

**Application for the approval of appearance, landscaping, layout and scale of the employment area to the east of Spratsgate Lane Cirencester Gloucestershire**

| <b>Reserved Matters Application<br/>22/02749/REM</b> |   |
|--|---|
| Applicants:  | Tungsten Cirencester Limited and Bathurst Development Limited |
| Agent:   | Pegasus Planning Group  |
| Case Officer:  | Anthony Keown   |
| Ward Member(s):                                      | Councillor Gary Selwyn  |
| Committee Date:                                      | 10th of July 2024   |
| <b>RECOMMENDATION:</b>                               | <b>REFUSE</b>   |

**1. Main Issues:**

- (a) Noise

**2. Reasons for Referral:**

- 2.1 This application was considered by Members at their meeting on the 13th of March. It is being reported to Members again, as Cotswold District Council (CDC) and the Applicants have not been able to reach agreement on a satisfactory scheme to minimize and mitigate potential adverse impacts resulting from noise. The report prepared for the March meeting is included as Appendix I to this follow-on report. Information that frames the decision-making context is reiterated below for Members' convenience; e.g. site description, planning history, planning policy context, and scope of the application. Consultation responses received since the first report was prepared, which were reported to the March meeting within additional pages, are also reiterated below for Members' convenience. Please see Appendix I for all consultation responses received prior to preparation of the March report.

**3. Site Description:**

- 3.1 This application relates to land east of Spratsgate Lane and Wilkinson Road, Cirencester, which was previously used for grazing. More recently the northern part of the parcel was temporarily used to accommodate site offices and materials storage during the highway works to construct the new Spratsgate Lane roundabout and accesses.
- 3.2 The red line site area is approximately 2.95 hectares (ha). It is part of the Strategic Site south of Chesterton, which is allocated for housing and employment, within the Local Plan (Policy S2). An outline planning permission (OPP), which covers an overall area of approximately 120 ha, was granted in 2019 for development on the Strategic Site, which is now referred to as The Steadings. This reserved matters application (RMA) relates to Employment Area A, which is the first of three safeguarded employment areas within The Steadings.

- 3.3 The western boundary is defined by an existing hedgerow, although sections of the same have been removed to create previously approved accesses. The eastern boundary is defined by existing trees and hedgerow on the adjacent dismantled railway line corridor. The southern boundary is also defined by an existing hedgerow. The site itself is subdivided by an existing hedgerow and trees.
- 3.4 The site is relatively flat. Land slopes downwards gently from the central part of the site to its northern and southern edges. Elevation ranges from just over 117 m to around 120 m AOD.
- 3.5 Two high-voltage power lines cross the central part of the site and there are two associated pylons within it. A National Grid strategic gas pipeline crosses The Steadings along a broadly east-west alignment. There is a pressure reducer at the eastern end of this alignment, to the south-east of The Steadings site, at the termination of a high pressure gas main. That gas main, which is not on The Steadings site, follows a broadly north-south alignment. There is some above-ground infrastructure in the gas valve compound immediately south of this application site. The presence of these services was known when the outline planning application (OPA) was considered, and the constraints posed were factored into the master planning work.
- 3.6 The different land uses that surround the site have very different characters. To the west is The Steadings main site, which includes the future Employment Area B adjacent the western edge of Spratsgate Lane. To the north-west are existing residential properties on Somerford Road and Berkeley Road. To the north are new residential properties on Phase 1a of The Steadings, which is still under construction. To the north-east is the western end of the Love Lane Industrial Estate and an electricity substation. To the east are new residential properties on Orchard Field, which is also still under construction. To the south is the compound mentioned above. A small area of land immediately north of this application site is reserved for a small substation and kiosk, which are required as part of the Kemble Solar Farm.

