

Parish: Shipton
Ward: Easingwold
11

Committee Date: 10 November 2016
Officer dealing: Mr T J Wood
Target Date: 13 February 2015
Date of extension of time (if agreed): 17 November 2016

14/02558/MRC

**Application to vary conditions 18, 19, 20 and 21 of approved scheme 14/00141/FUL
At Norish Limited, Station Lane, Shipton by Beningbrough
For Wernick Group Ltd.**

1.0 SITE DESCRIPTION AND PROPOSAL

- 1.1 The application site on the west side of Shipton, and sits to the north of Station Lane and to the east of the East Coast Main Line railway.
- 1.2 A residential estate is positioned to the east of the site, with commercial units immediately to the west and beyond the public highway to the south. The site has been in use for commercial storage and recently gained approval as a place for the refurbishment of portable cabin buildings.
- 1.3 This application initially sought to vary conditions 18 and 19 of 14/00141/FUL and remove conditions 20 and 21. The aim of the applicant is to improve the wording of the conditions and allow scope for some work outside of the buildings. Following amendments to the proposal and background survey work the proposal is to vary conditions 18, 19, 20 and 21 with new wording.
- 1.4 The original conditions were as follows:
- Condition 18: No work shall be undertaken or cabins moved within the application site outside of the hours of 07.30- 18:00 Monday to Friday, and 07:30-12.30 Saturday. No work shall take place on Sundays and Bank Holidays.
- Condition 19: No vehicles shall operate between the purple demarcation line shown on drawing PKA/1/004G received by Hambleton District Council on 12 August 2014 and the eastern boundary of the site outside of the hours of Monday-Friday 07:30-18:00. No movements shall occur on Saturdays, Sundays or Bank Holidays.
- Condition 20: No noisy activities shall be undertaken other than within the retained workshop buildings and during such works the doors and windows are to be kept shut.
- Condition 21: No works shall take place on cabins located externally to the factory workshop other than inside the cabins and not within 20m of the eastern boundary.
- 1.5 In each case, the reason for the condition was "in the interests of neighbour amenity in accordance with Local Development Framework Policy CP1 and DP1".
- 1.6 The proposed wording of the four new conditions as set out by the agent for the applicants on 1 June 2015 is as follows:

Replacement for 18 and 19 (hours of working)

No work shall be undertaken or cabins moved within the application site outside of the hours 07:30 - 18:00 Monday to Friday other than the following activities:

1. Office / administration work;
2. Works within the workshop building providing doors and windows are kept shut where no noise is discernible at the eastern boundary of the site;
3. Internal works to the cabins located in the storage area including painting, carpentry, floor laying, electrics and plumbing where no noise is discernible at the eastern boundary of the site;
4. Painting the cabins located in the storage area; and
5. Movement of forklift trucks and vehicles within the area to the west of the purple demarcation line on drawing PKA/1/004G received by Hambleton District Council on 12th August 2014 which in any event will be no earlier than 06.00 hours and no later than 20.00 hours.

Replacement for 19 (Vehicle movements)

No vehicles shall operate between the purple demarcation line shown on drawing PKA/1/004G received by Hambleton District Council on 12th August 2014 and the eastern boundary of the site outside the hours 07:00 to 19:00 Monday to Friday, except for staff accessing the designated parking area.

Replacement for 20 (Inside operations during working hours)

During works within a workshop the workshop doors and windows to that workshop shall be kept closed.

Replacement for 21 (Outside operations during working hours)

No work shall be undertaken outside the workshops other than, painting of the cabins and carpentry works as defined in Table 1 of Supplementary Noise Report DYN260214A/2_SUP dated August 2014, floor laying, electrics, and plumbing with 110 volt hand tools inside the cabins and the movement of fork lift trucks and vehicles within the area of the purple demarcation line shown on drawing PKA/1/004G received by Hambleton District Council on 12th August 2014.

