

**REFERENCE NO - 18/501181/FULL**

**APPLICATION PROPOSAL**

Variation of conditions 10, 16 and 17 of application 16/508659/FULL (Demolition of existing dwelling and erection of B8 warehouse building with ancillary offices, dock levellers, access, parking and landscaping including the creation of new woodland and attenuation pond.) to amend condition 10 to refer to 'a maximum of 32 one-way HGV movements (equivalent to 16 HGVs entering and leaving the site) are permitted between hours of 2300hrs and 0700hr', condition 16 to refer to the Noise Mitigation Plan Ref: 403.06466.00004.001 and a Noise Rating Curve NR30 measured externally to the boundary of any noise sensitive property; condition 17 to refer to the Noise Mitigation Plan Ref: 403.06466.00004.001 and a rating level maintained no greater than 5dB above the existing measured ambient noise level LA90, T during the day time and night time periods.

**ADDRESS** Land South Of Redwall Lane Linton Kent

**SUMMARY OF REASONS FOR RECOMMENDATION**

The principle of the development is established by MA/16/508659/FULL.

Conditions needs to comply with the all the statutory 6 tests for a planning condition.

The Environmental Statement for MA/16/508659/FULL has been taken into account equally in the determination of this application. The information in it is considered to be adequate for the determination of significant environmental effects arising from the changes to the 3 conditions sought.

Altering condition 10 to refer to up to 32 one-way movements is not an unacceptable change for this type of business.

Version 4 of the Noise Management & Mitigation Plan needs to be referred to in condition 16 but otherwise the need to meet the Noise Rating Curve 30 externally remains.

Condition 17 can be amended to refer to Version 4 of the Noise Management & Mitigation Plan and the limitation be raised to +3dB above ambient as that would not be a perceptible increase and can be met by the scheme if the mitigation plan is followed in full.

Other conditions need to be updated to reflect that the development has commenced and that some other conditions have been discharged already in 17/505223/SUB and 18/501238/SUB.

It is also necessary to add a new condition that the use be restricted to the fruit storage and packing operations as it is that type of product which has specific operational needs.

**REASON FOR REFERRAL TO COMMITTEE –**

- Called in by the Parish Councils of Linton and Hunton
- The recommendation is contrary to the views of Parish Councils Linton, Hunton, Loose and Chart Sutton which all object to the application

**WARD** Coxheath And Hunton

**PARISH/TOWN COUNCIL** Linton

**APPLICANT** Alan Firmin Ltd  
**AGENT** Mr Tim Spicer

**DECISION DUE DATE**

21/06/18

**PUBLICITY EXPIRY DATE**

17/07/18

**Planning History**

16/508659/FULL

Demolition of existing dwelling and erection of B8 warehouse building with ancillary offices, dock levellers, access, parking and landscaping including the creation of new woodland and attenuation pond.

Approved Decision Date: 03.10.2017

17/505223/SUB

Submission of Details to Discharge Condition 6 (Boundary Treatments) Condition 9 (Site Levels) Condition 10 (Control and Monitoring - HGV Movement) Condition 11 (Construction Method Statement) and Condition 12 Part i (Surface Water Drainage) Subject to 16/508659/FULL

Approved Decision Date: 16.11.2017

18/501238/SUB

Submission of details pursuant to Conditions 3: Details of hard landscaping, 19: Details of incorporation of decentralised & renewable or low-carbon sources of energy, & 22: Cycle storage facilities (original application ref: 16/508659/FULL).

Approved Decision Date: 04.05.2018

**MAIN REPORT**

**1. DESCRIPTION OF SITE**

1.01 The site extends to 14ha and lies 4.5km southwest of the Linton Crossroads (via Redwall Lane and A229) which represents the main approach to Maidstone Town Centre.

1.02 The site extends from Redwall Lane to the northern boundary to the River Beult which runs to the southern boundary. It is now under construction for a B8 warehouse building for storage and packing of soft and stone fruit for occupation by Berry Gardens.

- 1.03 The Wares Farm industrial estate lies to the north and contains a range of B Class uses including the existing Berry Gardens fruit storage and packing complex of approximately 9,000sqm. With the exception of the adjacent industrial areas, the area mainly consists of pasture and lies within a countryside location with farmsteads and sporadic residential development located along Redwall Lane which includes a residential property adjacent to the north-west boundary of the site.
- 1.04 To the north west of the site is a bungalow which is within the ownership of the applicant. An established bund delineates the eastern boundary with Wares Farm, which contains a further complex of large agricultural buildings as well as a large number of caravans which are used for accommodating seasonal workers.
- 1.05 In order to utilise this spoil within the site, land raising will take place within the landscape mitigation area which itself will wrap around the southern and western parts of the building.
- 1.06 The ground floor of the building is designed to allow the flow of produce through the building with a chilled intake area to the southern part of the building. The northern part of the building laid out for dispatch with 6 loading bays.
- 1.07 The site will also include two access points to the site and an internal road layout which will create one way system for HGVs which will link to the two loading areas to the north and south of the building and also two large car parks for staff and visitors which will provide a total of 232 spaces with HGV parking.
- 1.08 The application also proposes highway improvements to Redwall Lane and contributions to Linton Crossroad.
- 1.09 The application was supported by an Environmental Statement (ES) which assesses the application under the Environmental Impact Assessment Regulations 2017 which included assessments in relation to transport and noise impacts.

