



<b>Application Number</b>	<b>21/00411/VARCO</b>
<b>Site Address</b>	<b>Manor Farm, Worcester Early Years Centre, Malvern Road, Worcester, WR2 4BS</b>
<b>Description of Development</b>	Application to vary condition 3 of planning approval 19/00195/FUL to amend operating hours of the lighting
<b>Expiry Date</b>	28 March 2022
<b>Applicant</b>	Worcester Early Years Centre
<b>Agent</b>	Mr Ben Greenaway
<b>Case Officer</b>	Andrew Thompson
	<a href="mailto:andrew.thompson@worcester.gov.uk">andrew.thompson@worcester.gov.uk</a>
<b>Ward</b>	Bedwardine Ward
<b>Reason for Referral to Committee</b>	Ward Member referral
<b>Key Issues</b>	The principle of development and whether the proposal would be sustainable form of development having regard to the 3 dimensions of sustainable development in terms of its economic role, social role and environmental role.
<b>Web link to application</b>	<a href="https://plan.worcester.gov.uk/Planning/Display/21/00411/VARC">https://plan.worcester.gov.uk/Planning/Display/21/00411/VARC</a>
<b>Recommendation</b>	<b>The Corporate Director - Planning and Governance recommends that the Planning Committee grants planning permission subject to the Conditions set out at Section 9 of this Report.</b>

## 1. **Background**

- 1.1 The application was registered on 26 April 2021 and was due for a decision on 21 June 2021. An extension of time for the determination of the application has been agreed to allow determination by the Planning Committee.

1.2 The application has been referred to the Planning Committee at the request of Councillor Alan Amos given the long-standing unauthorized activity continually taking place at this location causing endless nuisance and disturbance to neighbouring residents.

## 2. The site and surrounding area

2.1 The site forms part of Manor Farm. The site is located on the southwestern outskirts of the City and is accessed from Malvern Road via an access shared with a glamping site, early years centre and caravan park, all of which are sited on the now-diversified Manor Farm. A public house and units in office use lie further north. Beyond the farmland the surrounding area becomes more residential in character with residential properties further north and east of the application site. To the south is open farm land (cattle) beyond which lies the River Teme.

2.2 Manor Farm is a dairy farm which in recent years the farm has diversified in a response to changing market conditions in the dairy industry and the site is bordered by a childcare facility and ice cream shop, caravan and glamping sites. The site borders (and has planning consent for) a temporary yurt style marquee which is used for wedding and other events as well as use of a permanent barn building for weddings and events. The site borders a pond and is located in flood zone 3 within the functional floodplain. The site is designated as 'Green Space' in the adopted South Worcestershire Development Plan.

## 3. The proposals

3.1 The application proposal relates to an application to vary Condition 3of planning permission 19/00195/FUL which approved a retrospective application for the erection of an antique lamppost and 6 low level lighting bollards on 22 August 2019

3.2 The application is accompanied by a full set of plans together with a suite of supporting documents that include:



**Figure 1 – Site Plan**



- 3.3 Condition 3 of Planning Permission 19/00195/FUL states  
“The 6 lighting bollards approved by this application shall not be illuminated at any time before 07.00 in the morning or after 19.00 in the evening and shall not be illuminated at any time on weekends or on bank holidays or during the period from 1st May to 1st October annually.’
- 3.4 The proposed wording of Condition 3 is now proposed to allow lighting of the bollards between the hours of Monday – Friday: 06:30 –22:00 and Saturday and Sunday: 08:00 – 22:00
- 3.5 The application sets out that “The lighting approved pursuant to planning permission 19/00195/FUL is necessary to facilitate safe and convenient access arrangements to and from the facility from its car park. The hours that lighting may be permitted should therefore follow the hours that the facility is operational”.
- 3.6 It should also be noted that the approved plan under Condition 2 of 19/00195/FUL only showed 4 bollards, despite 6 being approved by conditions and the Development Description. The plan at Figure 1 therefore has been received to allow for correction of this as an approved plan.
- 3.7 In accordance with Article 15 (7) of The Town and Country Planning (Development Management Procedure) (England) Order 2015 (as amended), full details of the application have been published on the Council’s website. As such, Members will have had the opportunity to review the submitted plans and documents in order to familiarise themselves with the proposals prior to consideration and determination of the application accordingly.

