

Officer Report on Planning Application: 09/03849/FUL

Proposal :	The erection of a building for B1, B2 and B8 uses. (GR 422553/115366)
Site Address:	Lopen Head Nursery, Lopen Head, South Petherton
Parish:	Lopen
SOUTH PETHERTON Ward (SSDC Members):	Mr Paull Robathan (Cllr) Mr Keith Ronaldson (Cllr)
Recommending Case Officer:	Andrew Gunn Tel: (01935) 462192 Email: andrew.gunn@southsomerset.gov.uk
Target date :	7th December 2009
Applicant:	Probiotics International Ltd
Agent:	Boon Brown Architects Motivo Alvington, Yeovil, Somerset BA20 2FG
Application Type:	Minor Manfr less than 1,000 sq.m or 1ha

REASON FOR REFERRAL TO COMMITTEE

This application has been referred to committee at the request of the Ward Members in agreement with the Chairman in order for the planning issues, in particular the proposed B8 use to be discussed.

SITE DESCRIPTION AND PROPOSAL



The application site is located on the northern side of the old A303, at the former Lopen Head Nursery. The site was previously grassed but currently comprises an uneven earth/mud surface. The northern boundary is open - Leylandii trees that previously existed along the northern boundary have been removed. An employment building and access road is located to the immediate west, with the remainder of the allocated employment site to the south west. To the east is the remainder of Lopen Nursery, with the derelict frames of glasshouses occupying the site. A dwelling is located in the southeast corner of the adjacent former nursery site.

This application seeks consent for the erection of an employment building for B1, B2 and B8 uses. The applicant is Probiotics, a company manufacturing health and welfare products for both humans and animals. They have previously received planning permission for a building located immediately to the west of the current application site. This building is currently under construction with a completion date of February and shall be primarily used for their production process, along with its packaging, storage and ancillary office accommodation. The new building is required to enable the separation of animal and human welfare production and to provide significantly more site storage of manufactured goods. The storage element will comprise two thirds of the floor space of the new building.

The building will occupy the north eastern part of the allocated employment site. The indicative plan approved as part of the outline consent, indicated a building towards the northern part of the site. The submitted details however state that due to deep fill material along the northern boundary, it has been moved 26 metres southwards. The building will share the service yard on the northern side with building C with vehicular access between the two buildings.

Vehicular access to the site and building D will be via the previously approved and constructed access road of the old A303 to the south of the site. Off site highway works are due to start once the Section 278 agreement is agreed and signed.

In terms of landscaping, a strategic landscaping plan was agreed to replace the felled Leylandii trees, to provide planting along the southern, western and northern boundaries of the whole allocated site. This scheme will not alter the wider strategic planting although additional planting will be provided specifically as part of this building, to the west and south.

The design of the building will be similar to building C, and will be constructed using the same composite and metal cladding materials with an even parapet roof. The building will measure 25.8 metres x 38.3m with a ridge height of 8.4 metres. It will be set 1 metre higher than building C.

The specified wall cladding will be charcoal grey metal wall cladding and silver grey composite wall cladding and metal clad roofing. The building generally will have little in the way of glazing. The north elevation will be largely unglazed with 2 goods doors and 3 small windows providing light for the toilets. A glazed section running almost the full height of the building will be created to provide light into the entrance area. The east elevation will have a blank façade other than for an emergency door. The west and south elevations will contain windows no higher than 2 metres above ground level.

13 car parking spaces will be provided along with 2 lorry parking spaces to the north of the building along with a yard area that will provide turning areas for lorries. 4 covered cycle spaces will also be provided to the west of the entrance.

HISTORY

08/00053/OUT - Development of land for B1 and B2 uses (approved).

08/00250/FUL - Erection of one B1/B2 industrial building (approved). (Located to south of application building).

09//00670/FUL - Erection of one B1/B2 industrial building (approved - revised application to 08/00250/FUL).

08/00248/FUL - Erection of one B1/B2 industrial building (approved).

08/05122/FUL - Erection of one B1/B2 industrial building (approved - revised application to 08//00248/FUL).

09/03030/OUT - Development of land for B1, B2 and B8 use. This is a current application on land to the east of the allocated employment site.

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 decision must be made in accordance with relevant Development Plan Documents unless material considerations indicate otherwise,

Relevant Development Plan Documents

Regional Spatial Strategy (RSS) for the South West (RPG10) (adopted September 2001)

VIS 1

VIS 2

Somerset and Exmoor National Park Joint Structure Plan (adopted April 2000)

Policy 16 - Provision of land for industrial, warehouse and business development.

Policy 49 - Transport Requirements of New Development.

South Somerset Local Plan (adopted April 2006)

ME/LOPE/1 - Land at Lopen Head Nursery, Lopen amounting to 1.8 Hectares allocated for employment use (B1 and B2 uses only).

EC3 - Landscape Character

ST5 - General principles of development

ST6 - Quality of development

TP6 - Non residential parking provision.

PPS's/PPG's

PPS7 - Sustainable development in rural areas

South Somerset Sustainable Community Strategy

Goal 5 - High Performance Local Economy

Goal 8 - Quality Development

CONSULTATIONS

Parish

Lopen Parish Council considered the above at an extraordinary meeting on 4th November 2009. 12 members of the public were present together with the MD of Probiotics, Mr Toby Lewis, and his agent, Mr Craig Jones of Boon Brown.

