

By Email Only: planapps@westberks.gov.uk

The Planning Service
West Berkshire Council
Council Offices
Market Street
Newbury
RG14 5LD
United Kingdom

**CMS Cameron McKenna Nabarro
Olswang LLP**

Cannon Place
78 Cannon Street
London EC4N 6AF

DX 135316 London Cannon Place

T +44 20 7367 3000

F +44 20 7367 2000

cms.law

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Dear West Berkshire Council

Land Opposite Nightingale Farm, Wantage Road, Leckhampstead, Newbury (the “Site”)

Planning Application (ref: 23/02913/FULMAJ (the “Planning Application”))

We are writing on behalf of our clients John Duffield, the freehold owner of the property adjacent to the Site, and Marcham Farms Limited, which farms the land to the north and east of the Site, in relation to the Planning Application made by CYO Seeds (the “Applicant”).

Further to our written objection to the Application dated 19 January 2024 (the “Objection”), we wish to bring the following additional points to the Council’s attention.

1. MATERIAL CHANGE OF USE TO INDUSTRIAL USE

The Proposed Development

1.1 The Application is for the development of agricultural barns to accommodate workshop, office, and associated vehicle storage for an agricultural seed processing business, including agricultural workers dwelling and seasonal worker accommodation, and will comprise the following:

- 1.1.1 seed processing facility;
- 1.1.2 workshop with areas for vehicle maintenance (including a linear washdown area to wash vehicles) and a fuel storage facility;
- 1.1.3 seed treatment store;
- 1.1.4 vehicle storage building (up to 7 vehicles);

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- 1.1.5 agricultural worker’s dwelling and seasonal worker accommodation;
- 1.1.6 an office;
- 1.1.7 parking for 13 vehicles; and
- 1.1.8 a nature reserve,
(the “**Proposed Development**”).

1.2 As outlined in the Planning Statement, the Site is “*mostly chalk grassland, with a redundant farm building and associated structures which are in a state of disrepair, with various hardstanding*”. Whilst there are existing agricultural buildings on the Site, these are derelict and not in use, and will be replaced with “*buildings suitable for the business’ operations*”. No evidence has been submitted by the Applicant to support their statement that there is existing agricultural use at the Site.

1.3 The Planning Statement notes that it was agreed with the Case Officer that the Applicant’s business operations constitute an agricultural use, as is already established at the Site. However, it is clear from the uses outlined in the Proposed Development and the current derelict state of the Site that neither of these circumstances are accurate. There is presently no agricultural use ongoing at the Site, and the Proposed Development is properly classified as industrial use.

1.4 It is therefore misleading to state that the Application seeks to maintain the ‘established’ use of the Site; rather, the Application will result in a material change of use at the Site to industrial use.

Industrial Use and Agricultural Use

1.5 Industrial use is split into the two following use classes:

1.5.1 **Use Class B1(c) – Light Industry:** this comprises any industrial use which may hypothetically be carried out in a residential area without detriment to the amenity of residents of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit.

1.5.2 **Use Class B2 – General Industry:** this includes all industrial activities except those defined as ‘light industry’. Industrial activities comprise a process for or incidental to any of the following purposes:

- (a) the making of any article or part of any article (including a ship or vessel, or a film, video or sound recording);
- (b) the altering, repairing, **maintaining**, ornamenting, finishing, **cleaning**, **washing**, packing, canning, **adapting for sale**, breaking up or demolition of any article; or
- (c) the getting, dressing or treatment of minerals in the course of any trade or business other than agriculture, and other than a process carried out on land used as a mine or adjacent to and occupied together with a mine.

1.6 ‘**Agriculture**’ is defined in section 336(1) of the Town and Country Planning Act 1990 as: “*horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock*”

(including any creature kept for the production of food, wool, skins or fur, or for the purpose of its use in farming the land), the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds and the use of land for woodlands where that use is ancillary to the farming of land for other agricultural purposes and ‘agricultural’ shall be construed accordingly”.

