

SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL

REPORT TO: Planning Committee

7th March 2007

AUTHOR/S: Executive Director / Corporate Manager - Planning and Sustainable Communities

S/1396/03/F - OVER

**Variation of Condition 2 of Planning Permission Ref. S/0894/00/F
To Allow 07.30 Hours Start on Weekdays, Riverview Farm, Overcote Road
For Mr M J Norman**

FOR REDETERMINATION

Recommendation: Refusal

Date for Determination: Not Applicable

Notes:

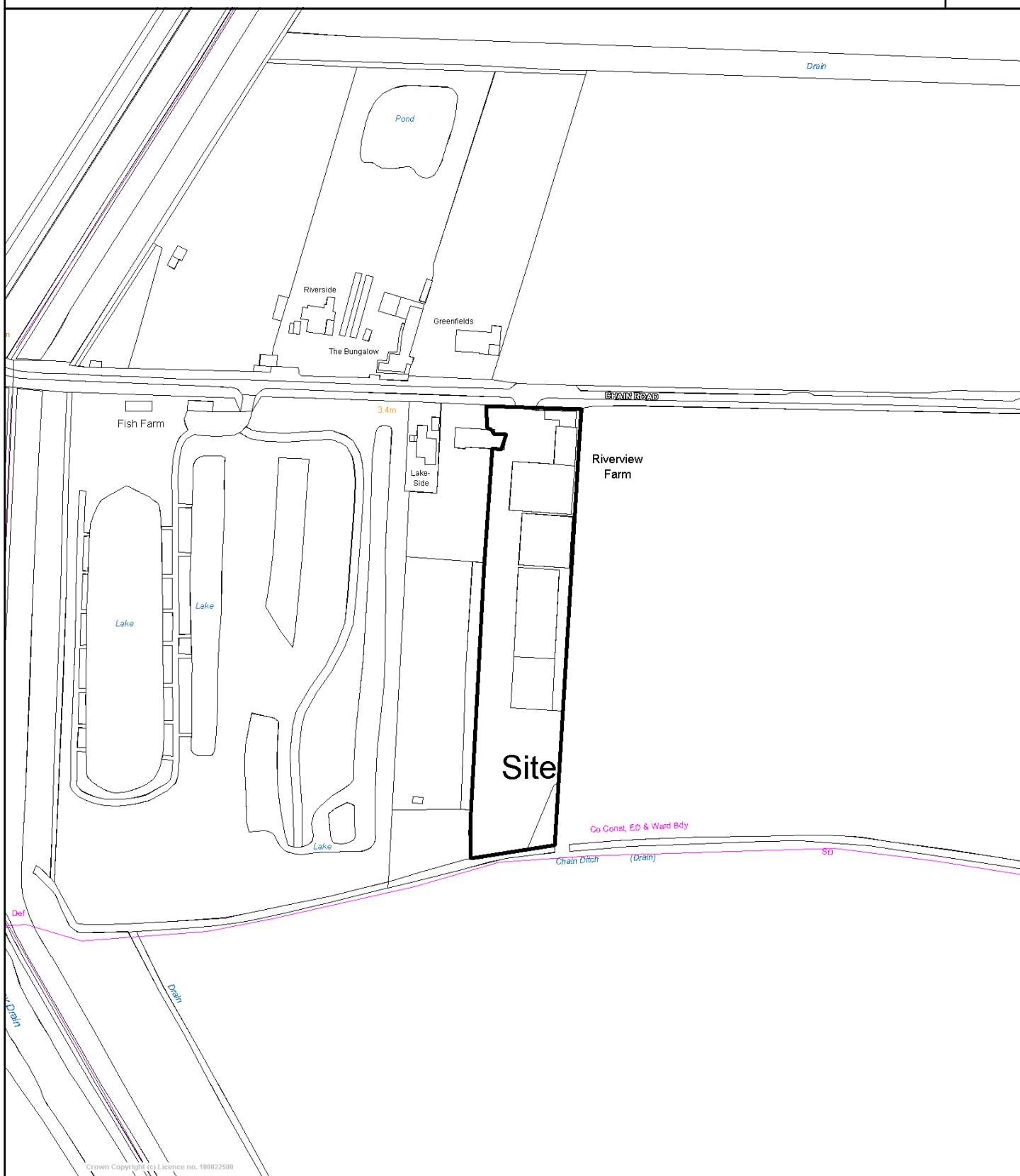
This Application has been reported to the Planning Committee for redetermination following the initial approval being quashed at the Court of Appeal.