All three members of the Parish Council present and eligible to vote, together with two thirds of the members of the public present, voted that we should support the application except for the application for B8 use. We additionally had concerns about the proposed screening scheme for the southern elevation of the building and the colour selected for building's cladding.

B8 Use

We are as a community concerned and disappointed that an application should be made for B8 use anywhere on the Lopen Head Nursery site, before even one building is occupied. I know you will need no reminding of the controversial circumstances under which this site was included in the Local Plan. However it is worth reminding everyone that part of the justification for ignoring the recommendations of the independent inspector and several relevant planning guidelines was the removal of B8 from the uses allocated in the Local Plan. This was because B8 uses generate lower levels of employment opportunities and thus their inclusion would have put in doubt the District Council's argument - and justification for their decision - that there was a demonstrable employment need for the site. Granting a B8 use now sets a dangerous precedent, which could easily be used by any other occupant of the site, especially on appeal. Such a situation would in our view rightfully give rise to serious doubts about the District Council's good faith at the time when the decision was taken not to include B8 uses in the Local Plan.

In his application and at our meeting, Mr Craig Jones suggested that our concerns could be met by restricting the B8 use of Building D to Probiotics. We are aware of such a process. We are also aware, and have been so advised, that such a restriction has been successfully appealed on many occasions, especially where a period of time has elapsed. We accordingly consider that we are justified in stating that such a compromise will not provide us with adequate protection.

We are mindful that Probiotics like any other manufacturing business, large and small, will need somewhere to store their raw materials and then the finished product before distribution to their customers. Our understanding is that for such situations, where manufacturing is clearly the core function, there is no explicit need for a B8 use. We have evidence that a firm as large as Panasonic does not have B8 uses for its sites in UK. Mr Jones said that he understood that each building was looked at separately and not as part of an overall operation, as is reported to be the case for Panasonic. He moreover was concerned about his client being potentially challenged at some later date.

Our opposition to the grant of a B8 use for Building D is strongly held. We are equally committed to the process of getting Probiotics into their two buildings and able to pursue their business. We believe that it should be possible for SSDC to reconcile these two apparently conflicting positions.

Screening

Our discussion of the screening proposals for the southern elevation of Building D was not well informed because of the absence from our bundle of a critical drawing which Mr

Jones said was available. Our views were therefore coloured more by our experience of the discussions about the screening proposals for Building A - you will recall that it took several months before we felt able in July this year to confirm that we were content with what was proposed. We were also conscious that, in his comments (dated 13/08/09) on the application (09/03030) to extend the whole site eastwards, Mr Robert Archer stressed the importance of extensive screening on the northeast corner of the site and to the east of the entrance. Now that Building D will be more visible from the south than before and without any other building in front of it, we would hope that Mr Archer would extend those same principles to encompass its southern elevation.

Although it became clear at our meeting that the applicant's main reasons for applying to move Building D further to the south are (i) to improve the overall working layout of their two buildings and (ii) to avoid the costly deep fill problems of the original site, both the applicant and his agent stated that they had been encouraged to pursue this change by Mr Archer because of his concerns about visibility from the north - we would hope that Mr Archer would extend these same concerns to the southern elevation.

In short, we are nervous about the screening plans, a situation which we feel is justified from our earlier experience in relation to other parts of the overall site. We note also what appears to be greater emphasis on the northern side. All of that said, we recognize that our low level of knowledge of the relevant plans is such that we may be mistaken. We believe this can be managed through an appropriate condition which would both permit and require the sort of discussions we had in respect of Building A, albeit hopefully fewer and quicker. I know that the applicant and Mr Whitehouse are both happy to take part in discussions, and that the applicant would be very happy to have a bund on the southern side of his building, a proposal raised at our meeting which met with widespread approval.

Colour of Cladding for Building D

Now that Building C is nearing completion, we are all capable of making a considered judgement about its colour, which is to be repeated for Building D. This issue united the meeting (parish councillors and members of the public). There was unanimous criticism of the colour chosen and general bemusement as to the criteria underpinning its selection. Even though not scientifically collated, I and my fellow parish councillors have all received unsolicited comments from many other residents of this village, including long standing residents, and from Hinton and Merriott. I am aware that choice of colour is subjective and I am not sure about the procedures that determine such choices. If opinion had been even partially divided, I might have been inclined not to pursue the matter. But opinion is not divided and I have yet to meet or hear any person who lives in this area who likes the colour. If local democracy is to have any meaning at all, I believe that whoever is responsible should be invited to re-think their choice.

Working Hours

Finally, I have a question rather than a comment. Condition 11 of the planning permission for 08/00053/OUT lays down tight working hours. Mr Lewis confirmed at our meeting that his workforce operated well within these times. Would it be sensible to include such a condition in this application, for the avoidance of any misunderstandings in the future?

Parish Council (additional comments received 3rd December 2009):

Thank you for chairing yesterday's meeting about the above. I think that conditioning the screening proposals is a sensible way ahead, as it gives us more time to get it right without it becoming a cause of delay to the overall project. We look forward to seeing

the replacement drawing for the version dated 19th October 2009, together with the "artist's impression" promised by Craig Jones.

