

Planning Committee: 27 February 2018

Item Number: 11

Application No: [W 17 / 2315](#)

Town/Parish Council: Warwick

Case Officer:

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Registration Date: 28/11/17

Expiry Date: 27/02/18

Plot 8001 - 8004, Tournament Fields, Stratford Road, Warwick

Application for the variation of condition 11 of planning permission no.

W17/1104 to delete the prohibition on loading doors being opened between 1900 hours and 0700 hours and to substitute this with a restriction whereby the loading doors can only be used if internal operations occurring at the time do not cause nuisance to nearby residences as well as a requirement that between these hours the loading doors are only opened for as long as is necessary for instances of the movement of goods or personnel. The new condition 11 would not apply to Plot 8001. Planning permission no. W17/1104 was for the erection of 4 no. buildings to provide employment development for Use Classes B1, B2 and B8 purposes. FOR Sackville Developments (Warwick)Ltd

This application is being presented to Committee due to the number of objections and an objection from the Town Council having been received.

RECOMMENDATION

Planning Committee are recommended to GRANT planning permission for the proposed variation of condition.

DETAILS OF THE DEVELOPMENT

The application proposes a variation of condition 11 of planning permission no. W17/1104. Condition 11 currently reads as follows:

Except in the event of an emergency, all shutter/loading doors shall be kept closed before 0700 hours or after 1900 hours on any day.

The proposed revised wording is as follows:

With respect to Plots 8002, 8003 and 8004 only, before 0700 hours or after 1900 hours on Monday to Saturday, or before 0900 hours or after 1800 hours on a Sunday or Bank / Public Holiday, the loading doors shall only be used if internal operations occurring at the time do not cause nuisance to nearby residences. At these times the loading doors shall only be opened for as long as is necessary for instances of the movement of goods or personnel.

THE SITE AND ITS LOCATION

The application relates to vacant plots of land on the Tournament Fields employment site. These plots are situated on the southern edge of the development.

A hotel and residential properties adjoin the site to the south and east, while further vacant plots on Tournament Fields adjoin the site to the north. The A46 adjoins the site to the west. Tournament Fields contains a mix of offices, industrial and warehousing premises, together with a care home and ambulance station.

The site is largely flat, although there is a man-made bund with trees on top alongside the southern boundary. A watercourse runs along the southern boundary, with trees alongside.

PLANNING HISTORY

Outline planning permission for Tournament Fields was renewed in 2013 (Ref. W13/0758). This was for "employment development for Use Classes B1, B2 and B8 purposes". The original outline permission had been granted in 1995 (Ref. W92/0291).

In October 2017 reserved matters consent was granted for "Application for approval of reserved matters under outline planning permission no. W/13/0758 for the erection of 4 no. buildings to provide employment development for Use Classes B1, B2 and B8 purposes" (Ref. W17/1104).

RELEVANT POLICIES

- National Planning Policy Framework
- DS3 - Supporting Sustainable Communities (Warwick District Local Plan 2011-2029)
- DS5 - Presumption in Favour of Sustainable Development (Warwick District Local Plan 2011-2029)
- EC1 - Directing New Employment Development (Warwick District Local Plan 2011-2029)
- EC3 - Protecting Employment Land and Buildings (Warwick District Local Plan 2011-2029)
- SC0 - Sustainable Communities (Warwick District Local Plan 2011-2029)
- BE1 - Layout and Design (Warwick District Local Plan 2011-2029)
- BE3 - Amenity (Warwick District Local Plan 2011-2029)
- TR1 - Access and Choice (Warwick District Local Plan 2011-2029)
- TR2 - Traffic Generation (Warwick District Local Plan 2011-2029)
- TR4 - Parking (Warwick District Local Plan 2011-2029)
- HS1 - Healthy, Safe and Inclusive Communities (Warwick District Local Plan 2011-2029)
- HS7 - Crime Prevention (Warwick District Local Plan 2011-2029)
- CC1 - Planning for Climate Change Adaptation (Warwick District Local Plan 2011-2029)
- CC3 - Buildings Standards Requirements (Warwick District Local Plan 2011-2029)

- FW2 - Sustainable Urban Drainage (Warwick District Local Plan 2011-2029)
- NE3 - Biodiversity (Warwick District Local Plan 2011-2029)
- NE5 - Protection of Natural Resources (Warwick District Local Plan 2011-2029)
- Vehicle Parking Standards (Supplementary Planning Document)
- Sustainable Buildings (Supplementary Planning Document - December 2008)
- Employment Land Development Brief - Tournament Fields, Warwick (Prepared by Severn Trent Property)

SUMMARY OF REPRESENTATIONS

Town Council: Object to the proposed change and support the original time restriction.