Members will visit this site on March 5th 2007.

Background and Update

1. In November 2000 planning permission was granted, part retrospectively, to change the use of the majority of the former agricultural buildings at Riverview Farm to B1/B8 use, subject to conditions including hours of work. The exception was a building at the rear of the site, which had retrospective planning permission granted earlier the same year for B1/B2 use without an hours of work condition. The firm concerned had been operating from the site for about 9 years without complaint and this fact, together with the buildings separation from the nearest neighbouring house unrelated to the farm (about 70m), meant that the condition was not considered necessary.
2. In September 2002 a 1 year temporary planning permission was granted to vary the hours of work condition to allow a 07.30 hours start on weekdays as opposed to the 08.00 hours originally approved. The Report to Committee is attached as an electronic appendix. The temporary permission was intended to allow a period for the impact of the earlier start on neighbouring residents to be monitored.
3. In September 2003 the permission was made permanent. The Report to Committee is attached as an electronic appendix.
4. In December 2003 a judicial review of the Council's decision was instigated by a neighbour. The High Court challenge was rejected in February 2005.
5. In July 2005 leave to appeal was granted. On the basis that the advice of the Environmental Health Officer to the Committee in 2003 was flawed, the Court of Appeal quashed the planning permission in October 2005 and remitted the application to the Council for redetermination. Costs were awarded against the Council.

S/1396/03/F



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March 2007 Planning Committee

Application for Redetermination

Policy

6. **Policy ES6** of the South Cambridgeshire Local Plan 2004 states the District Council will seek, by means of appropriate planning conditions, to minimise the impact of noise and pollution on noise-sensitive development arising from any new industrial or commercial activities.

Consultations

7. **Over Parish Council** has no recommendation
8. **The Chief Environmental Health Officer** states:

"I object to granting a variation of the condition relating to operating hours that would allow access to users of commercial units, apart from that operated by Mr Keith Collier, for the following reasons:

A variation in the conditions relating to operating hours would lead to an increase in the working day and subsequently an increase in the degree of noise to which nearby residents are already exposed. Furthermore, I am currently investigating complaints of nuisance from the site. However, no statutory nuisance has been proved at this time. I am opposed to any intensification of use of the site.

There is already a significant degree of vehicle movement associated with a commercial activity on the site that is not restricted by planning. A variation of the condition to allow an increase in operating hours would exacerbate this situation by permitting more early morning traffic movements. Recent monitoring has indicated as many as 14 commercial and private vehicles entering and leaving the site between 07.25-08.00 hours.

Overcote Road, Over is a typically rural location far removed from any main roads or other major sources of noise. The predominant background noise is comprised of bird song and foliage on trees in the wind. The entrance and main yard is close to residential properties opposite and there is no screening of noise sources. Consequently, noise generated by vehicles and use of the yard impinges on the residential properties opposite Riverview Farm. This is confirmed by noise readings taken at the neighbour's house.

Noise that has also been experienced emanating from the site include reversing alarms, impact noise from vehicles loading and unloading, high pressure hose vehicle washing, sporadic machinery operations that drone, whine or contain impulse noise; amplified radio noise from within units; shouting instructions during loading and unloading of commercial vehicles; loud emissions of noise from construction, building and maintenance operations.

Following a costly and time-consuming judicial review for the Council in respect of a previous attempt to address this matter, it was agreed that in order to avoid criticism about misinterpretation of assessment criteria in respect of noise monitoring and in order for monitoring to be representative, I met with the acoustic consultant hired by the objectors to agree methodology and parameters to be measured. It was also agreed to share data from monitoring in the interests of clarity and to avoid dispute.