The situation on the screening proposals was noted at last night's meeting of Lopen Parish Council, as were (i) Robert Archer's explanation about the colour of the building (without our critical view changing!) and (ii) your reassurances on lighting and hours of work (the outline planning permission condition on working hours to be carried forward to 09/03849/FUL). I am afraid, however, that I failed to convince my council that we should drop our opposition to the grant of B8 use for Building D, notwithstanding the reassurances given in your email of yesterday, which I read out.

Overarching our continuing opposition is the view that this change to (i) the original allocation of the site for employment use and to (ii) the follow-on grant of outline planning permission for just B1 and B2 use for the whole site is so fundamental that it must be debated at the Area North Committee and not be decided at the delegated level. More problematical is the underpinning of this overall view by a continuing belief that (i) the grant of B8 permission is not necessary and (ii) the limiting of such a grant to Probiotics fails to represent an adequate safeguard.

The member of my community who was an MD at Panasonic repeated that no Panasonic factory site in the UK had B8 permission. He acknowledged that this information was 10 years old, but we are not aware of any changes to the relevant legislation since then. You state that the scale of B8 use is such that it cannot be considered as ancillary to Building C. If Probiotics are seeking more space for B8 use than their on site manufacturing process will generate, then what do they need it for? If it is for storing and distributing goods manufactured elsewhere, then that would directly breach the carefully considered decision in the Local Plan to limit the site to B1 and B2 use, which as you know is being monitored by the SWGO. If Probiotics state that the storage space needed in Building D is necessary for their on site manufacturing output, then it is ancillary to Building C. With respect, you or they cannot have it both ways.

You state in the final sentence of your email that anyone at some point in the future buying the Probiotics building would have to "apply for planning permission if they wished to use the building for B8 uses". It is, with respect, this very point that alarms us. If Probiotics move on, say, in 10 years time, and a new arrival seeks B8 permission, it may well be that we can trust SSDC to refuse such an application. But it is what then follows that concerns us. As I stated in my original response, there is strong evidence that on appeal such an application would be granted - and in my view logically so; after all the building will have been used for a B8 purpose for 10 years. We are also concerned about an occupant of Buildings A and B applying for B8 use after noting your decision in respect of Building D - again what would happen on appeal? Ideally this matter should be subjected to independent and legally qualified advice.

Officer comment:

Following the receipt of the above comments from the Parish Council, the advice of the council's solicitors was sought. The legal advice is that the Local Planning Authority would not dispute that the buildings and associated land, on plots C and D, form one planning unit. However, it is the extent of the proposed B8 use for building D that takes it beyond ancillary and into a mixed B1/B2 and B8 use, for which express permission is required. Moreover, an occupancy condition linking use of building D to building C can be justified in this case given that Probiotics will shortly be occupying building C and requires building D for its expansion and storage needs. The issue whether building D's a composite part on one planning unit or a stand alone development is not the key issue. It is the view of the Local Planning Authority that an express grant of planning permission is required for the B8 use whether or not it is treated as one planning unit or a stand

alone development. Moreover, the need to apply for an express grant of planning permission means that the LPA has much more control over the proposed use than if no planning permission was required for B8. It is proposed to control the use by placing a personal permission on B8 use for Probiotics only. Notwithstanding the Local Plan allocation, the LPA in this case is willing to agree to B8 use. An assessment has been made in this case that storage space is required by Probiotics and weighing up the arguments for and against, a judgement in favour has been concluded. This recommendation does not imply that B8 use across the whole site is acceptable nor would be subsequently granted for other buildings.

Adjoining Parish Council - South Petherton:

Having now had the opportunity to consider and discuss this planning application at their meeting yesterday, South Petherton Parish Council has no comment to make.

Local Highway Authority:

It appears that the building as part of this application was previously permitted at the site but located on the northern boundary. This application is seeking to relocate the building further to the south. The means of access to the site has previously been approved and is suitable to cater for the likely traffic and the development provides an adequate level of parking, not only for private vehicles and bicycles but larger vehicles in connection with the B8 use. As a result, I would advise you that from a highway point of view there is no objection to the proposal.

However, in the event of permission being granted I would recommend that the following conditions be imposed:

1. The area allocated for parking on the submitted plan shall be kept clear of obstruction at all times and shall not be used other than for the parking of vehicles in connection with the development hereby permitted.
2. The development hereby permitted shall not be occupied until the covered cycle rack facility has been provided within the site in accordance with a design specification to be submitted to and approved in writing by the Local Planning Authority and to be constructed in accordance with those details that have been approved.

Policy:

The principle of employment use has been accepted on the site and so the issue that I'm guessing you want me to comment on is that of a B8 use activity.

As you know in the 1998 Deposit Draft Local Plan, B8 Use was included in the proposal ME/LOPE/1 but this was removed at the Proposed Modifications stage (MOD/13/025) because of two reasons:

1. B8 use would result in larger buildings of greater visual profile and consequently visual impact, and
2. B8 use would generate fewer jobs than B1 and B2 uses.

