

Planning Committee: 11 January 2006

Item Number: 04

Application No: W 05 / 1562

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Town/Parish Council: Leamington Spa

Expiry Date: 07/11/05

Case Officer: Alan Coleman

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Elisabeth The Chef Ltd, St. Mary's Road, Leamington Spa, CV31 1QE

Siting of a 40 foot long refrigerated trailer for product storage on an annual basis
between 1st May and 31st December FOR Elisabeth The Chef Ltd

This application is being presented to Committee in order to request that enforcement action be taken.

SUMMARY OF REPRESENTATIONS

Town Council: No objection.

WDC (Environmental Health): *"With the refrigerator motor on a level of 55dBA (Leq, 5 mins) was obtained. With it off the reading was 47dBA. I believe this difference will increase as background noise levels drop off during the evening. This latter assertion is supported by background measurements which reveal that the noise from the motor is the dominant sound in the area. The L90 measurement (that noise level exceeded for 90% of the time) with the motor on was 54dBA. This fell sharply to 45 dBA with the motor off."*

I believe these results show that retaining the refrigerated trailer in the same position would result in a loss of amenity from noise to many residential premises situated just over the canal from the rear of the factory."

British Waterways: No objection.

Inland Waterways Association: No objection.

WCC (Ecology): No objection, subject to protection of adjacent trees and hedgerows. **Neighbours:** 17 letters of objection, including St. Mary's Residents Association, and a 27-name petition from the residents of Chesham Street, St. Mary's Road and Waterloo Street on grounds of harm to amenities from excessive levels of noise, vibration and other pollution, particularly at night and early morning generated from plant and equipment within the site and level of production being undertaken/facilitated by proposals and associated problems of traffic caused by increased demand for on-street parking in adjacent roads by employees in streets that already suffer from congestion.

RELEVANT POLICIES

- (DW) ENV3 - Development Principles (Warwick District Local Plan 1995)
- DP1 - Layout and Design (Warwick District Local Plan 1996 - 2011 Revised Deposit Version)
- DP2 - Amenity (Warwick District Local Plan 1996 - 2011 Revised Deposit Version)
- DP8 - Parking (Warwick District Local Plan 1996 - 2011 Revised Deposit Version)

PLANNING HISTORY

The site has a detailed planning history with permission originally granted for 5 warehouses in 1968. Subsequently, there were various permissions for change of use and extensions have also been granted; in particular permission was granted for light industrial use in Units C, D and E in 1969 and 1973, and for bakery use of Units C and D in 1981. In connection with this use planning permission was granted for a flour silo some 10 metres in height adjacent to the vehicular access to the rear of the site.

In December 1995 planning permission was granted for the erection of extensions to provide an ambient box-up area, despatch chill, store area and new docking shelters together with erection of a 3 metre high timber acoustic barrier, laying out and surfacing of the car parking area and loading/unloading area and associated landscaping (WDC Ref: W921277). This permission related to the use of the whole site as a bakery operation and was granted subject to a Section 106 Agreement which secured the erection of an acoustic barrier along the canal frontage of the site and restrictions on the manner in which the property is used.

Following extensive fire damage to the property, planning permission was granted for re-building works on 19 August 1997 under the terms of application W961430. This is the extant permission for the use of the site as a bakery, which is also the subject of a Section 106 Agreement that requires:

- a) All fixed refrigeration or cooling plant which in the reasonable opinion of the Council increases the background noise level measured at the nearest noise sensitive facade shall be incorporated with an effective soundproof enclosure to be agreed in writing by the Council prior to the installation thereof such agreement not to be unreasonably withheld or delayed;
- b) Not to permit any lift truck or similar purpose built vehicle to be used on the property unless the same is being powered exclusively by electricity;
- c) Not to permit any refrigeration plant on stationary vehicles under the control of the owner or the tenant to be powered other than by electricity, subject to the following clause;
- d) To connect all refrigeration plant on stationary vehicles under the control of the owner or the tenant to the mains electricity supply present on the property within five minutes of the vehicle upon which such is located having become stationary;
- e) Not to use or permit the use on the property of any outdoor loudspeaker system;
- f) Not to move or permit the movement of any wheeled racks of metal trays on the property other than within buildings;
- g) Not to permit any outdoor storage of materials upon the property other than waste (as defined in the Environmental Protection Act 1990) awaiting imminent removal and pallets or other delivery containers awaiting imminent removal;
- h) Not to provide any waste materials about the property other than in containers made of plastic with rubber wheels.