#### **4. Planning Policy**

- 4.1 The Town and Country Planning Act 1990 (‘the Act’) establishes the legislative framework for consideration of this application. Section 70(2) of the Act requires the decision-maker in determining planning applications/appeals to have regard to the Development Plan, insofar as it is material to the application/appeal, and to any other material consideration. Where the Development Plan is material to the development proposal it must therefore be taken into account. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires the application/appeal to be determined in accordance with the Plan, unless material considerations indicate otherwise.
- 4.2 The application is submitted under Section 73 of the Town and Country Planning Act 1990 that allows an application to be made to vary conditions associated with a planning permission. Section 73 of the Town and Country Planning Act confirms that on such applications the Local Planning Authority shall consider only the question of the conditions subject to which planning permission should be granted, and:
- (a) if they decide that planning permission should be granted subject to conditions differing from those subject to which the previous permission was granted, or that it should be granted unconditionally, they shall grant planning permission accordingly, and
  - (b) if they decide that planning permission should be granted subject to the same conditions as those subject to which the previous permission was granted, they shall refuse the application

- 4.3 In terms of decision making a Section 73 application should be treated just like any other application, and in making their decisions Local Planning Authorities should focus their attention on national and development plan policies, conditions attached to the existing permission and other material considerations which may have changed significantly since the original grant of permission. A successful application to amend conditions results in the issue of what is in effect a new planning permission but does not cancel the old permission.
- 4.4 Guidance for determining s73 applications is set out in the NPPG which states that a minor material amendment is one "whose scale and nature results in a development which is not substantially different from the one which has been approved". It is further stated that the development which the application under s.73 seeks to amend will by definition have been judged to be acceptable in principle at an earlier date. Consequently, the extent of the material planning considerations are somewhat restricted and only the amendments being applied for should be considered at this stage in light of current policy. In terms of decision making a Local Planning Authority therefore has to make a decision on the amendments being applied for with regard to relevant national or local policies which may have changed significantly since the original grant of planning permission as well as the merits of the changes sought.
- 4.5 The key legal provisions relating to the consideration of heritage assets in the planning system are s72 (1) and s66 (1) of the Planning Listed Buildings and Conservation Areas Act 1990 which state that "special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area" and "have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses".
- 4.6 The Development Plan for Worcester now comprises:
- The South Worcestershire Development Plan (SWDP) which was adopted February 2016, and;
  - The Worcestershire Waste Core Strategy, which was adopted on December 2012.

### **South Worcestershire Development Plan**

- 4.7 The following policies of the SWDP are considered to be relevant to the proposal:

SWDP 6 Historic Environment  
SWDP 21 Design  
SWDP 24 Management of the Historic Environment  
SWDP 37 Community Facilities

### **The Waste Core Strategy for Worcestershire - Adopted Waste Local Plan 2012-2027**

- 4.8 The Waste Local Plan was adopted by Worcestershire County Council on 15 November 2012 and is a plan outlining how to manage all the waste produced in Worcestershire up to 2027. The following policies are relevant to this application:

WCS1 (Presumption in favour of sustainable development)  
WCS3 (Re-use and recycle)  
WCS17 (Making provision for waste in new development)

### **Material Considerations**

#### **1. National Planning Policy Framework**

## **2. National Planning Practice Guidance**

## **3. Supplementary Planning Documents**

4.9 The following Supplementary Planning Documents (SPD) are relevant to the application proposals:

- South Worcestershire Design SPD
- Planning for Health in South Worcestershire SPD

## **4. Other relevant documents**

4.10 The following other documents are relevant to the application proposals:-

- Worcestershire's Local Transport Plan (LTP4) 2018 – 2030
- Worcestershire County Council Streetscape Design Guide (2018)

## **5. Relevant Planning History**

5.1 The site has been the subject of a number of planning applications. The following are considered relevant to the determination of the application:

P97C0153 - Convert and extend existing farm buildings to ice cream production.  
Approved 5 June 1997