In terms of the visual impact of this proposal, I would suggest you contact Robert Archer.

In relation to the B8 use, it is recognised nationally that general warehousing (B8 use) employs less people per floorspace than offices (B1) and general industrial (B2):

English Partnerships Employment Density Ratios

Offices (B1) - 19sq m/per worker

General Industrial (B2) - 34sq m/per worker

General Warehousing (B8) - 50sq m/per worker

The proposal, because of its location, obviously seeks to achieve the maximum number of jobs, and hence the restriction to B1 and B2 use. However, in the case of this application, there is a reasonable justification for a departure from the Local Plan Proposal to allow for the level of B8 use which is required for the business to be able to fully function.

Emerging policy in draft PPS4 is clear that LPAs should be flexible to support businesses and from a sustainability perspective it would make sense to have the storage on-site as opposed to elsewhere, which would generate more traffic movements. If the conditions that are suggested by the applicant, namely a condition restricting any B8 use to Probiotics and restricting the B8 floor area to only that which is considered necessary are attached to any approval, then I cannot see any demonstrable harm and on that basis I have NO OBJECTION to the proposed development as it would not allow B8 use carte blanche across the allocated site.

Economic Development:

The Economic Development Team Leader has advised that from an economic perspective, he has studied this application in depth. This included meetings with the applicant to fully understand the nature of this business, the production and distribution methods used for the goods produced. Anything manufactured needs to be stored for a period prior to onward distribution, this area of activity would fall into Business Class use B8 (Storage or Distribution). It is my opinion that it would be wholly unreasonable to deny the applicant the opportunity to store and distribute the goods manufactured from the same building they were produced. The Class uses permitted on this business park are B1 and B2. The applicant would be unable to manage his business efficiently if permission for the storage and distribution were denied. Therefore and in conclusion, the economic development view is that this application is supported, with possible conditions considered to prevent the B8 Class use to be transferred in the event the applicant was to vacate the premises.

Landscape Architect:

Whilst continued development will exacerbate the aggregation of building mass on this site - as we had forecast it would - the principle of development is already established by the outline consent, and we are reliant on measures to mitigate the undoubted visual impact that will arise from further development. These impacts can be countered as far as is practicable by (i) level manipulation to keep the building as low as function and drainage allows; (ii) additional planting beyond that approved at the time of the outline application, and; (iii) sympathetic cladding tones on the building.

On these points;

1) The levels place this building at greater elevation than the current building under construction. Whilst this appears to have resulted from a desire to shed surface water northward, I am not convinced that such is the only solution. Can we first investigate all the options that may enable the height of the building (relative to ground level) to be dropped?

2) a landscape drawing is submitted in support of this application, primarily dealing with site-internal planting. I have two main concerns, being;

- a) the lack of cover along the north boundary, and;
- b) the insufficiency of planting to the south of the building.

In relation to item a) I briefly raised this concern with the agent, and he agrees there is scope to thicken up the planting belt along the north boundary, providing there is no loss of turning space. Turning to the south of the building, I would wish to see more planting, and larger trees. One option may be to utilise land currently within the phase 2 application site. If this can be done without compromise of the future layout, then such is

to everyone's advantage. Additionally, I consider there is scope to include specimen trees within the main access road hedgerow (northeast side) to the south of this building, which would help establish the sylvan characteristic on site, as well as further filter the general perception of building form from the south. Finally, I would suggest a further Acer is planted to the immediate west of the building, as a foil to this building when viewed from the west.

3) I am not aware if a materials proposal has come forward as yet? As before, I anticipate options that are relatively muted, neither too bright nor dark, and non-reflective.

Environment Agency:

The Environment Agency has raised no objections subject to conditions and informatives. These have been included in the list of conditions and informatives at the end of the report. These relate to groundwater protection, contamination, foul drainage, provision of a Private Treatment Plant, oil or chemical storage facilities, storage of fertiliser, chemicals, pesticides or other hazardous substances, submission of a Construction Environmental Management Plan and masterplan for site drainage.

Council Engineer:

Refer to previous applications for requirements regarding control of surface water runoff. Drainage details relating to this particular site to be submitted for approval.

Environmental Health Officer (Contamination):

Boon Brown have forwarded me the files missing from EDM. The preliminary ground investigation report did not find any evidence of contamination and so I don't believe further investigation is required on this part of the site.

REPRESENTATIONS

7 Individual letters/emails have been received objecting to the application. The issues raised relate to:

introduction of significant B8 use in building D when the site was allocated for B1 and B2 use only.

- Fewer employment numbers in a B8 building.
- No satisfactory justification for B8 use.
- Planning permission is required for B8 use as it not an ancillary use to the B1 and B2 uses.
- Building may be used by a different operator - LPA would have limited control over any change of user.
- Introduction of B8 uses demonstrates need for B1/B2 uses in this location is limited.
- B8 will follow on other parts of the development.
- Location and configuration of D, including parking area has changed since outline consent - will have significant impact on visual impact of development.
- Scale of building and materials are unsympathetic.
- A personal permission not normally an effective tool to limit uses as it can be challenged at appeal.
- Working hours should be controlled
- Illuminated lighting around the building should be controlled.
- The development is prominent and can be viewed from the A303 and old A303.
- B8 use is a commercial argument that has no planning basis.
- Formal B8 use not required for their business as a level of ancillary use is granted to all manufacturing operations.

