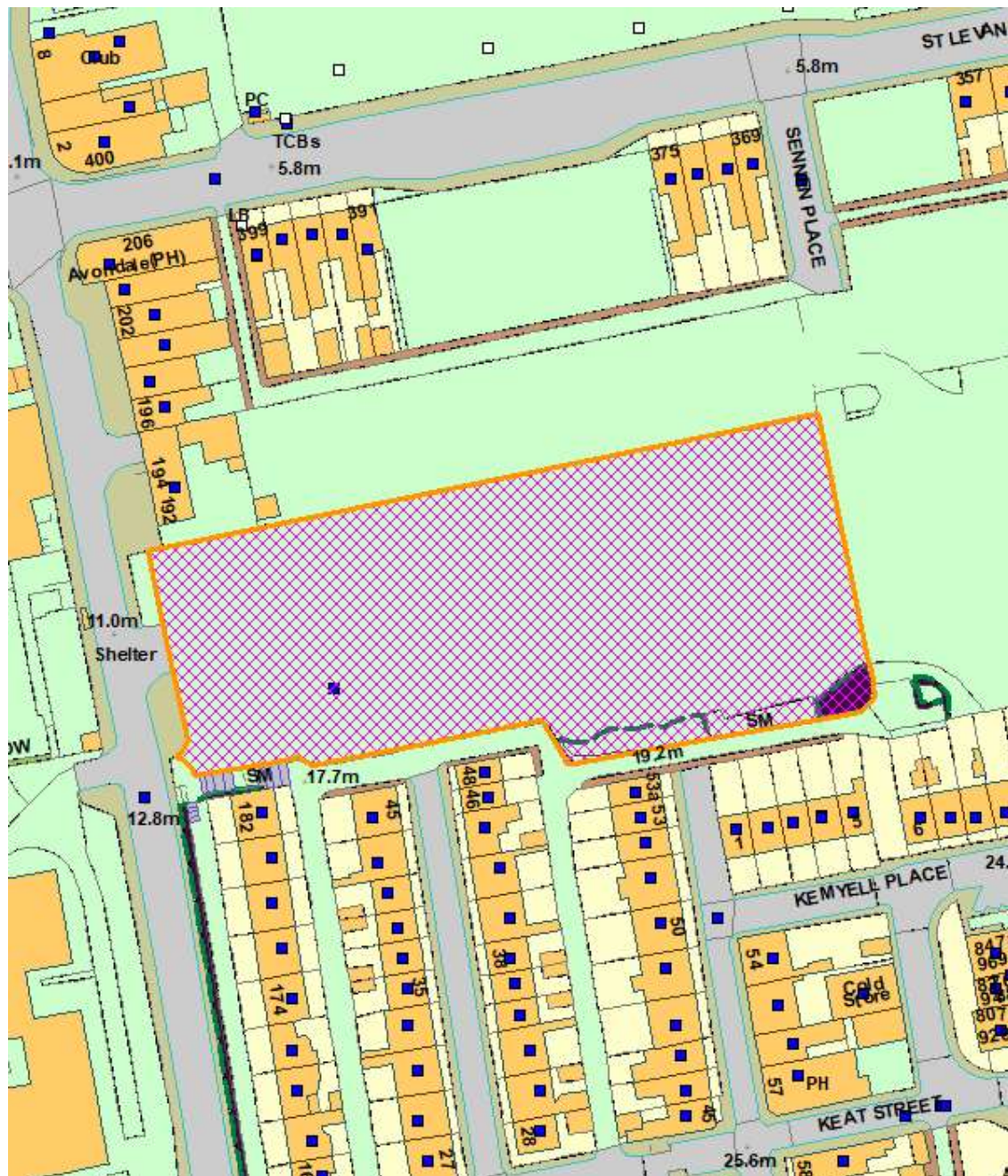


# PLANNING APPLICATION OFFICERS REPORT



<b>Application Number</b>	25/00236/S73	<b>Item</b>	2
<b>Date Valid</b>	11.02.2025	<b>Ward</b>	DEVONPORT
<b>Site Address</b>	186 - 190 Keyham Road Plymouth PL2 1RB		
<b>Proposal</b>	Removal of Condition 1 (Temporary Use: Reinstatement) of planning permission 20/02031/S73 to allow the current B8 use to continue permanently		
<b>Applicant</b>	Liam Lynch		
<b>Application Type</b>	Removal or variation of a condition		
<b>Target Date</b>	08.04.2025	<b>Committee Date</b>	24.07.2025
<b>Extended Target Date</b>	31.07.2025		
<b>Decision Category</b>	Councillor Referral		
<b>Case Officer</b>	Mr Daniel Thorning		
<b>Recommendation</b>	Grant Conditionally		



This application has been referred to the Planning Committee by Councillors Anne Freeman and Mark Coker and because the proposal is a departure from an allocation in the Joint Local Plan.

### **1. Description of Site**

The 0.7-hectare application site comprises an open storage depot on Keyham Road in the Morice Town neighbourhood. It comprises a large, open and level area of land that was a former gas works, bounded by terraced residential properties to the south, Keyham Road (off which access is provided) and Devonport Dockyard to the west, and surface level car parks to the north and east. The general topography of the area rises from north to south and as a result, the residential properties to the south sit significantly higher than the application site.

### **2. Proposal Description**

Planning application ref. 16/00477/FUL granted permission for the site to be used for open air storage (B8) for up to 5 years. The temporary consent was effectively renewed for a further 5 years

by application ref. 20/02031/S73, which requires the temporary use to be discontinued and the land restored to its former condition no later than 15 March 2026. The current application proposes the removal of Condition 1 (Temporary Use: Reinstatement) of application ref. 20/02031/S73 to allow the current B8 use to continue permanently.

### **3. Pre-application Enquiry**

There was no pre-application enquiry.

### **4. Relevant Planning History**

20/02031/S73 - Variation of Condition 10 (Temporary Use: Reinstatement) of application 16/00477/FUL to allow current B8 use to continue for a further 5 years - Granted conditionally

16/00477/FUL - Change of use to open storage (B8) - Granted conditionally with a 5 year temporary consent

