

RYEDALE DISTRICT COUNCIL

PLANNING COMMITTEE - 7 June 2016

Report of the Head of Planning

Breach of Condition 07 (hours of operations), Condition 08 ( use of equipment) and Condition 10 (noise levels from operations on the site not to exceed 45dB 15 min LAeq) of Planning Permission 93/00856/OLD at Whey Carr Farm, Sand Hutton

Purpose of the Report

To advise Members of alleged breaches of planning control in relation to the above planning conditions and recommend an appropriate course of action.

1. SITE LOCATION

1.1 The site is situated in a former farmstead within the development limits of the village of Sand Hutton. The application site is within the Conservation Area boundary. A plan showing the location of the site is attached for Members information.

2. ALLEGED BREACHES OF PLANNING CONTROL

2.1 The alleged breaches of planning control comprises :

Failing to comply with Conditions 07, 08 and 10 of the 1993 planning permission 3/111/19C/FA, Change of use of farm outbuildings and yard for the storage and assembly of sectional timber buildings and components at Whey Carr Farm, Sand Hutton.

These are described below.

2.2 Condition 07

The application site shall be used for the approved use only between 08.00 and 18.00 on Monday to Friday; and between 08.00 and 12.00 on Saturday. It shall not be used at all on Sundays and Public Holidays .

Reason: to ensure that the amenities of nearby residents are not unreasonably affected.)

Condition 08

No machinery or power tools shall be operated on the premises before 08.00 or after 18.00 on Monday to Friday. Machinery or power tools shall not be operated at any times on Saturdays, Sundays or public holidays

Reason To ensure that the amenities of nearby residents are not unreasonably affected.

Condition 10

Noise from operations conducted on the premises shall not exceed 45 dB 15 minute LAeq as measured at the boundaries of the application site.

Reason; to ensure that noise from the premises does not adversely affect neighbouring residents.

### 3. WHAT BREACHES HAVE OCCURRED

- 3.1 The site was investigated by the Council's Enforcement Officer after complaints had been received from the Council's Environmental Health Officer regarding the operation of the site. The complainant alleged that the site was being used and machinery and power tools operating outside of the times set in Conditions 07 and 08 of the 1993 planning permission. The complainant also raised concern over the levels of noise being generated by the operations taking place on the site.
- 3.2 In addition to the diary sheets provided to the complainant to complete. Environmental Health Officers also took initial noise readings on the site boundary, to check whether condition 10 was being breached.
- 3.3 The initial site recordings taken in September 2015 showed that during the time period of 09.00 - 11.00 activity at Whey Carr Farm, on several occasions, noise levels exceed 45dB (LAeq 15- the Equivalent Continuous A - weighted Sound Level measured over a 15 minute period) taken at the boundary of the site as stipulated by Condition 10. The measurements during the period included 47dB, 50dB and 56dB. These levels were perceived to be directly related to the use of extraction systems and the intermittent use of power tools. The use of the forklift truck during the monitoring period was measured at 57dB .
- 3.4 The Development Management Enforcement Officer and Environmental Health Officer visited the site and met with the site owner. The purpose of the site meeting was to establish how the site operated and lead to a better understanding of the noise recordings. During the meeting the site owner was again advised that the noise recordings taken prior to that point had showed that there had been a breach of Condition 10. He was advised that the onus was on him to commission a noise survey which should identify what part or parts of the process were resulting in the breach of Condition 10 and what mitigation could be put in place to ensure the condition was not breached. He informed officers that he had already approached a consultant to conduct the work and confirmed he would provide officers with a copy of the report.
- 3.5 Officers received confirmation from the site owner on the 4 January 2016 that the following works had been carried out to mitigate the noise generated from some of the machinery; investment in quieter tooling, acoustic lining of the machine cubicles and he had also acoustically lined a large section of the gable end. Photographs were submitted showing the 'acoustic lining'. However no noise survey was received, despite the request to see a copy of the report.
- 3.6 In light of this further noise recordings were taken by Environmental Health Officers. These recordings revealed that the noise levels being emitted as a direct result of the operations site were regularly exceeding the levels set by condition 10, sometimes in excess of 10dB.
- 3.7 A further meeting was arranged by the Council's Development Management Enforcement Officer with the Environmental Health Officers, the applicant and his newly appointed noise consultant. The purpose of the meeting was to address the identified breaches of planning control and to decide how the investigation was to progress as well as giving the owner of the site the opportunity to confirm his intentions. During the course of the meeting the owner of the site confirmed that despite his previous commitment to carrying out his own noise survey he had not done so and the mitigation works he had thus far done had not been done without the assistance of any professional advice.