P97C0156 - Erection of a farm shop and tea room building. Approved 5 June 1997

P10C0447 - The creation of a new early years centre on land at Bennetts Farm. Change of use of the agricultural land to D1, educational, is sought. Refused – 20 January 2011

P10C0556 - Proposed demolition of existing packaging section of ice cream factory and construction of new packaging storage, cold store and bulk ingredients store along with associated works. Approved 12 April 2011

P11C0069 - The creation of a new Early Years Centre on land at Bennetts farm and Change of Use of adjacent agricultural land to D1 (Educational). Approved 9 May 2011

P14C0106 - The creation of a new Early Years Centre on land at Bennetts farm and Change of Use of adjacent agricultural land to D1 (Educational). Approved 21 Aug 2014

P15C0111 - Full Planning Application for reconfiguration of approved hard landscaping areas of Worcester Early Years Centre (Ref: P14C0106) And Ice Cream Factory (Ref: P10C0556) Approved 20 May 2011

19/00094/FUL - Erection of a single storey events venue and farm cafe. Installation of decking over pond, outdoor seating and children's play area. Approved 4 December 2019

19/00195/FUL - Retrospective application for the erection of an antique lamppost and 6 low level lighting bollards. Approved 22 August 2019

19/00197/DOC - Retrospective application for discharge of conditions - P14C0106 – Withdrawn 3 July 2019

21/00410/VARCO – Variation to condition 5 of planning permission P14C0106. Under consideration

## **6. Consultations**

6.1 Formal consultation, including display of site notices, has been undertaken in respect of the application. The following comments from statutory and non-statutory consultees and interested third parties have been received in relation to the original and amended proposals and are summarised as follows:

**Neighbours and other third party comments:** 4 Objections have been received from the occupants of 10, 14 and 18 Crane Drive and Lyttleton House, Malvern Road; on grounds relating to the following matters:

- Impact on amenity
- Impact on wildlife
- Principle of the use and compliance with Policy SWDP37
- Other lighting being installed.

One letter of support from a member of staff at the Early Years Centre has been received.

Following the receipt of the amended plan in February 2022, an additional objection has been received from Lyttleton House, Malvern Road which raises the following matters:

- The 'new' plans also include a 5 metre tall lamppost. We assume that this is the lamppost which was previously refused retrospective planning and we do hope that this is not a fresh attempt to gain planning for the lamppost.  
[Officer Response – this is not seeking to gain permission for further lighting and relates solely to the 6 lighting bollards. Previous planning conditions in respect of the lamppost are maintained]
- The 'new plans' identify 2 'new' lighting bollards. In truth there are 4 more as well, making 10 bollards in total. (being 4 'original, 2 additional, and 4 not marked on the plan).  
[Officer Response – these are the subject of a separate investigation and outside the scope of the application]
- In addition to this there are 2 high level lights on a shed. These are much higher level and so are significantly more intrusive than the bollards. It is difficult to see what safety purpose they fulfil as they seem to be around head height.  
[Officer Response – these are the subject of a separate investigation and enforcement action]
- In addition to these there are 8 high level round lights shining out from the building itself. Perhaps the extra bollards are needed to counter the glare from all these lights?  
[Officer Response – these are the subject of a separate investigation and enforcement action]
- None of the above considers the lights coming from the events venue and lighting on an additional building which has recently 'appeared' at the Ice cream factory this year.  
[Officer Response – these are the subject of a separate investigation and outside the scope of the application]

- The plans which have been presented in support of this application are simply not an accurate representation of the lighting at the Early Years Centre. We refer to our comments of 3rd June 2021 and reiterate our request for a full review of the lighting on this site.  
[Officer Response – the application relates to bollards approved under 19/00195/FUL and such a review would be outside the scope of the planning application]

**Worcester City Council Conservation Officer:** Given that the building and its use are well-established, there should be very little impact from these additional hours of lighting upon the conservation area or the listed Lyttleton Court, north of the approach road. This notwithstanding, there is some neighbour opposition both to the current application and to 19/00195/FUL, and the need for these hours of operation of the lighting all year round it perhaps debateable. Therefore, is there not maybe a technological solution to the matter, possibly using light level sensors to turn the lights on when it is dark enough for their use, and/or motion sensors so that they only come on when activated by a moving vehicle.

