

REFERENCE NO - 19/500705/FULL			
APPLICATION PROPOSAL			
Variation of condition 20 of 14/502010/OUT to allow Saturday working hours start time to be changed from 9:00am to 8:00am (total working hours 8:00am to 13:00pm).			
ADDRESS Hen And Duckhurst Farm, Marden Road, Staplehurst, TN12 0PD			
SUMMARY OF REASONS FOR RECOMMENDATION – (APPROVE SUBJECT TO CONDITIONS)			
<ul style="list-style-type: none"> • There is separate Environmental Protection legislation and effective processes that address noise and environmental nuisance on construction sites. • For this reason, Condition 20 does not pass the relevant legal and policy tests for attaching planning conditions in that it is not necessary, relevant to planning, nor reasonable. • For these reasons and as explained below, it is recommended that Condition 20 is removed altogether. 			
REASON FOR REFERRAL TO COMMITTEE			
Staplehurst Parish Council recommends refusal and referral to Planning Committee if officers are minded to approve.			
WARD Staplehurst	PARISH COUNCIL Staplehurst	APPLICANT Mr Jon Collcutt (BDW Homes) AGENT N/A	
DECISION DUE DATE 02/07/2019		PUBLICITY EXPIRY DATE 17/04/19	
RELEVANT PLANNING HISTORY			
App No	Proposal	Decision	Date
17/506306	Approval of reserved matters application for the erection of 250 dwellings (Appearance, Landscaping, Layout and Scale being sought) and details of Conditions 5, 7, 9, and 10 relating to phasing, landscaping and ecology, pursuant to 14/502010/OUT	APPROVED	15/06/18
14/502010	Outline application for the erection of residential development for up to 250 dwellings with access and garaging with access considered at this stage and all other matters reserved for future consideration.	APPROVED	03/02/17

1.0 BACKGROUND

1.01 This application was reported to Planning Committee on 27th June where officers recommended that condition 20, which restricts construction working hours, be removed. The previous Committee Report is attached at the **Appendix**. Planning Committee deferred consideration of the application for the following reason:

"That consideration of this application be deferred for further discussions to determine the most effective mechanism to control issues of noise and disturbance during the construction phase of the development i.e. whether legislation such as the Control of Pollution Act 1974 and the Environmental Protection Act 1990 would provide sufficient remedy to deal with the issues such that the condition can be removed in its entirety or whether the condition still serves a useful planning purpose."

2.0 APPRAISAL

2.01 Discussions have been held with the Council's Community Protection Team (CPT) to outline the process of how they deal with the issue of noise on a construction site such as the application site.

2.02 When a noise complaint is received by the CPT, this is investigated by them and in the first instance they advise that residents raise their concerns with the developer/contractor directly to see if a resolution can be found. Where this is not possible or is ineffective the CPT ask the resident to notify them, and they will investigate further. Where necessary the resident will be asked to complete a noise nuisance diary and return it to the Council for assessment by a Community Protection Officer (which has been the case for the Hen & Duckhurst Site).

2.03 The Community Protection Officer will then assess the noise diary to determine if further investigation is required. Generally the case officer will assess on the basis of frequency, times, and level of noise. If there is judged to be a noise nuisance and it persists, and the developer/contractor does not follow the British Standard 5228 "Noise and Vibration Control on Construction and Open Sites", more formal action will be considered. Legal options include the Anti-Social Behaviour Crime and Policing Act 2014, Environmental Protection Act 1990 Sections 79/80, and Control of Pollution Act 1974 Section 60 Notice.

2.04 In terms of the available powers, the Council does not generally use Section 60 Control of Pollution Act notice's (and hasn't for a long time) but instead relies upon on the Environmental Protection Act and more recent measures known as Community Protection Notices. The Environmental Protection Act allows for 'abatement notices' to be served which can require, for example, the abatement of the nuisance, or prohibiting or restricting its occurrence or recurrence, or requiring the works causing the nuisance to stop. The notice would also specify the time or times within which the requirements of the notice are to be complied with. The CPT advises that Community Protection Notices have proved very effective at preventing noise nuisance and this is their preferred option to begin with. These can require an individual or body to stop carrying out noisy activities,

and / or take reasonable steps to achieve specified results, such as, a reduction in noise levels.

- 2.05 In terms of whether the existing (or modified) planning condition still serves a useful planning purpose, the sole effect of the planning condition is that no construction or deliveries are permitted outside the specified hours. So put simply, this would prevent any impacts occurring from these activities outside of those hours. However, it is a blunt tool in that it does not take account of actual noise levels, even within the permitted hours. So potentially quiet construction works such as painting would not be allowed outside the specified hours when they may not cause any harm to amenity. On the other hand, excessively noisy activities during the permitted hours would not be controlled. The Environmental Protection powers deal with specific noise nuisances to local residents and have a range of controls.
- 2.06 So it is considered the most effective mechanism to control issues of noise and disturbance during the construction phase of the development is via Environmental Protection legislation due to the more specific and targeted approach that can be taken against the actual noise nuisance. Because there is other legislation available, it is advised again that the condition does not pass the tests for planning conditions

3.0 CONCLUSION

- 3.01 It is once more recommended that condition 20 is removed altogether.
- 3.02 Notwithstanding this recommendation, the Council's own 'Environmental Code of Development Practice' actually allows working hours of 8am to 1pm on Saturdays so should Members consider that a condition should remain in place, the variation sought by the applicant to start at 8am on Saturdays would accord with the Code.
- 3.03 Should Members conclude that the condition should remain in place, amended or otherwise, it is advised that they explain why they consider it passes the 6 tests for planning conditions, potentially with site-specific reasons.