Graphs of readings taken in respect of early morning vehicle movements have been submitted. Comment has been made regarding the ability of noise readings and data to differentiate between vehicle movements associated with Mr Keith Collier's activities on the site, whose hours of use are not restricted by planning conditions, and other vehicle movements. This argument only serves to detract from the fact that if consent is granted in respect of the variation of the condition relating to hours of use, the site could potentially be used for activities that could include significant lorry movements outside of normal office hours and activity, such as fork lift trucks within yard areas to load and unload lorries.

In considering this application I have had recourse to Planning Policy Guidance 24 (PPG24) Planning and Noise.

This guidance states in the section "Development Control":

Noisy Development

10. Much of the development which is necessary for the creation of jobs and the construction and improvement of essential infrastructure will generate noise.

"....local planning authorities...should also bear in mind that a subsequent intensification or change of use may result in greater intrusion and they may wish to consider the use of appropriate conditions".

11. *Noise characteristics and levels can vary substantially according to their source and the type of activity involved. In the case of industrial development for example, the character of the noise should be taken into account as well as its level. Sudden impulses, irregular noise or noise which contains a distinguishable continuous tone will require special consideration.*

Some aspects of the site enjoy use that falls into Planning Use Class B8 (storage and distribution). An increase in the hours of use that is being sought by this application could result in the site being more attractive for these purposes. Conditions should be applied to address the future potential impact of the site in relation to transportation noise for nearby residents.

This could exacerbate the degree of noise and disturbance that could be generated at this site.

PPG24 also contains advice in relation to *Measures to mitigate the impact of noise*.

13. *A number of measures can be introduced to control the source of, or limit exposure to, noise. Such measures should be proportionate and reasonable and may include one or more of the following:*

(i) *Engineering: reduction of noise at point of generation (eg by using quiet machines and/or quiet methods of working); containment of noise generated (by insulating buildings which house machinery and/or providing purpose-built barriers around the site); and protection of surrounding noise-sensitive building (eg by improving sound insulation in these buildings and/or screening them by purpose-built barriers);*

(ii) *Lay-out: adequate distance between source and noise-sensitive building or area; screening by natural barriers, other buildings, or non-critical rooms in a building;*

(iii) *Administrative: limiting operating time of source; restricting activities allowed on the site; specifying an acceptable noise limit.*

18. *There will also be circumstances when it is acceptable - or even desirable in order to meet other planning objectives - to allow noise generating activities on land near or adjoining a noise-sensitive development. In such cases, local planning authorities should consider the use of conditions or planning obligations to safeguard local amenity. Care should be taken to keep the noisiest activities away from the boundary or to provide for measures to reduce the impact of noise. Authorities should also take into account the fact that the background noise level in some parts of suburban and rural areas is very low, and the introduction of noisy activities into such areas may be especially disruptive.*

I do not feel able to support this application in the absence of noise mitigation measures being implemented. These are necessary in order to remove the existing potential for disturbance to the occupiers of residential property opposite the site, which is indicated in the data submitted.

Suggested conditions:

An effective and enforceable way to control noise emissions would be to impose a condition that requires the applicant to submit a noise management scheme to be approved, implemented and maintained in accordance with the details of written approval. The written consent could also be subject to conditions, for example the scheme of measures could be approved for a period of 3 years to assess their effectiveness.

A noise management scheme could cover operational and engineering issues. Engineering works can improve the layout of the site to reduce or mitigate noise impact, less control would be required. There is a building to the north of the site and the entrance is just past this relatively close to the property Greenfields, Overcote Road. If a building was located at an equal distance within the boundary just along the north west and western boundary of the site and move the entrance to the east, there would be a number of benefits:

- (a) Buildings provide substantial noise screening of the yard and building openings that would reduce the noise from these sources thereby avoiding the need for acoustic screening.
- (b) Noise emissions from this building would face away from residential properties opposite the site.
- (c) The entrance to the site can be located further east from residential properties opposite the site.
- (d) The dual use of use of the yard as an entrance to a dwelling and the commercial yard can be removed rendering control easier.
- (e) The costs to the applicant of the changes could be offset by the benefits of the new building.

I have spoken with the applicant regarding the suggestion to construct a building to provide acoustic screening between the yard area and residential properties opposite the site and that of erecting an acoustic screen along other parts of the boundary where appropriate. The applicants appeared interested in this proposal.

