpt of the refused proposed site plan is provided in figure 3 below.

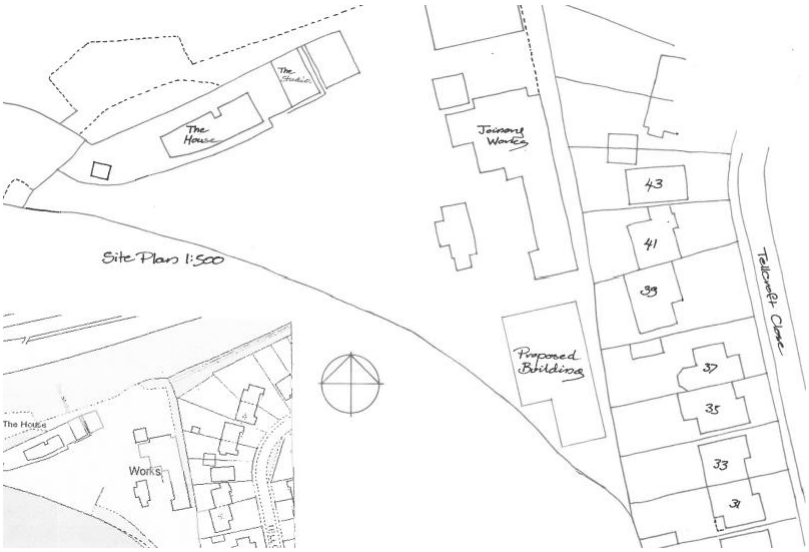


Figure 3: refused site plan for a proposed building under ref. PL/2022/03399, in the same position as the 1992 approval forming the subject of this S73 application

This live S73 is accompanied by a planning statement, which claims that because the applicant believes their 1992 permission remains extant, this undermines the Council's position in respect of the PL/2022/03399 reasons for refusal.

Lastly, the applicant has submitted a parallel application under ref. PL/2023/01955 for the '*variation of condition 2 of N/92/00420/F ('erection of single building to be used as studio and finished work store') to allow the building to be used for mixed E(g) and B8 use*'. This is a similar application with a similar condition, relating to a previously approved building to the north. This application is considered in a separate report.

POLICIES

Under the provisions of section 70(2) of the Town and Country Planning Act 1990 and section 38(6) of the Planning and Compulsory Purchase Act 2004, applications for planning permission must be determined in accordance with the Development Plan, unless material considerations indicate otherwise. At the current time, the relevant statutory Development Plan Documents in respect of this application consist of the Wiltshire Core Strategy (WCS) (adopted January 2015); the 'saved' policies of the North Wiltshire Local Plan (NWLP) 2011 (adopted June 2006); and the made Corsham Neighbourhood Plan (2019).

Though the Development Plan is considered as a whole, those parts deemed to be particularly relevant to this application are listed below:

Wiltshire Core Strategy (2015):

- Core Policy 1: Settlement Strategy
- Core Policy 2: Delivery Strategy
- Core Policy 11: Corsham Community Area
- Core Policy 34: Additional Employment Land
- Core Policy 50: Biodiversity and Geodiversity
- Core Policy 52: Green Infrastructure
- Core Policy 57: Ensuring High Quality Design and Place Shaping
- Core Policy 61: Transport and New Development
- Core Policy 64: Demand Management

Saved policies of the North Wiltshire Local Plan:

- T5 (Safeguarding).

Corsham Neighbourhood Plan (2019):

- CNP ED1 (Design Guide and Corsham Batscape Strategy).
- CNP BE1 (employment-related development).
- CNP BE3 (vitality and identity).
- CNP E2 (sustainable development).
- CNP HE1 (quality design).
- CNP T4 (railway station safeguarded land).

Material considerations

Corsham Design Guide (in particular section 3.3.17 on Pockeridge and Leafield).