## **2. PROPOSAL**

- 2.01 The application relates to 3 conditions on the parent planning permission as follows:

*10) Prior to the commencement of the development a scheme for the control and monitoring of the movement of HGV shall be submitted to the Local Planning Authority. On approval of the scheme by the Local Planning Authority, this scheme should be implemented and operated at all times and shall be available for review by the Local Planning Authority. No more than 8 HGVs shall enter or leave the site during the hours or 2300hrs and 0700hrs.*

*Reasons: In the interests of Local amenity*

*16) Prior to the commencement of development beyond slab level, details of a Noise Mitigation Plan for the sound insulation of the building*

*and any plant and Equipment shall be submitted for approval by the Local Planning Authority. This should incorporate details regarding mitigation measures such as sound insulation of the building envelope, screening, louvers, direction of orientation, location, enclosures etc. The plan shall ensure that the noise generated at the boundary of any noise sensitive property shall not exceed Noise Rating Curve NR30 as defined by BS8233: 2014 Guidance on sound insulation and noise reduction for buildings and the Chartered Institute of Building Engineers (CIBSE) Environmental Design Guide 2006. In addition The equipment shall be maintained in a condition such that it does not exceed NR30 as described above, whenever it's operating. After installation of the approved plant, no new plant or ducting system shall be used without the prior written consent of the Local Planning Authority. The development shall be carried out and operated in accordance with the approved details.*

*Reason: to protect the amenity of the area*

*17)Prior to the commencement of development beyond slab level, a Noise Management Plan will be submitted for approval by the Local Planning Authority. This plan should describe the management of deliveries and activity on the site during both night time hours (2300-0700hrs) and day time hours (0700-2300hrs). The rating level of noise emitted shall be at least 5dB below the existing measured ambient noise level LA90, T during the day time and night time periods. The plan should set out any mitigation measures that are required. This plan will be prepared in consultation with the council's Environmental Protection Team. The objective should be to ensure that the plan meets the BS4142 and NR30 standards. The building shall not be used until the plan is approved and all activity on the site thereafter shall be carried out in accordance with this plan.*

*Reason: To protect the amenities of the surrounding area*

2.02 The changes requested are supported by a Noise Management & Mitigation Plan (which was revised in response to Environmental Protection comments) and clarifying traffic data and a statement as to the case of operational need :

- To alter condition 10 to refer to a maximum of 32 one way movements by HGVs during the night (ie a doubling of the figure in the condition)
- To alter condition 16 to refer to an approved Noise Management & Mitigation Plan and to change the point of noise measurement from the boundary to the inside of a noise sensitive property
- To alter condition 17 to refer an approved Noise Management & Mitigation Plan in regard to 5dB above ambient noise levels instead of 5bB below
- To update conditions if already discharged

2.03 The justification for the changes from the applicant's agents is summarised as follows:

- The Noise Assessment incorrectly stated that there would be 8 HGV movements in the hours 2300 and 0700. It assessed 1 HGV movement during every 15-minute reference period (in accordance with industry methodology) which is 32 as a maximum.
- 32 HGV movements are acceptable in noise impact and highway terms.
- There are strong business requirements that require flexibility regarding night time HGV movements including the projected growth of the business
- Condition 16 wrongly refers to the NR30 Curve limit being met at the boundary of properties whereas it should be internally
- HGV noise sources currently form part of the existing noise climate. As no noise complaints have been received by the applicant, a more appropriate rating level limit would be 5dB above the existing measured ambient noise level LA90.
- A rating level above the background gives no concerns if NR Curve 30 could be met internally, and a hand calculation was provided to verify the results of the noise modelling.
- Predicted to be a maximum of 45 HGVs (equals 90 movements as set out in the TA) per day. The proposed change of Condition 10 is not additional to the total number of HGVs i.e. there will still be an estimated maximum of 45 HGVs visiting the site per day but 16 of these will be permitted to access the site between the hours of 11pm and 7am. ie some of the lorries anticipated to arrive between 18:00 and 00:00 and 07:00 and 09:00 as set out in Table 5-6 may arrive later or earlier i.e. between 11pm and 7am. The timings of movements will vary and fluctuate, requiring a degree of flexibility for operational reasons.
- The applicants have submitted records of existing HGV figures from their current premises in 2017 to illustrate the variations in usage to their existing premises.

