

---

**6. SECTION 73 APPLICATION – REMOVAL OF CONDITION 3 FROM APPROVED APPLICATION NP/DDD/0316/0280 AT RIVERSIDE BUSINESS PARK, BUXTON ROAD, BAKEWELL (NP/DDD/0117/0066), P4822, 23/01/2017, 421111/369121/TS**

**APPLICANT: RIVERSIDE BUSINESS PARK LTD**

**Site and Surroundings**

Riverside Business Park (RBP) lies on the north west side of Bakewell in the Wye valley approximately 0.8 km from the town centre. Land in ownership extends to 5ha north of the A6 Buxton Road and comprises a mixture of buildings used primarily for business (B1 use), general industrial (B2 use), and storage and distribution purposes (B8 use). Thornbridge Brewery and Pinelog Ltd also have a substantial presence on the Business Park.

There are some notable historic features on the site including a riverside mill, adjacent river bridge and facings to the mill leat, which are grade II listed. The site was originally developed as a mill complex by Sir Richard Arkwright and the original water management system, including the mill leat, is a Scheduled Ancient Monument. By virtue of the site's proximity to the River Wye and the water management systems, the site is located within the Environment Agency Flood Zone 3.

The area of the site specifically subject to this application is located at the north western end of the business Park and is currently occupied by a business that manufactures timber chalet buildings (Pinelog Ltd). Within the application site there are buildings of various ages, styles and finishes but that relate to the later phases of 20<sup>th</sup> century development on the site. The application site is bounded by the River Wye and the A6 on its south western side and on the remaining sides, abuts existing industrial building on the business park.

The eastern part of the application site (the access) lies within the Bakewell Conservation Area and the entire application site lies within the Local Plan Development Boundary for Bakewell. There is also a specific Local Plan policy (LB7) relevant to the Business Park. LB7 promotes the comprehensive redevelopment of the site, predominantly for industrial/business use (Use Classes B1 and B2). This policy also requires the provision of a new access bridge across the River Wye if further development on the site results in an increase in existing floorspace on the Business Park.

The site is currently accessed from the A6 via a narrow stone bridge unsuitable for HGVs, and from the residential road 'Holme Lane', which itself is frequently used for residential parking on its northern side, resulting in significant sections of the lane being of single vehicle width. This makes Holme Lane awkward for use by heavy goods vehicles serving the various businesses operating from the RBP. The eastern end of Holme Lane serves 6 residential properties and a business premises. At the western end of Holme Lane, the access to the RBP reverts to a single-width tarmacked track, which passes immediately alongside the front gardens of a row of 26 terraced and semi-detached properties at Lumford, whose main vehicular access is also via Holme Lane.

**Proposal**

The application seeks removal of condition 3 from application NP/DDD/0316/0280 for demolition of existing industrial units and construction of replacement employment floorspace, improvements to existing site access, parking, landscaping and other associated works. This application was approved by Planning Committee on 15 July 2016. The approved application involves the demolition of 4313 sqm of existing industrial buildings and the construction of 3696 sqm of replacement employment floor space. The approved new space comprises of 4 portal frames industrial units with associated parking, loading and access areas.

Under the approved application, it had been proposed by the applicant that the existing access arrangements, i.e. the listed stone bridge to the A6 and via Lumford and Holme Lane, would continue to be used to serve the new employment use. However, Committee Members resolved to approve the application subject to the addition of condition 3.

Condition 3 of the approved application states:

*“No development shall take place until a new road access to the business park has been provided in accordance with the implemented planning permission (office code no NP/DDD/0511/0487).”*

The reason given on the decision notice for condition 3 states:

*“In the interests of the proper planning of the local area and in the interests of highway safety, and to safeguard the character and amenities of the local area.”*

The minutes from the Planning Committee meeting note the following:

*“Members were minded to impose a pre-condition because of what they considered to be the “exceptional circumstances” pertaining to this application. A motion to approve the application subject to a pre-condition re the new access bridge and including the officers’ recommended conditions was moved and seconded. It was noted that such pre-condition would remove the need for conditions 5 and 7 in respect of the passing places on the lane.*

*The basis for concluding that permission would otherwise be refused without a pre-condition that the new access bridge be built included:*

*The strain on current access routes that would be caused by heavy construction traffic*

*The need to protect the safety and amenity of residents*

*The piecemeal development of the site would not be consistent with Local Plan policy LB7*

*The impact of the proposed passing places on the character of the area*

*These factors also supported a conclusion that the provision of the new bridge before development was commenced was fundamental to the acceptability of the development proposals.”*

The proposed removal of condition 3 would allow for the construction of the approved replacement floor space without the new road bridge being constructed. This would therefore mean that the approved new units would utilise the existing access arrangements to the site via the existing bridge from the A6 and Holme Lane/Lumford (unless the applicant chose to construct the bridge during the redevelopment of the site).