03/01517/FUL - Retrospective application for temporary consent to retain buildings and use of site for letting, sales and maintenance of portable modular buildings - Granted conditionally

01/00165/OUT - Outline application to develop land by the erection of a new food store (997sq.m net) and a BI business unit together with new access and car parking (revised scheme) - Refused

### **5. Consultation Responses**

Police Designing Out Crime - no objection.

Historic Environment Team - objection as no heritage statement has been submitted.

Local Highway Authority - no objection.

Public Protection - no comment.

Urban Design - objection due to the harmful impact on the streetscape.

### **6. Representations**

The Local Planning Authority (LPA) has received 18 letters of objection and no letters of support. The objections highlight adverse impacts associated with the current use of the site. These impacts include:

- Excess noise, vibration, light, and working hours
- Dust affecting health, property and air quality
- Overspill car parking
- Intensification of use

The objections highlight concerns regarding unauthorised development and operations allegedly taking place outside the permitted hours of operation. These are enforcement issues that are not material to the current application.

### **7. Relevant Policy Framework**

Section 70 of the 1990 Town and Country Planning Act requires that regard be had to the development plan, any local finance, and any other material considerations. Section 38(6) of the 2004 Planning and Compensation Act requires that applications be to be determined in accordance with the development plan unless material considerations indicate otherwise. For the purposes of decision making, as on 26 March 2019, the Plymouth & South West Devon Joint Local Plan 2014 - 2034 (hereinafter referred to as the JLP) is now part of the development plan for Plymouth City Council,

South Hams District Council and West Devon Borough Council (other than parts of South Hams and West Devon within Dartmoor National Park).

Other material considerations include the Planning (Listed Building and Conservation Areas) Act 1990 and the policies of the National Planning Policy Framework (2024) (NPPF), Planning Practice Guidance (PPG), the Plymouth & South West Devon Joint Local Plan 2014-2034 Supplementary Planning Document (2020) (SPD) and the Climate Emergency Planning Statement (2022) (CEPS).