I understand that the unit at the far end of the site has B1/B2 use whereas the other unit has B1/B8 use. Although the tenant has now vacated the unit I would be surprised if the shed construction that used to take place complied with the requirements of B1 usage. I have also some concern about the unit further back from the road where woodwork takes place, due partly to the nature of this work and the comments of the acoustic consultant retained by the objectors in relation to noise, potentially from an extract system. Such systems do produce relatively high levels of noise.

Measures that could be included in the Noise Management Scheme:

- (a) The creation of separate domestic and commercial entrances to enable direct control over operations within the permitted times and the differentiation of commercial and domestic activities at the site.
- (b) Restrictions of the movement of HGVs or 7.5 tonne gross laden weight vehicles onto, on and off the site along with limitations on their loading and unloading. No HGVs or 7.5 tonne gross laden weight vehicle will be permitted to enter or leave the site and there will be no loading or unloading of goods from such vehicles during the following times:

Before 0900 hours and after 1700 hours on weekdays

Before 0900 hours and after 1300 hours on Saturdays nor at any time on Sundays or Bank Holidays.

- (c) Erect a 3.5 metre high acoustic barrier along the northern and part of the western boundaries of the site that would be sufficient to screen yard activities and emissions from open paths. This should include the gated opening of the site.
- (d) No vehicular movements onto or off the site to take place on Sundays or Bank Holidays.
- (e) The solid screen gates to the site forming part of the noise screen should remain closed during the reversing of any vehicles operating a reversing alarm when within the yard area. Gates should remain closed during loading and unloading operations referred to in (b) above.
- (f) Parking areas and lorry loading should be restricted and identified by lines/areas within the northern yard for each unit and space for lorry unloading to be separately designated and not obstructed by parked vehicles.
- (g) It is understood that objectors to the application recommend that in conjunction with the earlier start time, there should be equally an earlier finish time of 1800 hours so that all activities cease by 1800 hours on weekdays."

Representations

9. 3 letters of objection have been received from the owners of "Riverside", "Greenfields" and "The Bungalow", three bungalows on the opposite side of Overcote Road to the west of the site entrance. Their objections can be summarised as follows:
 - (a) Originally the site owner applied to operate from 07.00 hours, later amended to 07.30 hours, to assist with marketing the buildings. In the 1 year trial period the

07.30 hours start time was breached on a daily basis and breaches have continued since the planning permission was quashed. The gates to the site open at 06.30 hours and the first vehicle enters the site before 07.00 hours. This is supported by video evidence.

For example, the following vehicle movements were recorded before 08.00 hours in October 2005:

Monday 24th	13
Tuesday 25 th	9
Wednesday 26 th	11
Thursday 27 th	8
Friday 28 th	11

- (b) Lorries enter the site at 07.30 hours, loading and unloading goods, and materials. Plant and machinery are switched on at 07.30 hours.
- (c) The 07.30 hours start is dangerous in the winter months, when it is dark and foggy, as Overcote Road is single track and unlit.
- (d) In 2002 the Council's officers recommended the earlier 07.30 hours start should be refused and if the Environmental Health monitoring on the 2003 application had been carried out correctly it is likely it would have been refused again. It should be refused this time.
- (e) The previous Council's Environmental assessment was not sufficiently comprehensive.
- (f) The fact that the site is used throughout the day until 18.30 hours increases the importance of restricting the start to 08.00 hours.
- (g) Collier Engineering should not be allowed to operate without the same hours of work limitations as the rest of the site. Their vehicles enter the site before 08.00 hours, and their goods, materials and equipment are stored outside on this site.
- (h) The existing conditions restricting the use of the site are inadequate.
- (i) Overcote Road is a very low noise sensitive area, and the hours of work condition is the only protection available to local residents, and should be enforced.
- (j) There are other ways the tenants' working day could be organised to avoid school traffic, given by the applicant as a reason for permitting a 07.30 hours start. Vehicles could be loaded the day before for instance.
- (k) The tenants should not have moved their businesses to the site if they couldn't abide by the hours of work condition.