4.0 RECOMMENDATION

GRANT PLANNING PERMISSION subject to the following conditions with delegated powers for the Head of Planning to be able to settle or amend any necessary planning conditions in line with the matters set out in the recommendation and as resolved by the Planning Committee.

1. The development hereby permitted shall be carried out in accordance with the following approved plans under application 14/502010/OUT: Site Location Plan DHA/9702/01 Rev B and drawing site access round about T0191/SK01 RevP4 forming part of Appendix E of Transport assessment report.

Reason: To ensure that the location of the vehicular access is defined.

2. The development shall be carried out in accordance with the phasing details approved under application 17/506306/REM unless otherwise agreed in writing with the local planning authority.

Reason: To ensure that the development is carried out in a satisfactory manner.

3. The development shall be carried out in accordance with the materials approved under application 18/505483/SUB unless otherwise agreed in writing with the local planning authority.

Reason: In the interests of visual amenity of the area and to ensure that the proposed development is satisfactorily integrated with its immediate surroundings.

4. The development shall be carried out in accordance with the hard and soft landscaping and boundary treatments approved under application 17/506306/REM unless otherwise agreed in writing with the local planning authority.

Reason: In the interest of visual amenity of the area.

5. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following first occupation of the dwellings to which the landscaping relates. Any trees or plants, which, within a period of 5 years from the completion of the development die, are removed, or become seriously damaged or diseased, shall be replaced in the next planting season with others of similar size and species.

Reason: In the interest of visual amenity of the area.

6. The development shall be carried out in accordance with the landscape management plan approved under application 17/506306/REM unless otherwise agreed in writing with the local planning authority.

Reason: In the interest of residential and visual amenity of the area.

7. The development shall be carried out in accordance with the tree and hedge protection measures approved under application 17/506306/REM unless otherwise agreed in writing with the local planning authority.

Reason: To safeguard existing trees to be retained and to ensure a satisfactory setting and external appearance to the development.

8. The development of plots 1-131 and 200-250 shall be carried out in accordance with the ground levels approved under application 17/506306/REM unless otherwise agreed in writing with the local planning authority. No development shall take place on plots 132-199 until details of the proposed slab levels of the building(s) and the existing site levels have been submitted to and approved in writing by the local planning authority.

and the development shall be completed in accordance with the approved levels;

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

9. The development shall be carried out in accordance with the construction management plan approved under application 18/505340/SUB unless otherwise agreed in writing with the local planning authority.

Reason: In the interests of residential amenities in the area and in the interests of biodiversity and ecology.

10. The development shall be carried out in accordance with the contamination assessment and mitigation strategy approved under application 18/503826/SUB unless otherwise agreed in writing with the local planning authority.

Reason: In the interests of residential amenities of the area.

11. If during the course of development any contamination is found which has not been identified in the site investigation, additional measures for the remediation of this source of contamination shall be submitted to and approved in writing by the local planning authority. The remediation of the site shall incorporate the approved additional measures.

Reason: In the interests of amenities of the future occupiers of the dwellings.

12. The development shall be carried out in accordance with the archaeological assessment and strategy approved under application 18/503707/SUB unless otherwise agreed in writing with the local planning authority.

Reason: To ensure appropriate assessment of the historic landscape implications of any development proposals and the subsequent mitigation through preservation in situ and integration into main development scheme or preserved by record.

13. The development shall be carried out in accordance with the sustainable surface water drainage scheme approved under application 18/505338/SUB unless otherwise agreed in writing with the local planning authority.

Reason: To prevent flooding by ensuring the satisfactory storage of/disposal of surface water from the site.

14. The development shall be carried out in accordance with the foul drainage details approved under application 18/505338/SUB for plots 1-2, 11-16, 25-32, 211-241, and 247-249 unless otherwise agreed in writing with the local planning authority. No occupation shall take place on any further plots until off-site foul drainage details have been submitted to and approved in writing by the local planning authority.

Reason: To ensure that foul and surface water is satisfactorily managed and disposed of from the site.

15. The development shall be carried out in accordance with the access details approved under application 18/503826/SUB unless otherwise agreed in writing with the local planning authority.

Reason: In the interests of highway safety.

16. The development shall be carried out in accordance with the road and footpath details approved under application 18/505340/SUB unless otherwise agreed in writing with the local planning authority.

Reason: In the interests of highway safety and residential amenities.

17. No dwelling shall be occupied until the following highway works have been implemented in full to the satisfaction of the local planning and highways authorities unless otherwise agreed in writing with the local planning authority. These works comprise:

- (i) Pedestrian and cycle links to be provided to the existing residential development to the east of the application site via Further Field and Marlfield.
- (ii) A link for vehicular traffic through the development site towards Lodge Road is to be safeguarded.
- (iii) Bus boarders are to be provided at two relevant bus stops.
- (iv) Traffic calming is to be provided along Marden Road and the 30 mph speed limit is extended.
- (v) A pedestrian and cycle crossing to be provided on Marden Road to ensure safe access to the village centre from the site.

Reason: In the interests of highway safety and amenity.

18. Cordwood above 20cm in diameter from the site should be retained and placed within the site in locations and quantities to be agreed with the local planning authority prior to any tree felling take place.

Reason: In the interests of biodiversity and ecological enhancement in compliance with NPPF.

19. Within 6 months of the occupation of the 50th dwelling house the public open space shall be accessible to the public as open-space and shall be maintained as such.

Reason: In the interests of amenities of the prospective residents of the development.