3.8 Further to this meeting Environmental Health Officers have carried out a further site visit on the 19 May 2016 with the appointed Noise Consultant. Noise recordings are continuing to be carried out periodically to give officers a more comprehensive understanding of the noise levels being emitted.

3.9 The complainant continues to submit diary sheets which are providing officers with a greater understanding of the impacts the breach of Condition 10 is having on their residential amenity. The information also continues to show that the premises is being used and machinery operated outside of the times as stipulated in Conditions 07 and 08 of the 1993 approval.

#### 4. HISTORY

4.1 The land the subject of this report has had numerous planning applications. However the most relevant is the one which is the subject of this report Ref. 3/111/19C/FA Change of use of farm outbuildings and yard for the storage and assembly of sectional timber buildings and components at Whey Carr Farm, Sand Hutton.

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#### . PLANNING POLICY CONTEXT

5.1 The relevant planning policy considerations are:

##### National Planning Policy Framework (NPPF)

Paragraph 17 - Core Planning Principles

Section 3 - Supporting a prosperous rural economy

##### Ryedale Plan - Local Plan Strategy

Policy SP1 - General Location of Development and Settlement Hierarchy

Policy SP9 - The Land-Based and Rural Economy

Policy SP11 - Community Facilities and Services

Policy SP19 - Presumption in Favour of Sustainable Development

Policy SP20 - Generic Development Management Issues

#### 6. APPRAISAL

6.1 When considering whether or not to take enforcement action it is not sufficient just for a breach to be identified. The Local Planning Authority should only take formal enforcement action where it is fair, reasonable and expedient to do so. In making this decision the Local Planning Authority is required to assess the circumstances of the case and make reference to adopted planning policies. In addition the LPA must also consider national planning policy and guidance. This is set out in the National Planning Policy Framework (NPPF) 2012 and the Planning Practice Guidance. The NPPF sets out that 'local planning authorities should act proportionately in responding to suspected breaches of planning control' Para 207. In considering 'expediency' the decisive issue is whether the breach would unacceptably affect public amenity or whether the use of land should be regulated in the public interest. Any enforcement action is required to be proportionate to the breach.

6.2 The site is located within the development limits of the village of Sand Hutton, within a designated Conservation Area. The site is close to non associated residential dwellings.

- 6.3 The Development Plan contains policies which seeks to promote rural business, as Policy SP9 (The Land-Based and Rural Economy) of the Ryedale Plan- Local Plan Strategy highlights. However there is a duty for both the LPA and for site owners to do so inline with Policy SP20 (Generic Development Management Issues) of the Ryedale Plan - Local Plan Strategy and Para 17 of the NPPF to ensure development is not to the detriment of residential amenity.
- 6.4 When planning permission was sought for the site to be developed for the storage and assembly of sectional timber buildings and components in 1993, it was controversial. A number of concerns had been raised by officers, neighbours and the Parish Council. These predominantly revolved around the potential impact the noise generated by the operations could have on the amenity of the neighbouring properties. In order to alleviate these concerns the applicant wrote to the planning officer dealing with the application on a number of occasions. He confirmed his willingness for conditions relating to noise and operation hours to be imposed. The applicant also expressed his readiness to take proactive steps such as acoustic lining the building, the subject of the application, if noise recordings showed operations were exceeding the levels set.
- 6.5 A series of noise recordings have been taken by Environmental Health Officers. On the 29 September 2015 noise readings taken at the boundary clearly showed that the noise levels generated by the operations taking place on the site regularly exceeded 45 dB as set by Condition 10. Mr Goodrick was advised of this breach and a site meeting followed. Further readings taken on 23 February 2016 clearly demonstrated further breaches by a significant margin, resulting in significant detriment to the amenity of neighbouring occupants. Subsequent to a meeting held with Mr Goodrick on 27 April 2016, further complaints and diary sheets and recordings made during May 2016 suggest that the breaches are continuing. The underlying background levels in the neighbouring garden are in the region of 35-38dB LAeq during the daytime with typical readings taken during hammering, banging and machinery operation being 50-57dB LAeq.
- 6.6 In view of the nature of the complaints received, and the evidence of the clear breaches of planning control, it is considered that the Local Planning Authority should take action to remedy the situation.
7. WHY IS IT CONSIDERED EXPEDIENT TO SERVE A NOTICE?
- 7.1 The site is located in a village setting adjacent to residential properties which are not associated with the activities carried out on the site as permitted by the 1993 permission. The breach was first reported to the Council in May 2015. Despite on-ongoing meetings and negotiations between officers and the owner the LPA are yet to be in receipt of any hard evidence that it is the owners intentions to comply with the conditions that were imposed. Whilst the owner has indicated that it is his intention to commission a noise survey at the time of writing this has not been done. In light of previous promises Officers consider it is necessary to be able to seek authority for enforcement action. If once again a noise survey and a schedule of remedial works have not produced within an agreed time frame. Despite attempts to mediate an acceptable course of action it is of note that the complaint has now been with the Council for in excess of 12 months and the matter remains unresolved.
- 7.2 The site owner has failed to ensure the operations on the site are being carried out in accordance with the aforementioned conditions. After the identification of the breach of planning control the site owner has failed to demonstrate to the LPA that they have remedial measure in place to enable the operations to be carried out in line with the requirements of the planning conditions. The diary sheets submitted by the complainant show that the operations on the site continues to have an adverse impact on their amenity.