## **8. Analysis**

1. Section 73 of the Town and Country Planning Act 1990 (as amended) enables an application to be made to an LPA to vary or remove conditions associated with a planning permission. The Planning Practice Guidance (PPG) explains that one of the uses of a section 73 application is to seek a minor material amendment, where there is a relevant condition that can be varied. There is no statutory definition of a 'minor material amendment'. However, the PPG states that "it is likely to include any amendment where its scale and/or nature results in a development which is not substantially different from the one which has been approved". In this case officers have determined that the amendments proposed can be dealt with via a section 73 application.

2. It should be noted that, in deciding an application under section 73, the LPA must only consider the condition/s that are the subject of the application - it is not a complete re-consideration of the application. The primary considerations for this application include the principle of development, design, heritage, amenity, and highway safety. The following JLP policies are considered particularly relevant:

DEV1 Protecting health and amenity

DEV2 Air, water, soil, noise, land and light

DEV20 Place shaping and the quality of the built environment

DEV21 Development affecting the historic environment

DEV23 Landscape character

DEV26 Protecting and enhancing biodiversity and geological conservation

DEV29 Specific provisions relating to transport

### **Principle of Development and Visual Impacts**

3. The proposal is contrary to Policy PLY58(1) of the JLP, which allocates the site for a medium sized food retail store with upgraded traffic signals, car parking and improved pedestrian and cycling connections from the surrounding streets. A temporary use condition was imposed on application ref. 20/02031/S73 to allow the 'meanwhile use' to continue until such time that a longer term, policy compliant proposal could come forward. However, the applicant has advised that it has not received any interest from food store operators. The Planning Statement contains correspondence from Aldi and Lidl that confirms that the site is not attractive to these retailers given its spatial constraints and proximity to existing operational stores. The Planning Statement suggests the site would not be attractive to larger format food retailers such as Tesco, Asda, Morrisons or Sainsburys, and therefore it concludes that the site is highly unlikely to come forward for its allocated use. Officers consider that there are medium scale food retailers other than Aldi or Lidl, however, the evidence provided suggests that the site may not be commercially attractive for the allocated use. While this is not a comprehensive assessment, no contrary evidence is available at present.

4. The site currently functions as the national headquarters for the marine division of Denholm Industrial Services, which provides scaffolding, shot blasting, painting, cleaning, rescue, rope access, acoustic tiling, and supplementary services, with the majority of its work taking place in HMNB Devonport. The Planning Statement details the benefits of locating its operations near the Dockyard. These include minimising vehicle movements and carbon emissions, providing storage space for the Dockyard, and providing operational efficiencies for Denholm and the Dockyard.

5. The marine sector is identified in the JLP (Strategic Objective SO2, PLY2, PLY3, PLY4, DEV14) and in the Plymouth Economic Strategy as a key transformational opportunity for Plymouth. The proposal allows Denholm to provide ongoing support to the Dockyard from a nearby location. Given the low immediate likelihood of a food retail proposal coming forward, the Local Planning Authority (LPA) sees merit in allowing Denholm to continue operating from the site to avoid adverse impacts on the operation of the Dockyard and the marine and defence sectors whilst not limiting the future potential of the site to be developed for the use identified in the allocation.

6. However, there are concerns regarding the appearance of the site and the impact on the surrounding townscape and character. Keyham Road is a busy road that is bounded by the hostile Dockyard wall and dwellings that are set back behind stone retaining structures. There is an expectation that a policy compliant food retail store would deliver a high-quality building that would help to repair and enhance the townscape and complement the existing range of public amenities. However, the open storage use does not meet good standards of design by virtue of its inactive frontage, stacked shipping containers and scaffold structures, and general industrial aesthetic. For these reasons, the Urban Design Team has objected to the proposal; and the proposal is considered contrary to policies DEV20 and DEV23 of the JLP.