There is also a requirement to ensure that the acoustic barrier stretching the full length of the boundary of the site with the canal is maintained in good and substantial repair and condition.

In respect to clause a) above, the baseline for enforcing this aspect of the Section 106 Agreement is 45dBa, as set out in the report to the Plans Sub-Committee at its meeting on 23 June 1998 regarding approval of amendments to this permission. Members had previously deferred approval of proposed amendments to the approved scheme to enable further noise assessments to be carried out by the Environmental Health Officer in conjunction with Elizabeth the Chef's noise consultant. In this respect, Members accepted the recommendation of the Environmental Health Officer that these levels are acceptable in this type of location.

The proposed amendments included the provision of blast freezer facilities within the envelope of the rebuilt premises rather than within a freestanding external freezer unit, for which permission was granted in 1996 under the terms of W960005. These amendments were granted subject to a separate Section 106 Agreement revoking the permission for the freestanding blast freezer unit.

Under the terms of Condition 4 of the extant permission for the use of the site as a bakery, the siting of materials, plant and equipment on any open area of the site is prohibited. The reason for this condition is '*To protect and enhance the amenities of the area.*' The siting of the refrigerated trailer is therefore in direct breach of this condition. The approved layout for the site also shows provision to be made for 23 no. car parking spaces adjacent to the northern and western boundaries of the site. Specific areas are also allocated for loading/unloading, access and manoeuvring. In accordance with Condition 3, these are all required to be retained available for these specific purposes in perpetuity. The reason for this condition is '*To ensure that adequate parking facilities are retained for use in connection with the development.*' However, these car parking spaces have not been provided and are prevented from being used by the siting and position of the trailer. The site is therefore operating in breach of this condition too. With regard to bakery production times though, there are no controls over hours of operation.

The terms of this permission and the provisions of this 'Agreement are therefore wholly pertinent to this application.

KEY ISSUES

The Site and its Location

The site is located in the Sydenham Industrial estate, which is allocated for employment purposes within the meaning of Class B of the Town and Country Planning (Use Classes) Order 1987 in the adopted Warwick District Local Plan 1995 and Revised Deposit Version. The site has a frontage onto St. Mary's Road adjacent to the point at which it crosses the Grand Union Canal, which forms the rear boundary of the site. An acoustic boundary fence separates the site from the canal, which is screened by mature planting along the canalside. On the opposite bank of the canal are residential properties, whilst to the east the site is adjoined by other industrial premises.

The premises are single storey and are set back from the road frontage with a staggered facade to reflect the alignment of the road at this point. Vehicular access to the site is from St. Mary's Road via a single width driveway that runs alongside the eastern boundary of the site to a service yard at the rear of the premises.

Details of the Development

The trailer is stationed on the northern boundary of the site adjacent to the canal and is partially screened from view within the site by pallets and crates. From the canal it is screened by the acoustic barrier fence and canalside boundary planting. In support of the application, the applicant has submitted the following statement:

"Since 1997, the business at St. Mary's Road has grown considerably. From this site we supply some of the major supermarkets including: - Morrisons, Somerfield, ASDA, Boots and Sainsbury's, with a wide range of desserts and bakery products.

This year we have become the dessert category champion for J Sainsbury's, and have won considerable business as a result. We have built a very good relationship with Sainsbury's and are in the process of developing new products with them. In the last 12 months we have launched 6" egg custards for Both ASDA and Sainsbury's, which is a major business line to us.

Our case count has gone up from 35,800 to 63,900 cases of product per week this year alone.

We employ approximately 260 staff at this site, most of whom come from the local area.