Classification of the Proposed Development

- 1.7 As outlined above, the Proposed Development comprises a seed processing facility, a vehicle maintenance area (where vehicles will be washed) as well as a fuel storage area. Mobile seed processing vehicles are to be stored on the Site, where they will be maintained and washed. The seeds that are to be cleaned by the Applicant are seeds from local farms and are not grown or sewed on the Site.
- 1.8 The Proposed Development therefore involves the cleaning / washing / maintaining of products that are not produced on the Site. Material is imported from elsewhere, and services will be carried out for others, with the cleaned seeds then returned. These are all processes which fall under general industrial use (Use Class B2). None of these processes are uses that fall within the definition of ‘agriculture’ as outlined above at paragraph 1.7.
- 1.9 The fact that the Proposed Development serves an ultimate agricultural purpose, i.e. results in seeds that will then be used for purposes that do fall within the definition of ‘agriculture’ (seed growing), does not mean that the use should be categorised as an agricultural use.
- 1.10 In the appeal decision of *Breckland*¹, a specialised industrial purpose which served an agricultural end purpose was held not to be an agricultural use. In this case, the construction of poultry sheds and movement modules and the repair/maintenance of equipment and machinery was carried out on an old agricultural building. This was held to be an industrial process and, *even though* it served an eventual agricultural purpose, it could not be regarded as a return of a working farm to the site; the proposals were instead held to be purpose-built industrial premises.
- 1.11 As such, the fact that the Proposed Development has an agricultural end use, and provides a service to agricultural premises, does not necessarily mean that it is classified as an agricultural use. None of the proposals that form part of the Application fall within the definition of ‘agriculture’, as outlined above, and the proposals are nothing to do with any agricultural use on the Site. Instead, the Proposed Development is clearly one of an industrial nature, notwithstanding the fact that agricultural uses elsewhere are supported by the proposals.

Ancillary to Agricultural Use

- 1.12 In order for the Proposed Development to be considered a use which is ancillary to agricultural use, there must first be an existing agricultural use on the Site. As outlined above, the Site comprises derelict barns which are not presently in use, and as such there is no current agricultural use on the Site for the Proposed Development to be considered as ancillary to. As confirmed by

¹ Breckland 11/02/2008 DCS No [100-053-816](#)

the Applicant, the Site's existing buildings have been left redundant, and the land has not been managed in a number of years².

- 1.13 In the alternative view that the Site does currently comprise agricultural use, the Proposed Development may be considered as ancillary to such agricultural use if, for example, the products that were being cleaned / washed / maintained etc. were products that were produced on the Site, or derived from material produced on the Site.
- 1.14 However, where an "industrial" activity at a farm involves the importation of material from elsewhere, the provision of services for others (be they other farmers or not), or where there is no linkage to the land concerned, it will almost certainly be considered that a separate industrial use is being carried out, and that it cannot be considered industry ancillary to agriculture.
- 1.15 It has been held³ that whilst the sale of produce grown on a holding may be considered to be ancillary to the use of the land for agriculture, the adaptation for sale of that produce on the holding is not regarded as an ancillary use, and that the bringing in and selling off someone else's produce is separate from the agricultural use of the land. Whilst this case related to retail use, the same principle should be applied to industrial uses.
- 1.16 As outlined above, the Proposed Development involves the cleaning / washing / maintaining of products that are not produced on the Site. Material is imported from elsewhere, and services will be carried out for others. There is therefore no linkage to the Site, and consequently cannot be considered as a use ancillary to the agricultural use of the Site. The fact that the Proposed Development serves an eventual agricultural purpose is not sufficient to justify it being deemed an agricultural use.