In addition to the current application, the applicant has also submitted an appeal to the Planning Inspectorate against the inclusion of condition 3 in the planning permission. An appeal hearing has been scheduled for 4 May 2017. If the current application is approved then it is anticipated that the appeal would be withdrawn as it would no longer be necessary. If the current application is refused then the appeal would proceed.

### **RECOMMENDATION:**

**That subject to the consideration of the recommendation of the independent consultant commissioned by the Authority that either:**

**The application be REFUSED for the following reasons:**

The condition which is the subject of the application is considered to be reasonable and necessary in the interests of the proper planning of the local area and in the interests of highway safety, and to safeguard the character and amenities of the local area.

OR

The application be APPROVED subject to the following conditions:

1. 3 year implementation time limit from the grant of application NP/DDD/0316/0280
2. Development to be carried out in accordance with the submitted plans and details.
3. Restriction of use to B1, B2 or B8
4. Removal of PD rights for extensions and alterations
5. Construction Compound
6. Wheel Cleaning Facilities
7. Construction and demolition construction traffic management plan
8. Parking and Access to be provided
9. Flood Protection Measures
10. Finished Floor Spaces
11. Sustainable Drainage details to be submitted and agreed and thereafter implemented
12. Archaeology Written Scheme of Investigation
13. Foundation Details to be submitted and agreed
14. Ecology management plan
15. Control of work within bird breeding season
16. Provision of bird nesting features
17. Lighting plan to be submitted and agreed
18. Removal of cotoneaster
19. Landscaping scheme
20. Pollution control and remediation
21. Passing places to be provided

### **Key Issues**

The key issue in the assessment of the application is whether or not condition 3 meets the six tests established by the National Planning Policy Framework (NPPF) and the National Planning Policy Guidance (NPPG). In order to assess this, there are three areas of consideration that are of particular relevance based on the reasoning given for the inclusion of condition 3:

1. Whether the development without a new road access would harm the proper planning of the area.
2. Whether the development without a new road access would be detrimental to highway safety.
3. Whether the development without a new road access would be harmful to the character and amenities of the local area.

### **History**

The most relevant planning history is application **NP/DDD/0316/0280** to which the current application seeks a variation in the form of removal of condition 3.

The following applications are also considered to be highly relevant:

Application **NP/DDD/0415/0339** for Demolition of former mill buildings, associated structures and other buildings and full planning permission for Class C1 (Hotel) development incorporating ground floor floorspace with flexibility to be used for Class A3 and Class D2 uses, improvements to existing site access, parking, landscaping and other associated works was refused on 11 December 2015. A subsequent appeal against the refusal of the application was allowed on 01 December 2016. Reference is made to the Inspector's decision in the assessment section of this report.

Application **NP/DDD/0511/0487** to Retain consent for the creation of access road and bridge over river to provide access to W Fearnough Ltd was approved on 15 July 2011.

Application **NP/DDD/0307/0192** for Creation of access road and bridge over river to provide access to W Fearnough Ltd was approved 7 August 2008.

### **Consultations**

#### **Bakewell Town Council:**

*"I have been instructed to write to you on behalf of Bakewell Town Council.*

*The above application was discussed at a meeting held on Monday 20th February 2017, based purely on this application the view of Bakewell Town Council is:*

*Use of the new proposed units is non-specific as to their use and by whom, therefore no realistic data for traffic movement can be deduced. As the current users (Pinelog) tend to have large slow movement of vehicles by the nature of their products in addition to staff parking there is no indication in the application as to how this situation may change.*

*A virtual snapshot survey using TRICS (Trip Rate Information Computer System) database only, carried out on instruction of the applicant by Croft Transport Solutions, is believed to give a theoretical not actual indication of current traffic movement. For example there is no evidence of a data monitor for traffic movement having been installed to give accurate, actual readings of the current traffic movement.*

*There are significant objections from local residents relating to traffic increase and danger by continued use of Holme Lane and Lumford.*

*The need for a new bridge is thought to be necessary for a developing site, subject of this application and for the bigger picture of the site as a whole.*

*The views are based on material conditions relating to the planning history of the site and of highway issues; traffic generation, vehicle access and road safety."*