As we have a lease running on the site we have to utilize it as effectively as possible..."

The reason given for the siting of the refrigerated trailer is because there is insufficient internal chilled space for raw materials and finished products, particularly during busy periods.

Assessment

In my opinion, the trailer is sufficiently screened from the canal and adjacent residential properties to render it acceptable in visual amenity terms.

However, I note the objection from the Head of Environmental Health on grounds of noise. I am also of the opinion that the increase in the number of employees and the lack of adequate on-site car parking has exacerbated demand for local roadside parking in an area which currently suffers from a high level of congestion, particularly at busier times of the day. In turn I am concerned that the effect of this is likely to have contributed to unacceptable inconvenience to other road users and the level of road safety in an area frequently trafficked by heavy goods vehicles. For these reasons, I consider the proposal is unacceptable.

In order to address these issues, it is therefore open to Members to authorise enforcement proceedings to secure the removal of the trailer from the site, which would allow provision for car parking to be made in accordance with the terms and conditions of the extant permission. I acknowledge that this would have fundamental implications for the operational capacity of the site, the continued success of the applicant company and, ultimately, jobs. Whilst Members may wish to take this into account as a material consideration, nevertheless I do not consider this is sufficient to outweigh the harm to neighbouring residents' amenities and highway safety/convenience. In my opinion, the site does not have the capacity to accommodate the expansion of the company at the current level and nature of production in compliance with the terms and provision of the extant permission and Section 106 Agreement.

RECOMMENDATION

1. REFUSE for the reasons given below;
2. Authorise enforcement action to ensure the removal of the existing refrigerated trailer from the site. The period for compliance to be one month, and;
3. Advise the applicant that upon the removal of the trailer from the site provision should be made for car parking, unloading/loading, access and manoeuvring areas in accordance with the approved layout of the site and condition 3 of planning permission W961430.

REASONS

- 1 District-Wide Policy ENV3 of the Warwick District Local Plan 1995 states that all development proposals are required to harmonise with their surroundings, both in terms of design and in terms of land use. This is reflected in DP2 of the emerging Warwick District Local Plan 1996-2011 (Revised Deposit Version) which states that development will not be permitted which has an unacceptable adverse impact on the amenity of nearby uses and residents.

The site is located within an allocated employment area and is situated within 20 metres of an established residential area to the north comprising terraced properties in Chesham Street and Waterloo Street, which are separated from the site by the Grand Union Canal. In the opinion of the District Planning Authority, the proposal would have an unacceptable impact on the amenities of neighbouring residents of properties in Chesham Street and Waterloo Street by reason of the level of noise generated by the refrigerated trailer, particularly during evening and early morning hours.

The proposal is thereby considered to conflict with the objectives of the aforementioned Local Plan Policies.

- 2 Policy (DW) ENV3 of the Warwick District Local Plan requires all development proposals, inter alia, not to compromise the safe movement of free flow of traffic, or the safe use of roads by others. In accordance with emerging policy DP8 of the revised deposit version of the Local Plan (1996-2011) development will also only be permitted that makes provision for parking which does not result in on-street parking detrimental to highway safety.

Condition 3 of planning application W961430 requires car parking, loading/unloading, access and manoeuvring areas to be retained available at all times in accordance with the approved plan to ensure that adequate parking facilities are retained for use in connection with the use of the site as a bakery. Whilst condition 4 of this permission prohibits the siting of materials, plant and equipment on any open area of the site, the siting of the refrigerated trailer in contravention of this condition also prevents provision for car parking to be made available in accordance with the terms of condition 3.

No proposals are made in the application to make adequate alternative acceptable provision for car parking facilities within the curtilage of the premises to satisfy the requirements of this condition. In the opinion of the District Planning Authority, this would exacerbate demand for local roadside parking in an area which currently suffers from a high level of congestion, particularly at busier times of the day which, in turn, would be likely to unacceptably inconvenience other road users and reduce the level of road safety in an area frequently trafficked by heavy goods vehicles.

The proposal would thereby also be contrary to the aforementioned Local Plan Policies.