7. It is accepted that the site has been used for open storage since 2016, and the site is well-suited to the operational requirements of Denholm and the Dockyard. It also provides a valuable use that supports the marine and defence sectors on a heavily constrained site. Therefore officers consider that it would be appropriate to agree another five-year consent to enable ongoing use of the site whilst the applicant prepares a new application for permanent B8 use and which proposes improvements to the appearance of site, particularly the site's street frontage. An extension may also allow further investigation of the food retail sector to establish the potential operators' aspirations/interest in the site for the purposes proposed in Policy PLY58(1). Therefore providing all other material considerations are acceptable, officers recommend that Condition 1 of application 20/02031/S73 is reapplied to allow the temporary open storage use to continue for another five years.

8. In reaching this recommendation, officers have had regard to section 72 of the Town and Country Planning Act 1990 and paragraph 014 (Reference ID: 21a-014-20140306) of the PPG, which set out the circumstances where temporary planning permissions may be appropriate. These include scenarios where a trial run is needed in order to assess the effect of the development on the area or where it is expected that the planning circumstances will change in a particular way at the end of that period. A temporary planning permission may also be appropriate to enable the temporary use of vacant land or buildings prior to any longer-term proposals coming forward (a 'meanwhile use'). The PPG states it is rarely justifiable to grant a second temporary consent except in cases where changing circumstances provide a clear rationale. In this case it is considered that permanent use of the site for open storage could be acceptable but not in its current form without design amendments.

#### Heritage

9. The Historic Environment Team has advised that there are several listed buildings and non-designated assets that have the capacity to be affected by the proposal including:

- The Quadrangle (N173-177, 186-191, 203) NHLE number 1378566 (Grade I)
- Revetment wall to the east of The Quadrangle NHLE number 354711 (Grade II)
- Dock Pumping Station (N 114 and 115) NHLE number 1378571 (Grade II)

10. These are of national significance, with Grade I listed buildings being of the highest importance. The Historic Environment Officer has advised that any current impacts to their setting and significance are thought to be low given the temporary use of the site. However, any cumulative

and secondary effects produced by permanent operations on the site have not been addressed and cannot be assessed without the appropriate technical information. Paragraph 207 of the NPPF requires applicants to describe the significance of any heritage assets affected by development proposals. Officers therefore consider that insufficient information has been submitted to assess compliance with policies SPT11 and DEV21 of the JLP and section 16 of the NPPF. However, it is considered that the recommendation of agreeing a further five-year consent would overcome this conflict, and a heritage statement would be required to support a future application for permanent use.

#### Amenity

11. The LPA has received 18 objections referring to residential amenity impacts including noise, vibration, light, and dust. Several objections refer to shot blasting that is taking place within an industrial unit that has been constructed on the site. The applicant has acknowledged that industrial operations such as shot blasting fall outside of the consent for open storage use and that planning permission is required for the industrial unit that has been constructed. A planning enforcement case (ref. 25/00093/ENF) has been created to address the planning contraventions.

12. The letters of objection suggest that the noise and vibration impacts are caused by the shot blasting. The proposal is to allow the open storage to continue and therefore impacts associated with unauthorised use of the development for B2 industrial processes are not material to the application and should be addressed through the enforcement regime.

13. The applicant has advised that there has been a recent reorganisation of the site. Furthermore, the site was recently resurfaced, with stone brought to the site and compacted over a period of two months from January to March 2025. The applicant has suggested that this process likely accounts for the noise, vibration, and dust. The Public Protection Service raised no objections to the development, and no complaints have been received prior to the current application. Therefore there is no evidence to suggest that recent noise objections were caused by the storage and distribution use of the site.

14. The existing permission requires that no machinery be operated, no process carried out, and no deliveries taken at or despatched from the site outside the following times: 07:00-21:00 Monday to Friday inclusive, 07:00-19:00 Saturday, Sundays and bank holidays. Use of the site is more intensive than was initially proposed and therefore officers recommend amending Condition 5 (Hours of operation) to reduce the hours to 07:00-19:00 Monday to Friday inclusive, 07:00-17:00 Saturdays, and 10:00-14:00 on Sundays and bank holidays. This is considered necessary to comply with policies DEV1 and DEV2 of the JLP. The applicant has advised that operations are unlikely to operate on Sundays and bank holidays with Sunday working being very ad hoc. However, the option to operate on Sundays is required as the operator needs to retain flexibility to respond to when operations need to be reactive to tide times or emergency situations that fall outside of the main working days.