10. *Comments from the Noise Consultant acting for the Owner of "Greenfields":*

"The owner is the worst affected neighbour by the proposal as she overlooks the development site. Demonstrable harm to amenity is clearly predicted to arise from the proposed use.

In particular:

- (a) The Background noise survey undertaken in 2003 and submitted with the letters of objection demonstrate this is an extremely quiet locality. This is independently verified by the quarrying survey that was undertaken in 1993. It was obviously undertaken for a different purpose but confirms that background levels are low.
- (b) There is clearly insufficient information to determine either the true, or more importantly, the potential future level of impact from the operation of this site. It is the latter that is most relevant and which the Council are obliged to have adequate regard to i.e. what they are permitting as opposed to what actually happens.
- (c) The calculation methods previously employed by the previous Environmental Health Officer had some merit. When these are properly adjusted (as undertaken for the purposes of the court's considerations during the Judicial Review), either in order to have regard to actual observed impact or the potential impact that could arise, they demonstrate a clear case of complaint prediction, in accordance with the guidance in BS4142 and therefore that there is excessive noise.
- (d) BS4142 does not set a limit of acceptability in planning terms and the prediction of complaints within the standard clearly exceeds the point of acceptability in planning terms by a considerable margin. This point was not previously considered. The Environment Agency's Horizontal guidance in relation to prescribed processes does give such advice. It sets a starting point of any determination or assessment of acceptability in general. This is defined as the point where the "rating level" equals the "background noise level" (both as defined by BS4142). Where noise has particular characteristics this equates to a level 5dB(A) below the background noise level. Thus the starting point of acceptable noise for the entire development is 5dB LAeq below the LA90 background noise level. This is 10dB lower than the criterion the Officer sought to apply previously which was shown to have been exceeded. It follows that exceedance of acceptable standards is much greater than previously predicted.

Following the advice within the EA's guidance, it is clear that there are grounds to apply even stricter criteria than indicated above. I trust the Council's advisors are familiar with the Horizontal Guidance and I do not need to set out in detail how this point is derived or why it is reasonable to apply the information as a comparable standard of acceptability.

- (e) Another primary issue is that the site's day to day activities already result in an unacceptable level of impact upon nearby residences. Any increase in that impact or extension of the hours of impact is unreasonable and untenable. The courts have established that the assessment of total impact (as opposed to the change in impact by minor changes that serve to ratchet up the total impact but which on their own show only a minor change), is the correct method of assessment. This is also logical.

To summarise:

1. The grounds of objection and extensive evidence of adverse impact as previously submitted are valid.
2. There is extensive evidence demonstrating the low background noise levels in this locality.
3. When adjusted to the actual activity levels or those which can be predicted to occur and the errors are eliminated, the calculations previously undertaken by the Officer provide clear acoustic evidence of significant adverse impact. These adjusted calculations demonstrate the adverse impact exceeding the baseline level appropriate for assessment purposes in this case by much more than 10dB(A).
4. Assessment should be based on what can potentially occur and not any periods of low activity that may be witnessed as it is the former which is being permitted.
5. The point at which impact should be considered acceptable is at least 10dB(A) lower than that previously applied by the Officer in the assessment of this application.
6. The application must be assessed having regard to the total adverse impact that can arise from the operation of this site and the effect of increasing that further. It should not be assessed merely in relation to the change.

Further, to give permanent permission to vary a restriction that is already being breached is irrational. There must be a prospect of control before approving a use. There must also be a prospect of assessing impact. This cannot be done when the control is widely ignored. We must urge refusal in line with historical recommendations. I also confirm that I have personally evaluated the evidence of breaches and it was not previously submitted as hearsay, contrary to what the Committee were told by officers in 2003.

In the event the Council do consider approval, it is imperative and entirely lawful to consider the impact of the development anew. In this regard it is reasonable and proper to apply noise level controls that are applicable to the entire site and all its activities. These need to use a form of words that are enforceable, unlike those currently applied to the site that include significant imprecision and ambiguity within their wording.

Additional points:

1. This quiet area warrants protection.
2. No planning merits for the development are identified.
3. Lack of acoustic screening to the site results in excessive emissions of noise."