2.0 RELEVANT PLANNING AND ENFORCEMENT HISTORY

- 2.1 14/00141/FUL - Change of use of land and buildings from B8 storage to a mixed use of B8 storage and B2 general industrial use, demolition of warehouse units and two storey office building, and siting of single storey modular office with associated car parking, roadways and hardstandings; Granted 11 November 2014.
- 2.2 15/02683/ADV - Retrospective Advertisement Consent to display 2no non-illuminated free standing post mounted hoarding signs and 1no non illuminated high level sign to gable end of warehouse – granted 1 July 2016.
- 2.3 Enforcement investigation 15/00311/CAT3 - New external lighting fitted in breach of condition 12. Lighting units have not been removed but officers have been advised that the lighting will not be used.

3.0 RELEVANT PLANNING POLICIES

- 3.1 The relevant policies are:

Core Strategy Policy CP1 - Sustainable development
Core Strategy Policy CP2 - Access

Core Strategy Policy CP4 - Settlement hierarchy
Core Strategy Policy CP12 - Priorities for employment development
Core Strategy Policy CP16 - Protecting and enhancing natural and man-made assets
Core Strategy Policy CP17 - Promoting high quality design
Development Policies DP1 - Protecting amenity
Development Policies DP3 - Site accessibility
Development Policies DP4 - Access for all
Development Policies DP16 - Specific measures to assist the economy and employment
Development Policies DP17 - Retention of employment sites
Development Policies DP32 - General design

4.0 CONSULTATIONS

4.1 Parish Council - 1st response: (on original and not amended condition wording):

Greatly concerned by the application to vary conditions 18 and 19 and removed conditions 20 and 21 in the previously approved scheme 14/00141/FUL Condition 18 as drafted by the applicant effectively would permit 24 hours per day 6 days per week including vehicle movements and fork lift trucks operation. The imposition of condition 18 was to provide local residents with some protection and minimise the loss of amenity through noise intrusion. Subject to the possible addition of the words "on cabins" after "No work shall be undertaken" the condition must stand to protect the local residents With regard to Condition 19 this was imposed on previous occupiers without objection, and the current applicants seek to extend the hours that vehicles can operate in the area. The will undoubtedly result in a further loss of amenity to local residents and must therefore be refused again.

With regard to the removal of conditions 20 and 21 this again would be unacceptable as these conditions impose restraints on the applicants to prevent them from causing nuisance to residents, some of whom are close to the edge of the applicants' boundary. Whilst accepting that perhaps the definitions may need to be extended the attempt to extend working hours and also extend the extent of outside work possible must be resisted. Shipton Parish Council request that this application is brought before the full Planning Committee and not treated as a delegated item.

2nd response; maintain objection and raise concern about the way that the applications have been proposed to be changed without discussion with the Parish Council. The Parish Council consider that it would be 'grossly unfair' to allow extended working hours as that would have a significant adverse effect of local residents.

4.2 Highway Authority - No objection.

4.3 Network Rail – No objection.

4.4 Environmental Health Officer – Scrutiny of the acoustic report and experience of complaint following activity on the site before 7:30am shows that there is the potential for complaint if activity on the site exceeds the restrictions of the conditions. The updated acoustic report provides a basis for consideration of the application.

4.5 Public comment - 26 responses received in summary mainly concerning:

- Disturbance from construction works;
- Noise restrictions;
- Hours of operation;
- Impact on neighbour amenity;

- Traffic/highway safety issues;
- Results of noise assessment;
- Light pollution; and
- Impact on enjoyment of footpath.