2.04 Following concerns about the originally submitted Noise Management & Mitigation Plan from the Borough Council's Environmental Protection officers, a revised Noise Management & Mitigation Plan (version 4) was submitted as follows:

- The application from 8 to 16 HGVs equates to 32 movements
- all loading and unloading of lorries would take place internally within the building once the lorry has docked and is sealed with the building.
- All forklifts will operate inside the building during the night-time
- Inbound carriers (HGVs) do not have any reversing beepers fitted and during the night-time beepers on the out-bound carriers are to be switched off.

- In regard of overlap of HGVs, a sensitivity exercise and re-modelling the on two movements taking place within the 15-minute reference period, a second HGV reversing into a dock, and a second airbrake. Without beepers, the predicted noise level would be the same and less than or equal to the background sound level.
- Regarding the internal noise levels, SLR appreciates that in rural areas ambient and background noise levels can be very low; SLR has measured the existing noise climate at the site.
- When considering the attenuation provided by an open window, internal levels are well above the 18dB internal level
- Whilst SLR can see the logic of applying NR Curve 30 outside to achieve an NR Curve 25 internally, as a residential receptor it is only necessary to achieve NR Curve 30 inside, in line with the recognised industry guidance.
- If reversing beepers are not operating there are now no exceedances in the limits stipulated in the NR30 Curve externally.
- Operations at the site would not cause a perceptible increase in the ambient noise level at the receptors assessed so a rating level of no more than 5dB(A) above the background sound level is acceptable.
- nearest noise-sensitive receptors are already subject to sound of an industrial nature including HGV movements, potential reversing beeper noise, and other plant noise from existing Berry Gardens site

2.05 The agent sought to clarify the need for the development in additional information:

- Greater flexibility is critical to the future operation and growth of the business, the basic premise for the original planning permission, for example, to accommodate lorries over and above the currently specified number in the night time during unusual events. These might include problems with the ferry service or at the place of origin, out of their control
- The condition as exists would not stop the movements still occurring on the local highway network. The result would therefore be lorries needing to find places to park locally until the condition time-period passes, or the business operating convoluted operations out of necessity, using premises on the north side of the road to accept the fruit and transport over to the application site on smaller non- HGV vehicles. Both scenarios are more impactful.
- The amendment of Condition 10 will have no material effect on the am or pm peak hours and will not increase total vehicle numbers. No consequential effect on highway safety or capacity is therefore envisaged and the original TA and accompanying ES chapter remains a valid worst case assessment in highway terms.
- With regard to the consequential effects of increasing permissible night-time HGV movements on the amenity of adjacent and nearby

residents, it does not materially change the degree of effect set out in the original EIA.

- There is no substantive change to the original ES and therefore the procedures set out in Regulation 25 of the EIA Regulations do not apply
- There is currently no restriction on night time movements associated with the existing facility, consistent with the approach adopted by the Council on numerous other fruit packing facilities across the Greensand Ridge.
- The condition does not meet the NPPF tests as the current restriction places unreasonable restrictions on operations and does not allow for occasional events outside the applicant's control.

### **3. POLICY AND CONSIDERATIONS**

Maidstone Borough Local Plan 2017: DM1; DM23  
National Planning Policy Framework (NPPF)  
National Planning Practice Guidance (NPPG)  
Environmental Impact Assessment Regulations 2017

### **4. LOCAL REPRESENTATIONS**

- 4.01 The application was advertised by site notice and press advertisement and was subject to an initial consultation following validation of the application and a further round of consultation following the submission of additional information in respect of the application.
- 4.02 Maidstone CPRE: object strongly: increase in noise by night time traffic by 4 times; needs proper managerial control number of vehicle movements. No operational experience in the new building so no evidence basis.

#### **Local Residents:**

- 4.03 34 objections received from local residents, on the following (summarised) issues
- This quadruples the night-time HGV numbers
  - disturbances need to be monitored by the council's own Environmental Health department
  - original application was pushed through, disregarding very strong local opposition, totally out of place in a rural location.
  - they have benefited from a cheaper land cost by placing the site in this rural setting, the flexibility they seek could have been provided in an industrial area or alternative logistics area near the motorway
  - this business does not serve local residents
  - there are no restrictions applying to the existing site but the two sites are not comparable in size

- original transport information was too vague- question if the planning committee's decision on this application can be considered legally valid
- flagrant, deliberate attempt to push these variations through by the backdoor
- Noise management and mitigation plan only relates to noise around the site itself: it does not consider nor offer any mitigation regarding the proposed HGV route
- Already too many HGVs which drive through Hunton and other local villages including at excess speed, danger to life of life as pedestrians, cyclists and horse riderspot
- the majority of the workforce will not be local, but travelling in from further afield,
- Already noise from reversing beepers up to 3 miles away, noise is more noticeable in a rural area.
- Damage to property, including listed buildings and conservation areas on the HGV routes
- traffic chaos because cars, buses or vans cannot pass each other on narrow lanes
- noise of an HGV vehicle every 15 minutes throughout the night is unacceptable
- 11pm is not daytime
- HGVs at night more likely to take short cuts or get lost, chance of one of them getting stuck or having major difficulties manoeuvring round the corner in the middle of the night, with the resulting light and noise disturbance to residents.
- HGVs who have been to the Redwall Lane also have to go to Fruition which is off East Street so will make a shortcut
- HGVs causing extreme damage to the lanes, breaking water mains, creating huge pot holes, damaging private verges, power lines and overhanging trees
- More young people drive these lanes at night- one recent teenage fatality in Redwall Lane
- The lanes in the locality are likely to become overnight lorry parks with litter produced.
- Increases vibration, air pollution and exhaust fumes
- Noise from the forklift trucks loading and unloading
- Harmful to physical and mental health
- the opening hours suggested by environmental health were not imposed