#### **4. Relevant Planning History:**

- 4.1 On the 13th of July 2006 CDC granted OPP for the erection of 10 industrial/warehouse buildings for Use Classes B2 and B8 on the northern part of this site (06/00757/OUT).
- 4.2 On the 12th of August 2009 CDC again granted OPP for the erection of 10 industrial/warehouse buildings for Use Classes B2 and B8 on the northern part of this site (09/01480/OUT).
- 4.3 On the 3rd of April 2019, CDC granted OPP for a mixed-use development at the Strategic Site south of Chesterton, as per Local Plan Policy S2 (16/00054/OUT). The description of development was as follows:

*Demolition of existing buildings and the erection of up to 2,350 residential dwellings (including up to 100 units of student accommodation and 60 homes for the elderly), 9.1 hectares of employment land (B1, B2 and B8 uses), a primary school, a neighbourhood centre including A1, A2, A3, A4 and A5 uses as well as community facilities (including a health care facility D1), public open space, allotments, playing fields, pedestrian and cycle links (access points onto Tetbury Road, Somerford Road and Cranhams Lane) landscaping and associated*

*supporting infrastructure to include vehicle access points from Tetbury Road, Spratsgate Lane, Wilkinson Road and Somerford Road.*

- 4.4 OPP for The Steadings was granted subject to 69 planning conditions, and following the completion of two section 106 agreements. Matters reserved for later consideration are appearance, landscaping, layout and scale.

## **5. Planning Policies:**

### **National**

- National Planning Policy Framework (NPPF) - updated December 2023
- Planning practice guidance (PPG)
- National Design Guide - October 2019
- National Model Design Code (Parts 1 and 2) - June 2021

### **Cotswold District Local Plan 2011-2031**

- Policy S2 - Strategic Site, south of Chesterton, Cirencester
- Policy EC1 - Employment Development
- Policy EC2 - Safeguarding employment Sites
- Policy EN1 - Built, Natural and Historic Environment
- Policy EN2 - Design of the Built and Natural Environment
- Policy EN4 - The Wider Natural and Historic Landscape
- Policy EN7 - Trees, Hedgerows and Woodlands
- Policy EN8 - Biodiversity and Geodiversity: Features, Habitats and Species
- Policy EN14 - Managing Flood Risk
- Policy EN15 - Pollution and Contaminated Land
- Policy INF3 - Sustainable Transport
- Policy INF4 - Highway Safety
- Policy INF5 - Parking Provision
- Policy INF7 - Green Infrastructure
- Policy INF8 - Water Management Infrastructure

### **Cotswold District Council - Climate and Ecology**

- Climate Emergency Strategy 2020-2030
- Ecological Emergency Action Plan

## **6. Observations of Consultees:**

- 6.1 Summaries of all responses to consultation received prior to preparation of the March report are contained within Appendix I. The responses are available in full on the Council's website.
- 6.2 Two further letters of objection were received from local residents after the March report had been prepared, which were reported to Members at the March meeting within additional pages. A summary of the points made is reiterated below for Members' convenience. Again, the responses are available in full on the Council's website.

- The Steadings development has caused untold damage to local roads, specifically Somerford Road, Wilkinson Road and Spratsgate Lane.
- These proposals will add to the problem and increase the number of sub-contractors' vehicles parked on Wilkinson Road, which cause traffic delays and blind spots.
- CDC wants to champion more environmentally friendly ways of getting around, but the use of bicycles as an alternative is currently impossible.
- Until the local road surfaces are vastly improved, I object to this development.
- The reduction in working hours is welcomed. However, working on Bank Holidays is not precluded. This must be included in the conditions.
- We note that the deadline for consultation is after the Planning and Licensing Committee meeting.

## **7. Applicant's supporting information:**

7.1 Following a period of negotiations, the joint Applicants' team formally submitted revised application material in November 2023. Additional information has been submitted since then. All of the revised material is available to view on CDC's website.