11. In a more recent statement following further site monitoring the consultant outlines his approach to control adverse impact:
 1. Examples of noise generated which is out of character with the quiet rural locality he has witnessed include:
 - (a) Regular reversing bleepers and airbrake release.
 - (b) Loading and unloading of goods with banging and clanging sounds.
 - (c) Regular high pressure hose vehicle washing.
 - (d) Sporadic machinery operations that drone, whine or contain impulse noise.
 - (e) Amplified radio noise from within units.
 - (f) Shouting and loud voices such as the shouting of instructions during commercial operations such as loading/unloading of lorries.
 - (g) Very loud emissions of noise from construction, building and maintenance operations.
 2. The length of the day over which emissions can occur and that respite does not arise Saturday afternoons or Sundays as building/maintenance work regularly occurs and has been recorded.
 3. The gradual expansion of the operations with activities occurring earlier in the day and finishing later in the evening.
 4. Vehicles already commonly enter and leave the site before the hours for which permission is sought i.e. 7.30 am.
 5. Operations relating to the commercial activities occur on the site long outside of the operating hours.
 6. Increasing congestion in the northern yard leads to problems with loading etc. which causes increased and unnecessary noise.
12. Most of the operations are sporadic with no particular pattern. As a consequence there are interspersed periods of noise along with periods of much quiet. The contrast serves to highlight the adverse impact.
13. Many of the concerns have been recognised/identified by officers. For example, the concerns with permitting an earlier start were identified in the report to Committee on 2nd September 2002 that "once an extension in the operating times has been granted there are no planning restrictions to prevent an increase in noise or traffic using the site."
14. A noise management scheme is recommended as a way forward. The early start was objected to because of the length of the day over which impact occurs and the total adverse impact as opposed to just the effects at the start of the day. It is the cumulative issues that have always been of concern and not just one much smaller part i.e. the time this all starts to happen. One effective and enforceable way to control noise emissions is to impose a condition requiring the submission of a noise management scheme, to be approved and then implemented and maintained in accordance with details of written approval. Written approval can itself be made subject to conditions, for example the scheme of measures put forward could be approved for a period of 3 years to enable their review. Where engineering works can improve the layout of the site to reduce or mitigate noise impact it follows that less control is required. For example, currently there is a building in the north-east

corner of the site with the main site entrance adjoining to the west, relatively close to Greenfields. If it were feasible to erect a new building further to the north west and move the access to the east there would be a number of advantages:

- (a) The buildings would provide substantial noise screening of the existing yard and building openings. It would avoid the need for acoustic screening.
- (b) Noise emissions from this building would face away from affected residences.
- (c) The entrance to the site can be located further east and further away from dwellings.
- (d) The current dual use of the yard as an entrance to a dwelling and the commercial yard can be removed rendering control easier.
- (e) Costs of the changes are offset against the benefits of the new build.

The following measures proposed for inclusion in a Noise Management Scheme:

- (a) Creation of separate domestic and commercial entrances to enable direct control over operations within the permitted times and the identification of commercial as opposed to domestic activities.
- (b) Restrictions on the movement of HGVs or 7.5 tonne gross laden weight vehicles into, on and off the site along with limitations on their loading and unloading. It is proposed that no HGVs or 7.5 tonne gross laden weight vehicles be permitted to enter or leave the site and that there is to be no loading or unloading of goods from said vehicles during the following times:
before 09.00 hours and after 17.00 hours during any weekday;
before 09.00 hours and after 13.00 hours on any Saturday and at no time on Sundays or Bank Holidays.
- (c) A 3.5 metres high acoustic barrier to be erected along the northern and part western boundaries of the site sufficient to screen yard activities and emissions from open units. Final height and length to the western boundary subject to additional calculations and noise contour mapping of site noise emissions. The barrier would include the gated opening of the site.
- (d) The solid screen gates to the site forming part of the noise screen to remain closed during the reversing of any vehicles operating a reversing alarm when within the northern yard area.
- (e) Noise emitted from activities within the site (other than from vehicles entitled to operate on any public highway) or any unit to be inaudible beyond the northern boundary of the site or any location along Overcote Road during the following periods:
Before 09.00 hours and after 18.00 hours during any weekday;
Before 09.00 hours and after 13.00 hours on any Saturday and at no time on Sunday or Bank Holidays.