National Planning Policy Framework (2021):

- Paragraphs 8, 56, 81, 83, 112, 130, 134, 174 and 180.

Wiltshire Local Plan Review:

The Council has recently resolved to undertake a Regulation 19 (pre-submission) consultation on its Local Plan Review. Given the relatively early stage in the plan-making process, weight will be limited. However, it is relevant insomuch that it demonstrates the intended direction of travel. To that end, the Corsham 'Main Settlement Document' talks about how:

'*The growth planned will help to ensure that Corsham remains an important employment location in Wiltshire. and will help to facilitate the delivery of improved services and facilities in the Corsham area including any forthcoming proposals for the redevelopment of the Corsham Railway Station site. The railway station is currently a safeguarded site under saved Policy T5 from the North Wiltshire Local Plan 2011 and will continue to be safeguarded in the Local Plan Review as part of Policy 75 Strategic Transport Network*'.

ISSUES

The main issues in the consideration of this application are:

- Fallback position;
- Principle of development;
- Impacts from the proposed change of use on local character;
- Impacts from the proposed change of use on neighbour amenity;
- Highways; and
- The appropriateness of adding planning conditions.

CONSULTATION

Corsham Town Council: '*Resolved: that the application be noted*'.

Council Highway Engineer: no response received.

REPRESENTATIONS

None.

ASSESSMENT

Fallback position

The courts[1] have held that as a matter of principle, it is possible to amend the conditions of an implemented and non-completed planning permission, provided any overlapping subsequent consents mean it would be physically impossible to complete the first permission.

In this case, having discussed this application at length with the Council's Planning Enforcement team, they have witnessed at first-hand and photographed the foundations and drainage runs that were completed within the required five-year timeframe for the 1992 consent. This constitutes a material start, such that the consent remains live. There are no physical impediments on the site that would prevent the development from progressing, such that significant weight may be attributed to the extant consent as a fallback position.

Careful consideration has been given as to the impact from the 2008 change of use permission for this part of the site. Condition 2 pertains that the permission allowed for a '*general office, reception, drawing office, gallery and related purposes associated with the stone carving and sculpting activities on the site*'. It then makes it unequivocal that '*no other purpose*' would be allowed, including '*any other use falling within Classes B1, B2 and B8*'.

At face value, it might appear that the 1992 planning permission cannot be completed because it has been superseded by the 2008 consent, which changed the use of this part of the site to B8.

However, condition 2 is not a true condition precedent, insomuch that it does not go to the heart of the permission. The nuance here is that a true condition precedent would mean that a development would be wholly unacceptable unless a condition was complied with, but in this case, the development was deemed acceptable in all respects, and the use was simply secured by condition 2. In other words, factors such as design, scale, relationships with neighbours, highways, etc. were deemed acceptable at the time of the approval in 1992 and it was approved on that basis. The use therefore does not go to the heart of the permission in terms of its deemed acceptability in 1992.

In addition, the 2022 inspector's observations are material. Here, they commented on the multiplicity of uses present, and the fact the whole wider site should be treated as one planning unit in mixed or composite use. With that in mind, even if the building were to be completed and used as per the terms of condition 2 of the 1992 permission, it would not affect the mixed/composite use of the planning unit as a whole.

Lastly, with regard has been had to the aspiration in the Local Plan and the emerging Local Plan Review to site a new railway station in this location. This does not affect my conclusions set out above, given the lawful implementation of the 1992 permission.

<u>Principle of development</u>

Policy CNP-BE1 of the neighbourhood plan supports proposals that are sustainably located and would strengthen Corsham's economy, while core policies 2 and 11 of the WCS encourage economic development within the built-up area of Corsham. Although this is not an allocated or safeguarded employment site, Core Policy 34 of the WCS allows for employment-related development within Market Towns, such as Corsham.