7.2 The key drawings and the proposed scheme of noise mitigation are listed below.

- Proposed Site Plan - Drawing Number P407 Revision U - dated 02.01.24
- Boundary Treatments - Drawing Number P406 Revision K - dated 29.05.24
- Unit 1 Floor Plan - Drawing Number P1-100 Revision D - dated 31.10.23
- Unit 2 Floor Plan - Drawing Number P2-100 Revision E - dated 31.10.23
- Unit 3 Floor Plan (showing units 3, 4 and 5) - Drawing Number P3-100 Revision E - dated 31.10.23
- Unit 1 Elevations - Drawing Number P1-200 Revision D - dated 10.07.23
- Unit 2 Elevations - Drawing Number P2-200 Revision G - dated 10.07.23
- Unit 3 Elevations (showing units 3, 4 and 5) - Drawing Number P3-200 Revision F - dated 10.07.23
- Acoustics Report on existing noise climate - proposed commercial development - Revision 6 - dated 10.04.24
- Scheme of Noise Mitigation - dated 29.05.24

## **8. Officer's Assessment:**

### **Scope of this application**

8.1 This application seeks approval of the reserved matters relating to a Sub-Phase of The Steadings, which is referred to in the OPP as Employment Area A. The joint Applicants are Tungsten Cirencester Limited (TCL) and Bathurst Development Limited (BDL).

- 8.2 The principle of development is established by The Steadings OPP. Prior to that, CDC had granted OPP for employment buildings on the northern part of this site. CDC and the Applicants have therefore moved beyond the question of whether any development of the type proposed may be acceptable, to the question of what form it should take.
- 8.3 Access was resolved at the OPP stage. The reserved matters are appearance, landscaping, layout and scale. They have been considered within the context of national and local planning policies and priorities, and specifically within the context of the master planning regime for The Steadings (please see Appendix I).

### **Environmental Impact Assessment**

- 8.4 The OPA was an “EIA application” as defined in the Environmental Impact Assessment (EIA) Regulations. It was accompanied by an Environmental Statement (ES). RMAs submitted pursuant to the OPP are “subsequent applications” as defined in the EIA Regulations, and are therefore also EIA applications.
- 8.5 In determining this RMA, CDC is legally required to reach a reasoned and up-to-date conclusion on the significant effects of the proposed development on the environment, taking into account its examination of the environmental information. The environmental information submitted to support the OPA has since been updated where necessary. Officers have taken the original ES and the updated environmental information into account when assessing the merits of these proposals.

### **The development plan**

- 8.6 Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that “*If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise.*” The starting point for the determination of this application is therefore the current development plan for the District, which is the adopted Cotswold District Local Plan 2011 - 2031. The policies and guidance within the revised NPPF are also a material planning consideration.

### **The Committee’s March resolution**

- 8.7 The Committee’s March resolution is included below for Members’ convenience.

*“RESOLVED: That the Planning Committee DELEGATES AUTHORITY to the Interim Head of Planning Services in consultation with the Chair of Planning and Licensing Committee to determine this application subject to:*

- a) the completion of a UU prior to the Decision Notice being issued, which secures a financial contribution sufficient to enable the local highway authority to progress and implement the parking restrictions described in this report, and which also secures the submission of (and the opportunity to determine) an RMA for the additional landscaping described in this report;*
- b) agreement of a satisfactory scheme for controlling noise emitted from the development, if such a scheme has not already been agreed prior to the Planning Committee meeting;*
- c) the suggested draft conditions set out in this report;*

- d) *delegated authority being given to the Interim Head of Planning Services to amend and/or add to the suggested draft conditions prior to the Decision Notice being issued, where such amendments would be legally sound and would not deviate significantly from the purpose of the draft conditions;*
- e) *expiry of the necessary additional public consultation exercise;*
- f) *careful consideration being given to any further representations received in response to that additional public consultation exercise; and*
- g) *referring the application back to the Planning Committee if any new or altered material considerations arise before the grant of reserved matters approval which, in the view of the Interim Head of Planning Services, may have the effect of altering the resolution.”*

## **Events since the March meeting**

### Technical work on the noise issue

- 8.8 As the Environmental Regulatory Services case officer left CDC just before the March Committee meeting, officers appointed Nova Acoustics (hereinafter referred to as Nova) to provide specialist acoustic advice.
- 8.9 Nova provided advice in a Technical Memo dated the 8th of May. It responds to the Applicants’ noise evidence, which is listed in section 9 of this report. It also sets out the findings of Nova’s assessment of the site.