- The number of loading bays and HGV parking spaces indicate intention for 18 HGVs onsite at any one time.do not allow changes after the event
- the building should not have commenced if the conditions attached to the approval were not acceptable
- Need to stick to NR 30 at the boundary: External noise in e.g. gardens of adjoining properties is most relevant in the daytime.
- 10dB change would roughly double the perceived noise level
- Incorrect to say there have been no noise complaints: there are no contact details for the site manager
- Noise from an intrusive refrigeration type noise for a couple of hours at a time.
- NR curves not appropriate for intermittent noise
- Technical Errors in the noise report and assumptions made seem questionable
- Noise needs to be modelled on the HGV route as well as at the site and factor overlapping vehicles.
- If approved, mitigation measures are needed eg triple glazing.
- They will not be satisfied until unlimited numbers of HGVs entering and leaving the site 24 hours a day, and unrestricted noise levels; mor applications will be submitted.
- The HGV drivers are ignoring the routing plans- has been reported to the applicant.
- Inadequate time for consultation/notification in a holiday period
- No assesement of the extra staff vehicles or LGVs during the night-time
- A persistent absence of traffic statistics in applications in the Borough
- Need to recognise the severe cumulative impacts on traffic and environment
- Politicians, MP Helen Grant, planners and local councillors need to serve local people. not profit first business

## **5. CONSULTATIONS**

*(Please note that summaries of consultation responses are set out below with the response discussed in more detail in the main report where considered necessary)*

### 5.01 Linton Parish Council objection:

- The decision notice should be clear and unequivocal in how many movements in total are permitted
- No amendment until after some operational experience
- the consideration of local amenity should cover all of Maidstone Borough along routes used: an HGV every fifteen minutes throughout the night, will seriously affect local amenity over a wide area eg Linton Hill
- Worsens pollution
- conditions 16 and 17 of the planning decision notice are too complex and technical
- A change in permitted noise levels from 5dB below ambient to 5dB above means in practical terms a doubling in the amount of noise produced.
- conditions amended before construction means that the original decisions were based have been significantly undermined
- Concern at lack of monitoring committees and other stipulations such as a written routing agreement and appropriate signage need to be properly monitored and enforced.

Objections remain following the additional information

- The TA has confusing data: the conditions should reflect it with three time zones: daytime, evening and night
- The access route (Redwall Lane and Linton Hill) has back ground noise that noticeably reduces after the evening rush-hour and further reduces after 10pm.
- The are not positioned in a realistic setting: the Linton landscape gradient runs north/south yet the sensors were placed east / west.
- Noise sensors needed by homes in Redwall Lane and the junction with Linton Hill.
- A Lorry produces over 90Db when in high revs and low gears, manoeuvring, pulling away traversing hills either up or down, and negotiating bends.
- Beepers should be off during daylight too.
- No beepers makes it dangerous for cyclists
- Linton as an inappropriate location for a HGV logistics operation: the market for this building is not local suppliers.
- HGVs / LGVs Berry Gardens are one entity and MBC should treat it so.
- The applicant should withdraw the application, agree to amend the conditions PC suggests and then assess matters when the site is up and running.

- a Lorry Watch should have been done before the original application and post application dealing with HGVs and noise levels along Redwall Lane

5.02 Hunton Parish Council objection:

- to quadruple the number of HGVs is intolerable to local residents
- unacceptable to seek substantial change to conditions so soon
- local roads are totally unsuitable
- HGVs are already travelling through Hunton from the site
- To increase the noise level from 5dB below existing measured ambient noise levels to 5dB above will harm local amenity.

5.03 Loose Parish Council objection:

- Houses in Linton Road already suffer from vibrations when vehicles pass
- an increase in noise level for the residents of A229 through the night
- Between Linton Crossroads and the viaduct on the A229 there have been several serious accidents, some of them fatal.
- KCC recommended no further development on the south side of Maidstone due to excess pollution and lack of infrastructure
- Increased pollution at night, particularly in the Wheatsheaf area of the A229
- Inspectors have expressed his concern about the volume of traffic that would increase through Loose.

5.04 Chart Sutton Parish Council objection:

- proposed 'doubling' of night-time HGV movements under this application
- no lorries should use the B2163/Willington Street as a route back to the motorway\_
- extra information does not alter the objections

5.05 Marden Parish Council: No objection providing none of the increased number of lorries at night-time would be directed via the B2079 through Marden.

