

PLANNING APPLICATION NUMBER: P05/1857

Type of approval sought	FULL PLANNING PERMISSION
Ward	HALESOWEN SOUTH
Applicant	A & J MUCKLOW
Location:	FORMER MEB HEADQUARTERS, MUCKLOW HILL, HALESOWEN, WEST MIDLANDS.
Proposal:	APPLICATION UNDER SECTION 73 FOR THE REMOVAL OF CONDITON 4 WHICH STATES. 'THIS OUTLINE PERMISSION DOES NOT RELATE TO THE LAYOUT, OR AUTHORISE THE ERECTION OF ANY BUILDINGS, SHOWN ON THE PLANS ACCOMPANYING THIS APPLICATION' OF PLANNING APPROVAL P03/1629.
Recommendation summary:	APPROVE SUBJECT TO CONDITIONS

SITE AND SURROUNDINGS

- 1 The application site is part of the former MEB Headquarters site. Part of the site is cleared. There are existing trees on the site, which are the subject of a Tree preservation Order. The site is on an elevated position above Leasowes Park. There are other existing office buildings ("West Point" and "ADT") on the plateau, with residential properties on the opposite side of Mucklow Hill, and to the east and south of the site, including on Hollies Drive.

PROPOSAL

- 2 The proposal is to delete a condition attached to a previous permission granted in 2004 (P03/1629). That permission related to an Outline application for residential development. The application included siting and design for consideration, and was described as residential development with a total floor area of 6391 sq. metres.
- 3 The condition that the applicants are seeking to remove is condition 4. This states:-

This outline permission does not relate to the layout, or authorise the erection of any buildings on the plans accompanying the application.

The reason given for this condition states:-

The layout has been supplied for illustrative purposes only.

- 4 The siting on the Outline application (P03/1629) showed the residential units arranged in 3 blocks around a central landscaped and parking area. There was also parking shown between that block nearest the highway and the western boundary of the site. The blocks were illustratively shown as between 3 and 4 storeys in height, with 66 units overall. There was a further block, near to the highway: this was deleted from the scheme: it was considered too remote from the rest of the development and too close to the tree belt.
- 5 The applicants have submitted supporting information. In summary, this refers to the history of the processing of the previous application, and state that it is unlawful for the Council to grant an Outline permission with a condition attached referring to a reserved matter, when that reserved matter is one on which the outline application has been made (they cite case law and Circular 11/95).

HISTORY

- 6 A summary of the relevant planning history is set out in the table below.

APPLICATION No.	PROPOSAL	DECISION	DATE
P00/51643	(full) construction of 3 and 4 storey offices	Approved	15/12/00
P03/1629	(outline) residential development	Approved	15.10.04
P05/0274	Variation of condition attached to P00/51643 to allow extended time for commencement of development.	Approved	21.4.05
P05/1738	Outline application for 8 dwellings.	Refused	11/11/05

- 7 P05/1738 was refused on the grounds that the proposal would prejudice views into or out of adjacent Conservation Area.

PUBLIC CONSULTATION

- 8 I have received a formal objection from a Local Member, pending more details of what is proposed. I have also received a letter of objection from a local resident. In summary that letter states that he would not be opposed to the erection of dwellings, provided that they do not rise above the park at more than 2 storeys. It also refers to the potential for an increase in traffic having implications for a dangerous junction onto Mucklow Hill. It then refers to a lack of a crossing place across Mucklow Hill. (I have forwarded a copy of this onto HTRS for consideration.)

OTHER CONSULTATION

- 9 None.

RELEVANT PLANNING POLICY

- 10 There is no site specific designation within the UDP. However, given the previous employment use of the site (office headquarters), the site is the subject of the policy aimed at safeguarding existing employment uses (Policy EE3).
- 11 Also relevant are policies DD1 and DD4 (design and amenity considerations for residential development), and policies aimed at protecting the open space, heritage and nature conservation value of Leasowes Park to the south of the site (policies S01, HE2, S06, NC3).

ASSESSMENT

- 12 It is considered reasonable that in this instance, the assessment be based on the facts and legal basis of including the condition. It is considered unreasonable to review the previously approved development on other planning considerations.
- 13 The relevant events in the history of the processing of the previous application (P03/1629) are as follows

- A report was submitted to your meeting on 15/3/04, initially that had Condition 4 (layout not approved) attached;
- There was a pre- committee note stating that Condition 4 was included in error
 - the reason given was that the application sought permission at outline stage for siting, and that this was made clear in the report
 - the pre-committee note was prepared following a representation from the applicants to the planning officer questioning the inclusion of that condition;
- At that meeting the application was deferred for a site visit.
- The post committee note stated that Condition 4 was to be deleted.
- The report on that application to the following meeting on 5/4/04 did not include that condition (in its place was a condition referring to amended plans).
- The proposal was approved on the basis of the conditions as set out in the report,
 - this was despite concerns raised by individual Members on the proposed height of the development
- The draft conditions attached to the letter (dated 8/4/05) which went out to the agents informing them of the committee's resolution and the requirement to enter into Section 106 Agreement negotiations did not include Condition 4 (layout not approved).
- The instruction to release the permission following the completion of the Agreement was made on the 11th October 2004, with the decision issued on the 15th October 2004;
 - The decision notice included Condition 4 (layout not approved).

