

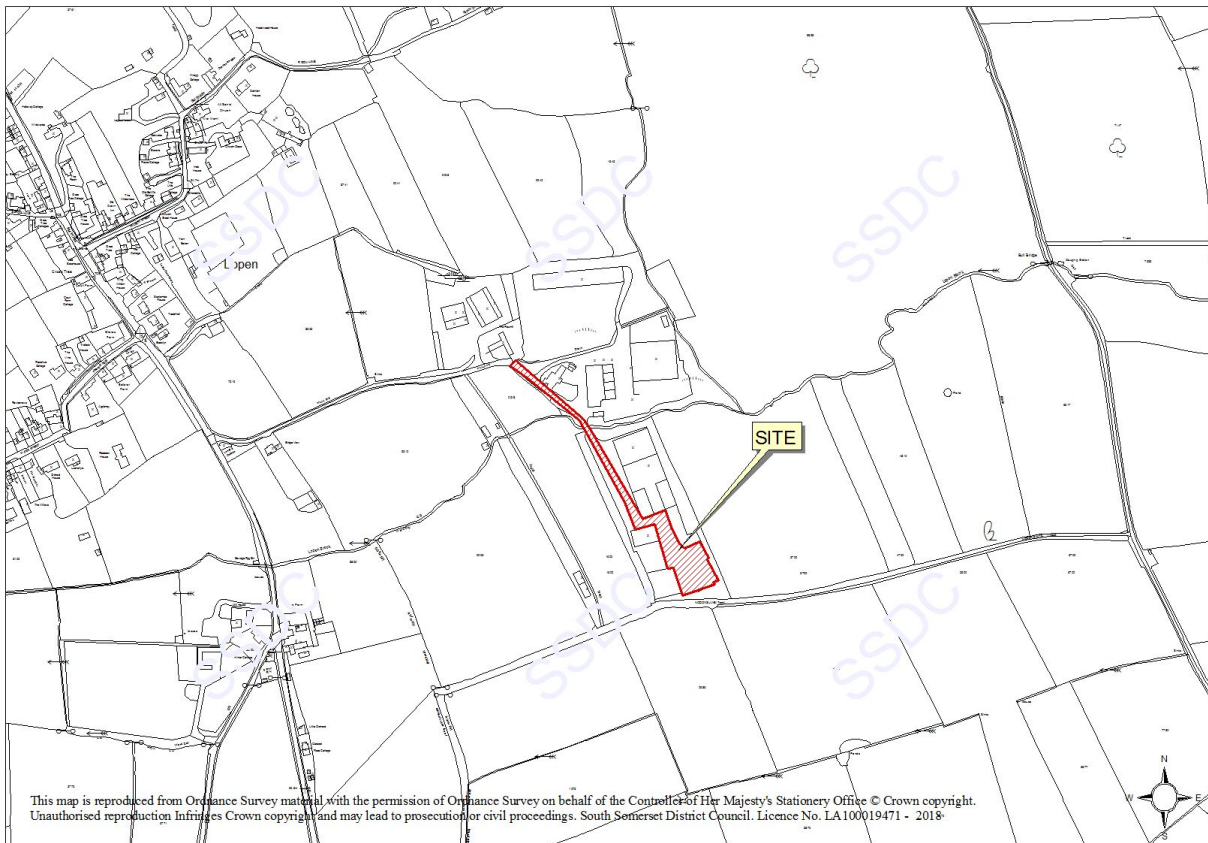
## Officer Report on Planning Application: 18/00900/S73A