5.06 KCC (Highways and Transportation)- no objection

5.07 Environment Agency: no comments

5.08 Health and Safety Executive: no objections

5.09 Natural England- no comment

5.10 KCC (Drainage)- no comment

5.11 Kent Police: no comments

5.12 Southern Water: no comments

5.13 MBC Environmental Protection (initial comments):

- The original assessment of noise was based on one vehicle movement in the 15 minute BS4142 assessment period. Overlap becomes much more likely during any 15 minute period. 2 vehicles arriving together would add 5dB to the assessment and 3 would add 5dB.
- not specific about which L90 value has been used. The assessment should use a representative case - so 7pm to 11pm with a median or modal value for that period might be acceptable.
- we are not in a position to verify that there would not be unacceptable impact.
- Floating barriers in isolation would not be sufficiently effective in controlling noise from plant. However combined with the screening effect of the building itself this is satisfactory.
- preferable to have a seal to the rear of the vehicles meaning that body of the truck (assuming they are hard backed) will provide some attenuation and the forklifts would operate inside the building.
- if beepers need to be used at night they should be white noise beepers at the very least and preferably not be used at all (with an alternative safe system of operation). Any HGV that uses traditional beepers should be prohibited from night time deliveries. Bleepers should attract a 6dB penalty as they are both intermittent and impulsive.
- Page 19 - the report has misunderstood our requirement - NR30 is designed as an outside measurement to allow for a level of around NR20 inside. This is a fair level for rural areas. Low frequency noise of HGV is more penetrating
- While we may consider relaxing the requirement for noise to be 5dB below background in very quiet areas this would be only as far as to be equal with background not to above background.
- The NR curve specified is required outside not inside

5.14 MBC Environmental Protection (comments on amended Noise Management & Mitigation Plan):

- While there remain some technical errors and misinterpretation, the reduction in impact gained by the non-use of reversing beepers and the other physical and management measures are now demonstrating low impact.
- The assessment of the possibility of two vehicles arriving together is satisfactory.
- The ground absorption factor is a standard method and the derivation of 0.5 for a bit of hard and a bit of soft ground is satisfactory.

- Using line source gives a better built in margin of error.
- BS4142 is a fair and valid assessment with penalties for tonal, impulsive and intermittent noises.
- The plant is located at the rear of the factory and heavily screened so it easily meets both BS4142 and NR curve requirements.

## **6. APPRAISAL**

6.01 It is clear from the representations that there is ongoing local concern about the principle of the B8 building that is under construction and also issues that have arisen from the existing Berry Gardens business or from the construction of the new building. However, the consideration of this s73 application needs to focus on the impact of the specific changes to conditions requested and has to be considered on its individual merits.

6.02 There is also concern from some objectors that conditions imposed on a planning permission should not be revisited and that should not be before the building is in use. The points made on this are appreciated but it is clear in national planning legislation (s73 of the Town and County Planning Act) that a right exists to an applicant have conditions varied or removed at any point once the planning permission has been granted.

6.03 In considering conditions, paragraph 203 of the NPPF states “Local Planning Authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions”. Paragraph 206 states “Planning conditions should only be imposed where they are: necessary, relevant to planning, relevant to the development to be permitted, enforceable, precise and reasonable in all other respects. These are the “6 tests” of a planning condition and all have to be met.

6.04 The main issues are:

- Environmental Impact Assessment
- Highways Impact
- Noise Impact at the site
- Amenity Impacts in the locality

### **Environmental Impact Assessment**

6.05 The original planning application, by reason of its use, scale and location, was subject to Environmental Impact Assessment (EIA) and an Environmental Statement (ES) was submitted that covered a number of matters including ones that relate to this application in terms of traffic, transport, noise, vibration and air quality.

6.06 In this case, the ES for MA/16/508659/FULL has been taken into account equally in the determination of this application. The information in it was considered to be adequate for the determination of significant environmental effects of the development arising from the changes to the 3 conditions sought.