At all times the average equivalent noise energy LAeq measured during any 15 minute period shall not exceed 35dB² when measured or calculated at the

residential property to the northern side of Overcote Road and within 100m of the boundary of the site.

- (f) No amplified music or speech to be audible at any location along Overcote Road.
- (g) Site entrance and yard to be subject to CCTV monitoring to record all activities for a period of 3 months and access during normal working hours to CCTV records to be available to officers of the authority upon request.
- (h) Areas of parking and lorry loading to be restricted and identified by lines/areas within the northern yard for each unit and space for lorry unloading to be separately designated and not obstructed by parked vehicles. N.B. the Council's parking standards appear unable to be met. This alone demonstrates a congested yard and over intensification.
- (i) In conjunction with the earlier start time, there should be an equally earlier finish time of 18.00 hours. Thus all activities to cease by 18.00 hours on any weekday.

15. *Further representations by the applicant's Agent:*

"General Matters:

For reasons stated in the original application, the additional time is sought to enable firms to operate more efficiently. We note the objection by the Council's EHO following the data provided by MAS Environmental and would comment as follows:

The objection is based on the underlying assumption that the current activities at the site are causing harm, and any intensification of use - through an additional half hour start time in the morning - will further exacerbate a perceived noise/disturbance complaints.

In response, we cannot equate the evidence base nor the actual activities and operation of the site with this conclusion. It is confirmed by the EHO, that the Council has investigated the uses at the site and has NOT proven that any statutory nuisance is being caused. Nor has sufficient data/evidence been provided to enable a proper assessment to be made.

The evidence base supplied by MAS Environmental on behalf of the neighbouring property owners does not support this conclusion. Furthermore, at no time have any readings been taken from within the home of the applicants, who reside within the yard in their family home.

The fact that the evidence base upon which the Council now rely is provided by the objectors raises concern. This concern is supported from reading the various letters and email correspondence submitted by MAS Environmental, which are wholly biased towards those who have been paying their fees. In any event, insufficient data has been made available to the Council and to the applicants to reach this conclusion. Despite numerous requests by Bidwells as the applicant's agent, we have received no response to our specific questions posed in the past few months nor any additional data as requested or indeed promised by the Council (EHO memo refers). We raise concern that this judgement has been made on the following evidence base:

- (a) Garden measurements - 15 to 18 July 2003
- (b) Garden measurements - 3 September 2003 (17.21-18.16pm - out with the application period!)
- (c) Roof Measurements - 31 January to 4 February 2006 (the acoustic consultant confirms that building works were ongoing during this week period which distorts the data)

In our view, these readings do not show any harm being caused within the subject period - 07.30 to 08.00 am nor does it provide a sustained evidence base upon which to assess the application. From my knowledge of the site and from the applicant's own living conditions, we are at a loss to understand how the EHO can reach this view. The lack of organisation by MAS Environmental to supply accurate and reliable data - whatever the readings - to support these objections should not affect any determination by SCDC, particularly one that holds the threat of enforcement proceedings.

The Council is fully aware (through previous planning applications) of the former use of the site as an agricultural enterprise for hay and straw haulage. In recent years, Keith Collier engineering has been in situ for over 12 years without complaint. At the time of the change of use application for units 1-5, no objections were lodged nor any such issues raised. Having regard to the type of occupiers in the buildings and the continuing site management by the resident owners, we fail to see where the problems arise. It is reasonable to conclude that there is not a problem, evidenced by the lack of data supplied by the acoustic consultant and the inability to differentiate between those activities on the site which are connected with the residential use or Keith Collier. If there were such evidence we would have expected it to be readily available.

PPG24 states that the night time hours are 23.00 to 07.00. The readings do not show any undue harm within this period.

Proposed Noise Management Scheme:

The EHO comments appear to extend beyond the remit of the application and requests a noise management scheme be put in place to cover the entire site and the full working day. Not only is this unrelated to the current application, it is also unreasonable. Moreover, they directly correlate with the acoustic consultants requests on behalf of the objectors, as stated in MAS Environmental's 7 August 2006 report. At no time does the Council's EHO appear to have taken a balanced judgement. Rather the objectors points are simply reiterated as his own.