14 From the above, it is considered that Condition 4 was first included, then deleted, and then included again (after the committee resolution and before the decision notice was issued, at some stage during the processing of the Section 106 Agreement).

15 There was no subsequent report back to committee seeking amendments to the draft conditions prior to the issuing of the decision.

16 For these reason, it is considered that there was no substantive reason for re-attaching that condition. It was therefore included in error.

- 17 The applicants refer to paragraph 44 of Circular 11/95. This in summary states that if an Outline application is made, specifying matters for consideration, those matters must be assessed as part of that application, and not reserved by condition for subsequent approval. This is unless the applicants amend the application and withdraw those details. To clarify this, if details are submitted as part of an Outline application, they must be assessed as part of that application and not reserved for subsequent approval: the details must either be considered acceptable or not at that stage.
- 18 In summary, given that it is considered that there was no substantive reason for including Condition 4 (layout not approved) on the decision notice, and in this instance that there is no clear legal basis for reserving siting for subsequent approval, the current application seeking the removal of that condition is supported.

RECOMMENDATION

- 20 That Condition 4 attached to P03/1629 be deleted.

Reason for approval

The siting of the proposed residential blocks was considered acceptable, and in accordance with Unitary Development Plan Policy DD4 at the time that the Outline application (P03/1629) was considered. There was no substantive reason for subsequently attaching Condition 4 to P03/1629., reserving siting, for subsequent approval

Conditions and/or reasons:

1. None of the existing trees or hedgerows on the site shall be lopped, felled or root pruned before the landscaping scheme to be submitted in accordance with condition 14 has been approved.
2. Application for approval of the reserved matters shall be made to the Local Planning Authority before the expiration of three years from the date of this permission.
3. The development hereby permitted shall be begun either before the expiration of five years from the date of this permission, or before the expiration of two years from the date of approval of the last of the reserved matters to be approved, whichever is the later.
4. This permission shall relate to the revised plans numbered 10 revision C.

5. None of the dwellings shall be occupied until works for the disposal of foul and surface water drainage have been provided on the site to serve the development hereby permitted, in accordance with details to be submitted to and approved by the Local Planning Authority.
6. Development shall not begin until details of plans and sections of the lines, widths, levels, gradients and form of construction of service/access roads and drainage systems have been submitted to and approved by the local planning authority.
7. Development shall not begin until details of the existing and proposed levels of the site, which should be related to those of adjoining land and highways, have been submitted to and approved by the local planning authority.
8. Plans showing details including sections of existing retaining walls on the site shall be submitted to and approved by local Planning Authority before development is commenced, and calculations provided to prove that the walls as shown will be capable of supporting the likely future loading from the proposed development, and where work is required to the existing retaining walls to ensure that they will sustain the future loading, the development shall not be occupied until such work has been carried out in accordance with the approved plans.
9. Details of the proposed retaining walls within the site shall be submitted to and approved by the Local Planning Authority before development is commenced and the development shall not be occupied until the retaining walls have been constructed in accordance with the approved plans.
10. Development shall not begin until a detailed site investigation report which indicates that the site is suitable for the development proposed has been submitted to the local planning authority. This report shall include details of recommendations on foundation design and such recommendations shall be implemented concurrently with the development.
11. Development shall not begin until a comprehensive written site investigation strategy (in a form to be agreed by the local planning authority), has been submitted to and approved by the local planning authority. Such a strategy shall facilitate the identification of contaminants and permit the risk based assessment of the development site. Where the investigations identify the presence of contamination, development shall not begin until a scheme to protect the development from the effects of such contamination has been submitted to and approved by the local planning authority. Such a scheme shall: include provisions for validation monitoring & sampling; be implemented in accordance with the approved details before the development is first occupied; and be retained throughout the lifetime of the development.
12. Development shall not begin until a comprehensive written site investigation strategy (in a form to be agreed by the local planning authority), has been submitted to and approved by the local planning authority. Such a strategy shall facilitate the identification of methane & carbon dioxide. Where the investigations identify the presence of methane and/or carbon dioxide the development shall not begin until a scheme to protect the development from the effects of such gases has been submitted to and approved by the local planning authority. Such a scheme shall: include provisions for validation monitoring & sampling; be implemented in accordance with

the approved details before the development is first occupied; and be retained throughout the lifetime of the development.

