

Borough Green
Borough Green And
Long Mill

14 June 2016

TM/16/01859/FL

Proposal: Demolition of 6 industrial buildings and construction of a replacement industrial unit and a flexible change of use within Use Classes B1, B2 and B8 as well as use by Robert Body Haulage for parking and maintenance of vehicles and office use as an administrative base

Location: Development Site Long Pond Works Wrotham Road Borough Green Sevenoaks Kent

Applicant: Robert Body Haulage

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1. Description:

- 1.1 Members will recall that this application was originally reported to APC2 on 14 December 2016, with a recommendation to refuse planning permission. The Planning Committee deferred determination of the application to enable officers to advise further on the possible existence of very special circumstances in light of the requirements of the NPPF as set out at paragraphs 87 – 89.
- 1.2 Members are reminded that none of the exemptions in paragraph 89 of the NPPF apply in this case (as set out in the annexed report) and therefore in order to satisfy Green Belt policy requirements, there must be “very special circumstances” justifying this development if planning permission is to be granted.
- 1.3 In deferring determination of the application, the Planning Committee also requested that officers provide a list of planning conditions that might be imposed should the Committee consider that very special circumstances outweighing the harm to the Green Belt did exist and were minded to grant planning permission on this basis.
- 1.4 Copies of the previous Committee and Supplementary reports are annexed for ease of information.

2. Determining Issues:

- 2.1 Since the previous deferral, the agent for the applicant has submitted a statement outlining what he considers to be the case for very special circumstances in this instance. In making this statement, the agent considers there to be a “*significant number of matters*” that, in their view, amount to very special circumstances outweighing the identified harm to the Green Belt. For the avoidance of any doubt, these are reproduced in full below:

“The proposal results in a reduction of footprint and a reduction in dispersal such that in overall terms there is no increased impact on openness;

While some parts of the replacement building are taller than some of the existing buildings, they are dug into the ground such that actual impact is minimised, and no greater than currently exists;

The proposal relates to two existing businesses and the intention is to meet the needs of those businesses to help preserve jobs as well as to provide good quality speculative floor-space;

The majority of people employed in the two existing businesses (significantly in excess of 10) are local residents living within a two mile radius;

The current buildings have structural issues that require significant investment. The current buildings are not well suited to modern business needs with some of the eaves heights meaning that they are only suitable for a relatively limited market and for this reason there is little point the owner investing in the repair of the buildings. Investment in floor space that is fit for the intended purpose is a matter of significant weight;

The construction of buildings suitable for the market would be consistent with the approach taken at Nepicar Park, where buildings 2m higher than those applied for were considered acceptable;

The replacement buildings will have no greater visual impact than what is being replaced when seen from public vantage points and are lower than other buildings on the site and lower than storage that takes place on the adjacent site and could take place on the application site, so there is no additional impact;

There is potential for new landscape planting on surrounding "blue" land that could be secured by condition. This could otherwise not be achieved".

2.2 The agent also goes on to question the need for very special circumstances to be demonstrated given that the site is a major developed site within the Green Belt meaning that policy M1 of the DLA DPD applies and his assertion that the development complies with this policy.

2.3 These arguments can be grouped into several main themes as follows, and it will be these on which the basis of my assessment will follow:

Absence of harm:

2.4 The agent argues that in this case the proposed footprint would be reduced and consolidated and that the height would be limited through digging down, meaning that there would be no "actual" harm to the openness of the Green Belt over and above the definitional harm arising from the fact that the development is inappropriate development.

2.5 In terms of the policy underlying Section 9 of the NPPF any inappropriate development in the Green Belt is by definition harmful and harms openness as a

result. Quite simply, it is well established in law that the absence of harm is not a factor capable of amounting to very special circumstances. I therefore do not intend to explore the arguments set out concerning relative footprints and heights any further.