#### Highway Safety

15. The Local Highway Authority has advised that the use has been operational since 2016 with no transport-related issues having been raised. Condition 2 of application ref. 20/02031/S73 requires at least four onsite car parking spaces to be provided. However, space has been laid out for significantly more parking onsite. The proposal is therefore considered compliant with Policy DEV29 of the JLP.

#### Other Considerations

16. The proposal does not affect trees or habitat and therefore there are no natural infrastructure considerations. Mandatory BNG does not apply to section 73 applications to amend applications that were granted prior to 12 February 2024.

## **9. Human Rights**

Human Rights Act - The development has been assessed against the provisions of the Human Rights Act, and in particular Article 1 of the First Protocol and Article 8 of the Act itself. This Act gives further effect to the rights included in the European Convention on Human Rights. In arriving at this recommendation, due regard has been given to the applicant's reasonable development rights and expectations which have been balanced and weighed against the wider community interests, as expressed through third party interests / the Development Plan and Central Government Guidance.

## **10. Local Finance Considerations**

There are no local finance considerations.

## **11. Planning Obligations**

The purpose of planning obligations is to mitigate or compensate for adverse impacts of a development, or to prescribe or secure something that is needed to make the development acceptable in planning terms. Planning obligations can only lawfully constitute a reason for granting planning permission where the three statutory tests of Regulation 122 of the CIL Regulations 2010 are met.

No planning obligations have been sought in respect of this application.

## **12. Equalities and Diversities**

This planning application has had due regard to Section 149 of the Equality Act regarding the Public Sector Equality Duty and has concluded the application does not cause discrimination on the grounds of gender, race, and disability.

## **13. Conclusions and Reasons for Decision**

Officers have taken account of the NPPF and S38(6) of the Planning and Compulsory Purchase Act 2004 and determined that the proposal is contrary to policies PLY58(1), DEV20 and DEV23 of the JLP and section 12 of the NPPF. However, there are no current proposals to deliver the site in accordance with the allocation, and the proposed development supports the important marine and defence sectors. The LPA sees merit in supporting the ongoing use of the site for open storage but not in its current form. Therefore officers recommend re-applying the temporary use condition to allow the applicant to continue using the site whilst it prepares an application that also proposes improvements to the appearance of the site. The hours of operation have also been reduced to protect against amenity impacts. Subject to applying these conditions, officers consider the proposal to be acceptable without prejudicing potential future use of the site for the use identified in the allocation. The application is therefore recommended for conditional approval.

## **14. Recommendation**

In respect of the application dated 11.02.2025 it is recommended to Grant Conditionally.

## **15. Conditions / Reasons**

The development hereby permitted shall be carried out in accordance with the following approved plans:

### **I      CONDITION: TEMPORARY USE (REINSTATEMENT)**

The use hereby permitted shall be discontinued after 5 years from the date of this decision notice and the land restored to its former condition in accordance with a scheme of work that shall be submitted to and approved in writing by the Local Planning Authority before any works commence on restoring the site to its former condition.

Reason:

In the opinion of the Local Planning Authority the temporary use to which this permission relates will by the said date have fulfilled its required purpose. This condition is imposed to comply with policies DEV20 and DEV23 of the Plymouth & South West Devon Joint Local Plan 2014-2034 (2019) and Sections 11 and 12 the National Planning Policy Framework (2024).

## **2      CONDITION: MINIMUM CAR PARKING PROVISION**

The operators of the site shall ensure that space has been laid out within the site in accordance with details previously submitted to and approved in writing by the Local Planning Authority for a minimum of 4 cars to be parked and for vehicles to turn so that they may enter and leave the site in forward gear.

Reason:

To enable vehicles used by occupiers or visitors to be parked off the public highway so as to avoid damage to amenity and interference with the free flow of traffic on the highway in accordance with Policies DEV20 and DEV29 of the Plymouth & South West Devon Joint Local Plan 2014-2034 (2019) and Section 9 of the National Planning Policy Framework (2024).