5.0 OBSERVATIONS

- 5.1 As noted earlier, the conditions were imposed in the interests of neighbour amenity, which is therefore the primary planning consideration. The key determining issue is whether the proposed variations would make the conditions more, less or equally effective in securing the public protection they were designed to achieve, having regard to the stated reasons for them. It follows that the variations should only be refused if it is concluded that they would be less effective and would thus give rise to harm.
- 5.2 The applicant's proposed changes are stated to have the aim of giving greater precision that will do two things: (a) allow the operator more scope for work; and (b) protect the amenity of neighbours.
- 5.3 The proposed conditions seek to achieve greater clarity of the works that may be undertaken on the interior and exterior of cabins stored outside the buildings on the site and to extend the time for such work. The range and times of working outside the buildings would be controlled so as not to harm amenity. In order to assess the impact of the proposed variation additional background noise monitoring was required as the monitoring work done in April 2014 only measured noise levels during the period 11:15 to 14:20 and not at the earlier and later parts of the day. Additional noise monitoring work was undertaken between 06:00 and 20:00 on 30 June 2016 (with a break in the middle of the day) and a report submitted. Following clarification that the activities on the site during the background noise monitoring did not interfere with the monitoring it is possible to give further consideration to the case.
- 5.4 The proposed conditions as set out at paragraph 1.6 above are considered to meet the six tests for a planning condition prescribed in the Planning Practice Guidance. It is known that the conditions (i) are necessary to protect amenity, (ii) relate to planning and (iii) the development permitted and the wording proposed is considered to be clear such that they would be (iv) enforceable and (v) precise, and (vi) reasonable in all other respects. The terms are considered capable of being monitored by both the operator and others outside the site and would allow the site to operate for the purposes approved whilst protecting the public (especially the residents of nearby dwellings).
- 5.5 The current controls prevent any work outside of the approved buildings beyond the core business hours; the proposal seeks to allow works that are not noisy (such as the internal decoration of cabins) to be undertaken outside those hours. The caveat is included in the conditions that the impact of activity must not be discernible at the boundary of the site. As a consequence if activity is discernible in homes, in gardens or on neighbouring public open space outside the period 07:30 - 18:00 Monday to Friday then the proposed replacement for planning condition 18 has been breached. An amendment to the applicants proposal is that the restrictions in each of the revised conditions should preclude works during Bank Holidays.
- 5.6 The proposed conditions would allow forklift movements to take place between 06:00 and 20:00 on the multi-stacked part of the site to the north of the workshops and away from the eastern boundary. This would be an extension from the current 07:30 – 18:00 controls. Whilst the provisions are for earlier and later movements than formerly proposed they still allow no movements at weekends.

- 5.7 Balancing the varied conditions that would allow an increase in hours of work against those that would require any work to be not be discernible on the boundary of the site, it is considered that the impact upon the amenity of neighbours would be neutral. The test set at paragraph 5.1 is therefore met and the application is recommended for approval.
- 5.8 As a decision the grant this application would result in a new planning permission (albeit a variation of the earlier permission) all the conditions need to be restated. However, some of the conditions of the initial condition are no longer relevant as they related to construction work that is complete. Details have been submitted in applications to discharge the requirement for written approval of other conditions, applied to the initial permission, so some conditions need to be varied, others deleted and new conditions are required. The amended conditions proposed are therefore recommended as conditions 9 to 12 below.
- 5.9 Some responses to consultation remark about construction noise (which is now complete) and traffic movements, that are not relevant to the proposal to change conditions 18 - 21. The concerns relate to other matters about the development of the site that are not within the scope of the application and cannot be considered in this case.

6.0 RECOMMENDATION:

- 6.1 That subject to any outstanding consultations the application is **GRANTED** subject to the following conditions:
1. The permission hereby granted shall not be undertaken other than in complete accordance with the drawings numbered PKA/1/002, PKA/1/003 received 21 January 2014 (file ref 14/00141/FUL) , Site Plan PKA/1/004G received 12 August 2014 (file ref 14/00141/FUL), PKA/1/005C received 2 September 2014 (file ref 14/0141/FUL) and stack height plan PKA/1/004H received 25 September 2014 (file ref 14/00141/FUL) transport assessment received 1 May 2014 (file ref 14/00141/FUL), Supplementary Noise Reports of September 2014 received 17 December 2014 (file ref 14/02558/MRC) and Background Noise Survey report September 2016 received 29 September 2016 (file ref 14/02558/MRC) unless otherwise approved in writing by the Local Planning Authority.
 2. The approved parking, unloading and turning areas (on drawing PKA/1/004G) shall be maintained clear of any obstruction and retained for their intended purpose at all times.
 3. No structures shall be sited within 2 metres of the western boundary of the site which is adjacent land belonging to Network Rail.
 4. The landscaping scheme shown on plans RF14-232-D01 and RF14-232-L01 (file ref 14/00141/DIS11) shall be completed and any trees or plants which within a period of 5 years of planting die, are removed, or become seriously damaged or diseased, shall be replaced with others of similar size and species.
 5. No external lighting shall be installed on site except in accordance with the details received on 11 February 2015 unless otherwise approved by the Local Planning Authority.
 6. The boundary treatments shown on plan PKA/2/009C received 18th August 2015 (file ref 14/00141/DIS13) shall be implemented in full and thereafter the boundary treatments shall be retained in accordance with the approved details.