### **Highways Impact**

- 6.07 The existing condition 10 on the parent planning permission limits the number of HGVs that can enter or leave the site between 2300hrs and 0700hrs to 8 in number. This effectively means 16 one-way movements as 8 HGVs could both enter **and** leave in that time period without technically breaching the condition. It was imposed in the interests of amenity.
- 6.08 This s73 application does not intend to increase the numbers of HGVs overall each day but is intended to give flexibility to the times in which they can visit the site to unload or load. The applicant is asking for up to 32 one-way movements which is a doubling of the maximum limitation in the condition. Many of the objections refer to a "quadrupling" of the number but that is not a correct interpretation in my view.
- 6.09 Based on the submission of the agent on behalf of the applicant, it is not intended that there be 32 in or out movements at night-time on a frequent or regular basis throughout the year. The 8 HGV figure in the existing condition was based on an average expected figure but in a planning condition, for reasonableness and precision, it is necessary to factor in contingency for the worst case scenario.
- 6.10 The figure of 32 in or out movements represents a maximum scenario and is requested to give flexibility to factor in either individually or in combination, matters such as peak seasons, the terms of contracts with suppliers and/or customers and any traffic circumstances beyond their control. The nature of the fruit products sold is that delays to loading or unloading need to be avoided as far as possible to minimise degradation.
- 6.11 The reference to HGVs in or out movements rather than vehicle numbers is more precise and enforceable and more reasonable in terms of allowing for the need to spend time unloading and loading. In terms of the requested change in the time of day when the vehicles arrive or depart, KCC as the Local Highway Authority does not consider that there can be objections sustained in the context of national NPPF paragraph 32 "Development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are **severe**".
- 6.12 Similarly, there is considered to be no breach of Policy DM21 of the MBLP which relates to assessing the transport impacts of development because the trips generated to and from the development have no severe residual impacts simply based on them occurring at a different time within the 24 hour day.
- 6.13 I am satisfied that the condition also can be amended to make it more precise and enforceable and that it would be reasonable to allow up to 32 one way movements, bearing in mind the flexibility needed by the applicant to operate this particular business.
- 6.14 I concur with the point made by the agent that to retain the condition based on average figures and not allow for maximum figures could lead to a perverse situation whereby, for example, any HGVs that would breach the existing night-time condition would need to wait on the public road until after 0700hrs to enter the site.

### **Noise Impact at the Site**

- 6.15 Conditions 16 and 17 were imposed in the interests of amenity.
- 6.16 Condition 16 (and therefore the NR30 Noise Rating curve measurement) refers to noise from plant and equipment. The Council's Environmental Protection Officer is of the view that the measurement of noise from these sources should be an external one at the boundary of any dwelling as that is more easily measurable and thus enforceable. In terms of noise nuisance to local residents, I am satisfied that the position of any plant and equipment that is likely to be noisy would be in acceptably screened positions and that there is mitigation proposed such that there will not be a breach of the relevant acoustic standards. The condition is therefore reasonable as originally imposed but can be updated to refer to the most recent Noise Management & Mitigation Plan submitted by the applicant.
- 6.17 Condition 17 relates to noise from sources other than plant and equipment, e.g. the loading and unloading processes etc. In this regard, clarification has been submitted that the loading doorways are sealed and that there will be internalised use of fork lift trucks at night. The main intrusive noise source would have been the use of reversing beepers. The applicant has agreed that these will **not** be used at night. They would need to use alternatives such as banksman or radio controlled communication.
- 6.18 The revised Noise Management & Mitigation Plan also states that in the daytime, the operatives will be encouraged to use or convert to broadband or white noise alarm models which are much less acoustically intrusive over the distances relevant in this rural locality.
- 6.19 In terms of the noise limits in condition 17, whilst it is desirable for a -5dB below ambient, in terms of the "reasonableness" test of planning conditions, a +3dB limit above ambient is acceptable. This is the amount of noise that is hardly perceptible as a change by the human ear whereas the request for +5dB can be "adverse depending on the context". The Noise Management & Mitigation Plan submitted indicated that +2dB is the most increase anticipated. Therefore +5dB above ambient has not been evidenced as necessary by the applicant.
- 6.20 I am therefore satisfied that it would not cause any harm to amenity to amend the condition to +3 dB above ambient and to update it to refer to the revised Noise Management & Mitigation Plan.
- 6.21 The methodology as to assessing daytime and night-time 2 periods with night-time being 2300 to 0700 is standard practice and there is no requirement for a third period of "evening".

### **Amenity Impacts in the Locality**

- 6.22 Many of the objectors refer to the traffic noise, disturbance, air pollution etc to a wider area than the application site environs.
- 6.23 As detailed above, the changes in the condition 10 in terms of traffic numbers do not increase overall compared to the permitted scheme being constructed. Hence it would not be reasonable to refuse the application on wider traffic grounds other than in relation to any specific impacts arising from potentially more night-time traffic on occasion.

- 6.24 As the number of HGVs overall is not affected by the s73 application, I do not consider that air pollution is changed to be relevant to the determination of this application.
- 6.25 Environmental Protection is not able to assess operational traffic of this kind on roads as a “nuisance” so noise and disturbance beyond the site in the wider locality of can only be considered as a subjective amenity matter.
- 6.26 On the basis that the change requested is a maximum of an extra 8 HGVs (and utilising the original ES traffic counts to set the context of the prevailing situation) I conclude that the changes to condition 10 requested would not result in any significant harm to amenity to warrant refusal. That is bearing in mind the general prevalence of night-time HGV traffic in the locality and the unfettered hours of operation that exist at Berry Gardens’ premises in Redwall Lane.

### **Other Matters**

- 6.27 I have considered all other matters raised by consultees and local residents and conclude that they are not material to the conditions being sought to be altered.

