

PLANNING APPLICATION NUMBER:P07/0545

Type of approval sought	Full Planning Permission
Ward	St. Thomas's
Applicant	Penbrick Ltd
Location:	LAND TO THE EAST OF, BLOWERS GREEN ROAD, (KNOWN AS YORKS PARK), DUDLEY, WEST MIDLANDS
Proposal	APPLICATION UNDER SECTION 73 FOR VARIATION OF CONDITIONS 5,8 & 10 OF APPLICATION P06/1577 RELATING TO PROVISION OF PEDESTRIAN ACCESS, RESTRICTION OF MOVEMENT OF GOODS VEHICLES AND HOURS OF OPERATION OF MACHINERY.
Recommendation Summary:	APPROVE

SITE AND SURROUNDINGS

1. The application site extends to approximately 1.44 hectares and forms part of a wider site, which extends to 5.15 hectares. It is located approximately 800 metres to the south west of Dudley Town Centre, and consists of reclaimed vacant land.
2. The site is bound to the north by Blowers Green Primary School; to the west by existing industrial units, which form part of the Dudley Central Trading Estate; to the south by Shaw Road; and to the east by Blowers Green Road. Dudley Southern By-Pass and a disused railway line are located beyond Shaw Road to the south and there is an existing housing estate beyond Blowers Green Road to the west.
3. Owing to the former use of the site and the remediation works that have been carried out over the years, the site is effectively a bowl with steep embankments on all sides and a developable plateau set some 7 metres below Blowers Green Road and the other surrounding land uses. It is estimated that the net developable area is approximately 3.4 hectares.

4. The developable plateau does slope gently up from south to north with the most northern end of the developable site sitting approximately 6 metres above the southern end of the site.
5. This planning application relates to land at the southern end of the site. The net developable area of the application site is 1.09 hectares which includes the access road that will also serve the remainder of the site.

PROPOSAL

6. This application is for the deletion of conditions 5, 8 and 10 of the planning permission granted under application P06/1577 for the erection of two units for Classes B1 (c), B2 and B8 use upon the site. The full text of the conditions is as follows:
 5. Before the development is occupied, a pedestrian access from Blowers Green Road providing more direct access to the public entrances to the buildings than the footway shown on the approved plan shall be provided in accordance with details to be agreed in writing by the LPA. Such access shall remain available for public and staff use at all times that public and staff are permitted access to the site and buildings.
 8. No goods vehicles of any description, whether loaded or otherwise, shall enter or leave the site between 19.00 hours and 07.00 hours on weekdays, between 17.00 hours and 08.00 on Saturdays, or at any time on Sundays or Bank Holidays.
 10. During any period of occupation for Class B2 purposes, no machinery shall be operated on the premises before 7.00 hours on weekdays, and 08.00 hours on Saturdays, nor after 19.00 hours on weekdays and 17.00 hours on Saturdays, or at any time on Sundays or Bank Holidays.

The conditions were intended to provide a more convenient access for disabled people, pedestrians and users of public transport and to protect the amenities of nearby residents.

HISTORY

7. Application No. P06/1577

Erection of two units for B1(c), B2 and B8 use with construction of new access road, car parking and landscaping. Approved subject to 13 conditions on 19.12.06.

PUBLIC CONSULTATION

8. The application has been publicised by way of a site notice, press advertisement and individual notification of 24 residential, commercial and industrial occupiers in the vicinity of the site. No representations have been received.

OTHER CONSULTATION

9. The Head of Public Protection has considered the deletion of conditions 8 and 10 which he recommended be attached to the original consent. He raises no objection to the removal of condition 8 but would only be prepared to accept a modified wording of condition 10. This will be discussed further in the Assessment section of the report.
10. The Group Engineer (Development): no objection received.
11. The Assistant Director (Regeneration), who objected to the original application, has commented to the effect that he would wish to see the conditions placed upon the planning consent remain in place unless the Head of Environmental Protection agrees to their removal or variation.

RELEVANT PLANNING POLICY

12. Adopted UDP

UR1 Central Employment Zone

UR2 Claughton Development Site

UR9 Contaminated Lane

DD5 Development in Industrial Areas

AM11 Cycling

AM14 Parking

AM15 Personal Mobility

AM16 Travel Plans

Other guidance:

Claughton Development Brief (approved October 2002).

ASSESSMENT

13. Condition 5

The applicant has considered whether a more convenient footpath to the entrance doors could be provided. However, there is a drop of some 4.3m from the footway in Blowers Green Road to the entrance doors to the units. To traverse this at a gradient not steeper than 1 in 20 (the maximum approach gradient allowed under the Building Regulations) would require a footpath length of 86 metres which is impractical to construct. The access shown on the approved plan does achieve the maximum 1 in 20 gradient and does provide a footway over 3.0m wide on the buildings' side. Also, the provision of disabled person's parking spaces in the car park immediately adjacent to the entrance doors to the buildings is required by condition 4 of the permission which is not being contested.

14. It is, therefore, considered that, in view of the considerable length of alternative footway that would be required, it would not be reasonable to pursue this requirement and that the condition could be omitted.

15. Condition 8

The applicants consider this condition to be unreasonable and would significantly limit the ability of firms to operate in a commercial environment. The majority of businesses require the flexibility to be able to operate seven days a week, 24 hours a day. This applies not only to production but to delivery and despatch as well. Two examples of sites rendered unlettable because of such conditions are cited.