**Derbyshire Dales District Council Environmental Health:** No comments

**Derbyshire County Council Highways:** No comments received

**Environment Agency:** No comments on the removal of condition 3

**Historic England:** No comments

**Natural England:** No comments

## **Representations**

During the consultation period, the Authority has received thirteen letters of objection, including a letter from Lumford Residents Association. The letters of objection raise the following concerns:

- Significant disruption and inconvenience to local residents
- Increase in larger vehicles and increased traffic flow
- Increase in pollution
- Harm to the quiet, tranquil character of the area
- Hazardous to pedestrians
- Would delay the provision of the bridge / doubts that the bridge will ever be built
- The new units might not be for Pinelog Ltd
- Thornbridge want to expand production so likely that they would occupy some of the new units
- Doubts about the existing floor space areas and the proposal is contrary to policy LB7 when considered in conjunction with the approved Hotel development
- Lack of clarity about the cost of building the bridge
- The passing places would be insufficient and would not allow a HGV and a van to pass
- Concern that the Highway Authority has not carried out detailed site visits or assessments
- Approval without the bridge would result in intensification of the substandard accesses
- Harm to wildlife in and around the river
- Harm to amenity of local residents
- Provision of the bridge is even more important since the hotel appeal was allowed
- Construction traffic would exacerbate problems
- Pinelog generate very infrequent traffic movements so an alternative user would result in an increase

## **Relevant Policy Context**

### **Development Plan**

#### **Core Strategy**

Policy GSP1 seeks to secure National Park purposes and GSP2 builds upon this by stating that opportunities should be taken to enhance the valued characteristics of the National Park and, (in part D) specific opportunities should be taken to remove undesirable features or buildings. This is expanded in policy L1 which relates directly to enhancement of landscape character, L2 to sites of biodiversity and geodiversity importance and policy L3 relating to the conservation and enhancement of features of archaeological, architectural, artistic or historic significance.

Policy GSP3 refers to development management principles. Relevant criteria listed in this policy relate to appropriate scale of development in relation to the character and appearance of the National Park, impact on access and traffic, and impact on living conditions of communities. Policy GSP4 recommends the use of conditions and legal agreements to ensure that benefits and enhancement are achieved.

Policy DS1 is the development strategy. Bakewell is a named settlement under this policy and as such 'small scale' business premises would be permitted in or on the edge of the settlement.

Core strategy policy E1 B states that proposals for appropriate improvements to make existing employment sites in Bakewell more attractive to businesses will be welcomed.

### Saved Local Plan Policies

Saved Local Plan policy LB7 sets out specific provisions for the re-development of Riverside Business Park, which is allocated in the Local Plan as a designated employment site. LB7(a) says that Comprehensive redevelopment, predominantly for industrial/business use (Use Classes B1 and B2) will be permitted on some 5 hectares at Riverside Business Park, provided that:

- i. the Listed Building and Scheduled Ancient Monument and their settings are adequately safeguarded in the long term;
- ii. design, layout, landscaping and neighbourliness with adjacent uses are satisfactory;
- iii. a new access bridge is built across the River Wye, and the old bridge is closed to vehicles.

LT18 establishes that the highest standards of environmental design and materials should be used in transport infrastructure to conserve and enhance the valued characteristics of the area. All traffic management measures and new development will be designed to allow for access by emergency vehicles. Individual schemes and developments will be the subject of consultation with the emergency services. The provision of safe access arrangements will be a prerequisite of any development. Where the provision of safe access would damage the valued characteristics of the area, the National Park Authority will consider refusing planning consent.

### NPPF and NPPG

Paragraph 115 of the Framework states that great weight should be given to conserving landscape and scenic beauty in National Parks along with the conservation of wildlife and cultural heritage, which is consistent with the aims and objectives of policies GSP1 and GSP2 the Core Strategy.

Paragraph 32 states that development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe.

Paragraph 206 of the NPPF establishes that planning conditions must meet six tests and states that:

*“Planning conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.”*

Paragraphs 1-34 of the NPPG provide further guidance on the use of planning conditions, including that:

*“The 6 tests must all be satisfied each time a decision to grant planning permission subject to conditions is made.”*

### Assessment

#### Procedural Note:

As noted above in the Planning History section of the report, the new road bridge was approved in 2008 under application NP/DDD/0307/0192. An application to renew that permission was approved in July 2011 under application NP/DDD/0511/0487.