Public response: 11 objections have been received, raising the following concerns:

- the units and service yards are in close proximity to neighbouring dwellings;
- the proposed amendment would allow 24 hour operations;
- working outside of business hours would cause unacceptable noise and disturbance for neighbouring dwellings;
- noise from vehicle engines, reversing alarms, forklifts, loading doors opening etc;
- the noise report submitted by the applicant only considers internal noise, it makes no estimate of noise from vehicle movements or loading activities in the yards;
- there would be no way of monitoring the resulting level of noise;
- the construction works currently taking place are already adversely affecting neighbouring dwellings;
- increased emissions and adverse impact on air quality caused by increased hours of operation; and
- the applicant's suggestion that the condition will be unacceptable for all potential occupiers is speculation.

In addition to the above, the Hilton Hotel originally objected to the proposed amendment. However, following discussions with the applicant, they advise that they are satisfied that condition 12 is fully enforceable and that the Council is required to take action on this condition should a nuisance occur. They are therefore happy with the revised wording for condition 11 and that it is fully enforceable. However, they do not agree that condition 11 should be lifted from plot 8001.

WDC Environmental Health: Object (further details provided in assessment section below).

ASSESSMENT

The main issues relevant to the consideration of this application are the impact on the living conditions of neighbouring dwellings and the need to support economic growth.

The condition in question was imposed to protect the neighbouring dwellings from noise. The wording used in the condition was chosen to tie in with the assumptions made in the original noise assessment, which was that the loading doors would remain closed between 1900 hours and 0700 hours. The applicant has advised that this has caused difficulties for one of the prospective occupiers. They also consider that this condition is likely to be an issue for other prospective occupiers. As a result, they have undertaken a revised noise assessment to consider the impact of the loading doors being open at night.

The applicant's revised noise assessment concludes that internal noise from light industrial and warehouse operations is not likely to have an adverse impact on nearby residents with the loading doors open. This is based on the premises being used for B1 or B8 purposes (condition 10 prohibits B2 use unless a further noise assessment and noise mitigation measures are submitted for approval).

In view of these conclusions, the applicant submitted the current application to vary the condition. The revised wording for condition 11 in relation to internal noise is intended to mirror the approach taken in the approved wording for condition 12 in relation to external noise. Condition 12 permits vehicle movements and other activities in the service yard, provided that this does not result in noise likely to cause nuisance to nearby residences before 0700 hours or after 1900 hours on Monday to Saturday or before 0900 hours or after 1800 hours on Sundays / Bank Holidays.

This is a complicated issue and so Environmental Health's comments are repeated in full below:

"Overall, Environmental Health has significant concerns about the noise impacts arising from the shutter doors being open during the evening and night time. The units are located in close proximity to existing residential dwellings and noise sensitive commercial properties e.g. care home and hotel. With the original application (W/17/1104), the applicant submitted a noise report which highlighted the need for the shutter doors to be closed in order to prevent noise disturbance to residents. As this was not favourable to the applicant, a revised noise assessment was submitted which lowered the internal noise levels to such an extent that it suggested that noise would not be an issue. The revised internal noise level was not realistic and Environmental Health did not accept this. The applicant has suggested that keeping the shutter doors closed will impact on the viability and operability of the units, however, they have not provided a clear explanation on why this is the case. There is currently a planning condition on the original permission (W/17/1104) which restricts noisy external activities and deliveries between 19:00 and 07:00 so it is unclear why the shutter doors would need to be kept open during the night time. It is reasonable to say that the proximity of these units to the existing residential dwellings is close enough that industrial-type noise during the night time hours has the potential to cause a disturbance. This has been highlighted by complaints regarding the current construction activities at the site and the number of residential objections. In our view, keeping the shutter doors closed during the night time is a practical solution to this problem and should not unduly restrict the normal undertakings of a business.