- The company are not a storage and distribution company - it is their chosen layout and there are other options to them without the need for B8 use.
- Increased view of D from the south, east and west.
- Landscape views concentrate on views from the north whilst not giving equal importance to other views.
- Current landscaping proposals inadequate given the previous conifer screen was to remain
- Many other better sites for B8 use.
- Scandalous that this site was allocated in the first place for employment uses.

The Local planning Authority has also received a bundle of 110 letters signed mostly by Lopen residents objecting to the proposed B8 use. This is a circular letter and states the following:

'I object to this application which seeks to permit B8 use on a site originally allocated by South Somerset District Council (SSDC) for employment under classes B1/B2 only. B8 use was specifically removed from this site at the original planning stage by SSDC. If permission is permitted for this application it would set the precedent for allowing further B8 permissions on this and any other building on the Lopen Head Nurseries site'.

CONSIDERATIONS

The main considerations with regard to this application are the principle of the development, the acceptability of B8 use on this site, design, siting, materials and visual impact, landscaping, highways and drainage issues.

Principle of Development

The principle of employment development on this site for B1 and B2 uses has been clearly established. The site occupies part of a larger allocated employment site, as defined in the South Somerset Local Plan. It also benefits from outline planning permission for employment use. Thus, B1/B2 employment uses are considered acceptable on this site. However, this application differs from the previous consents for buildings A and C, and indeed the outline consent, in that it seeks B8 use in addition to B1/B2 uses. The B8 use will constitute the majority of the proposed building at 66% of the floor space.

Proposed Use (to include B8 use).

The use of the building for B1 and B2 uses is fully supported as this meets the original allocation for the site and subsequent outline consent. The introduction of B8 use is not in accord with the local plan allocation nor the outline consent. However, that does not mean that a proposed B8 use cannot be properly considered and assessed. Moreover, each application has to be assessed on its merits and any refusal of an application should be made on strong planning grounds.

Judging the merits of this particular case for B8 use, it is important to first assess the case made by the applicant. The applicant has forwarded the following additional statement with regard to the need for the B8 accommodation:

Please find set out below a statement from the applicant Probiotics International Ltd providing a precise justification for the proposed building having regard to the needs of the business:

"Probiotics International is growing at 30% per year. We knew that more production space would be required within a couple of years but this requirement has been pulled forward due to the upsurge in global demand for one of our products. The machinery to produce the quantities required is larger than anything we had previously envisaged

purchasing and will need to be installed in what is currently the warehousing element of building 'C' once the space has been adapted for this purpose.

Building 'C' contains high cost elements that are essential for the clean room production space to operate, HEPA filtered air supply, dehumidified air, temperature controlled production environment, air sourced heat pumps and high capacity compressed air systems. It would not be financially possible for the company to build another manufacturing facility with this level of infrastructure.

The type of products the company produces and the type of customer we supply demands that quality control is paramount, all incoming raw materials are sent for analysis and all finished product is QC passed by independent laboratories before dispatch (positive release), this process slows down the flow of goods through the warehouse which results in more space being required. The success of these products globally, not only under our Protexin brand but also branded for multinational pharmaceutical companies, has resulted in a massive increase in packaging, as each of the 25 countries we supply needs its own label, box and outer packaging.

Building 'D' at 10,000 sq ft will therefore be used to replace the storage lost in building 'C' (3,500 sq ft) and supply the further 3,500 sq ft of storage required to operate the business efficiently. The remaining 3,000 sq ft will be utilised for the production of products that do not require the highly specialised infrastructure of building 'C'."

It is accepted that Probiotics has made a clear intention to occupy the adjoining site with the near completion of building C. The supporting documents make it clear that Probiotics require the second building to separate human and animal product manufacture and to provide a significant level of storage space. It is considered that from a business perspective, locating the two buildings together on one site makes sense. It does meet a site specific need for Probiotics. The additional information provided makes a strong case for the B8 use. Moreover, from a planning point of view, placing this second building adjacent to their first unit is certainly a sustainable approach in terms of reducing traffic movements delivering the finished goods to a storage area. The Council's planning policy team have not raised an objection to this proposal nor did the council's economic team. The case officer specifically asked the then Economic Development Team Leader about this proposal and specifically whether granting this application would cause economic harm. His advice was that it would not cause economic harm and supported the application.

It is accepted that B8 use creates less employment than B1 and B2 uses. The Design and Access Statement argues that the B8 use would not generate fewer jobs, stating that this building will enable Probiotics 'to maximise the efficiency of their business'. Whilst the efficiency argument is not disputed, it is not accepted that the B8 wouldn't create fewer jobs. English Partnerships Employment Density Ratios for B1 use is 19sq metres per worker, 34 sq metres for B2 and 50sq m/per worker for B8 use. Thus, it is considered that if a B1 / B2 use only was permitted for building D, more people would be employed. The numbers would of course vary from business to business but more people would expect to be employed. However, notwithstanding the disagreement on that issue, the LPA has to consider whether the overall planning benefit of granting permission to include a significant B8 use outweighs the concerns.

