DELEGATED REPORT

Application reference: PL/2023/06928
Application type: S73 variation of condition
Site address: 3 Maundrell Road, Calne, SN11 9PU
Proposal: Variation of condition 4 of PL/2022/05063 to extend opening times and provide brewery tours.
Recommendation: refuse

SITE AND PROPOSAL

The site comprises part of a two-storey industrial building located within the built-up area of Calne. It occupies a corner plot at Porte Marsh Road/Maundrell Road and is highly visible from the public domain. It is situated within Portemarsh Industrial Estate, a Principal Employment Area safeguarded for employment uses under WCS Core Policy 35.

Further to achieving retrospective consent ref. PL/2022/05063 for a '*change of use from B8 to B2 brewery with ancillary trade counter*', the applicant seeks to vary condition 4 of that permission, which states:

> '*The ancillary trade counter shall be limited to the area hatched yellow on the ground-floor plan ref. 121A hereby approved. The use of the trade counter shall only take place between the hours of 5pm to 7pm on Fridays and 12pm to 2pm on a Saturday. The use shall not take place at any time on Sundays and Bank or Public Holidays.*
>
> *REASON: To ensure the use of the site remains as per the terms of this permission and to retain an environment free from intrusive levels of noise and activity in the interests of the amenity of the area*'.

The original planning permission was approved on the basis of the applicant's calculations that the opening of the trade counter for four hours per week would contribute 5% of the business's overall revenues, but correspondence from the applicant dated 06/10/23 suggests that the figure is currently in fact closer to 0.5%.

The applicant's supporting letter submitted with this S73 application says that the opening hours now sought for the trade counter are 11.30am to 10.30pm Monday – Saturday (66 hours per week), as per the applicant's alcohol licence. However, the applicant has since stated in their 06/10/23 email that they in fact seek 5.30pm to 10.30pm Monday to Friday, and 11am to 10.30pm on Saturday (36.5 hours per week), which would allow them to achieve closer to the 5% of revenue figure. However, they are amenable to 5.30pm - 10.30pm Thursdays and Fridays and 12.00 - 10.30pm Saturday (20.5 hours per week), should the Council take the view that the requested hours are too great. This would result in the trade counter contributing around 3% of business revenue.

The applicant's email also confirms that brewery tours would occur twice a month on Saturdays, with maximum groups of 30 people. However, it is unclear how many groups would be accepted each day the tours are running.

They also confirm that visitor numbers are currently around 20-30 per week, which would increase to around 100-125 through the preferred new opening hours (36.5 per week).

RELEVANT PLANNING HISTORY

As set out above, consent ref. PL/2022/05063 that the applicant is seeking to vary was approved in October 2022.

POLICIES

Development Plan

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); 'saved' policies of the North Wiltshire Local Plan 2011; and the Calne Community Neighbourhood Plan ('made' 2018).

Wiltshire Core Strategy:

- Core Policy 1: Settlement Strategy
- Core Policy 2: Delivery Strategy
- Core Policy 8: Spatial Strategy for the Calne Community Area
- Core Policy 35: Existing Employment Land
- 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:

- NE18: Noise and Pollution

Calne Community Neighbourhood Plan:

- Policy GA2: Highway Impact
- Policy WS1: Employment
- Policy BE2: Design Principles for Local Distinctiveness
- Policy BE3: Parking Provision

Material considerations

National Planning Policy Framework (2023):

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

Regulation 19 pre-submission Local Plan Review:

- Draft Policy 65: Existing Employment Land

ISSUES

The main issues in the consideration of this application are:

- Principle of development;
- Impacts on the character of the locality;
- Impact on the living conditions of adjacent occupiers; and

- Highways.

CONSULTATION

Calne Town Council: no response submitted to Wiltshire Council, but the online meeting minutes show that the application was discussed and 'no objection' was recorded.

Council Public Protection: no comment.

Council Highway Engineer: initial objection raised on grounds of insufficient information. This objection was later withdrawn, further to the receipt of clarifications from the applicant.

REPRESENTATIONS

None.

ASSESSMENT

Principle of development

Core Policy 35 allows for development of employment uses (former use class B1 and current use classes B2 and B8) at Principal Employment Areas such as Portemarsh. The emerging Local Plan Review, whilst at a relatively early stage, proposes to retain this designation.

It is very important to understand the negotiations that occurred with the applicant, in order for the Council to be able to support the original permission. The delegated report prepared at that time documents how, given the designation in the Local Plan, the trade counter and ancillary retail must be of a scale that retains the principal B2 use of the site. Initially, the applicant applied for retail element to represent 56sqm of the total floor area of 170sqm. Hours of opening were not specified on the submitted application form, but a copy of a premises licence (dated 23/05/22) showed a licence in place to allow for opening to the public between 0900 – 2330 Mondays to Saturdays and 0900 – 2330 on Sundays. On and offsite alcohol sales are permitted by the licence between 1100 – 2300 Mondays to Saturdays and 1100 – 2130 on Sundays. The Council concluded that this amount of retail floorspace and activity would have been a sui generis use, thus leading to a conflict with CP35.