7.3 It is the conclusion of Officers that the failure to operate the site in accordance with the conditions of the 1993 planning permission is contrary to national planning advice contained in the NPPF and NPPG. This is considered to adversely impact on the amenity of neighbouring residents contrary to the requirements of Para. 17 of the NPPF and Policy SP20 of the Ryedale Plan - Local Plan Strategy. In this instance, there is a clear breach of a planning control and it is considered to be expedient to authorise enforcement action in this case.

7.4 The expediency reason to serve an enforcement notice is outlined below:

1. The unauthorised breach of planning control is contrary to Policy SP20 (Generic Development Management Issues) of the Ryedale Plan - Local Plan Strategy which requires that development should not have a material adverse impact on the amenity of present or future occupants, the users or occupants of neighbouring land and buildings or the wider community by virtue of the ... 'use, location and proximity to neighbouring uses'. The National Planning Policy Framework Paragraph 17 seeks to secure a good standard of amenity for all existing and future occupants of land and buildings. It is evident from the complaints received and the evidence gathered by the Councils Environmental Health Officers that the operations and activities being carried out on the site, (in the manner which they are presently being done) result in an adverse impact on the amenity of the occupiers of the neighbouring properties.

In the absence of a Noise Impact Assessment it has not been demonstrated to the Local Planning Authority that the site is or can be operated in a manner which does not adversely affect the amenity of the occupiers of neighbouring properties or in accordance with the condition as imposed on the original grant of planning permission. The development is therefore contrary to Para. 17 of the NPPF, and Policy S20 of the Ryedale Local Plan Strategy.

## 8. STEPS NECESSARY TO REMEDY THE BREACH

8.1 This report seeks authorisation to serve a formal enforcement notice to remedy the breach of planning control. In order to achieve compliance the necessary steps include:

1. Cease any use on the land arising from the approved use which results in a noise level which exceeds 45 dB 15 minute LAeq as measured at the boundaries of the application site
2. Subject to clauses 3, 4 and 5 below, cease the use of the land for the approved use outside the authorised hours of use where the authorised hours of use are between 08.00 and 18.00 on Monday to Friday; and between 08.00 and 12.00 on Saturday.
3. Cease the use of the land for the approved use on Sundays and Public Holidays .
4. Cease the use of machinery or power tools on the land before 08.00 or after 18.00 on Monday to Friday.
5. Cease the use of machinery or power tools at any time on Saturdays, Sundays or public holidays

9. SUGGESTED PERIOD FOR COMPLIANCE

9.1 The suggested period for compliance is one month in respect of an Enforcement Notice.

Recommendation

The Council Solicitor be authorised in consultation with the Head of Planning and Housing Services to issue an enforcement notice and any further action pursuant to section 172 of the Town and Country Planning Act 1990 (as amended) requiring :

1. Cease any use on the land arising from the approved use which results in a noise level which exceeds 45 dB 15 minute LAeq as measured at the boundaries of the application site
2. Subject to clauses 3, 4 and 5 below, cease the use of the land for the approved use outside the authorised hours of use where the authorised hours of use are between 08.00 and 18.00 on Monday to Friday; and between 08.00 and 12.00 on Saturday.
3. Cease the use of the land for the approved use on Sundays and Public Holidays .
4. Cease the use of machinery or power tools on the land before 08.00 or after 18.00 on Monday to Friday.
5. Cease the use of machinery or power tools at any time on Saturdays, Sundays or public holidays

Background Papers

Investigation file 15/00097/BC