Condition 3, which is subject to the current application, refers to application NP/DDD/0511/0487. The applicant contends that application NP/DDD/0511/0487 has in fact expired and therefore

cannot be implemented. The earlier application, NP/DDD/0307/0192, was however implemented as a meaningful start on the development was made. That permission is therefore extant.

It is therefore acknowledged that the wording of condition 3 should in fact have referred to application NP/DDD/0307/0192, rather than to NP/DDD/0511/0487. This is however an administrative issue that does not relate to the planning merits of the condition.

### **Principle of Development**

The principle of the replacement employment space was fully considered under the previous application and was deemed to be acceptable. This remains the case and the purpose of the current application is solely to consider whether or not condition 3 is essential to make the development acceptable in planning terms and whether or not the condition meets the six tests set out within the NPPF and NPPG

### **Issue 1: Whether the approved development without a new road access would harm the proper planning of the area**

The principle of redeveloping the site for further industrial/business use is established in Saved Local Plan policy LB7. In addition a recent study 'The Bakewell Employment Land and Retail Review 2016', commissioned by the National Park Authority, concluded that *'The Riverside Business Park is a key industrial estate where continued employment use should be supported'....'There is a clear justification for retention of the site for continued employment use and the redevelopment of derelict buildings'.*

The Committee Minutes for the previous application note that one of the reasons for the imposition of condition 3 was because the piecemeal development of the site is not consistent with policy LB7. However, it is important to note that Policy LB7 is a permissive policy – it does not state that comprehensive redevelopment of the site and the provision of a new road bridge is a pre-requisite of any development at the site.

It is considered that the principle of the replacement employment space development, either with or without the road bridge, is acceptable and in accordance with policy E1 and does not conflict with policy LB7. As such, it is considered that the new access is not necessary to make the development acceptable in terms of the proper planning of the area.

This does not, however, necessarily mean that the condition is not necessary to address other material planning considerations in order to make the application acceptable. Whilst policy LB7 requires a new road bridge in the event of redevelopment delivering an increase in floor space, that does not automatically mean that new access arrangements cannot be justified in any other circumstances.

### **Issue 2: Highways Safety**

In order for the new road bridge (and therefore condition 3) to be necessary to make the development acceptable for highway reasons, it would need to be clearly demonstrable that the development without the bridge would result in a material intensification or change in vehicular movements over and above the existing situation or the 'fall back' position of any change that could occur without planning permission being required. If it can be demonstrated that there would be a material intensification or change in traffic movements, this must be to such an extent that it would result in harm to highways safety in order to make condition 3 necessary. It is noted that the NPPF makes it clear that development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe.

Furthermore, in providing guidance on the six conditions tests, the NPPG states that:

*“A condition cannot be imposed in order to remedy a pre-existing problem or issue not created by the proposed development.”*

Because of this, the existing problems caused by sub-standard accesses at the site do not justify the imposition of a condition for the new road bridge on the approved application that would result in a reduction in floor space. It is reiterated that for the condition to pass the test of relevance, it must be demonstrable that the development would directly result in an unacceptable intensification or other change in traffic movements.

The application is accompanied by a Transport Statement that concludes that the reduction in floor space that would arise from the proposed development would result in a reduction in vehicle movements to and from the site. It is acknowledged that this is a theoretical assessment based on TRICS database information and is therefore only indicative of typical vehicle movements.

The Authority does not at present have any contradictory evidence to demonstrate that either existing movements are lower than the TRICS database information or that the resultant movements would be significantly higher than forecast. The Authority has however commissioned an independent Highway Consultant to produce a report on the proposed development. The results of this are not available at the time of publication of this report but a verbal update of the findings will be made at the Planning Committee meeting. It is anticipated that the consultant's report will provide a clearer basis for either agreeing with the applicant's case or for refusing this application and defending the imposition of the condition at the appeal. The recommendation above is therefore framed to reflect this.

Letters of objection have noted that Pinelog, the occupier of the existing buildings that would be replaced, generate infrequent vehicle movements and that a different occupier of the new units could generate more intensive traffic movements. This concern is acknowledged and broadly agreed with. However, this view does not take into account the fall back position that a different operator in the same use class could use the existing buildings without the need for planning permission or that the existing operator could, in theory, change the nature of their business thereby resulting in increased traffic movements without the need for planning permission. In this respect, the assessment provided by the applicant based on the TRICS database is considered to be a reasonable assessment of the fall back position and is therefore of relevance, accepting that it may not be an accurate assessment of the existing 'on the ground' situation.