The proposed mixed E(g) and B8 uses are therefore acceptable. It is worth noting that the applicant originally suggested that an area of land surrounding the building could be used for external storage, with factors such as the maximum height of any containers being defined under the fresh S73 permission. However, whilst I accept that B8 would be generally acceptable in this location, I do not agree that amending the 1992 consent to allow for it in the manner proposed would be the appropriate

[1] Pilkington v Secretary of State for the Environment and Others [1973] 1 WLR 1527 CA; and in Hillside Parks Ltd v Snowdonia National Park Authority [2019] EWHC 2587 (QB)

mechanism. This is for three reasons. Firstly, the 2008 planning permission already defines where on this part of the site B8 storage can occur, and that permission remains extant. By amending the area, the Council would be in receipt of conflicting plans. Secondly, the 1992 permission was described as the erection of a building, and this S73 application is seeking to amend condition 2 of that consent, which relates to manner in which that building could be used. Therefore, redefining the use of the surrounding land would risk going to the heart of how the consent was originally described. And thirdly, introducing amended areas of storage could impact upon amenity, such that full details should be fully considered and public opinion sought on them. It would thus be inappropriate to wrap the matter up in this application, which has been tabled and consulted on as simply varying the use of the building.

Therefore, the applicant has been advised that the most appropriate mechanism to define the use of specific land parcels and the parameters of what can go in them would be via a fresh, standalone application, which would create a new planning chapter.

Nevertheless, the proposed E(g) and B8 use would be acceptable for the building itself, and this could be secured via an appropriately worded condition.

Impacts from the proposed change of use on local character

The site is well established in terms of its mixture of uses. The proposal would reflect this character.

Impacts from the proposed change of use on neighbour amenity

As set out above, the 1992 permission remains extant and the relationships with neighbours were considered at the time. It is therefore inappropriate to reconsider any impacts arising from the consented building itself; rather, it is only the impacts of the proposed change of use that are material to this application.

The site's multiplicity of uses is well documented, and those that are proposed have either historically been present on the wider planning unit (B8) or are acceptable near to residential properties (E(g)). The use of the buildings in the manner proposed would therefore not give rise to material harm to neighbour amenity.

Highways

The 1992 permission allowed for a '*general office, reception, drawing office, gallery and related purposes associated with the stone carving and sculpting activities on the site*', and since then, B8 use has also been approved. Although the Council Highway Engineer has not commented on this application, it is nonetheless considerd that the transport movements and types of vehicles would not materially differ between the fallback position and the proposed uses.

The appropriateness of adding planning conditions

The 1992 permission came with two pre-commencement conditions pertaining to a landscaping scheme and tree protection measures, but Council records only show landscaping was discharged. The passage of time exceeding 10 years from the point when the permission was implemented means that the tree condition is no longer enforceable, and the development can be completed without needing to comply with that condition. It would therefore be unreasonable for the Council to impose a similar condition on any S73 variation. The approved landscaping scheme now forms part of the approved plans and can therefore be rolled forward to any fresh consent, while an informative note could remind the applicant of the need to protect trees on third-party land, as well as within the application site itself.

Given the fallback position, the Council also has no control over requiring any ecological mitigation or enhancement measures, such that a planning condition in this regard would be unreasonable.

Nevertheless, separate legislation covers protected species, such that any harm to species and their habitat could result in prosecution.

Previous conditions prohibiting the future installation of openings; the installation of parking/turning; and the retention of trees remain relevant and should be rolled forward to any fresh permission.

CONCLUSION

The proposed variation to condition 2 of planning permission ref. N/92/00419/F meets the tests for planning conditions set out in paragraph 56 of the NPPF.

RECOMMENDATION: that planning permission be APPROVED, subject to the following conditions:

1. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or reenacting or amending that Order with or without modification), the building shall be used solely for purposes within Classes E(g) and B8 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended) (or in any provisions equivalent to that class in any statutory instrument revoking or reenacting that Order with or without modification).

REASON: for the avoidance of doubt and to ensure that the permitted uses are appropriate.