## **7. CONCLUSION**

- 7.01 In conclusion, the principle of the development is established and this application is not able to be determined on concerns about that, or on problems encountered during construction or that the conditions are being amended before the building is operational.
- 7.02 The Environmental Statement for the parent planning permission (MA/16/508659/FULL) has been taken into account equally in the determination of this application. The information in it was considered to be adequate to allow a determination if there were any significant environmental effects of the development arising from the changes to the 3 conditions sought.
- 7.03 I conclude that altering condition 10 to refer to up to 32 one-way movements is a doubling of the restriction in the condition but that in itself in the local context is not an unacceptable change for this type of business and can be amended in a way that complies with the all the statutory 6 tests for a planning condition.
- 7.04 Version 4 of the Noise Management & Mitigation Plan needs to be referred to in condition 16 but otherwise the need to meet the Noise Rating Curve 30 externally should be retained.
- 7.05 Condition 17 can be amended to refer to Version 4 of the Noise Management & Mitigation Plan and the limitation be raised to +3dB above ambient as that would not be a perceptible increase and can be met by the scheme if the mitigation plan is followed in full. That would ensure the condition meets the “reasonable” test for a planning condition.
- 7.06 Other conditions need to be updated to reflect that construction has commenced and that some other conditions have been discharged already in 17/505223/SUB and 18/501238/SUB.



- 7.07 It is also necessary in my view to add a new condition that the use be restricted to the fruit storage and packing operations as it is that type of product which has specific operational needs over a 24 hour period that have generated this request from Berry Gardens to vary condition 10.
- 7.08 The obligations in the legal agreement for the parent planning permission would not need to be carried forward into this new planning permission as it relates equally to any s73 applications.

## **8. RECOMMENDATION**

GRANT planning permission subject to the following conditions:

The development hereby permitted shall be carried out in accordance with the following approved plans: DHA/11488/01 SITE LOCATION PLAN; DHA/11488/02 EXISTING SITE PLAN; DHA/11488/11 REV B ELEVATIONS; TEQ/1817-04D SITE LAYOUT/LEVELS; 3874DR001 rev H LANDSCAPE STRATEGY; 3874DR002 rev H LANDSCAPE MASTERPLAN; TEQ 1817-03D INDICATIVE SECTIONS; WM/512/P/12 / rev2 ROOF PLAN; WM/511/P/15/ rev2 MEZZAINE FLOOR; WM/511/10 / rev3 GROUND FLOOR ; DHA/11485/03A SITE LAYOUT; TRANSPORT ASSESSMENT AND APPENDICES; ENVIRONMENT ASSESSMENT AND ES TECHNICAL NOTES ;FLOOD RISK ASSESSMENT; LANDSCAPE AND ECOLOGY MANAGEMENT PLAN MARCH 2017 and email received from DHA dated 18 July 2018.

Reason: To clarify which plans have been approved.

- 1) The materials to be used in the development hereby approved shall be as indicated on the approved plans DHA/11488/11B unless otherwise approved in writing by the Local Planning Authority.

Reason: To ensure a satisfactory appearance to the development

- 2) The development shall be completed in accordance with the hard landscaping approved as part of permission 18/501238/SUB before the first occupation of the building hereby permitted.

Reason: To ensure a satisfactory appearance to the development.

- 3) The approved details of the parking/turning areas shall be completed before the commencement of the use of the land or buildings hereby permitted and shall thereafter be kept available for such use. No development, whether permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order, with or without modification) or not, shall be carried out on the areas indicated or in such a position as to preclude vehicular access to them.

Reason: In the interests of highway safety and to ensure efficient internal movements within the site

- 4) The approved details of the access points as shown on plan 11487-H-01 shall be completed before the commencement of the use of the land or buildings hereby permitted and the sight lines maintained free of all obstruction to visibility above 1m thereafter.

Reason: To ensure highway safety of the site and the locality.

- 5) The development shall be completed in accordance with the fencing and boundary treatments approved as part of permission 17/505223/SUB and shall thereafter be installed and permanently retained.

Reason: To protect the amenity of adjoining occupiers and ensure a good standard of design is achieved.

- 6) No use of the development hereby permitted shall take place until the following off-site highways improvements have been completed.

(a) Extension of the existing 40mph speed limit to the south of the Redwall Lane junction with the A229.

(b) Creation of access points to site including installation of a Bollard to prevent westerly HGV travel on Redwall Lane from the north west access point

(c) Improvements to Redwall Lane and Junction of Redwall Lane and A229 as set out in the Transport Assessment

Reason: to ensure appropriate highway conditions are maintained within the locality

- 7) The development hereby permitted shall be carried out strictly in accordance with the slab level shown on the approved drawing TEQ1817-04D.

Reason: In order to secure a satisfactory form of development having regard to the topography of the site.

- 8) The development shall be carried out in accordance with the final site levels approved as part of permission 17/505223/SUB and retained as approved thereafter.