**Worcester City Council Landscape and Biodiversity Advisor:** No objection

**Worcestershire County Council (Highways):** No objection

**Worcestershire Regulatory Services (Nuisance):** no objection to the operation of external lighting at Worcester Early Years Centre. The additional low level bollard lighting in the car park should not pose a light nuisance. We advise that timing controls are implemented to ensure they automatically turn on and off within thirty minutes of opening/closing times.

- 6.2 Members have been given the opportunity to read all representations that have been received in full. At the time of writing this report no other consultation responses have been received. Any additional responses received will be reported to members verbally or in the form of a late paper, subject to the date of receipt.
- 6.3 In assessing the proposal due regard has been given to local residents comments as material planning considerations. Nevertheless, decisions should not be made solely on the basis of the number of representations, whether they are for or against a proposal. The Localism Act has not changed this, nor has it changed the advice that local opposition or support for a proposal is not in itself a ground for refusing or granting planning permission unless it is founded on valid planning reasons.

## **7. Planning Assessment**

- 7.1 Policy SWDP1 of the South Worcestershire Development Plan sets out overarching sustainable development principles and these are consistent with the Framework. The various impacts of the development have to be assessed and the benefit and adverse impacts considered, to establish whether what is proposed is sustainable development. Taking the above matters into account I consider the main issues raised by the proposal relate to the principle of development and whether the development would be sustainable, having regard to the 3 dimensions of sustainability set out in the Framework: economic, social and environmental, in particular with regard to:
- 7.2 Policy SWDP1 of the South Worcestershire Development Plan sets out overarching sustainable development principles and these are consistent with the Framework. The various impacts of the development have to be assessed and the benefit and adverse impacts considered, to establish whether what is proposed is sustainable development.



Taking the above matters into account I consider the main issues raised by the proposal relate to the principle of development and whether the development would be sustainable, having regard to the 3 dimensions of sustainability set out in the Framework.

### **The Principle of Development**

- 7.3 Since the grant of planning permission the Council the National Planning Policy Framework has been revised. The amended document fundamentally or significantly alters the consideration of the original planning permission and supports the provision of community facilities in assisting community cohesion. It is noted that some residents have objected to the use of the site.
- 7.4 It should also be noted that the Use Classes Order has also been updated since the original planning permission. The use would now fall under Use Classes F.1 (a) and (e) and F.2 (b).
- 7.5 Policy SWDP 37 in particular Part A states
- A. The provision of new community facilities or the enhancement of existing facilities will be permitted, particularly where the proposals have resulted from neighbourhood planning, subject to satisfying the sequential test in the Framework where applicable. Applicants will be required to consider whether the combining or rationalisation of existing facilities would be more appropriate than the provision of a new facility.*
- 7.6 In updating the submission and varying the Condition to permit lighting during the hours of operation of the Early Years Centre the proposed wording would not alter the purpose of the condition or agree further lighting. The proposals are regarding the six approved bollards.
- 7.7 There is therefore considered that the proposals in principle subject to consideration of the matters of detail.

### **Impact on neighbouring amenity**

- 7.8 The comments of the nearby and neighbouring residents are noted and have been given full and careful consideration. Policy SWDP 21 requires development to have regard to the amenity of neighbours.
- 7.9 The application site already exists and there is a range of uses on the site. There is a shared use of the car park and therefore whilst control of bollards lies with the approved permission there is the capability for other users to utilise the car parking. There are no restrictions on other permissions preventing this use. .
- 7.10 The proposal is an appropriate distance from neighbouring and nearby residents and therefore it is considered that the proposed hours Monday – Friday: 06:30 – 22:00; Saturday and Sunday: 08:00 – 22:00 are appropriate and would not be significant or out of keeping with other uses. Further the use of the building in the evening would also support the use of the building by people working through the day and to safely use the car park.
- 7.11 Local residents have also raised issues with regard to other lights. Following enforcement investigation and action a number of lights on the building and around the site were removed towards the end of 2021. The site will continue to be monitored and further lighting, if installed, would be investigated as appropriate.