The Inspector's decision on the recently approved hotel-led development is considered to be of particular relevance and also represents a new material planning consideration that was not available to the Authority at the time that the previous application was determined.

Unlike the current proposal, for which there would be a reduction in floor space, the hotel development will result in an increase in floor space. However, the Planning Inspector rejected the Authority's opinion that this would lead to an unacceptable intensification in the use of sub-standard accesses. The Inspector stated that:

*“the proposed development would not significantly intensify use of the accesses to the extent that they would not be capable of handling the traffic generated or that highway safety would be harmed...”*

Given that the Planning Inspector concluded that the additional traffic that the hotel development would generate would not harm highway safety, it is considered that in light of that decision it can no longer be reasonably argued that the replacement employment space would harm highway safety if it was to continue to be accessed via Holme Lane and the existing A6 bridge, unless it can be demonstrated that it would significantly intensify the use of the existing accesses.



It is noted that construction and demolition traffic is of particular concern to local residents. This concern is noted and it is fully acknowledged that construction and demolition traffic would result in additional vehicle movements and disturbance during the construction and demolition phase. However, this would be for a temporary period. The provision of a permanent road bridge to address a temporary problem is not considered to be a reasonable measure. It is considered that construction and demolition traffic could be adequately controlled through a different condition for a management plan to be agreed and implemented.

### **Issue 3: Amenity and Character**

The Committee Minute for the previous application notes that Members were concerned about the visual impact of passing places. The provision of a new bridge access would alleviate the need for the creation of passing places at Holme Lane/Lumford. However, the Inspector for the hotel development application accepted the use of passing places and the provision of these is now a condition of the approval of that development. As such, passing places are likely to be created regardless of the outcome of this application. Therefore it can no longer reasonably be argued that Condition 3 is necessary to make the development acceptable by avoiding the need to provide passing places.

In terms of the impact on the amenity of local residents, in particular residents of Holme Lane and Lumford, the Inspector's decision for the hotel development is again considered to be of relevance. The Inspector dismissed the Authority's concerns that traffic associated with the hotel would cause significant harm to the amenity of local residents, noting:

*"The houses along Lumford are set back from the carriageway behind long front gardens along the northern side of the road. The few houses that are present on Holmford Lane are set closer to the carriageway. In response to the Park Authority's concerns a noise assessment has been carried out. The residential property chosen for the monitoring is at the eastern end of Lumford in a position closer to the highway than many houses along this access route. As a result, it is a representative location for monitoring. The noise report found that the predominant noise sources along Lumford are fast moving traffic along the A6 and the noise of water from the river. On the basis of the site visit and the lower speeds of traffic that use this access route, I agree with that assessment. The report found that the modelled noise levels resulting from the predicted increase in vehicles movements would be acoustically insignificant and not discernible. I have no good reason to disagree with that finding."*

And:

*"I therefore conclude that the proposed development would not have a material adverse impact upon the residential amenity of the occupants of the properties on Lumford and Holme Lane."*

It is acknowledged that the hotel will attract predominantly domestic, rather than commercial traffic. However, it will still require service vehicles as well as customer cars. Given that the hotel will lead to an increase in floor space and vehicle movements but that this was not considered to be detrimental to amenity by the Inspector, it is considered that it can no longer be reasonably argued that the replacement of existing employment space would be harmful to amenity unless it can be demonstrated that it would significantly intensify the use of the existing accesses.

### **Conclusion**

It is considered that, in light of the Planning Inspector's decision for the hotel-led development, that unless it can be demonstrated that it would significantly intensify the use of the existing accesses, condition 3 is not necessary to make the approved development acceptable in terms of highway safety, the character and amenity of the locality or in the interest of the proper

planning of the local area. If this cannot be demonstrated, then it is considered that condition 3 does not pass the six tests required for the imposition of planning conditions. In these circumstances officers would recommend that the condition should be removed and that alternative conditions for the provision of passing places and for a construction and demolition traffic management plan would be recommended. If, on the other hand, the recommendation of the independent traffic consultant commissioned by the Authority provides a clear justification for the imposition and retention of the condition, then the application should be refused and the appeal defended, with a robust defence against any application for costs. The recommendation of the consultant commissioned by the Authority is therefore critical in this instance. Given the timing of the appeal and the need for this advice, the recommendation above is framed to deal with both possible outcomes. A detailed update will be provided to Members at the meeting on 7 April.

### **Human Rights**

Any human rights issues have been considered and addressed in the preparation of this report.

### **List of Background Papers** (not previously published)

Nil