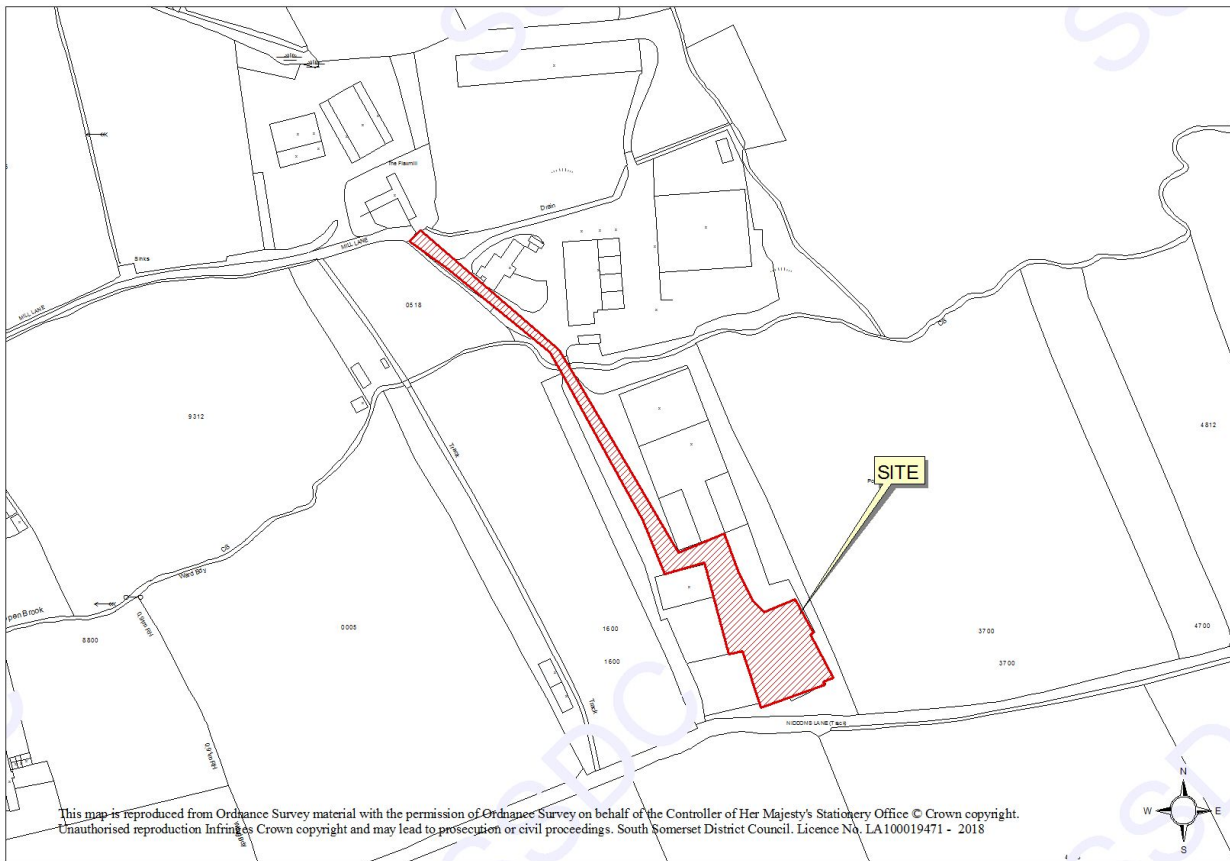
<b>Proposal:</b>	Application to vary condition 1 and remove condition 2 of appeal decision 3149762 ( 25/10/2016) to allow unrestricted B8 use (storage/ distribution)
<b>Site Address:</b>	Unit 17 Lopen Business Park, Mill Lane, Lopen
<b>Parish:</b>	Merriott
<b>EGGWOOD Ward (SSDC Member)</b>	Cllr Paul Maxwell
<b>Recommending Case Officer</b>	Mike Hicks Tel: 01935 462015 Email: mike.hicks@southsomerset.gov.uk.
<b>Target date:</b>	14th May 2018
<b>Applicant:</b>	Mr Stone
<b>Agent:</b>	Mr Andrew Tregay, Boon Brown Architects Motivo Alvington Yeovil, BA20 2FG
<b>Application Type:</b>	Minor Other less than 1,000 sq.m or 1ha

### REASON FOR REFERRAL TO COMMITTEE

The relevant ward members for the two wards in which the building and access are located do not agree with the officer recommendation due to concerns over environmental impact and highway safety.