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

- Location plan and site plan ref. 91-3-1-A.
- Floorplans and south and west elevations ref. 91-3-2.
- Elevations and sections ref. 91-3-3.
- Plan ref. LPC-5510-EX-02, only insomuch where it shows tracking and parking spaces.
- Landscaping plan ref. 91-3-11, as approved under discharge of conditions application ref. N/97/00553/DOC.

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

3. The materials to be used in the construction of the external surfaces of the development hereby permitted shall match in material, colour and texture to those detailed on the application form and approved plans.

REASON: in the interests of visual amenity and the character and appearance of the area.

4. No tree within the site shall be cut down, uprooted, topped, lopped or destroyed, nor any hedge within the site cut down or grubbed out without the Local Planning Authority's written approval.

REASON: in the interests of amenity and biodiversity.

5. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or reenacting or amending that Order with or without modification), no windows, doors or other form of openings other than those shown on the approved plans, shall be inserted in the eastern elevation of the development hereby permitted.

REASON: In the interests of residential amenity and privacy.

6. No part of the development hereby permitted shall be brought into use until the access, turning area and parking spaces have been completed in accordance with the details shown on the approved plans. The areas shall be maintained for those purposes at all times thereafter.

REASON: In the interests of highway safety.

INFORMATIVE TO APPLICANT:

The applicant is requested to note that this permission does not affect any private property rights and therefore does not authorise the carrying out of any work on land outside their control. If such works are required, it will be necessary for the applicant to obtain the landowner's consent before such works commence.

If you intend carrying out works in the vicinity of the site boundary, you are also advised that it may be expedient to seek your own advice with regard to the requirements of the Party Wall Act 1996.

INFORMATIVE TO APPLICANT:

Any alterations to the approved plans, brought about by compliance with Building Regulations or any other reason must first be agreed in writing with the Local Planning Authority before commencement of work.

INFORMATIVE TO APPLICANT:

The applicant reminded of the need to protect onsite and third-party trees during the construction phase.

INFORMATIVE TO APPLICANT:

Bats

Boundary vegetation at the site forms part of the local network of wildlife corridors and green infrastructure network, forming a connection to the major corridor of the railway line with offsite habitat features to the south. This is all in the context of it being within a core sustenance zone for bats associated with the Bat and Bradford of Avon Bat SAC.

Bat roosts are protected all times by the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 even when bats are temporarily absent because, being creatures of habit, they usually return to the same roost site every year. Planning permission for development does not provide a defence against prosecution under this legislation or substitute for the need to obtain a bat licence if an offence is likely. If bats or evidence of bats is found during the works, the applicant is advised to stop work and follow advice from a professional ecologist or to contact Natural England's Batline through the internet.

Breeding birds

All British birds, their nests and eggs are protected under Section 1 of the Wildlife and Countryside Act 1981 (as amended) and the Countryside and Rights of Way Act 2000 while birds are nesting, building nests and sitting on eggs. The applicant is advised to check any structure or vegetation capable of

supporting breeding birds and delay removing or altering such features until after young birds have fledged. Damage to extensive areas that could contain nests/breeding birds should be undertaken outside the breeding season. This season is usually taken to be the period between 1st March and 31st August but some species are known to breed outside these limits.

Artificial lighting

An increase in artificial lux levels can deter bats which could result in roost abandonment and/or the severance of key foraging areas. This will likely result in a significant negative impact upon the health of bat populations across the region. Artificial light at night can have a substantial adverse effect on biodiversity. Any new lighting should be for the purposes for safe access and security and be in accordance with the appropriate Environmental Zone standards set out by the Institute of Lighting Engineers in their publication GN01:2021, ‘Guidance for the Reduction of Obtrusive Light’ (ILP, 2021), and Guidance note GN08-18 ‘Bats and artificial lighting in the UK’, issued by the Bat Conservation Trust and Institution of Lighting Professionals.