Compliance with policy and proposed mitigation:

- 2.6 The agent also argues compliance with development plan policies, the lack of visual harm arising from the proposal and the potential mitigation of visual appearance through additional tree planting on adjoining land.
- 2.7 As I have explained, the absence of harm is not capable of amounting to a very special circumstance. Furthermore, the Courts have held that the existence of very special circumstances must go beyond straightforward compliance with the normal development control policy requirements. As such, the fact that the development would not, in the view of the applicant, have any greater visual impact than the buildings to be replaced combined with the assertion that planting could be achieved to afford screening to the development, are matters that are normal requirements of planning policy in assessing any development proposals and therefore are not “very special” in terms of outweighing the identified harm to the Green Belt.
- 2.8 Furthermore, in response to the references to the visibility of the site from surrounding public vantage points and the suggestion of screening through landscaping measures, it is important to recognise the difference between the Green Belt concept of openness and the ordinary planning consideration of visual impact. Development can be harmful to the openness of the Green Belt despite the fact that it cannot be seen and perhaps has little visual impact. Again, this is a matter which has been determined by the court. The two concepts are distinct because the development is harmful to openness *by definition* quite irrespective of its impact in terms of its visual impact.
- 2.9 As such, these matters are not capable in law of amounting to, or contributing to a cumulative case, of very special circumstances; they are simply matters that are required of all good quality development across the Borough.

Economic considerations:

- 2.10 The planning agent has set out that there would be benefits to the two existing businesses on site plus employment benefits for local people arising from the proposed development and that the substantial investment needed to improve the existing buildings on site would not be equitable. Reference has also been made to the nearby Nepicar Park development in terms of a precedent having been set.
- 2.11 It is accepted that the contribution of development towards supporting economic growth is capable of amounting to a very special circumstance. Indeed, paragraphs 18 and 19 of the NPPF support sustainable economic growth, on

which significant weight should be placed. Paragraph 28 supports a prosperous rural economy and confirms the commitment to supporting economic growth in rural areas to create jobs and prosperity. It advises that support should be given for the sustainable growth and expansion of all types of business and enterprise in rural areas through well designed new buildings.

- 2.12 Improvements to this site through built development would accord with these wider aims. However, it is important to recognise that the planning system would not be able to seek to control the specific occupiers of the resultant floorspace and similarly would have no jurisdiction in terms of who might be employed by those companies. Rather than relying on any kind of specific local benefits as set out by the applicant, those benefits would simply be in the wider sense of providing commercial floorspace and associated investment within the Borough.
- 2.13 Notwithstanding the fact that the planning system does not operate within the context of precedents, I do not consider that there are any specific or useful comparisons that can be drawn between this application site and Nepicar Park. The site specific and locational contexts are far removed and have little bearing on the considerations of this case.
- 2.14 Whilst economic benefits in the broadest of senses could potentially amount to a case of very special circumstances, the case put forward in this particular respect is limited. There is in fact little quantifiable evidence provided to suggest what those benefits might be in real terms and the reliance on the local connections of occupiers and employees in an attempt to justify very special circumstances is not tenable in my view.

Conclusions:

- 2.15 I would remind Members that the tests regarding very special circumstances as set out in paragraphs 87 and 88 of the NPPF are as follows:

“87. As with previous Green Belt policy, inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.”

“88. When considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. ‘Very special circumstances’ will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.”

- 2.16 Matters which may or may not constitute very special circumstances are ultimately for the Courts to determine, and the limitations of this application in that context are summarised within the preceding assessment. However, the determination as to whether very special circumstances exist within that legal framework is a matter for the decision maker. The weight to give to the various elements identified which

either individually or cumulatively are both capable of and considered to constitute very special circumstances is a matter of planning judgement and must be weighed against the Green Belt harm by way of inappropriateness, and any other harm that may exist. In this respect, whether very special circumstances exist is the ultimate issue to be determined and the critical question on the path to that determination is whether such circumstances *clearly* outweigh the harm by reason of inappropriateness and any other harm.