### SITE DESCRIPTION AND PROPOSAL





The application site is located within Mill Lane Business Park, Lopen. The site consists of a recently constructed industrial building measuring 610 square metres that was granted by the Planning Inspectorate at an enforcement appeal (reference 3149762).

The building was permitted at appeal with conditions restricting the use to self storage only. The conditions state:

- 1) The building shall be used for self-storage and for no other purpose (including any other purpose in Class B8 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended) (or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification).
- 2) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking and re-enacting that Order with or without modification) there shall be no permitted change of use of the building under the said Order from self-storage.

The building has recently been occupied by an animal health product storage and distribution company. The application seeks to vary condition 01 to allow an unrestricted B8 use as opposed to self storage only and to remove condition 02 as it relates to restricting permitted development from self storage only. This would allow the current occupation of the building to continue lawfully.

## HISTORY

Enforcement appeal- (APP/R3325/C/16/3149762)- Appeal allowed.

## POLICY

Section 38(6) of the Planning and Compulsory Purchase Act 2004 repeats the duty imposed under S54A of the Town and Country Planning Act 1990 and requires that the decision must be made in accordance with relevant Development Plan Documents unless material considerations indicate otherwise.

For the purposes of determining current applications the Local Planning Authority considers that the relevant policy framework is provided by the National Planning Policy Framework and the South Somerset Local Plan (2006-2028). The Local Plan was adopted by South Somerset District Council in March 2015.

The National Planning Policy Framework (NPPF) is a material consideration.  
The following chapters are of most relevance:

National Planning Policy Framework  
Chapter 7 - Requiring Good Design  
Chapter 11 - Conserving and Enhancing the Natural Environment

Local Plan (2006-2028)

The following Local plan policies are considered to be relevant:

EQ2- General Development  
EQ3- Historic Environment  
TA5- Transport impact of new development

National Planning Practice Guidance:

The following sections have the most relevance:

- o Determining an application.
- o Design

## **CONSULTATIONS**

### **Parish Council**

Second response (in response to additional information submitted by the applicant):

Further to the forwarding of the additional material, I have referred the matter to the Councillors, and all are in agreement that where Lopen Parish Council had already made a robust objection to this planning application on the basis that the additional vehicle movements were estimated at a lower figure (which LPC indicated were unrealistically low), the additional information only adds weight to our argument i.e. vehicle movements are estimated to be higher. We do seek to reiterate that the application cannot be properly dealt with on a trade or business-specific basis as the planning application is tied to the property not to the current tenancy.

Please see below the response of Lopen Parish Council to the above referenced application:

*" Application to vary condition 1 and remove condition 2 of appeal decision 3149762 ( 25/10/2016) to allow unrestricted B8 use (storage/ distribution)."*

LPC does not support this application. This was a unanimous decision.

Note that although the site in question is not actually within Lopen Parish, all access to it is through Lopen and it is this access and potential traffic which is the major source of concern.

### **Background**

You will recall that this building (Building 17) provoked considerable controversy in 2016 having been initially erected without planning permission, then subject to a demolition notice issued by SSDC and subsequently granted permission on appeal. One of the major concerns was site access and traffic levels.

Access to the Mill Lane industrial has been problematic for many years. The lane itself is a narrow single track road, with no formal passing places for most of its length. It also serves 3 residential properties. It meets the main road at an angle with poor visibility to the south. Any vehicle larger than a medium sized van struggles to turn south resulting in a sign advising larger traffic to turn north, turn around at Lopen Head roundabout and return south, thus a making a double pass through the main part of the village, 7.5 ton weight limit notwithstanding!

This access issue has been a point of contention with every application for at least the last 18 years and has been recognised as a significant problem by both SCC and SSDC Highways. To such an extent that during 2000/2001 an S106 agreement was drawn up as part of a permission (00/00028/FUL) to extend existing self-storage buildings to prevent any further development of the land on which building 17 now stands until such time as access had been improved. While the S106 now unfortunately seems to have been discredited as the correct way to approach the issue, SSDC clearly considered it a good idea at the time and it very clearly demonstrates that even then, site access was considered to be on the limit.