The applicant responded with a revised floorplan showing a reduced the trade counter of 10sqm, and offered the hours that were ultimately set out in condition 4 of the planning permission:

> '*Proposed opening* [hours] *would be 5pm to 7pm on a Friday and 12pm to 2pm on a Saturday.*
>
> *I would anticipate that percentage of sales would be less than 5% of the total revenue generated by the business…*
>
> *With regards to footfall, I would anticipate that approximately 10 customers per hour may attend the kiosk*'.

The case officer's report documents how this was deemed acceptable, but warned against the risk of further intensification resulting in a material change of use:

> '*It is nevertheless important that the use is defined and the trade counter does not gradually intensify because, to do so, would undermine the aims of Core Policy 35 and retail would not be an acceptable use of the site. The applicant has volunteered that the*

opening hours of the trade counter would be Fridays and Saturdays for two hours per day, which would represent around 20 customers per day, generating around 5% of total revenues. It is considered that this would be within the realms of ancillary, but it is acknowledged that the applicant's alcohol licence allows for generous opening hours. In order that the use of the trade counter does not drift into the licenced hours and thus risk a potential material change of use, it is considered it necessary and justified to restrict the trade counter opening hours to those proffered by the applicant.

On that basis, the principle of development is considered to be acceptable'.

This application proposes to vary an existing condition, and the courts have made clear that any variations cannot go to the heart of the original permission. In this case, the original permission is described as being for a '*B2 brewery with ancillary trade counter*', which is also reaffirmed by condition 3 of the consent that defines the use. It is therefore imperative that any changes now sought would not depart from this starting point.

While it is taken at face value that the applicant originally forecasted how the trade counter would contribute towards 5% of revenues and the reality has been 1/10th of that figure, it cannot be agreed with the applicant's assumption that 5% is a target. This is because, if revenue from the trade counter were to change again in the future, the applicant may then argue they require further footfall and increased opening hours to compensate and allow them to attain this target. Doing so would risk drifting towards a material change of use – the whole point behind the restrictions in the first place. The applicant's claim in their 06/10/23 email that the Council has 'approved' 5% is therefore not correct: this figure was suggested by the applicant and was deemed reasonable by the Council as one of several factors considered in the round as a matter of fact and degree. It was never a permitted target.

The applicant's initially suggested 66 hours per week would undoubtedly lead to a material change of use, as feared in the previous delegated report. The applicant's newly suggested preferred hours would result in 36.5 hours of opening per week, which would still far exceed the four hours per week currently permitted. They also state that customer numbers would rise from 20-30 to around 100-125 per week, which is around a five-fold increase.

Although no figures on customer numbers have been provided by the applicant in respect of the third option of 20.5 hours per week, the number of hours alone would clearly represent a significant increase on the permitted levels. It is understood that Par Foods, which previously occupied the premises, opened from 8am to 5pm on weekdays only. This represents 45 hours per week, which is fairly typical of businesses' opening hours on this industrial estate. At 20.5 hours per week for the trade counter, a considerable proportion of the business's opening time would feature retail activity. The bi-monthly brewery tours would also not represent a B2 use and would compound the issue, taking the use yet further from B2. Furthermore, although the applicant has said that tours would be limited to 30 per group, they have omitted to give any details as to the number of groups per day and their duration.

Consequently, in terms of fact and degree, it is considered that the proposed hours for all three tabled options would blur the distinction between the principal B2 use and a *sui generis* use, such that this proposal would go to the heart of the acceptability of the permission.

The proposed development is therefore in conflict with Core Policy 35 of the WCS.

It has been explained to the applicant that it is the nature of S73 of the 1990 Act such that care must be taken not to go to the heart of the original permission. The applicant has also been directed towards Core Policy 35 of the WCS, which does provide for circumstances where non-B employment generating proposals can be justified, subject to certain criteria. Therefore, even

though conflict with Core Policy 35 has been identified, for the specific reasons detailed above, the applicant may wish to consider applying afresh for a *sui generis use* and therefore starting a new planning chapter.

Impacts on the character of the locality

Although the proposed trade counter hours and brewery tours would lead to a material change of use for the site, the effect on local character beyond the fallback position would be minimal.

Impact on the living conditions of adjacent occupiers

The proposals would be unlikely to result in any material harm to neighbouring properties beyond which have already been considered as part of the fallback position.

Highways

The Highway Authority raises no objections and there is considered to be no reason to disagree with those conclusions reached in this instance.

CONCLUSION

The proposed intensification of the site would result in a material change of use, which would go to the heart of the original planning permission and would conflict with Core Policy 35 of the Wiltshire Core Strategy. Planning permission should therefore be refused.

RECOMMENDATION: that planning permission be REFUSED for the following reason:

1. The proposed increase in trade counter opening hours and the introduction of brewery tours would lead to a material change of use from the existing principal B2 use to a sui generis use. This would go to the heart of the original planning permission and be in conflict with Core Policy 35 of the Wiltshire Core Strategy, which safeguards the site for traditional B-class uses.