

Application under S73 to
vary condition 3 (hours
of operation) on planning
permission H13-1038-19
Poplar Farm, Austendyke
Rd.

Planning Statement on behalf of Mr. H Myers



3D Planning Ltd.

Town Planning Consultancy

Planning Design and Access Statement in support of an application under S73 to vary condition 3 (hours of operation) on permission H13-1038-19.

Introduction

This Planning Statement incorporates statements in accordance with local and national planning guidance and is to be read alongside the submitted plans and documents.

The role of this statement is to aid decision making. This is achieved by communicating the process employed to inform the development by considering the form, character, structure and impact of the proposed development in the context of its surroundings (as set out in Note 1 below which is extracted from the Planning Policy Guidance note on Design 2014).

This statement includes an assessment of the scheme against the policies of the adopted Development Plan and other material planning policy considerations.

The application should also be considered within the context of the National Planning Policy Framework (NPPF). The key principles of national government planning policy are set out in this document and surround the concept of creating developments that are sustainable and of high quality in terms of design, sustainability, socially inclusive and protect the environment.

A Design and Access Statement is a concise report accompanying certain applications for planning permission and applications for listed building consent. They provide a framework for applications to explain how the

proposed development is a suitable response to the site and its setting and demonstrate that it can be adequately accessed by prospective users.

Paragraph: 034 Reference ID: 26-034-20140306

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Proposal

Planning permission was granted for the 'Change of use of site and buildings to commercial use (Classes B1c, B2 and B8) – retrospective' in January 2020.

The permission was granted subject to a number of conditions- this application seeks to vary the wording of C3 – hours of operation- as it is considered that it is not compliant with the statutory requirements for a condition as set out in the NPPF in that it is not reasonable and not necessary.

Planning policies

The requirement for conditions to be imposed on a planning permission are as set out in the NPPG guidance opposite. In order for a condition to be sound- it must meet all of the 6 tests set out.

It is contended that the imposition of the condition is not reasonable as it is unjustified and it is not necessary as the site has been in operation for many years -since 2012 without complaint.

What should a local planning authority do to ensure that the tests in national policy have been met?

[Paragraph 55](#) of the National Planning Policy Framework makes clear that planning conditions should be kept to a minimum, and only used where they satisfy the following tests:

1. necessary;
2. relevant to planning;
3. relevant to the development to be permitted;
4. enforceable;
5. precise; and
6. reasonable in all other respects.

These are referred to in this guidance as the 6 tests, and each of them need to be satisfied for each condition which an authority intends to apply. See also [guidance on the use of model conditions](#).

Paragraph: 003 Reference ID: 21a-003-20190723

Revision date: 23 07 2019 See [previous version](#)

The provisions of C3 are set out below;

- 3 No machinery shall be operated, no processes shall be carried out and no deliveries shall be taken at or dispatched from the site outside the hours of 8am and 6pm, nor at any time on Sundays, Bank or Public Holidays.

Reason: In the interests of the amenity of local residents.

This Condition is imposed in accordance with Policies 2, 3 and 30 of the South East Lincolnshire Local Plan, 2019.

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It is noted from reference to the case officers report;

Representations

Moulton Parish Council - No response.

LCC Highways/SUDS - Does not wish to restrict the grant of permission.

SHDC Environmental Protection - No objection.

Environment Agency - Falls within Cell G4 of the Local Flood Risk Standing Advice.

Public - No objections received.

In terms of its relationship to neighbouring land uses, there are residential properties nearby. However, the application is retrospective and no complaints have been received. SHDC Environmental Protection has raised no objections. It is considered that the proposal would not significantly harm the amenity of nearby residents, subject to the imposition of a noise condition as a safeguard.

Planning considerations

The officer's report on the public file confirms that the council's Environmental Protection (EP) team did not object to the previous grant of planning permission- and there is no evidence on the public file that either the hours of operation condition or the noise condition were requested by the EP officer.

It is further noted that there were no public objections to the previous application indicating that noise from the operation had not been an issue of concern to nearby residents.

In his delegated report the officer comments that;
It is considered that the proposal would not significantly harm the amenity of nearby residents, subject to the imposition of a noise condition as a safeguard.

It is therefore evident that the noise condition (C4) is imposed only as a safeguard- it is further noted that there is no such comment in relation to the hours of operation condition.

The provision of the local plan policy P30 makes it clear that development would be controlled only if there is an unacceptable impact on amenity- which in this instance the case officer confirms is not the case.

Therefore, it is contended that neither the hours of operation nor the noise condition fulfils the requirements of the statutory test.

As set out in the statutory test for a condition it must (amongst other criteria) be both necessary and reasonable for it to be imposed.

Given that the uses on the site had been operating for several years without complaint and that there is no evidence that the proposal was causing harm to local amenity, it is considered that the conditions are **not justified and as a consequence are not necessary.**

We include a noise report from WBM Acoustic Consultants which confirms that;

Based on the above observed activity, the likely site noise should be at or below 40 dB at the adjacent residential properties (Cedar Lodge, Austendyke Hall and The Beeches). This meets the noise limits within permitted operating hours, and also outside permitted operating hours from 04:00 to 08:00 hours and 18:00 to 22:00 hours.

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Please note that that notwithstanding the conclusion of the report we are seeking only the amendment to C3 to extend the hours of operation on site from 0600- 2200.

Tim Slater
BA (Hons) DMS MRTPI
3D Planning Ltd.

C4 in relation to noise at a residential boundary remains to provide protection to local residential amenity.

Conclusions

C3 was imposed by the planning case officer without a clear justification or advice from Environmental Protection. It is contended that the restriction on the use of the site as imposed by C3 is not justified, and it is therefore unreasonable-and also it is not necessary as the operation of the site demonstrably does not cause significant harm to local amenity.

It is therefore requested that C3 be amended to;

3 No machinery shall be operated, no processes shall be carried out and no deliveries shall be taken at or dispatched from the site outside the hours of 6am and 10pm, nor at any time on Sundays, Bank or Public Holidays.

Reason: In the interests of the amenity of local residents. This Condition is imposed in accordance with Policies 2, 3 and 30 of the South East Lincolnshire Local Plan, 2019.

I trust that this is in order, however if you have any questions or matters of clarification arising please contact me.