Since then, additional building on the site has been permitted. Businesses on the site have prospered and traffic levels have gone up. The size of HGVs has increased. No improvements to Mill Lane or its junction with the main road have been made. Therefore the situation has worsened. Traffic and access was one of the two key issues considered during the appeal process and the only one remaining relevant to this application.

As no application for building 17 was ever made through SSDC, and the planning inspectorate don't make documentation associated with appeals available online, we have not seen any documentation relating to the appeal apart from the Inspectors report and the Hydrok Transport Statement (seen only after the appeal was granted). However, the appellant claimed at the time that the building was intended for self-storage purposes only, that no additional staff would be associated with it and consequently would generate minimal traffic levels. This was backed up by the Hydrok report and TRICs data. The actual predicted traffic levels were 16, 2-way vehicle movements per 12 hour period.

Based on these assertions the inspector decided that the proportionate impact on the road network would be small enough to be allowable, but was very clear that he based this assessment on the use being limited to self-storage and the low traffic levels it would generate. This was clearly the reason for conditions 1 and 2 being set.

Our specific objections are:

1.

The reasons that led to the planning inspectors setting of conditions 1 and 2 are very clear. It seems incomprehensible to us that less than two years later, these very specific and carefully worded conditions, set by a national planning inspector, can be simply removed without any change to the circumstances that led to their imposition.

2.

Prior to permission granted via appeal SSDC had issued a demolition order on this building, so presumably considered (rightly so in our opinion) that it should not exist at all. Therefore relaxing conditions put in place by the over-ruling authority to allay, in part, their original concerns would be a very inconsistent thing to do.

3.

We understand that the unit has in fact been let to, and has recently been occupied by, a business other than self-storage (distributor of animal health products). We also understand that the lessee was not

advised of the use restrictions and did not discover them for himself until a late stage. While very unfortunate, this is a matter between the lessee and the owner/applicant and should not be a planning consideration.

4.

The above further demonstrates a pattern of behaviour on this site that seeks, via moral blackmail, to force through planning matters by intentionally creating situations that will incur financial loss if permission is not granted. This should not be a planning consideration and this behaviour will continue if rewarded!

5.

We also note that there seems to be consideration given to the specific business involved and its own traffic estimates. We do not consider that this is appropriate as unless the full B8 permission is conditioned to this specific business (which would be an unusual step), the use class relates to the building not the business in occupation. We also have concerns that there is absolutely no way to verify the figures provided by the business, which in any case is clearly aiming to expand having moved to larger premises. We feel that the HGV numbers in particular may be significantly understated at 1 every 3 months, especially as they cannot control the vehicles their suppliers may use to deliver.

6.

We do not consider the sites selected by Hydrock for the TRICs comparisons within the Technical Note supplied for this application to be comparable with this location. The five sites used are between 2 x and 20x the floor area of this one, located close to much larger settlements and located closer to and better connected with major roads (motorways in some cases). The resulting overall figures are very similar to those provided previously for the appeal, apart from defining the expected number of HGV visits.

*"Table 5.1 shows that the proposals are forecast to generate 16 two-way vehicle trips over a 12-hour period (0700-1900), including 6 two-way HGV trips."*

7.

We do not agree with the following statement made in the Technical Note

*"By way of validation / comparison, this is also in line with the forecast generation for the potential occupier of the unit. The business is anticipated to generate 1 x 7.5 ton lorry, 3 vans and 2-3 cars on a daily basis (around 14 two-way vehicle movements a day) and one articulated vehicle once every three months (i.e. a worst case day equating to 16 vehicle movements). These figures have been provided by the potential occupier and stated by SSDC within their highways comments in Appendix A."*

It is quite clear that "6, two-way HGV trips per day" are not comparable with "one articulated vehicle once every 3 months" so we see no "validation". The business's own projection completely ignores the possibility of any vehicle size between 7.5 tons and articulated.