Material Change of Use

- 1.17 As outlined above, the Proposed Development is an industrial use and therefore constitutes a material change of use at the Site.
- 1.18 With regards to the classification of industrial use, given that the classification of Light Industry (Use Class B1) is made by reference to *effects* and not innate characteristics, and given the lack of information provided in the Application with regards to such effects (e.g. lack of lighting impacts, as outlined in our Objection), we therefore assume for the present purposes that the Proposed Development will fall within General Industry (Use Class B2). If it is considered that the Proposed Development can be carried out in a residential area upon receipt of further information as to the effects of the Proposed Development on nearby amenity, the conclusions as to a material change of use at the Site still remain.
- 1.19 If, contrary to our clear view, the Proposed Development is considered agricultural use, a material change of use at the Site nevertheless occurs due to the intensification of use. As mentioned, the Site currently comprises derelict barn buildings, with no other use being carried out on the Site. The proposals are of an increased scale and bulk to the existing buildings, and as such result in a change in the character of the land. This in turn results in an additional impact on the Site and its surroundings (as detailed in our Objection). This intensification of use is therefore of such a

² See pg. 15 of the Applicant's Agricultural Needs Statement

³ Wood v Secretary of State for Communities and Local Government [2015] EWCA Civ 195

degree to amount to a material change in the character of the use, and in turn can therefore be regarded as a material change of use⁴.

Planning Policy on Industrial Use

1.20 In addition to the planning policy outlined in our Objection, the following is also relevant and must be considered by the Council when determining the Application:

1.21 **Policy CS9 of the West Berkshire Core Strategy (2006 – 2026): Location and Type of Business Development**

1.21.1 This states that proposals for industry, distribution and storage uses will be directed to the District’s defined Protected Employment Areas, and existing suitably located employment sites and premises. Any proposals for such uses outside these areas/locations will be assessed by the Council against the following:

- (a) Compatibility with uses in the area surrounding the proposals and potential impacts on those uses; and
- (b) Capacity and impact on the road network and access by sustainable modes of transport.

1.21.2 The Site does not fall within any of the Protected Employment Areas⁵, which are parcels of land designated for Use Classes B1 and B2.

1.21.3 Paragraph (c) of Policy CS9 states that proposals for business development should be in keeping with the surrounding environment, not conflict with existing uses, and promote sustainable transport.

1.22 **North Wessex Downs AONB Management Plan**

1.22.1 This outlines that one of the key issues which has the potential to have significant influence on the AONB is new noise creating activities, for example from new industrial operations⁶.

1.22.2 As outlined in our Objection, the Site is situated in the ‘Downland with Woodland’ landscape type, within the Brightwalton Downs character area, of the AONB, with one of the key characteristics of this landscape type being “*a peaceful, tranquil and secluded rural landscape, with sheltered enclosed woodland areas contrasting with more open, remote summits*”⁷, with the overall management objective of the Brightwalton Downs being to “*conserve and enhance the quiet, rural character of the Brightwalton Downs*”.

1.22.3 The following policies are therefore of particular relevance given the industrial nature of the Proposed Development:

- (a) **Policy DE07:** Resist noise-generating developments and activities within both the AONB and its setting.

⁴ Hertfordshire County Council v Secretary of State for Communities and Local Government [2012] EWCA Civ 1473

⁵ See Appendix G of the West Berkshire Core Strategy 2006-2026

⁶ See paragraph 7.37 North Wessex Downs AONB Management Plan

⁷ See pg. 84 AONB Landscape Character Assessment

- (b) **Policy DE08:** Avoid and reduce light pollution, including control of lighting schemes or other developments that threaten the integrity of dark night skies over the North Wessex Downs.
- (c) **Policy DE20:** Resist developments that would substantially increase traffic volume in sensitive areas.

1.23 In light of the above, we therefore request that the Council confirm in writing that the Application is considered one of industrial use resulting in a material change of use at the Site.