## **3      CONDITION: LOADING AND UNLOADING PROVISION**

The operators of the site shall ensure that adequate provision shall be made to enable goods vehicles to be loaded and unloaded within the site in accordance with details previously submitted to and approved in writing by the Local Planning Authority.

Reason:

To enable such vehicles to be loaded and unloaded off the public highway so as to avoid:- (i) damage to amenity; (ii) prejudice to public safety and convenience; and (iii) interference with the free flow of traffic on the highway; in accordance with Policy DEV29 of the Plymouth & South West Devon Joint Local Plan 2014-2034 (2019) and Section 9 of the National Planning Policy Framework (2024).

## **4      CONDITION: LONG TERM MONITORING AND MAINTENANCE**

The operators of the site shall continue with the monitoring and maintenance scheme to monitor the long-term effectiveness of the approved remediation scheme. Reports that demonstrate the effectiveness of the monitoring and maintenance scheme must be submitted to and agreed in writing by the Local Planning Authority.

Reason:

To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure development can be carried out safely without unacceptable risk to workers, neighbours and other offsite receptors in accordance with Policy DEV2 of the Plymouth & South West Devon Joint Local Plan 2014-2034 (2019) and Section 15 of the National Planning Policy Framework (2024).

## **5      CONDITION: HOURS OF OPERATION**

No machinery shall be operated, no process shall be carried out other than administrative functions, and no deliveries taken at or despatched from the site outside the following times: 07:00 to 19:00 hours Monday to Friday inclusive, 07:00 to 17:00 hours Saturday, and 10:00-14:00 hours Sundays and Bank or Public Holidays.



Reason:

To protect the residential and general amenity of the area from any harmfully polluting effects and avoid conflict with Policy DEV2 of the Plymouth & South West Devon Joint Local Plan 2014-2034 (2019) and Section 15 of the National Planning Policy Framework (2024).

## **6      CONDITION: STACKING HEIGHT RESTRICTION**

Containers shall not be stacked or deposited to a height exceeding 3 units high.

Reason:

To safeguard the amenities of the area and the appearance of the site in accordance with policies DEV1, DEV20 and DEV23 of the Plymouth & South West Devon Joint Local Plan 2014-2034 (2019) and Section 12 of the National Planning Policy Framework (2024).

## **INFORMATIVES**

### **1      INFORMATIVE: (NOT CIL LIABLE) DEVELOPMENT IS NOT LIABLE FOR A COMMUNITY INFRASTRUCTURE LEVY CONTRIBUTION**

The Local Planning Authority has assessed that this development, due to its size or nature, is exempt from any liability under the Community Infrastructure Levy Regulations 2010 (as amended).

### **2      INFORMATIVE: CONDITIONAL APPROVAL (NEGOTIATION)**

In accordance with the requirements of Article 31 of the Town and Country Planning (Development Management Procedure) (England) Order 2010 and the National Planning Policy Framework, the Council has worked in a positive and pro-active way with the Applicant and has negotiated amendments to the application to enable the grant of planning permission.

### **3      INFORMATIVE: BIODIVERSITY NET GAIN EXEMPTION - SECTION 73**

In accordance with the Biodiversity Gain Requirements (Exemptions) Regulations 2024, this application is exempt from mandatory BNG as it is a section 73 application to amend an application that was granted before 12 February 2024.

### **4      INFORMATIVE: UNAUTHORISED DEVELOPMENT**

For the avoidance of doubt, this planning permission permits ongoing use of the site for operations falling under Use Class B8 storage and distribution. It does not regularise the construction of new buildings or the material change of use that has occurred.

### **5      INFORMATIVE: CHARACTER AND APPEARANCE**

In accordance with Condition 2, this planning permission is limited to a period of five years. The applicant is advised that any planning application for any permanent use at the site must include proposals to improve the character and appearance of the site frontage onto Keyham Road in accordance with JLP Policy DEV20.