The applicant has now proposed an alternatively worded condition which says that the shutter doors shall not be kept open if internal noise levels are likely to cause nuisance to nearby residents. I understand that the planning team has taken legal advice on the condition and it has been determined as meeting the relevant legal tests. Whilst we acknowledge this opinion, we are still not entirely convinced that the proposed condition is appropriate. The proposed condition will dilute the intended purpose of keeping the shutter doors closed and will not provide the same level of protection for local residents. We also feel that the condition too closely replicates the legal requirement to not cause a statutory nuisance under the Environmental Protection Act 1990 therefore it could be challenged at a later date as being unnecessary. If successful, this would provide even less protection for local residents. We note that the condition would only address noise amounting to a nuisance as opposed to a loss of amenity. We also note that the legal advice indicates that the opinion of whether the noise is a nuisance or not will fall to the assessment by an environmental health officer. We are not clear on how the applicant/operator of the site will be able to determine their own compliance with the condition if the suggestion is that a qualified individual is required for the assessment. The applicant's revised proposals have also failed to address our original objections where we raised concerns about the impact of LAmox noise incidents i.e. short loud peak noise incidents likely to cause sleep disturbance such as the sound of a pallet being dropped, a shutter door being closed, etc. These types of incidents need only occur a small number of times throughout the night time before complaints are received and a loss of amenity is experienced. The applicant has not addressed this issue in their submission and it still remains a relevant concern. Again, the original condition requiring the shutter doors to be closed during the night time would provide a practical solution to this.

To complicate the planning application further, the applicant wishes to have the condition removed entirely for Plot 8001 as the shutter doors face away from the residential dwellings. The applicant has submitted a further noise assessment which has utilised another internal noise level different to the previous two noise reports. As there is no specific operator in mind for these units, the noise assessment approach can only be viewed as indicative since the noise levels will vary depending on the occupier. The indicative noise assessment for Plot 8001 shows a low impact on the residential properties and hotel but indicates an increase in noise experienced at the care home. We would want to avoid an incremental increase in background noise levels at the site and therefore suggest that this increase be mitigated as far as possible. There is a concurrent planning application being considered for Plot 7001 (W/17/2396) which also indicates an increase in noise above the background level therefore there would be a cumulative increase in noise (in addition to any future development at the site). We would again suggest that the most practical way to mitigate this noise would be to keep the shutter doors closed during the evening to minimise noise breakout from the premises.

For the reasons set out above, we must maintain our objection to the application as we are not satisfied that the proposed variation will provide an equivalent level of noise protection for local residents and that noise disturbance will be caused as a result of shutter doors being left open whilst the units are in use during the night time period."

The comments of Environmental Health must form a key part of any assessment of matters relating noise. However, in determining a planning application, it is necessary to balance all considerations. Therefore, whilst the potential noise impact of the development is an important issue that must be afforded significant weight in the planning balance, it is not the only important consideration. In this case there is the similarly important issue of supporting economic growth. This is reflected in Para. 19 of the NPPF, which states that significant weight should be placed on the need to support economic growth through the planning system.

In this regard it is perhaps first important to note that the proposals relate to an established employment site that has long been the prime employment allocation for the District. Furthermore, the site has a long-standing outline planning permission for all forms of employment development (Use Classes B1, B2 and B8). Despite this, the site has remained largely undeveloped for many years.

There finally appears to be interest from prospective occupiers and therefore, given the previous evident lack of interest, it is important to ensure that any conditions are not unduly onerous so as not to put occupiers off. Of course, these economic considerations need to be balanced with the interests of the adjacent residents.

In this regard it should be noted that the application does not propose to remove the noise controls entirely. The alternative condition that has been proposed by the applicant would retain a reasonable level of control over internal noise for Plots 8002-8004. This condition is not necessary for Plot 8001 because the loading doors for that unit face away from the nearest noise sensitive uses (the hotel and the dwellings in The Peacocks) and will be screened from the care home to the north by future development on the intervening plots. Furthermore, no changes are proposed to Condition 12 which controls external noise. This would continue to apply to all plots (8001-8004) in its current form. Therefore, it has been concluded that the controls provided by the revised Condition 11 and existing Condition 12 strike the correct balance between protecting nearby residents and supporting economic growth.

Objectors have also raised concerns about traffic and air quality. However, these matters were considered in the assessment of the outline planning application and cannot now be reconsidered in the assessment of this reserved matters submission.

SUMMARY / CONCLUSION

Balancing out the objectives of supporting economic growth and protecting the living conditions of nearby residents, it is considered that the revised Condition 11 provides adequate control over internal noise from the proposed development, with existing Condition 12 retained to control external noise. Therefore it is recommended that planning permission is granted for the variation of condition 11.