We therefore ask that the application be refused . Since the conditions in question were set recently by an appeal inspector there surely should be little concern about a successful appeal.

### **County Highway Authority –**

This application is to vary the planning consent granted at appeal for this development, so that 15 existing self-storage units can be used for any B8 use, not just self-storage. This requires the alteration to condition 1 of the consent, and the applicant has also applied for the removal of condition 2 on the basis that this would become redundant if condition 1 is varied.

The applicant has submitted a technical note (TN) at the request of South Somerset District Council (SSDC) to detail the expected change in trip generation from the proposed amendment, and it is noted that this TN has itself been assessed by SSDC's highways consultant who has concluded that any highway impact from this proposal is unlikely to be severe.

The Highway Authority notes that the inspector determined at appeal that it was justified for traffic and highway safety reasons to control the future use of this development, and included conditions 1 and 2 to the planning consent for this purpose.

Mill Lane, via which this site is accessed, is a narrow single carriageway road, with very limited opportunity for vehicles to pass. In addition, Mill Lane's junction with Holloway is substandard. With this in mind, the Highway Authority would not wish to see any significant increase in use of this access approach without measures to improve the current sub-standard arrangements.

Nevertheless, the Highway Authority agrees that the alteration of the development to permit any B8 use, rather than self-storage, is unlikely to result in a significant change in traffic flows along Mill lane, bearing in mind the adjacent permitted uses also using Mill Lane for access, and a severe impact on the existing highway network is therefore unlikely. With this in mind the Highway Authority does not object to the alteration of condition 1 as proposed.

However, it would still appear appropriate for traffic and highway safety reasons to control the future use of this development, as intended by the Inspector at appeal. It is therefore recommended that condition 2 be amended to prevent any further change of use (ie other than any B8 use), rather than being removed altogether.

#### **SSDC Highway Consultant -**

Not consulted during the application but provided the following pre application advice:

#### **Second (concluding) response:**

I have read Hydrock's further submission and reviewed the attachments to the email.

I agree that two of the sites I had previously listed to be reviewed do not appear to be appropriate as comparison sites given their location to the highway network, number of car parking spaces, nature of business, etc. I also agree that the two sites Hydrock have assessed are more comparable to the proposed business that is planned to locate to Unit 17.

I therefore consider the revised TRICS analysis as a sensitivity test compared to the previous assessment. The revised analysis indicates that the scheme may lead to 22 two-way vehicle movements across the day (07:00-19:00) - including 2 HGV movements - which is six more than the previous analysis. While any increase is a concern given the deficiencies of the network, it is clear that the residual cumulative impact of the sensitivity test when considering all the other uses and operations at Lopen Business Park, would not be severe.

Consequently, I believe the proposal could be supported. In the event that a planning application is submitted I recommend the TRICS assessments and analysis that have been considered are included in the planning submission.

#### **First response:**

Many thanks for your email. I have read the Technical Note produced by Hydrock. Looking at the TRICS assessment and the sites referred to on the TRICS database that have been used as comparable sites to derive a suitable trip rate, I am of the opinion that there may be other sites on the database that more

closely match the proposed use in this case as two of them appear to involve distribution as in the scenario at Lopen. Two of them more closely match the gross floor area of the site at Lopen. These are:

2506 SF-02-F-01 PHARMACY DISTRIBUTION SUFFOLK  
2512 TV-02-F-03 ELECTRICAL COMPONENTS TEES VALLEY  
2520 WY-02-F-01 ELECTRONICS DISTRIBUTION WEST YORKSHIRE

Given the sensitivities over traffic generation and the substandard nature of the highway network on the approach to Lopen Business Park, I think it would be prudent to carry out an assessment using the above sites rather than the three warehousing sites (sites 3, 4 and 5) listed on page 3 of the Hydrock's TRICS assessment, as a sensitivity test, to that already carried out. This should not take too long to undertake.