### Consultation with the Chair

- 8.10 Having considered the advice from Nova, officers prepared a briefing note for the Chair, which provided the context for a discussion between officers and the Chair on the 22nd of May 2024. On the basis of the assessment and recommendation within the briefing note, and subject to two specified revisions, the Chair agreed to officers approving the application under delegated powers.

### Further negotiations with the Applicants

- 8.11 Officers advised the Applicants of the outcomes of consultation with the Chair in an email dated the 22nd of May, and requested submission of a revised ‘Scheme of Noise Mitigation’ document.
- 8.12 The Applicants’ planning consultant responded on the 30th of May, submitting an alternative (and unsatisfactory) ‘Scheme of Noise Mitigation’ document. The covering letter confirmed that the Applicants did not consider the mitigation measures proposed by CDC to be necessary.
- 8.13 Officers and the Applicants subsequently agreed that the application should be reported to the Committee again at its July meeting.

## **The noise issue**

- 8.14 The potential for adverse impacts resulting from noise was considered at the OPA stage. The OPP includes two planning conditions, which were intended to address Policy EN15 concerns. OPP condition 65 requires RMAs involving commercial and

employment development to be accompanied by proposed hours of operation. OPP condition 68 requires such RMAs to also be accompanied by a “scheme” for the control of noise emitted from the use. This approach was taken because the only conditions which can be imposed when reserved matters are approved are conditions directly relating to those reserved matters. Conditions relating to anything other than those reserved matters can only be imposed when OPP is granted (PPG, Paragraph: 025 Reference ID: 21a-025-20140306).

#### Our assessment

- 8.15 Having carefully considered the advice from Nova, we believe that the following measures are necessary to minimize and mitigate potential adverse impacts resulting from noise:
- a) the buildings meeting a specified standard of noise insulation;
  - b) the provision of acoustic fencing in specified locations;
  - c) subsequent submission and approval of details of any installed external plant or machinery, which is not shown on the submitted drawings;
  - d) precluding use of the service yards (including deliveries) between the hours of 23:00 and 07:00;
  - e) subsequent submission and approval of Noise Management Plans (NMPs) prior to use; and
  - f) reducing noise emissions from use of the service yards at units 2 and 3 in particular (see below).
- 8.16 CDC could secure a), b), and c) through conditions attached to any approval of reserved matters. CDC could also partially secure f) in the same way, by requiring units 2 and 3 to have internal loading bays. Nova advise that even with the other mitigation measures in place, there could still be significant exceedance of background sound levels for residential properties at Orchard Field, as a consequence of noise from loading/unloading operations within the service yards of units 2 and 3. They therefore recommended that the Applicants consider internal loading bays at these units.
- 8.17 The Applicants’ position is described below. While they do not accept that any additional mitigation measures are necessary (i.e. beyond those proposed by them prior to the March Committee meeting), there are three contested matters that prevent CDC from approving this application subject to conditions.
- Firstly, the Applicants want a different approach to d), with use of the service yards (including deliveries) precluded between the hours of 23:00 and 06:00. We are unable to support this proposal. This matter goes to OPP condition 65.
  - Secondly, the Applicants have withdrawn their previous agreement to the submission and approval of NMPs prior to use. Again, we are unable to support this aspect of the current proposals. This matter goes to OPP condition 68.
  - Thirdly, the Applicants are opposed to internal loading bays for units 2 and 3, and have not offered any other solution to reduce/manage potential noise emissions from use of the service yards at those units. Again, we are unable to support this

aspect of the current proposals. This matter goes to OPP condition 68, and potentially also to OPP condition 65.