- 2.17 The Planning Committee must therefore give due consideration to the prevailing circumstances of this case, either individually or cumulatively, and to determine whether or not they clearly outweigh the harm and in so doing has to exercise a judgement and assess the quality of factors according to planning principles and considerations.
- 2.18 It remains my judgement that the circumstances put forward by the agent in seeking to justify this development are either not capable of amounting to very special circumstances as a matter of law or, where they are capable of amounting to very special circumstances, do not outweigh the harm to the Green Belt in this case sufficiently to allow for a grant of planning permission. As such, my recommendation remains that planning permission should be refused for the reasons set out at paragraph 3.1 of the report below.

Suggested planning conditions:

- 2.19 Notwithstanding my conclusions above, the application was also deferred so that officers could suggest potential conditions if Members are minded to grant planning permission contrary to Officer's recommendation. The suggested conditions are set out at paragraph 3.2 of the report. In general terms, these would seek to control the aesthetics of the building and wider site, technical matters including contamination, noise and drainage and the logistics of the demolition and development itself.
- 2.20 In terms of the demolition aspects, the applicant has indicated through supporting information submitted during the course of the application that the demolition and redevelopment of the site would take place on a phased basis. The information submitted in this regard suggested a phased approach which could potentially render the scheme partially implemented insofar that new buildings would be constructed with some of the older existing buildings being retained for an unspecified period of time, which could be unacceptable in visual terms. As such, should Members be minded to grant planning permission contrary to the recommendation set out below, a condition requiring a detailed phasing plan should be imposed to ensure that the development comes forward in an acceptable way.

3. Recommendation:

- 3.1 **Refuse planning permission** for the following reasons:

Reasons

- 1 The site lies within the Metropolitan Green Belt where there is a strong presumption against permitting inappropriate development, as defined by paragraph 89 of the National Planning Policy Framework and Policy CP3 of the TMBCS 2007. The proposal would result in a significant increase in the height and bulk of the existing buildings, and would therefore have a greater impact on the openness of the Green Belt, contrary to Policy M1 of the DLADPD 2008. The Local Planning Authority does not consider that any very special circumstances have been demonstrated to justify setting aside the policy objections.
- 2 The site lies within the designated countryside. The Local Planning Authority does not consider that the proposal would improve the visual appearance of the countryside. Consequently, the development does not fall within any of the categories of development listed within policy CP14 of the TMBCS 2007 as being acceptable, in principle, within the countryside.
- 3.2 Should the Planning Committee be minded to grant planning permission contrary to the recommendation set out above, the following planning conditions are recommended:

Conditions:

- 1 The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason: In pursuance of Section 91 of the Town and Country Planning Act 1990.
- 2 No development shall take place until details and samples of all materials to be used externally have been submitted to and approved by the Local Planning Authority, and the development shall be carried out in accordance with the approved details.

Reason: To ensure that the development does not harm the character and appearance of the area or the visual amenity of the locality.
- 3 The premises shall be used for Class B1(b) or (c) Business use, B2, B8 or haulage offices only and for no other purpose (including any other purpose in Class B1 of the Schedule to the Town and Country Planning (Use Classes) Order 1987, or in any provision equivalent to that Class in any statutory instrument amending, revoking and re-enacting that Order).

Reason: To protect the amenities of neighbouring occupiers and to ensure that the development does not harm the character of the area or affect highway safety
- 4 No development shall take place until a plan showing the finished floor level of the building and finished ground levels within the site in relation to existing ground

levels has been submitted to and approved by the Local Planning Authority. The works shall be carried out in strict accordance with the approved details

Reason: To ensure that the development does not harm the character of the area or visual amenity of the locality.

- 5 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order amending, revoking and re-enacting that Order) no development shall be carried out within Class I, O, P or T of Part 3, or Class H of Part 7, of Schedule 2 of that Order unless planning permission has been granted on an application relating thereto

Reason: To control development that could otherwise be carried out under permitted development rights that may have the potential to harm the character of the area and highway safety.

- 6 No retail sales shall take place from the premises

Reason: . The site is not located in a suitable location for retail sales.