2. CONSIDERATION OF ALTERNATIVE SITES

- 2.1 As outlined in our Objection, the Planning Application failed to provide sufficient detail as to the consideration of alternative sites, and why the Site was deemed the most suitable in light of the requirements (none of which relate to the area being within an AONB, or the potential effects on the landscape and character of the area).
- 2.2 Our Objection requested that the Council request that the Applicant provide further information regarding the alternative site options considered, and the appraisals carried out. To date, we have not had sight of any such further information.
- 2.3 Following our Objection, an Alternative Sites Assessment was prepared by Pegasus Group. This was provided to the Council via email on 4 March 2024 and provided an independent assessment of alternative sites that could accommodate the Proposed Development. In summary, the Alternative Sites Assessment used the Applicant’s site criteria (including minimum site area, distance from the A34, suitable access roads and proximity to existing site) and identified a further **40 potential alternative sites**.
- 2.4 Appendix A to the Applicant’s Agricultural Needs Statement contains a letter from Adkin in response to the Applicant’s request for comments on the availability of suitable sites for the Application “*at the time of [the Applicant’s] purchase of the Leckhampstead site*”. It is clear from this letter that this was a **retrospective activity** undertaken only after the Site was purchased by the Applicant.
- 2.5 This is further evidenced by the letter noting that one of the sites “*is the land that [the Applicant] purchased*”⁸. The fact that such a brief assessment of alternatives was only carried out after the Applicant purchased the Site demonstrates that no true assessment of alternatives was carried out and was only done as a ‘tick box’ exercise after the Site was purchased.
- 2.6 The Applicant has therefore failed to demonstrate that alternative sites have been assessed and no evidence has been provided to show that the 40 potential alternative sites put forward by Pegasus have been considered. In light of the lack of assessment of alternative sites put forward by the Applicant, and given the significant number of alternatives assessed as being suitable alternative sites by Pegasus, we request that the Applicant show that they have fully considered all the alternatives put forward, and where alternatives are discounted, clear reasons for this are given.

⁸ See pg. 24 of the Applicant’s Agricultural Needs Statement

3. NO ADDITIONAL ECONOMIC ACTIVITY

- 3.1 The Application is for a relocation of the Applicant's existing site in Chilton, Didcot. As explained by the Applicant, the current site requires relocation due to the tenancy ending imminently.
- 3.2 The Planning Statement, however, states that the Proposed Development will “*provide job opportunities*”⁹ and “*provide opportunities for additional employment in this rural area*”¹⁰. It is unclear how this is the case. The additional employment opportunities are not outlined or evidenced in the Planning Statement nor anywhere else in the Application documents.
- 3.3 The Applicant notes themselves that their seasonal workers have been with the company “*for over 18 years*”¹¹ and are specialist returning workers. It also notes that their roles could not be filled by ad hoc labour from the local area where the required standards would not be met. It also further emphasises the ‘loyal staff’ and ‘established workforce’ of the Applicant¹².
- 3.4 Given this, and given the fact that the Proposed Development is simply a relocation of existing facilities, we request that the Applicant provide further information to support their statement that job opportunities and additional employment will be provided by the Proposed Development.
- 3.5 As explained by Holgate J¹³, in a case where there would be harm to an AONB but no countervailing benefits, and therefore no balance can be struck between ‘pros and cons’, the effect of giving great weight to what might otherwise be assessed as a relatively modest degree of harm, might be sufficient as a matter of planning judgment to amount to a reason for refusal of planning permission, when, absent that policy, that might not be the case. But where there are also countervailing benefits, it is self-evident that the issue for the decision-maker is whether those benefits outweigh the harm assessed, the significance of the latter being increased by the requirement to give ‘great weight’ to it¹⁴.

In light of the above, we request that the Council, before determining the Application:

- a) confirm in writing that the Application is considered one of industrial use resulting in a material change of use at the Site;
- b) request that the Applicant demonstrates that they have fully considered all the alternative sites outlined by Pegasus in the Alternative Sites Assessment, with clear reasons for discounting any alternative sites given; and
- c) request that the Applicant provide further information to support their statement that job opportunities and additional employment will be provided by the Proposed Development.

We also kindly request that the Council provide an update as to the determination of the Application. The Council's website currently states that the Application remains pending, with the deadline for determination having now passed.

⁹ Para 7.3.2 of the Planning Statement

¹⁰ Para 7.3.5 of the Planning Statement

¹¹ See pg. 11 of the Agricultural Needs Statement

¹² See pg. 1 of the Agricultural Needs Statement

¹³ *Monkhill Ltd v Secretary of State for Housing, Communities and Local Government* [2019] EWHC 1993 (Admin)

¹⁴ *Ibid*, paragraph 52

Yours sincerely

CMS

CMS Cameron McKenna Nabarro Olswang LLP