In terms of the concerns, the lower employment levels argument is accepted. Moreover, it would be contrary to the allocation restricting the site to B1/B2 use only in the Local Plan. Concern has also been raised that this would set a harmful precedent for the use of other buildings on the site in the future and that a condition restricting any B8 use of the building to their own personal occupation can be challenged via an appeal and thus

not offering sufficient protection against a B8 use independent of Probiotics. In addition, a query was raised as to whether express consent was required for B8 use.

In order to address the above concerns, the case officer sought the advice of the council's solicitors. As outlined earlier in this report, the legal advice is that express permission is required for the B8 use. It is the extent of the proposed B8 use for building D that takes it beyond ancillary and into a mixed B1/B2 and B8 use, for which express permission is required. Moreover, an occupancy condition linking use of building D to building C can be justified in this case given that Probiotics will shortly be occupying building C and it requires building D for its expansion.

In terms of imposing a personal condition, there is no 100% guarantee about the effectiveness of imposing any condition. It can be ignored, can appeal against the condition and/or apply to have it varied or removed. Equally, an application can be submitted to discharge or vary a section 106 obligation. However, whilst the LPA are not able to give a 100% guarantee against a personal condition, an occupancy condition is a tested way of retaining control and it is easier for the LPA to enforce a breach of any occupancy condition compared with a 106 obligation. On this basis and the fact that the applicant is happy for this condition to be imposed, it is considered an appropriate way forward.

With the above control through condition, the support for the application from Planning Policy and the economic development team, and along with the planning merits of locating the two buildings together, on balance, the B8 use for this building is supported.

Landscaping

In terms of the landscaping of the application site, specific planting proposals have been included to the west and south of the building. The landscape architect has sought an improved level and thickening of planting along the southern and western boundaries but also to the north. Discussions have been held with the landscape consultant to provide this additional planting. An amended plan has been received that is supported by the Council's Landscape Architect. A condition will be attached to any consent to secure implementation of this amended landscaping scheme.

On the issue of landscaping, concern has been raised locally both by the parish Council and local residents about the landscaping scheme. It is acknowledged that this is a sensitive issue and that due to the current lack of planting, the site is very open. However, it must be stressed that much time and effort has been put into discussing the landscaping for the whole site as well as for the current application site. It was considered that the previous Leylandii boundary was inappropriate, being non-native, in poor condition and the roots system of the Leylandii would not allow suitable growth of additional planting along the boundary. It is considered that the strategic planting along with the additional planting around building D will provide an attractive landscaped area around the buildings. It is not intended to provide 100% screening of the buildings but when fully established, will certainly provide a more attractive and appropriate screen compared with what would have been provided by the Leylandii trees.

Visual Impact and Materials.

In terms of the visual impact, the building will be viewed against the backdrop of building C and of future buildings to be erected on the site. Nevertheless, it is still important to ensure that the visual impact of the building is countered as far as possible. A condition will be attached regarding all of the materials to ensure that these are not too bright or reflective. Concern has been raised about the chosen materials for C. It is agreed that the choice of materials is a subjective issue but it is considered that the chosen materials are acceptable, both in terms of being relatively dark and non-reflective.

In terms of the physical impact of the building, due to the difference in ground levels and to ensure the site drains adequately, it will sit 1 metre higher than building C. The landscape officer has accepted the scale and height of the building. Set against the scale of the site, the distance between the buildings, the comprehensive landscaping scheme and control of materials, it is not considered that the visual impact of the building would be detrimental to the character and appearance of the setting. The point was made during the assessment of building C, and indeed of the outlined consent for the whole site, that whilst the impact of the development can be countered to a certain extent through the measures outlined above, a note of realism had to be struck when allocating the site that an employment site in this location would have an inevitable visual impact. It is considered however, that the measures outlined above will assist in countering its visual impact. Moreover, it is concluded that the landscaping scheme will provide an attractive boundary to the development.

Highways

The Highway Authority has raised no objection to the proposal subject to conditions. These have been included in the list of conditions attached at the end of the report.

External Lighting

Concern has been raised about proposed external lighting in the form of bollards around the building. It is agreed that the control of all external lighting is important in a rural setting, and as with building C, a condition will be attached to any consent to ensure that details of all external lighting is agreed by the LPA. This would apply to both external lighting attached to the building as well as within the grounds of building D.

Drainage

The Environment Agency has not raised an objection in terms of the proposed water drainage and foul drainage disposal arrangements. A number of conditions have been recommended along with informatives - these will be attached to any consent.

Working hours

Concern was also raised about working hours. A condition will be imposed on any consent in accordance with the outline consent to control working hours. A similar condition will also be imposed in terms of construction working and delivery hours.

SECTION 106 PLANNING OBLIGATION/UNILATERAL UNDERTAKING

Not relevant to this application.

RECOMMENDATION

Grant Consent.

01. The proposed development by reason of its design, scale, siting and materials, is considered to respect the character and appearance of the area, will provide employment opportunities, will provide a satisfactory means of vehicular access and will also provide a satisfactory landscaping scheme. It is also considered that there is adequate justification to allow B8 use of the building. The scheme accords with Policy ST5, ST6, and EC3 of the South Somerset Local Plan and Policy 49 of the Somerset and Exmoor National Park Joint Structure Plan Review.