- 7 Notwithstanding the provisions of Section 55 of the Town and Country Planning Act 1990 or the Town and Country (General Permitted Development) Order 2015 (or any order amending, revoking and re-enacting that Order), the layout of the development shall not be varied by means of sub-division or amalgamation of any units, nor by the insertion of additional floors, without the prior permission in writing by the Local Planning Authority.

Reason: To enable the Local Planning Authority to assess the impact of any variation in parking and vehicle circulation in the interests of safe and free flow of traffic.

- 8 The building(s) shall not be occupied until the areas shown on the submitted layout as turning and vehicle parking space have been provided, surfaced and drained. Thereafter those areas shall be kept available for such use and no permanent development, whether or not permitted by the Town and Country Planning (General Permitted Development) Order 2015 (or any order amending, revoking and re-enacting that Order) shall be carried out on the land so shown (other than the erection of a garage or garages) or in such a position as to preclude vehicular access to this reserved turning and parking space.

Reason: Development without adequate vehicle turning and parking provision is likely to lead to hazardous on-street parking.

- 9 The premises shall not be in use (including for any deliveries to or from the site) outside the hours of 07:00 to 19:00 Mondays to Fridays, with no working on Saturdays, Sundays or Public and Bank Holidays, unless otherwise agreed in writing by the Local Planning Authority.

Reason: To avoid unreasonable disturbance to nearby residential properties.

- 10 No materials, plant or other equipment of any description shall be kept or stored in the open other than in areas and to such heights as may be approved in writing beforehand by the Local Planning Authority.

Reason: To avoid obstruction of vehicle parking/turning areas and to ensure the character and appearance of the development and the locality is not significantly harmed.

- 11 No development shall take place until there has been submitted to and approved by the Local Planning Authority a scheme of landscaping and boundary treatment (including the acoustic fencing along the site frontage). All existing trees to be retained shall be shown and landscape plantings across the front of the site shall include suitable species with a high urban air quality score. All planting, seeding and turfing comprised in the approved scheme of landscaping shall be implemented during the first planting season following occupation of the buildings or the completion of the development, whichever is the earlier. Any trees or shrubs removed, dying, being seriously damaged or diseased within 10 years of planting shall be replaced in the next planting season with trees or shrubs of similar size and species, unless the Authority gives written consent to any variation. Any boundary fences or similar structures as may be approved shall be erected prior to first occupation of the building(s).

Reason: Pursuant to Section 197 of the Town and Country Planning Act 1990 and to protect and enhance the appearance and character of the site and locality.

- 12 No development shall commence until details of a scheme for the storage and screening of refuse has been submitted to and approved by the Local Planning Authority. The approved scheme shall be implemented before the development is occupied and shall be retained at all times thereafter.

Reason: To facilitate the collection of refuse and preserve visual amenity.

- 13 No external lighting shall be installed on the site, except in accordance with a scheme of external lighting that has been submitted to and approved by the Local Planning Authority. The development shall thereafter be carried out in accordance with the approved scheme.

Reason: To ensure the character and appearance of the development and the rural amenity of the locality is not harmed.

- 14 No development shall take place until details of how the development will be connected to mains drainage have been submitted to and approved by the Local Planning Authority, and the work shall be carried out in strict accordance with those details.

Reason: To ensure that the development is served by satisfactory drainage.

- 15 No development approved by this permission shall be commenced prior to noise attenuation measures being identified by the developer/ applicant, submitted to and approved by the Local Planning Authority. In determining any noise impact, regard shall be given to relevant standards such as BS4142:2014. Further information on compliance with this condition should be sought from the Local Planning Authority. At any time when the nature of the work/ business within any of the units changes, the incoming tenant/ occupier shall carry out a noise impact assessment of their proposed use and provide adequate noise insulation/ attenuation work following discussion and agreement with the Local Planning Authority prior to the proposed occupation. In determining the noise impact, regard shall be given to relevant standards such as BS4142:2014. Use of the units shall not commence until the noise insulation/ attenuation works have been carried out to the satisfaction of the Local Planning Authority.

Reason: To protect the amenities of nearby dwellings.