13. No development shall take place until there has been submitted to and approved by the local planning authority a scheme of landscaping, which shall include indications of all existing trees and hedgerows on the land, and details of any to be retained, together with measures for their protection in the course of the development.
14. All planting, seeding or turfing comprised in the details of landscaping approved in accordance with condition 14 shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development whichever is the sooner; and any trees, hedgerows or plants contained in the approved planting scheme which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the local planning authority gives written consent to any variation.
15. Notwithstanding the provisions of the Town and Country Planning General Development Order 1988 or any order revoking and re-enacting that Order) at no time during the life of the development shall the areas approved for landscaping be used for any other purpose.
16. None of the existing trees or hedgerows on the site shall be lopped, felled or root pruned before the landscaping scheme to be submitted in accordance with condition 14 has been approved
17. Development shall not begin until all existing trees to be retained on the site have been marked in such a manner as shall be clearly visible until completion of building operations.
18. Development shall not begin until barriers have been erected around existing trees to be retained on the site and the barriers shall remain in position until completion of building operations.
19. At no time shall the ground level be raised or lowered within the branch spread of trees to be retained.
20. Development shall not begin until a scheme for protecting the proposed dwellings from noise from road traffic noise from Mucklow Hill and noise from activities in the car parking areas of Mucklow Office Park has been submitted to and approved by the local planning authority, and all works which form part of the scheme shall be completed before any of the permitted dwellings is occupied.
21. No development approved by this permission shall be commenced until a Flood Risk Assessment has been submitted to and approved in writing by the Local Planning Authority and all recommended works are in place.
22. No development approved by this permission shall be commenced until:
 - i. A desktop study has been carried out which shall include the identification of previous site uses, potential contaminants that might reasonably be expected given those uses and other relevant information. And using this information a diagrammatical representation (Conceptual Model) for the site of all potential contaminant sources, pathways and receptors has been produced.
 - ii. A site investigation has been designed for the site using the information obtained from the desktop study and any diagrammatical representations (Conceptual Model).

This should be submitted to, and approved in writing by the Local Planning Authority prior to that investigation being carried out on the site. The investigation must be comprehensive enough to enable:

1. a risk assessment to be undertaken relating to groundwater and surface waters associated on and off the site that may be affected, and
 2. refinement of the Conceptual Model, and
 3. the development of a Method Statement detailing the remediation requirements.
- iii. The site investigation has been undertaken in accordance with details approved by the Local Planning Authority and a risk assessment has been undertaken.
 - iv. A Method Statement detailing the remediation requirements, including measures to minimise the impact on ground and surface waters, using the information obtained from the Site Investigation has been submitted to the Local Planning Authority. This should be approved in writing by the Local Planning Authority prior to that remediation being carried out on site.
23. The development of the site should be carried out in accordance with the approved Method Statement.
 24. If during development, contamination not previously identified, is found to be present at the site then no further development (unless otherwise agreed in writing with the Local Planning Authority) shall be carried out until the developer has submitted, and obtained written approval from the Local Planning Authority for, an addendum to the Method Statement. This addendum to the Method Statement must detail how this unsuspected contamination shall be dealt with.
 25. Upon completion of the remediation detailed in the Method Statement a report shall be submitted to the Local Planning Authority that provides verification that the required works regarding contamination have been carried out in accordance with the approved Method Statement(s). Post remediation sampling and monitoring results shall be included in the report to demonstrate that the required remediation has been fully met. Future monitoring proposals and reporting shall also be detailed in the report.
 26. Development approved by this permission shall not be commenced unless the method for piling foundations has been submitted to and approved in writing by the Local Planning Authority. The piling shall thereafter be undertaken only in accordance with the approved details.
 27. Nothing other than uncontaminated excavated natural materials shall be tipped on the site.
 28. Prior to being discharged into any watercourse, surface water sewer or soakaway system, all surface water drainage from parking areas and hardstandings shall be passed through trapped gullies with an overall capacity compatible with the site being drained.
 29. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order) no tank for the storage of oils, fuels or chemicals shall be erected within the curtilage of a dwellinghouse unless it is sited on an impervious base and surrounded by impervious bund walls. The volume of the bunded compound should be at least equivalent to the capacity of the tank plus 10%. All filling points, vents, gauges and sight glasses must

be located within the bund. The drainage system of the bund shall be sealed with no discharge to any watercourse, land or underground strata. Associated pipework should be located above ground and protected from accidental damage.