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CHARTERED TOWN PLANNERS

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Directorate for Planning, Growth and Sustainability
Buckinghamshire Council (South Bucks)
King George V House
King George V Road
Amersham
Bucks
HP6 5AW

Our ref: 9820

15 February 2023

Dear Sir/Madam,

Proposed Development: Variation of condition 1, pursuant to planning permission reference PL/20/3842/FA - change site use to mix use (Sui Generis) to comprise storage or distribution (Use Class B8), offices (Use Class E (g)(i)) and light industrial (Use Class E (g)(iii))

Site: Church Farm, Church Road, Iver Heath, Buckinghamshire, SL0 0RA

We are instructed by Ms Jo Essex (Duke Ltd) to submit an application to amend condition 1 of planning permission reference PL/20/3842/FA which was approved for the following development proposal:

Retrospective permission to change site use to mix use (Sui Generis) to comprise storage or distribution (Use Class B8), offices (Use Class E (g)(i)) and light industrial (Use Class E(g)(iii))

The condition in full states that:

1. Any activities associated with the site use hereby approved shall only take place between the hours of 8:00am and 17:00pm on Monday to Friday and at no time on Saturday, Sunday or Bank Holidays. No personnel or customers shall be on site outside of these times.

The reason given for the condition is:

“To protect the amenities of adjoining occupiers in accordance with Policy EP3 of the South Bucks District Local Plan (adopted March 1999)”.

Further to the grant of planning permission, it has become evident that the condition is too restrictive.



This application seeks to allow its amendment to the following:

'Any activities associated with the storage use hereby approved shall only take place between the hours of 07:00am and 19:00pm on Monday to Friday and between the hours of 08:00 and 13:00 on Saturdays, and no time on Sunday or Bank Holidays.'

The proposal therefore extends the hours of operation and removes the requirement for "no personnel or customers shall be on site outside these times".

Planning Justification

Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning applications should be determined in accordance with the Development Plan unless material considerations indicate otherwise.

For the purposes of this application, we have had regard to the following Development Plan documents:

- South Bucks Local Plan 1999 (Consolidated September 2007 and February 2011)
- South Bucks Core Strategy 2011
- Policies Map

Reference is also given to the National Planning Policy Framework (NPPF), which sets out the Government's planning policy aims and objectives. It sits outside of the statutory development plan but is a material planning consideration in the determination of planning applications.

The Condition

The reason given for the condition is "To protect the amenities of adjoining occupiers in accordance with Policy EP3 of the South Bucks District Local Plan (adopted March 1999)", with Policy EP3 stating that:

"Permission will not be granted for uses which would be, or which would have the potential to be, detrimental to the character and amenities of nearby properties or the locality in general by reason of noise, vibration, smell, pollution, disturbance, visual intrusion, loss of privacy, the impact of traffic, or other nuisance."

We also draw your attention to the Council's consideration of the original application, where the following assessment of residential amenity was given in the Officer's Report:

"The application site is located in close proximity to residential properties. Nonetheless, no significant further harm to residential amenity is considered to have resulted (by way of increased loss in outlook, privacy, daylight and sunlight and noise disturbance) due to no increase in built form and limited intensification in site use. Presently, no noisy machinery operates from the site, and no use generates odour. The planning use sought by this permission is sui-generis, any material change of use involving 'heavy industry', which requires noisy machinery and/or generates odour would need to be subject to a separate planning application. For this reason, it is considered that the Environmental Health Officer's recommended conditions are unreasonable, unnecessary and not relevant to the permission sought (ultra vires). Hours of site operation, which includes deliveries, have been restricted by condition to avoid further noise and disturbance to adjacent neighbours should the site use continue to evolve, and to provide some clarification and certainty of the nature of use operating on site."



Whilst it is recognised that the planning permission is given for a sui generis use, this is then broken down into offices (Class E (g)(i)) and light industrial (Use Class E(g)(iii) which are both uses that are defined in the Order as being suitable in residential areas. Accordingly, there is no reason to restrict the hours for these uses.

It also includes storage and distribution (Class B8) which was already formed part of the existing permitted use for the site (a copy of the planning history is provided as **Appendix 1**), and without restriction. Accordingly, the operations allowed under planning permission PL/20/3842/FA would not amount to additional harm but are now more restricted due to the added additional controls on hours.

Whilst these controls are accepted to a degree, it is also important to ensure that the site can run without unnecessary burdens on existing and future businesses who occupy the site, whilst also being sensitive to neighbouring properties. In this case, no substantive impacts are expected to derive from the operations of the site, with the greatest risk (if any) likely to derive from noise. To assess this potential impact, a Noise Assessment has been undertaken by 24 Acoustics. This was not available at the time of the original application.

This finds that noise from the site at all residential receptor locations would not exceed background noise levels, so will result in a low impact during the extended hours of use. The assessment also considers the possibility of noise from any fixed plant that may be installed by future tenants, and proposes a plant noise limit of 42 dB LAr, 1 hour. A Noise Management Plan for the site has also been included.

The combination of the above demonstrates that the proposed extended hours would not have a significant impact on neighbouring amenity, as also set out in the conclusions of the noise assessment. The proposed extended hours are therefore considered to be acceptable.

Notwithstanding the above, the condition also includes a restriction that means that *“No personnel or customers shall be on site outside of these times”*. This is also considered within the noise assessment which makes the following remarks on its inclusion:

“The current condition states “No personnel or customers shall be on site outside of these times”, however, it is considered that activities outside the proposed hours should be permitted if these do not involve significant noise-generating activities. For example, office use, admin work and sales activities would be acceptable outside of the proposed hours as these are not expected to generate significant noise levels at nearby residential dwellings. The revised planning condition should therefore be worded accordingly.”

We would add that Paragraphs 56 of the National Planning Policy Framework makes clear that planning conditions should be kept to a minimum, and only imposed where they are:

- necessary;
- relevant to planning and to the development to be permitted;
- enforceable;
- precise; and
- reasonable in all other respects.

The requirement to not allow any personnel or customers on the site outside of the stated hours is unnecessary, noting that the condition already limits the operating hours of the site. It is also unreasonable to not allow staff in office and similar roles, such as security, onto the site outside of normal opening hours, when they are highly unlikely to impact on neighbouring amenity. It is also unenforceable, as it will be



practically impossible to know when a few staff are on the site outside of normal hours of operation. Accordingly, the application also proposes that this part of the condition is removed.

Conclusions

The proposed change to the condition meets the aims of the Development Plan policies and the NPPF. As such, there should be no impediment to agreeing to the change.

Yours sincerely

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Appendix 1

- Application for a certificate of lawfulness for: An existing use of land and buildings for paper conversion business, including storage and distribution of paper, manufacture, machining and re-use of paper.

Ref. No: 02/00872/EUC
Approved – 04/09/2002

- Replacement storage building.

Ref. No: 05/00515/FUL
Approved – 31/05/2005

- Replacement storage building.

Ref. No: 06/01670/FUL
Approved – 15/01/2007

- Replacement storage building.

Ref. No: 07/00457/FUL
Approved – 19/04/2007

- Retrospective permission to change site use to mix use (Sui Generis) to comprise storage or distribution (Use Class B8), offices (Use Class E (g)(i)) and light industrial (Use Class E (g)(iii))

Ref. No: PL/20/3842/FA
Approved