Reason: In the interests of landscape, visual impact and amenity of the area and to ensure a satisfactory appearance to the development.

- 9) The control and monitoring of the movement of HGVs shall be in accordance with the scheme approved under 17/505223/SUB. This scheme should be implemented and operated at all times and shall be available for review by the Local Planning Authority. There shall be no more than 32 in or out movements to the site by HGVs between the hours of 2300hrs and 0700hrs.

Reason: In the interests of local amenity.

- 10) The development hereby approved shall be constructed in accordance with the approved construction method statement pursuant to permission 17/505223/SUB.

Reason: To protect the amenity and highway safety of the area during the construction phase.

- 11) The surface water drainage scheme for the site shall be implemented in accordance with approval 17/505223/SUB and retained thereafter. The scheme shall be implemented prior to use of the building and thereafter managed and maintained in accordance with the details of a management and maintenance plan submitted for the approval of the Local Planning Authority which shall include the arrangements for adoption by any public body or statutory undertaker, or any other arrangements to secure the operation of the sustainable drainage system throughout its lifetime.

Reason: To ensure ongoing efficacy of the drainage provisions.

- 12) No storage of oils and fuels are to be stored on site within 10m of the river edge or any field drain, ditches (including field ditches) and other surface water system which are connected to the SSSI. Any other storage to take place within the site must be stored in a bunded tank or mobile container that complies with current regulations.

Reason: To protect the ecological interests of the River Beult SSSI

- 13) The approved landscaping details shall be carried out during the first planting season (October to February) following first occupation of the building. Any seeding or turfing which fails to establish or any trees or plants which, within five years from the first occupation of a property, commencement of use or adoption of land, die or become so seriously damaged or diseased that their long term amenity value has been adversely affected shall be replaced in the next planting season with plants of the same species and size as detailed in the approved landscape scheme unless the local planning authority gives written consent to any variation.

Reason: In the interests of landscape, visual impact and amenity of the area and to ensure a satisfactory appearance to the development

- 14) The proposed building shall achieve at least a BREEAM Very Good level. A final certificate should be issued within 6 months of first occupation of the building to confirm the Very Good BREEAM rating has been achieved.

Reason: To ensure efficiency use of natural resources and achieve sustainable energy production in line with Policy DM2 of the Maidstone Borough Local Plan.

15) The development shall be carried in with the mitigation measures in Noise Management & Mitigation Plan Ref: 403.06466.00004.001 Version 4 including the sound insulation of the building and all plant and Equipment to ensure that noise generated by plant and Equipment at the development shall not exceed Noise Rating Curve NR30 (as defined by BS8233: 2014 Guidance on sound insulation and noise reduction for buildings and the Chartered Institute of Building Engineers Environmental Design Guide 2006) at the boundary to any noise sensitive property. All plant and equipment shall be maintained in a condition such that it does not exceed NR30 as described above, whenever it is operating. No new plant or ducting system shall be used without the prior approval of the Local Planning Authority.

Reason: To protect the amenity of the area.

16) The development shall be carried in accordance with the approved Noise Management & Mitigation Plan Ref: 403.06466.00004.001 Version 4. The rating level of noise emitted shall be maintained at a level no greater than 3dB above the existing measured ambient noise level LA90,T during the day time and night time periods respectively. All activity on the site thereafter shall be carried out in accordance with this plan.

Reason: To protect the amenities of the surrounding area

17) Prior to the first use of the premises, details of any plant (including ventilation, refrigeration and air conditioning) or ducting system to be used in pursuance of this permission shall be submitted to and approved in writing by the Local Planning Authority. The development shall then be carried out in accordance with the approved details

Reason: To protect the amenities of the area

18) Before the first occupation of the building hereby permitted, the development shall be completed in accordance with permission 18/501238/SUB in terms of how decentralised and renewable or low-carbon sources of energy will be incorporated into the development hereby approved. All features shall be retained thereafter.

Reason: To ensure an energy efficient form of development

19) The building hereby permitted shall not be occupied until details of any lighting to be placed or erected within the site have been submitted to and approved by the Local Planning Authority. The submitted details shall include, inter alia, details of measures to shield and direct light from the light sources so as to prevent light pollution and illuminance contour plots covering sensitive neighbouring receptors. The development shall thereafter be carried out in accordance with the approved details.

Reason: In the interest of amenity.

20) Prior to the occupation of the building(s) hereby permitted, 18 parking spaces to be served by electric vehicle charging points shall be installed and shall thereafter be retained for that purpose.

Reason: To promote the reduction of CO2 emissions through the use of low emissions vehicles in accordance with paragraph 35 of the National Planning Policy Framework.

21) The development hereby approved shall be completed in accordance with permission 18/501238/SUB in terms of cycle storage facilities on the site. The approved facilities shall be provided before the first occupation of the building and retained thereafter.

Reason: In the interest of amenity and sustainability.

#### Informative

- 1) The s106 legal agreement for 16/508659/FULL applies to this planning permission.

Case Officer Marion Geary