## **REPRESENTATIONS**

Following consultation one letter has been received from a nearby neighbour. The following comments are made:

- The site owner has a history of submitting retrospective applications.
- The business park is detrimental to the appearance of the locality.
- Large goods vehicles are damaging local roads, buildings and the area generally.
- Sites used in the TRICS analysis are unlikely to be accessed by narrow lanes.
- In reality 'movements' mean more than the number stated as HGVs approaching from the South have to travel through Lopen village, turn around on the Lopen Head roundabout before coming back through the village. Some vehicles reverse onto Frog Street

## **CONSIDERATIONS:**

The principal consideration relates to the impact of the proposal on highway safety. Policy TA5 of the Local Plan is relevant as states the following:

"All new development shall be required to address its own transport implications and shall be designed to maximise the potential for sustainable transport through:

- i. Safeguarding existing and new transport infrastructure, which is important to an efficient and sustainable transport network from development that would prejudice their transport use;
- ii. Securing inclusive, safe and convenient access on foot, cycle, and by public and private transport that addresses the needs of all;
- iii. Ensuring that the expected nature and volume of traffic and parked vehicles generated by the development would not have a detrimental impact on the character or amenity of the area and would not compromise the safety and/or function of the local or strategic road networks in terms of both volume and type of traffic generated;
- iv. Ensuring that proposals, which specifically require a location with direct access to the strategic road network due to the volumes and quality of traffic generated, are well located on these networks. There is a presumption against direct access from the strategic road network. Exemptions will only be made where the type of development is such that it requires a high order (of route hierarchy) route location, such as roadside service stations or freight transfer facilities;
- v. Assessing the transport impact of development and ensuring delivery of the necessary transport infrastructure for the proposal and requiring larger schemes to prepare Transport Assessments.
- vi. Requiring car parking and vehicle servicing at levels appropriate to the development and its location, in accordance with the approved/adopted standards identified in Policy TA6".

The primary issue relates to the sub standard nature of the junction of Mill Lane and the main road through Lopen and this was the main issue of contention under the enforcement appeal. The appeal arose as the Council served an enforcement notice requiring the demolition of the building which had been erected without planning permission. The highways basis of the enforcement notice was that the Council had significant concerns over the impact of an additional building within the business park and the associated additional vehicular movements using the substandard junction of Mill Lane and the Lopen Road.

The applicant submitted TRICS data (This stands for 'Trip Rate Information Computer System' and is a database of trip rates for existing developments and is used to provide comparative data to quantify the likely trip generation of proposed developments) in support of the appeal that forecast trip generation of 16 two way movements over a 12 hour period, including 2, two way HGV trips. In allowing the appeal the Inspector considered that ; "the roads to the site already take traffic to and from the business park and there is no evidence that despite their nature they are dangerous to use. Given what I have found above, there is also nothing to show that the residual cumulative impact of the development on highway safety would be severe. As such I do not accept that any increase in traffic would compromise the safety and function of the road network" (para 5)

"I have found that the development I am considering would not materially increase traffic levels and so it would not unduly add to local concerns" (para 9).

Notwithstanding the above, the Planning Inspector considered that is was justified because of the highway safety concerns to control the future use of the building and restrict the use to self storage only and to exclude permitted changes of use under the General Permitted Development Order.

The building has recently been occupied by a storage/distribution company and is currently therefore in breach of condition 01 of the appeal decision and the Council was approached by the site owner prior to their occupation to ascertain the likelihood of a planning consent to vary the relevant conditions. As set out above, the key issue relates to the impact of any additional vehicular movements on the safety of the junction of Mill Lane and Lopen Road.

As suggested by the Councils Highway Consultant at pre application stage, the applicant commissioned two TRICS assessment reports for the proposed unrestricted B8 use. Details of the first is included within the 'technical note submitted by Hydrock with the application. The second assessment carried out at pre application stage was a 'sensitivity test' that was carried out at the request of the Councils Highway Consultant. Details of this were submitted by the applicant during the course of the application and public consultation was carried out again on the basis of this information being of material information.