CONDITIONS

- 1 The development hereby permitted shall be carried out strictly in accordance with the details shown on the site location plan and approved drawing(s) 0003 Rev P-02, 0005 Rev P-01, 0103 Rev P-02, 0105 Rev P-02, 0203 Rev P-03, 0205 Rev P-05, 0301 Rev P-02, 0303 Rev P-02, 0304 Rev P-01 & 0305 Rev P-02, and specification contained therein, submitted on 9 June 2017, 19 June 2017, 7 September 2017 & 13 October 2017. **REASON** : For the avoidance of doubt and to secure a satisfactory form of development in accordance with Policies BE1 and BE3 of the Warwick District Local Plan 2011-2029.
- 2 The development shall be carried out and completed in accordance with the details of finished site and ground levels that were approved under Condition 2 of reserved matters consent no. W17/1104. **REASON** : To protect the character of the area and the amenities of adjoining occupiers in accordance with the requirements of Policy BE1 of the Warwick District Local Plan 2011-2029.
- 3 The development hereby permitted shall only be undertaken in strict accordance with details of both hard and soft landscaping works which shall have been submitted to and approved in writing by the local planning authority. Details of hard landscaping works shall include boundary treatment, including full details of the proposed boundary walls, railings and gates to be erected, specifying the colour of the railings and gates; footpaths; and hard surfacing, which shall be made of porous materials or provision shall be made to direct run-off water from the hard surface to a permeable or porous area. The hard landscaping works shall be completed in full accordance with the approved details within three months of the first occupation of the development hereby permitted; and all planting shall be carried out in accordance with the approved details in the first planting and seeding seasons following the first occupation. Any tree(s) or shrub(s) which within a period of five years from the completion of the development dies, is removed or becomes in the opinion of the local planning authority seriously damaged, defective or diseased shall be replaced in the next planting season with another of similar size and species. All hedging, tree(s) and shrub(s) shall be planted in accordance with British Standard BS4043 – Transplanting Root-balled Trees and BS4428 – Code of Practice for General Landscape Operations. **REASON:** To ensure a satisfactory standard of appearance of the development in the interests of the visual amenities of the area in accordance with Policies BE1, BE3 & NE4 of the Warwick District Local Plan 2011-2029.
- 4 The development shall be carried out in accordance with the details of external facing materials that were approved under Condition 4 of reserved matters consent no. W17/1104. **REASON:** To ensure that the proposed development has a satisfactory external appearance in the interests of the visual amenities of the locality in accordance with Policy BE1 of the Warwick District Local Plan 2011-2029.
- 5 No development or other operations (including demolition, site

clearance or other preparatory works) shall be commenced until the tree protection measures that were approved under Condition 5 of reserved matters consent no. W17/1104 have been implemented in strict accordance with the approved details. In particular no excavations, site works, trenches or channels shall be cut or pipes or services laid, no fires shall be lit within 10 metres of the nearest point of the canopy of any protected tree(s); no equipment, machinery or structure shall be attached to or supported by a protected tree(s); no mixing of cement or use of other contaminating materials or substances shall take place within, or close enough to, a root protection area that seepage or displacement could cause them to enter a root protection area, or any other works be carried out in such a way as to cause damage or injury to the tree(s) by interference with their root structure and that no soil or waste shall be deposited on the land in such a position as to be likely to cause damage or injury to the tree(s). The approved tree protection measures shall remain in place for the duration of construction works. **REASON:** To protect those trees which are of significant amenity value to the area and which would provide an enhanced standard of appearance to the development in accordance with Policy NE4 of the Warwick District Local Plan 2011-2029.

- 6 All existing trees shall be retained and shall not be cut down, grubbed out, topped, lopped or uprooted without the written consent of the local planning authority. Any tree(s) removed without such consent or dying, or being severely damaged or diseased or becomes, in the opinion of the local planning authority, seriously damaged or defective, within five years from the substantial completion of development shall be replaced, as soon as practicable with tree(s) of such size and species details of which must be submitted to and approved by the local planning authority. All tree(s) shall be planted in accordance with British Standard BS4043 – Transplanting Root-balled Trees and BS4428 – Code of Practice for General Landscape Operations (excluding hard surfaces). **REASON:** To protect those landscape features which are of significant amenity value and which ensure a satisfactory standard of appearance of the development in the interests of the visual amenities of the area in accordance with Policies BE1 & NE4 of the Warwick District Local Plan 2011-2029.
- 7 No boundary treatment shall be installed other than in strict accordance with the details approved under condition 7 of reserved matters consent no. W17/1104. **REASON :** To ensure a satisfactory standard of design and appearance for the development, in accordance with Policy BE1 of the Warwick District Local Plan.
- 8 The premises hereby permitted shall not be occupied unless and until the car parking and manoeuvring areas indicated on the approved drawings have been provided and thereafter those areas shall be kept marked out and available for such use at all times. **REASON:** To ensure adequate off-street car parking and servicing facilities in the interests of both highway safety and visual amenity in accordance with Policies BE1, BE3 & TR4 of the Warwick District Local Plan 2011-2029.