- 8.18 Prior to preparing this report, we advised the Applicants that the application could be approved subject to conditions, providing they were willing to address the three matters above. For the avoidance of doubt, the unilateral undertaking (UU) referred to in sub-paragraph a) of the March Committee resolution would also need to be completed before CDC could grant approval of reserved matters.

#### The Applicants position

- 8.19 The Applicants stress that they have no wish to be disruptive. From their perspective, they are seeking to secure approval of reserved matters for a deliverable, commercial development, which would be attractive to future occupiers. They point out that the employment elements of The Steadings are just as important as the residential elements. They consider that CDC's proposed noise mitigation measures would be detrimental to the development's deliverability, and to its attractiveness within the market place.
- 8.20 They also refer to the part of OPP condition 68 that requires the "*scheme of mitigation*" to ensure that noise levels in the nearest gardens and public open spaces do not exceed 55 dB LAeq 1 hour when measured at any period (see below). The Applicants consider that their noise evidence, and Nova's assessment of the site demonstrate that this threshold will not be exceeded.

#### Interpretation of OPP condition 68

- 8.21 As described above, OPP condition 68 requires RMAs involving commercial and employment development to be accompanied by a "*scheme*" for the control of noise emitted from the use. It goes on to set out two requirements for any such scheme. Firstly, it must be based on the noise rating and methodology laid out in BS 4142: 2014 'Methods for rating and assessing industrial and commercial sound.' Secondly, it should ensure that noise levels in the nearest gardens and public open spaces as a result of the carrying out of the uses do not exceed 55 dB LAeq 1 hour when measured at any period (in accordance with the World Health Organisation figure contained in BS8233:2014).
- 8.22 In the BS 4142 methodology, the background sound level forms the basis for determining the level of impact associated with an industrial site/development. Typically, the greater the exceedance above the background sound level, the greater the magnitude of the impact. To put that into perspective, a difference of around +5 dB is likely to be an indication of an adverse impact, depending on the context. A difference of around +10 dB or more is likely to be an indication of a significant adverse impact, depending on the context. The lower the rating level is relative to the measured background sound level, the less likely it is that the specific sound source will have an adverse impact or a significant adverse impact.
- 8.23 Case law has established that there are no special rules for the interpretation of planning conditions. A key question is what a reasonable reader would understand the words to mean when reading the condition in the context of other conditions and of the consent as a whole. The reason for imposing the condition is important in this

regard. OPP condition 68 was imposed to protect the amenity of the locality, especially for people living and/or working nearby, in accordance with Local Plan Policy EN15 and the NPPF. The NPPF describes how planning decisions should (among other things) mitigate, and reduce to a minimum, potential adverse impacts resulting from noise from new development, and avoid noise giving rise to significant adverse impacts on health and the quality of life. Local Plan Policy EN15 requires development not to result in unacceptable risk to the amenity of existing land uses through (among other things) generation of noise. The BS 4142 methodology is entirely consistent with the NPPF and Policy EN15, and is therefore entirely consistent with the reason for imposing OPP condition 68.

- 8.24 The Applicants argue that the second requirement of OPP condition 68 should be read as the critical threshold. In their view, providing the 55 dB LAeq 1 hour level is not exceeded, the purpose of imposing the condition is satisfied. The Applicants' evidence gives the daytime background sound level as 37 dB. A rating level of 55 dB would therefore involve exceedance of +18 dB, well above the level that BS 4142 cites as an indication of a significant adverse impact. Taking this part of OPP condition 68 to be the critical threshold would be entirely inconsistent with the reason for imposing the condition. We therefore disagree with the Applicants on this point.
- 8.25 Bearing in mind the reason for imposing OPP condition 68, and the fact that the BS 4142 methodology is perfectly aligned with that reason, we consider the second requirement as an obvious anomaly in the condition. Moreover, we consider that it would be irresponsible to accept the Applicants' interpretation of the condition.