16. Paragraph 35 of Circular 11/95 states:

‘Although a condition may in principle impose a continuing restriction on the use of land (provided that there are good planning reasons for that restriction), such a condition should not be imposed if the restriction effectively nullifies the benefit of the permission. For example, it would normally be reasonable to restrict the hours during which an industrial use may be carried on if the use of the premises outside these hours would affect the amenities of the neighbourhood, but it would be unreasonable to do so to such an extent as to make it impossible for the occupier to run the business properly. If it appears that a permission could be given only subject to conditions that would be likely to be held unreasonable by the courts then it will be necessary to refuse permission altogether’.

17. The majority of HGV traffic would access and leave the site via the A461 Dudley Southern By-Pass which provides a direct link onto the strategic highway network. The likelihood of HGVs arriving at or departing from the site via any other route, including the residential streets opposite, would be low. Notwithstanding the fact that industrial traffic already uses the residential streets opposite, only 10-15 associated lorry movements are anticipated per day and in the interests of residential amenity the applicants have already agreed to erect signs prohibiting HGVs from turning right out of the site as required by condition 13.

18. The Head of Public Protection has stated that there are many instances where the Council has been in receipt of justifiable noise complaints by residents due to vehicles servicing nearby industry. In this case there is little room for compromise on the matter due to the proximity of existing residential properties to the proposed development. However, he has considered conditions 8 and 10 together and, on that basis, he would be prepared to recommend that condition 8 is removed as requested and that condition 10 is altered to cater for noise from the loading/unloading and operation of vehicles externally to the proposed industrial units in order to allow some more flexibility of use for the occupiers of the proposed industrial units.

19. Condition 10

The Head of Public Protection considers that this condition remains relevant and is not persuaded that its removal should be allowed. The proposed development is in close proximity to existing residential properties and, although there is the provision for noise insulation of the proposed units through one of the other conditions on the permission, this would not protect residents from any noise generated externally to the proposed units or indeed from within the units via open windows, doors, etc. Accordingly he does not recommend its removal but has recommended that it be re-worded as follows:

During any period of occupation for Class B2 purposes no machinery associated with the operation of the B2 process, (including the running of engines, air conditioning or cooling units on stationary vehicles or loading and unloading of vehicles external to the industrial units) shall be operated on the site before 07.00 Monday s to Saturday s nor after 19.00 Monday s to Saturday s, or at any time on Sunday s or Bank Holidays.

20. This re-worded condition would allow for the access and egress of vehicles from the site 24/7 but would restrict the noisy procedures associated with delivery and despatch and production by a combination of hours of use limits and the use of the noise-insulated industrial units to minimise noise emissions from the site.

21. The Head of Public Protection points out that no noise data has been submitted with the application to remove the conditions or any analysis by the applicants of the impact upon the occupiers of the nearby dwellings. Only arguments on the commercial viability of the proposed development are put forward. Mindful of these concerns, the applicants have indicated that they would be prepared to accept the re-worded condition.

CONCLUSION

22. In view of the long length of an alternative pedestrian access to the entrance doors to the two buildings, that would be compliant with the Building Regulations, it is considered that condition 5 can be removed.
23. The considered view of the Head of Public Protection is that condition 8 can also be removed but that the related condition 10 should remain to ensure that the amenities of nearby residents are adequately protected. However, he has suggested a modified wording which he considers would achieve this objective whilst introducing a little more flexibility for the future occupiers of the approved units. The applicants would be prepared to accept the modified condition.
24. On this basis, the proposed variation of the original consent for two industrial units on the site would comply with the relevant UDP policies.

RECOMMENDATION

- 25.. It is recommended that the application be approved in respect of conditions 5 and 8, and that condition 10 be modified as stated in paragraph 21. The revised conditions for the development are as follows:

Conditions and/or reasons:

1. The development hereby permitted shall be begun before 19th December 2009.
2. Development shall not begin until drainage details, incorporating sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development have been submitted to and approved by the Local Planning Authority, and the scheme shall subsequently be implemented in accordance with the approved details before the development is completed/occupied.
3. Before the development is commenced, an interim Travel Plan (covering key elements for the final Travel Plan and proposals for surveys) shall be submitted to and agreed in writing by the LPA. Thereafter, a final Travel Plan shall be submitted to and agreed in writing by the LPA. Such approved plan shall remain in force for the life of the development.
4. Before the development is commenced, details of road gradients, visibility splays, turning areas, parking areas, areas of access, disabled persons parking provision, showering facilities, cycle storage and powered two-wheeler parking provision and bin facilities shall be submitted to and agreed in writing by the LPA. Such agreed details shall be provided/implemented concurrently with the development and maintained for the life of the development.
5. 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.
6. The building shall be so constructed as to provide sound attenuation against internally generated noise of not less than 30 db averaged over the frequency range 100 to 3150 hz.
7. Before either unit is used for any Class B2 purpose, a scheme for the treatment of grit, dust, fume, gas or mist and for their extraction shall be submitted to and approved in writing by the Local Planning Authority and all works which form part of the scheme shall be completed before the use commences. Such facilities shall be retained for the duration of the use.
8. 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.
9. All planting, seeding or turfing comprised in the details of landscaping approved in accordance with condition 11 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.

10. Before either unit is occupied, signs shall be erected in accordance with details to be submitted to and agreed in writing by the Local Planning Authority prohibiting heavy goods vehicles turning right into Blowers Green Road upon exiting the site. Such signs shall remain in place for the life of the development, unless otherwise agreed in writing with the Local Planning Authority.
11. During any period of the occupation for Class B2 purposes no machinery associated with the operation of the B2 process, (including the running of engines, air conditioning or cooling units on stationary vehicles or loading and unloading of vehicles external to the industrial units) shall be operated on the site before 07:00 Mondays to Saturdays nor after 19:00 Mondays to Saturdays, or at any time on Sundays or Bank Holidays.