Additional information was submitted during consideration of the application to confirm that during pre application discussions a second 'sensitivity test' was carried out at the request of the Councils Highway Consultant using the TRICS database. This produced a figure of 22 two way movements over a 12 hour period, including 2 HGV movements as opposed to the figure of 16 two way movements, including 6 HGV movements quoted by the technical note. These figures compare to 16 two way movements over a 12 hour period, including 2, two way HGV trips for the permitted self storage use.

The TRICS analysis has demonstrated that the increase in movements is unlikely to be significant with a potential increase of 6 two way movements over a two 12 hour period on the second TRICS assessment.



The Councils Highway Consultant and the Highway Authority consider that the proposal would not result in severe harm to the safety of the adjacent road network and provided the following conclusion: HGV movements are regarded as having the greatest impact on the local road network and the first and second TRICS assessments gave predictions of an increase in 4 (6 two way movements) and a nil increase respectively. These are considered to be relatively minimal impacts against the context of the existing movements generated by the site. The Highway Authority concluded as follows:

“The Highway Authority agrees that the alteration of the development to permit any B8 use, rather than self-storage, is unlikely to result in a significant change in traffic flows along Mill lane, bearing in mind the adjacent permitted uses also using Mill Lane for access, and a severe impact on the existing highway network is therefore unlikely. With this in mind the Highway Authority does not object to the alteration of condition 1 as proposed”.

It is considered necessary and reasonable to reimpose a condition restricting permitted changes of use under the GPDO. The earlier condition imposed at appeal relating to the provision of parking has been repeated in this decision with an alteration to include the updated drawing number. Having regard to the above, subject to conditions, it is considered that the proposal would not result in a severe impact on the local highway network and would therefore comply with Policy TA5 of the South Somerset Local Plan (2006-2028) and paragraph 32 of the National Planning Policy Framework (2012).

**Residential amenity:**

Having regard to the scale of the business park, associated vehicular movements and the limited likely increase as a result of this proposal, it is considered that there would be no demonstrable adverse impact on the amenities of the adjoining occupiers at Flaxmill as a result of this proposal. The proposal would therefore accord with Policy EQ2 of the South Somerset Local Plan (2006-2028).

**RECOMMENDATION:**

Approve with conditions

01. The proposal, by reason of its use, predicted traffic generation size, design, materials and location, represents a development that would respect the character of the area and would preserve the setting of the nearby listed building. The proposal would cause no adverse impact on neighbour amenity or highway safety in accordance with the aims and objectives of Policies EQ2 and TA5 of the South Somerset Local Plan (2006-2028).

**SUBJECT TO THE FOLLOWING:**

01. Notwithstanding the time limits given to implement planning permission as prescribed by Sections 91 and 92 of the Town and Country Planning Act 1990 (as amended), this permission (being granted under section 73A of the Act in respect of development already carried out) shall have effect from April 2018.

Reason: To comply with Section 73A of the Act.

02. The development hereby permitted shall be carried out in accordance with the following approved plans: DSGN0048\_LP01; DSGN0048\_SP01 only.

Reason: For the avoidance of doubt and in the interests of proper planning.

03. The building shall be used for storage and distribution (use class B8) and for no other purpose (including any other purpose in the Town and Country Planning (Use Classes) Order 1987 (as

amended) (or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification).

Reason: In the interests of highway safety to accord with Policy TA5 of the South Somerset Local Plan (2006-2028).

04. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking and re-enacting that Order with or without modification) there shall be no permitted change of use of the building under the said Order from B8 use.

Reason: In the interests of highway safety to accord with Policy TA5 of the South Somerset Local Plan (2006-2028).

05. The area allocated for parking on Drawing No. DSGN0048\_SP01 shall be provided before the building is first brought into use and it shall be kept clear of obstruction and not used thereafter other than for the parking and turning of vehicles in connection with the development hereby permitted.

Reason: In the interests of highway safety to accord with Policy TA6 of the South Somerset Local Plan (2006-2028).

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