## **9. Conclusion**

- 9.1 We agree with the Applicants that the employment elements of The Steadings are just as important as the residential elements. For that reason, we would much prefer to be able to recommend approval of this application. Had officers been determined to recommend refusal, it would have been reasonable to do that towards the end of 2022, given that the original application proposals largely disregarded CDC's pre-application advice of May 2022. However, rather than recommending refusal at that point, officers chose to work through the issues in the hope of securing mutually acceptable proposals.
- 9.2 It is also important to bear in mind that the OPP allows for both Class B2 (General industrial) and Class B8 (Storage or distribution) uses on Employment Area A. Given the range of potential uses that fall within these classes, there is uncertainty about the exact nature of future operations, their sound emission characteristics, and potential sound power levels. This marks Employment Area A as distinct from the other two Employment Areas at The Steadings, where the OPP only allows for former Class B1 (Business) uses.
- 9.3 CDC has already offered the Applicants a route to conditional approval of this application. That would require precluding use of the service yards for an extra hour to 07:00 (i.e. the last hour of the night period). It would also require a commitment to the submission and approval of NMPs, which the Environment Agency describe as an excellent way of demonstrating that site operations are properly controlled. It would also require measures to ensure that potential noise emissions from use of the

service yards at units 2 and 3 would not adversely affect the amenity of residential properties at Orchard Field, particularly during the evening period (i.e. 19:00 to 23:00). Nova advise that even with the other mitigation measures in place, loading/unloading operations in those service yards could result in exceedance of +9 dB for homes in Orchard Field. CDC's requirement is that this potential for significant adverse impact be carefully managed. We consider all three of the above to be reasonable requirements for a high-quality development.

- 9.4 Given that CDC would prefer to grant conditional approval, we are seeking legal advice on whether an additional condition (or conditions) could be imposed on any approval of reserved matters to secure the above requirements. Taking legal advice on this question seemed prudent, given the limitations described in PPG.
- 9.5 The recommendation to refuse will of course be reconsidered if the Applicants confirm before the July Committee meeting that they are willing to satisfactorily address the matters above. It will also be reconsidered if CDC receives legal advice confirming that its requirements could legitimately be secured by condition(s). For the avoidance of doubt, if the recommendation were to change, the UU would still need to be completed before CDC could grant approval of reserved matters.
- 9.6 Failing the above, we recommend that Members refuse this application on the grounds set out below. The first reason reflects the fact that the application is not supported by a satisfactory scheme to minimize and mitigate potential adverse impacts resulting from noise. The second reason reflects the fact that the UU has not yet been completed.

## **10. Proposed reasons for refusal:**

1. The application is not supported by a satisfactory scheme, including acceptable proposals for hours of operation, to minimize and mitigate potential adverse impacts resulting from noise. The development as proposed would therefore result in unacceptable risk of significant adverse impacts on the amenity of neighbouring residential properties contrary to Local Plan Policy EN15 and to the National Planning Policy Framework.
2. A unilateral undertaking is necessary for two reasons. Firstly, to secure a financial contribution to enable the local highway authority to progress and implement parking restrictions to prevent overspill parking on the local road network. Secondly, to secure additional tree planting between the development and Wilkinson Road and Spratsgate Lane. As the required unilateral undertaking has not been completed, the proposed development is unsatisfactory in the following respects. Firstly, it is likely to result in an unacceptable impact on highway safety, thereby undermining the management of the local road network contrary to Local Plan Policy INF5. Secondly, it does not include sufficient planting of native trees between the employment buildings and Wilkinson Road and Spratsgate Lane to soften the development edge, screen it from adjacent land uses, and create a sense of landscape maturity, and is therefore contrary to mandatory requirements of the Phase I Detailed Design Code, and to the green infrastructure and design standards requirements of Policy EN1 sub-paragraphs b) and e) respectively.