SUBJECT TO THE FOLLOWING:

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

Reason: To accord with the provisions of section 91(1) of the Town and Country Planning Act 1990.

02. The area allocated for parking on the submitted plan shall be kept clear of obstruction at all times and shall not be used other than for the parking of vehicles in connection with the development hereby permitted.

Reason: In the interests of highway safety to accord with Policy 49 of the Somerset and Exmoor National Park Joint Structure Plan Review.

03. The development hereby permitted shall not be occupied until the covered cycle rack facility has been provided within the site in accordance with a design specification to be submitted to and approved in writing by the Local Planning Authority and to be constructed in accordance with those details that have been approved.

Reason: In the interests of highway safety to accord with Policy 49 of the Somerset and Exmoor National Park Joint Structure Plan Review.

04. No means of external lighting shall be installed on the building or within the rest of the application site without the written approval of the Local Planning Authority. Details of any external lighting to be submitted shall include the hours of operation of such lighting. Any approved external lighting subsequently installed shall not be changed or altered without the written consent of the Local Planning Authority.

Reason: To protect the visual amenity of the area in accordance with Policy ST5 and ST6 of the South Somerset Local Plan.

05. The development hereby permitted shall not be commenced until samples of all of the materials to be used for external walls and roofs have been submitted to and approved in writing by the Local Planning Authority. Once agreed, the materials shall not be altered or changed without the written consent of the Local Planning Authority.

Reason: In the interests of visual amenity to accord with Policy ST5 and ST6 of the South Somerset Local Plan.

06. No construction works or deliveries shall take place outside of the hours of 08.00 to 17.30 Monday to Saturday. No construction works or deliveries shall take place on Sundays or any Public/Bank Holidays.

Reason: In the interests of residential amenity to accord with Policy ST6 of the South Somerset Local Plan.

07. 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, and obtained written approval from the Local Planning Authority for, an amendment to the remediation strategy detailing how this unsuspected contamination shall be dealt with.

Reason: To protect vulnerable ground waters from pollution to accord with PPS25 and EP5 of the South Somerset Local Plan.

08. No development approved by this permission shall be commenced until a scheme for the provision of foul drainage has been submitted to and approved in writing by the Local Planning Authority. The drainage works shall be completed in accordance with the details and timetable agreed. No part of the development shall be brought into use until such treatment plant has been constructed.

Reason: To protect vulnerable ground waters from pollution to accord with PPS25 and EP9 of the South Somerset Local Plan.

09. No development approved by this permission shall be occupied or brought into use until a scheme for the future maintenance of the Private Treatment Plant has been submitted to and approved by the Local Planning Authority.

Reason: To prevent pollution of the water environment to accord with Policy EP9 of the South Somerset Local Plan.

10. Prior to being discharged into any watercourse, surface water sewer or soakaway system, all surface water drainage from impermeable parking areas and hardstandings for vehicles, commercial lorry parks and petrol stations shall be passed through an oil interceptor designed and constructed to have a capacity and details compatible with the site being drained.

Reason: To prevent pollution of the water environment. We recommend you follow the guidance provided by CIRIA (C697), which provides best practice on the planning, design, construction, operation and maintenance of Sustainable Drainage Systems (SUDs) to facilitate their effective implementation within developments.

11. Oil or chemical storage facilities should be sited in bunded areas. The capacity of the bund should be at least 10% greater than the capacity of the storage tank or, if more than one tank is involved, the capacity of the largest tank within the bunded area. Hydraulically inter-linked tanks should be regarded as a single tank. There should be no working connections outside the bunded area.

Reason: To prevent pollution of the water environment to accord with Policy EP9 of the South Somerset Local Plan.

12. Any oil storage facility of 200 litres or more must include a bund, and comply with the Oil Storage Regulations ("The Control of Pollution (Oil Storage) (England) Regulations 2001"), a copy of which has been forwarded to the Applicant/Agent.

Reason: To prevent pollution of the water environment to accord with Policy EP9 of the South Somerset Local Plan.

13. No development approved by this permission shall be commenced until a Construction Environmental Management Plan, incorporating pollution prevention measures, has been submitted to and approved by the Local Planning Authority. The plan shall subsequently be implemented in accordance with the approved details and agreed timetable.

Reason: To prevent pollution of the water environment to accord with Policy EP9 of the South Somerset Local Plan.

14. Before the development hereby permitted is commenced, surface water drainage details to serve the development, shall be submitted to and approved in writing by the Local Planning Authority and such approved drainage details shall be completed and become fully operational before the development hereby permitted is first brought into use. Following its installation such approved scheme shall be permanently retained and maintained thereafter.

Reason: To ensure a satisfactory means of surface water drainage is implemented as part of this development.

15. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), there shall be no extensions to this building without the prior express grant of planning permission.

Reason: To protect the character and appearance of the area to accord with Policy ST6 of the South Somerset Local Plan.

16. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), no additional windows, including dormer windows, or other openings (including doors) shall be formed in the building, or other external alteration made without the prior express grant of planning permission.