7. The approved fork lift truck audible warning safety system for the fork lift trucks shall be operated and be maintained in accordance with the approved scheme submitted on 17th August 2015 (file ref 14/00141/DCN) and the manufacturers' recommendations.
8. No openings shall be created to the eastern elevations of the retained warehouse structures on site.
9. No work shall be undertaken or cabins moved within the application site on Bank Holidays or outside of the hours 07:30 - 18:00 Monday to Friday other than the following activities:
 1. Office / administration work;
 2. Works within the workshop building providing doors and windows are kept shut where no noise is discernible at the eastern boundary of the site;
 3. Internal works to the cabins located in the storage area including painting, carpentry, floor laying, electrics and plumbing where no noise is discernible at the eastern boundary of the site;
 4. Painting the cabins located in the storage area; and
 5. Movement of forklift trucks and vehicles within the area to the west of the purple demarcation line on drawing PKA/1/004G received by Hambleton District Council on 12th August 2014 which in any event will be no earlier than 06.00 hours and no later than 20.00 hours.
10. No vehicles shall operate between the purple demarcation line shown on drawing PKA/1/004G received by Hambleton District Council on 12th August 2014 and the eastern boundary of the site during a Bank Holiday and not outside the hours of 07:00 to 19:00 Monday to Friday, except for staff accessing the designated parking areas.
11. During works within a workshop the workshop doors and windows to that workshop shall be kept closed.
12. No work shall be under taken outside the workshops other than, painting of the cabins and carpentry works as defined in Table 1 of Supplementary Noise Report DYN260214A/2_SUP dated August 2014, floor laying, electrics, and plumbing with 110 volt hand tools inside the cabins and the movement of fork lift trucks and vehicles within the area of the purple demarcation line shown on drawing PKA/1/004G received by Hambleton District Council on 12th August 2014
13. The recommendations and mitigation measures identified in the protected species survey received by Hambleton District Council on 11 February 2015 shall be implemented in full.
14. Notwithstanding the submitted drawing PKA/1/004H received 25 September 2014 (file ref 14/00141/FUL) no cabins shall be stacked on the easternmost or the southernmost shaded areas of drawing PKA/1/004H (annotated as "Hatched Areas") or on land outside of the remaining areas designated for multi storey stacking on the drawing PKA/1/004H unless otherwise approved in writing by the Local Planning Authority.
15. No cabins shall be stacked to a height of more than 6m unless otherwise agreed in writing by the Local Planning Authority.

The reasons are:

1. In order that the development is undertaken in a form that is appropriate to the character and appearance of its surroundings and in accordance with the Development Plan Policies CP1, CP16, CP17, DP1, DP30 and DP32.
2. To provide for appropriate on-site vehicle parking and storage facilities, in the interests of highway safety and the general amenity of the area.
3. In the interests of the safe operation of the adjacent railway.
4. In order to soften the visual appearance of the development and provide any appropriate screening to adjoining properties in accordance with Local Development Framework Policy DP30.
5. In the interests of local visual and neighbour amenity and the safe operation of the adjacent railway.
6. To protect the amenity of the neighbouring residents and to ensure that the development is appropriate to the character and appearance of its surroundings.
- 7-12. In the interests of neighbour amenity in accordance with Local Development Framework Policy CP1 and DP1.
13. To safeguard against harm to any protected species present within the buildings proposed for demolition.
- 14–15. In the interests of neighbour and visual amenity in accordance with Local Development Framework Policy CP1 and DP1.