- 16 No drainage system for the infiltration of surface water drainage into the ground is permitted other than with the express written consent of the local planning authority, which may be given for those parts of the site where it has been demonstrated that there is not resultant unacceptable risk to controlled waters. The development shall be carried out in accordance with the approved details.

Reason: To protect the underlying groundwater from the risk of pollution and in accordance with the requirements of the NPPF.

- 17 Piling or any other foundation designs using penetrative methods shall not be permitted other than with the express written consent of the Local Planning Authority, which may be given for those parts of the site where it has been demonstrated that there is no resultant unacceptable risk to groundwater. The development shall be carried out in accordance with the approved details.

Reason: To protect the underlying groundwater from the risk of pollution.

- 18 No development of any phase of the development (or part thereof) shall take place other than as required as part of any relevant approved site investigation works until the following have been submitted to and approved by the Local Planning Authority:

(a) results of the site investigations (including any necessary intrusive investigations) and a risk assessment of the degree and nature of any contamination on site and the impact on human health, controlled waters and the wider environment. These results shall include a detailed remediation method statement informed by the site investigation results and associated risk assessment, which details how the particular phase of development (or part thereof) will be made suitable for its approved end use through removal or

mitigation measures. The method statement must include details of all works to be undertaken, proposed remediation objectives, remediation criteria, timetable of works and site management procedures. The scheme must ensure that the particular phase of development (or part thereof) cannot be determined as Contaminated Land as defined under Part 2A of the Environmental Protection Act 1990 (or as otherwise amended).

The submitted scheme shall include details of arrangements for responding to any discovery of unforeseen contamination during the undertaking hereby permitted. Such arrangements shall include a requirement to notify the Local Planning Authority in writing of the presence of any such unforeseen contamination along with a timetable of works to be undertaken to make the site suitable for its approved end use.

(b) prior to the commencement of each phase of the development (or part thereof) the relevant approved remediation scheme shall be carried out as approved. The Local Planning Authority should be given a minimum of two weeks written notification of the commencement of the remediation scheme of works.

Reason: In the interests of amenity, public safety and human health and in accordance with the National Planning Policy Framework 2012 (paragraph 121).

- 19 Following completion of the approved remediation method statement for each phase of the development (or part thereof), and prior to the first occupation of the relevant phase a relevant verification report that scientifically and technically demonstrates the effectiveness and completion of the remediation scheme at above and below ground shall be submitted for the information of the Local Planning Authority.

The report shall be undertaken in accordance with DEFRA and the Environment Agency's Model Procedures for the Management of Land Contamination, CLR 11. Where it is identified that further remediation works are necessary, details and a timetable of those works shall be submitted to the Local Planning Authority for written approval and shall be fully implemented as approved.

Thereafter, no works shall take place within any phase of the development (or part thereof) such as to prejudice the effectiveness of the approved scheme of remediation.

Reason: In the interests of amenity, public safety and human health and in accordance with the National Planning Policy Framework 2012 (paragraph 121).

- 20 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 a remediation strategy to the local planning authority detailing how this unsuspected contamination shall be dealt with and obtained written approval from the local planning authority. The remediation strategy shall be implemented as approved.

Reason: In the interests of amenity and public safety and in accordance with the National Planning Policy Framework 2012 (paragraph 121).

- 21 Prior to the commencement of the development hereby approved a scheme for the phasing of the development including the phasing and timetable for the demolition of the existing buildings shown to be removed relative to the construction of the new buildings, shall be submitted to and approved by the Local Planning Authority, and the development shall be carried out in strict accordance with the approved details.
- 22 Reason: To avoid an over-intensive use of the site and in the interests of highway safety.

Informatives:

- 1 In implementing the above consent, regard should be had to the requirements of the Bye-Laws of the Environment Agency, Orchard House, Endeavour Park, London Road, Addington, West Malling, Kent ME19 5SH
- 2 During the demolition and construction phase, the hours of working (including deliveries) shall be restricted to Monday to Friday 07:30hours – 18:30hours

Contact: Glenda Egerton