Reason: To protect the amenity of the area in accordance with Policy ST6 of the South Somerset Local Plan.

17. The approved scheme of landscaping shall not be carried out otherwise than in complete accordance with the submitted planting plan received 28th January 2010 (drawing number 414/DO1 A). All planting, seeding, turfing or earth moulding comprised in these approved details of landscaping shall be carried out in the first planting and seeding season following the completion of the development; and any trees or plants which within a period of five 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.

Reason: In the interests of visual amenity and to safeguard the character and appearance of the area, in accordance with policy 5 of the Somerset and Exmoor National Joint Structure Plan Review and policies ST5, ST6, EC2 and EC3 of the South Somerset Local Plan 2006.

18. No development approved by this permission shall take place until a Construction Environmental Management Plan, incorporating pollution control measures has been submitted to and approved by the Local Planning Authority. The plan shall subsequently be implemented in accordance with the approved details and timetable.

Reason: To prevent pollution of the water environment.

19. The B8 use hereby permitted shall be limited to 664m² floor area and shall only be carried out by Probiotics International Ltd (or any successor company) during its occupation of the land subject to this permission and shall only be carried on the for the purposes of the adjoining B1/B2 use carried out in Building C, as shown on

drawing number 2865/PL/O1. Such B8 Use shall cease immediately on Probiotics International Ltd vacating or otherwise disposing of its legal interest in the said land and then the use of the building shall revert to B1 and B2 use only.

Reason: The Local Planning Authority wishes to control B8 uses on this site and the wider allocated employment site known as ME/LOPE/1.

20. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking or re-enacting that Order with or without modification), no walls or other means of enclosure, other than those granted as part of this permission, shall be constructed or erected within the application site without the written consent of the Local Planning Authority. Once agreed, no changes shall be made to the fencing without the written agreement of the Local Planning Authority.

Reason: To protect the character and appearance of the area to accord with Policy ST6 of the South Somerset Local Plan.

21. No machinery shall be operated, no process shall be carried out and no deliveries taken or dispatched from the site outside the hours of 07.00 - 19.00 Monday to Saturday nor at any time on Sunday, Bank or Public Holidays.

Reason: To protect residential amenity in accordance with Policy ST6 of the South Somerset Local Plan.

Informatives:

01. If a new septic tank/treatment plant is the only feasible option for the disposal of foul water, or if there is an increase in effluent volume into an existing system, a Consent to Discharge may be required. This must be obtained from us before any discharge occurs and before any development commences. This process can take up to four months to complete and no guarantee can be given regarding the eventual outcome of any application. The applicant is advised to contact us on 08708 506506 for further details on Consents to Discharge.
02. Roof water shall not pass through the interceptor.
03. Any oil storage facility of 200 litres or more must include a bund, and comply with the Oil Storage Regulations ("The Control of Pollution (Oil Storage) (England) Regulations 2001"), a copy of which has been forwarded to the Applicant/Agent.
04. The storage of fertiliser, chemicals, pesticides or other hazardous substances must be within properly constructed bunded areas of sufficient capacity to avoid contamination of any watercourse, surface water drains or groundwater in the event of spillage. To prevent pollution of the water environment agrochemicals and pesticides should be stored and used in such a manner so that pollution of surface or groundwater cannot occur.
05. Nothing other than uncontaminated excavated natural materials shall be tipped on the site.
06. Inspection manholes shall be provided and clearly identified on foul and surface water drainage systems, in accordance with the foul and surface water drainage schemes approved by the Local Planning Authority.

07. Safeguards should be implemented during the construction phase to minimise the risks of pollution and detrimental effects to the water interests in and around the site.
Such safeguards should cover the use of plant and machinery, oils/chemicals and materials; the use and routing of heavy plant and vehicles; the location and form of work and storage areas and compounds and the control and removal of spoil and wastes.

We recommend referring to our Pollution Prevention Guidelines, found at www.environment-agency.gov.uk/business/444251/444731/ppg/

08. The operators of any units should consult with the Environment Agency prior to activities commencing on the site. Advice should be sought on waste management, hazardous activities, pollution prevention, etc. relating to operations at the site to protect water interests. Please contact Bob Massey, Environment Officer, on 01278 484849 for further information.

The Duty of Care regulations for dealing with waste materials are applicable for any off-site movements of wastes. The developer as waste producer therefore has a duty of care to ensure all materials removed go to an appropriate licensed disposal site and all relevant documentation is completed and kept in line with regulations.

In England, it is a legal requirement to have a site waste management plan (SWMP) for all new construction projects worth more than £300,000. The level of detail that your SWMP should contain depends on the estimated build cost, excluding VAT. You must still comply with the duty of care for waste. Because you will need to record all waste movements in one document, having a SWMP will help you to ensure you comply with the duty of care.

Further information can be found at <http://www.netregs-swmp.co.uk>

09. The applicant has submitted a Flood Risk Assessment (FRA) which covers the whole Lopen Head Nursery outline application site.

We support a masterplan approach as this the most efficient and effective way of managing flood risk and drainage. An addendum to the original flood risk assessment, and revised layout and drainage plans, have been submitted for this specific application for Building D. The details submitted are considered satisfactory and we have no objection to the surface water disposal scheme proposed.