- 9 None of the premises hereby permitted shall be occupied unless and until cycle parking has been provided in accordance with details that shall have been submitted to and approved in writing by the local planning authority. The cycle parking shall be retained at all times thereafter. **REASON:** To ensure adequate cycle parking facilities, in accordance with Policy TR4 of the Warwick District Local Plan 2011-2029.
- 10 None of the units hereby permitted shall be used for purposes falling within Class B2 of the Town and Country Planning (Use Classes) Order 1987 unless:
- (a) a noise assessment (including details of noise mitigation measures if deemed appropriate) has been submitted to and approved in writing by the local planning authority; and
- (b) any noise mitigation measures approved under (a) have been implemented in strict accordance with the approved details.
- Any noise mitigation measures shall thereafter be retained and maintained in strict accordance with the approved details at all times that the unit is used for purposes falling within Class B2 of the Town and Country Planning (Use Classes) Order 1987.
- REASON :** To protect the living conditions of the nearby dwellings and hotel, in accordance with Policies BE3 & NE5 of the Warwick District Local Plan.
- 11 With respect to Plots 8002, 8003 and 8004 only, before 0700 hours or after 1900 hours on Monday to Saturday, or before 0900 hours or after 1800 hours on a Sunday or Bank / Public Holiday, the loading doors shall only be used if internal operations occurring at the time do not cause nuisance to nearby residences. At these times the loading doors shall only be opened for as long as is necessary for instances of the movement of goods or personnel. **REASON :** To protect the living conditions of the nearby dwellings and hotel, in accordance with Policies BE3 & NE5 of the Warwick District Local Plan.
- 12 No noisy external activities (including deliveries in or outgoing) likely to cause nuisance to nearby residences shall take place on site before 0700 hours or after 1900 hours on Monday to Saturday or before 0900 hours or after 1800 hours on a Sunday or Bank / Public Holiday. **REASON:** To protect the amenities of occupants of nearby properties in accordance with Policies BE3 & NE5 of the Warwick District Local Plan 2011-2029.
- 13 Noise arising from any plant or equipment, when measured one metre from the façade of any noise sensitive premises, shall not exceed the background noise level by more than 3dB(A) (measured as LAeq(5 minutes)). If the noise in question involves sounds containing a distinguishable, discrete, continuous tone (whine, screech, hiss, hum etc) or if there are discrete impulses (bangs, clicks, clatters, thumps etc.) or if the noise is irregular enough to attract attention, 5dB(A) shall

be added to the measured level. **REASON:** To protect the amenities of occupants of nearby properties in accordance with Policies BE3 & NE5 of the Warwick District Local Plan 2011-2029.

- 14 The development shall be carried out in strict accordance with the Construction and Environmental Management Plan by Benniman Construction Group that was submitted on 28 July 2017. **REASON :** To protect the amenities of occupants of nearby properties in accordance with Policies BE3 & NE5 of the Warwick District Local Plan 2011-2029.
- 15 No lighting or illumination of any part of any building or the site shall be installed or operated unless and until details of such measures shall have been submitted to and approved in writing by the local planning authority and such works, and use of that lighting and/or illumination, shall be carried out and operated only in full accordance with those approved details. **REASON:** To ensure that any lighting is designed so as not to detrimentally affect the amenities of the occupiers of nearby properties in accordance with Policies BE3 & NE5 of the Warwick District Local Plan 2011-2029.
- 16 No chimneys or flues shall be installed on any of the premises hereby permitted other than in strict accordance with details that shall have been submitted to and approved in writing by the local planning authority. **REASON :** To protect the living conditions of nearby dwellings, in accordance with Policy NE5 of the Warwick District Local Plan.