- 7.12 The previous condition also included a seasonal aspect. Considering comments of Worcestershire Regulatory Services that the additional low level bollard lighting in the car park should not pose a light nuisance it is considered that further controls would not be necessary.
- 7.13 Whilst the concerns of residents have been given full and careful consideration, the proposals are considered to be acceptable and would be in accordance with the requirements of the Development Plan and the aims and objectives of the NPPF,

### **Historic Environment**

- 7.14 The key legal provisions relating to the consideration of heritage assets in the planning system are s72 (1) and s66 (1) of the Planning Listed Buildings and Conservation Areas Act 1990 which state that "special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area" and "have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses". Policy SWDP 6 is the relevant policy of the Development Plan and the requirements of Paragraph 200-204 of the NPPF are also relevant.
- 7.15 As set out by the Conservation Officer there are no significant impacts on heritage assets. As such the proposals are considered to be in accordance with Policies SWDP 6 and 24.

### **Biodiversity and Wildlife**

- 7.16 Policy SWDP 22 requires development to ensure that there is no harm to protected species or habitats. The Council's Landscape and Biodiversity Advisor raises no objection.

### **Access and Highway Safety**

- 7.17 The application proposals utilise car parking and access arrangements to Manor Farm which have been provided. The amendment to the planning condition which relates to a permission for lighting would not significantly alter the use of the building or result in issues in relation to highway safety.
- 7.18 As such the proposals are in accordance with the Policies of the Development Plan and would not be detrimental to highway safety.

### **Original Planning Conditions**

- 7.19 The original planning application was approved with a number of planning conditions. As the application is to consider Condition 3 under s73 process it would grant a new planning permission, it is appropriate to consider the original planning conditions and whether there are alterations to the consideration of the application or it is necessary to reimpose such conditions.
- 7.20 Four planning conditions were added. Development has commenced on the site and as such it is not necessary to amend the implementation condition,
- 7.21 Condition 2 is updated to include the reference to the new plan showing six bollards and condition 4 is updated in its wording.

## **8. Planning Balance and Conclusion**

- 8.1 The application is for an amendment to the existing lighting hours originally approved under 19/00195/FUL and does not propose new lighting. The plans have been updated to show the six approved bollards.
- 8.2 In the consideration of any application it is necessary to balance the sustainable development objectives.
- 8.3 The Centre provides economic benefit in terms of jobs and assists the community in its day to day living. There is also social benefit from the use of the centre and also in the sense that the users feel safe in accessing the site.
- 8.4 On environmental terms the impact to neighbours has been carefully considered and the environmental impact to users of the facility and the site has also been considered.
- 8.5 Overall taking into account all matters raised and the comments of residents and consultee responses into consideration. It is considered that the proposals constitute an environmentally, socially and economically sustainable form of development that accords with the Framework and the Development Plan as a whole.

## **9. Recommended Planning Conditions**

- 9.1 In the event that Members resolve to grant planning permission the following conditions are recommended:

1. Unless where required or allowed by other conditions attached to this permission, the development hereby approved shall be carried out in accordance with the information (including details on the proposed materials) provided on the application form and the following plans/drawings/documents:

Planning Application Diagram;  
Lamp Post Specification (excluding lighting details) as received by the Local Planning Authority on 15 February 2022 showing six bollards), and;  
Bollards Specification.

Reason: For the avoidance of doubt and to secure a satisfactory form of development in accordance with policy SWDP 21 of the South Worcestershire Development Plan and the aims and interests that the National Planning Policy Framework seeks to protect and promote.

2. The 6 lighting bollards approved by this application shall not be illuminated at any time outside the hours of Monday – Friday: 06:30 – 22:00; Saturday and Sunday: 08:00 – 22:00.

Reason: To safeguard the amenities of neighbouring residents in accordance with policy SWDP 21 of the South Worcestershire Development Plan and the aims and interests that the National Planning Policy Framework seeks to protect and promote.

3. The lamppost approved by this application shall remain disconnected from the electrical circuit.

Reason: To safeguard the amenities of neighbouring residents in accordance with policy SWDP 21 of the South Worcestershire Development Plan and the aims and interests that the National Planning Policy Framework seeks to protect and promote.