Reference to the judicial review process is irrelevant to the determination of this application. An independent assessment should still be made by the Council and its advisors, in its role as LPA.

The noise mitigation measures proposed by the EHO are misguided. It is not appropriate to discuss a noise management scheme to apply to a time period greater than the additional half hour start time. A planning application cannot seek to alter a lawful use which has the benefit of planning permission.

The noise reduction measures are not necessary, having regard to the actual activities occurring at the site. Most are excessive in any event, some requiring planning permission in their own right and which we would suggest are contrary to the

Council's adopted planning policies. As such, permission would not be expected to be forthcoming. For example, the erection of 3.5m acoustic fencing around the site perimeter and new commercial buildings along the site frontage.

Summary:

In conclusion, despite an ongoing assessment of the property, no data has been supplied or made available to the Council or to the applicant's or their agent to support the claims that an additional half hour in the mornings is causing harm.

The Council's EHO has confirmed that no statutory noise nuisance has been confirmed, despite investigations over the past few years since the 2003 consent was originally issued.

The solutions expressed to overcome a perceived (but unsupported) noise problem between 07.30 and 08.00 hours on weekdays are wholly unreasonable."

Planning Comments – Key Issues

16. The key issue is the noise impact of the proposed ½ hour earlier start time i.e. 07.30 hours upon the amenities of neighbouring residential properties given the rural location of the site.
17. Some Members will be aware of the site from two previous site visits concerning earlier applications. Since 2000 there have been numerous complaints from neighbouring residents concerning primarily hours of work and noise from the site. To date matters raised have been resolved by Council Officer's without recourse to enforcement action. A third complaint by residents to the Ombudsman is currently being investigated.
18. The previous decision to approve the additional ½ hour start time was successfully challenged by a neighbour through the courts, as outlined in this report, and Members now have to redetermine the application following a lengthy period of monitoring by a noise consultant acting for the residents, and the Council's Environmental Health Officer, aided by the Council's noise consultant. On the basis of the joint monitoring carried out and his own site visits, the Environmental Health Officer objects to permission being granted for the earlier start time because it would lead to an increase in the working day and subsequently an increase in the degree of noise to which nearby residents are already exposed. He is currently investigating complaints of noise nuisance from the site, although no statutory nuisance has been proved at the present time. He is unable to support the application in the absence of the noise mitigation measures outlined by the neighbour's consultant being implemented. Members will note that the noise consultant acting for a local resident has proposed a "noise management scheme" to resolve existing noise issues identified from monitoring the site which involve, inter alia, the erection of a new building on the site frontage to provide an acoustic screen, and a 3.5m high acoustic fence along the front and possibly part of the western site boundaries.
19. In my view this would not be acceptable in planning terms, giving the property an alien, fortress like appearance at odds with its rural setting. Other measures such as resiting the access eastward away from neighbouring properties would involve the owner in further considerable expense and in my view would not be justified given that until the late 1990's the access served a working farm and associated hay and straw business.

20. The scheme also proposes limitations on the movements of commercial vehicles over a certain size entering the site. This would be unrealistic in my view because the unit at the southern end of the site (Collier Engineering) has its own separate planning permission and shares the site's only access. Other suggestions such as the main site gates, which would have to be 3.5m high and of solid construction, should remain closed during the reversing of any vehicles operating reversing alarms at the northern end of the site are impractical and difficult to enforce.
21. The applicant's agent queries the legality of imposing a Noise Management Scheme on the whole site given the limited extent of the current application. Clearly, such a scheme could only be imposed with the agreement of the site owner in consultation with the building's occupants. This approach is supported by the guidance in Planning Policy Guidance 24 "Planning and Noise" which states "authorities should not use the opportunity presented by an application for minor development to impose conditions on an existing development which already enjoys planning permission."
22. A solicitor acting for a local resident has also suggested that the Committee should consider regulating the site as a whole, in particular the anomaly that the Collier Unit is not subject to an operating hours restriction, pointing out the difficulties of enforcement of planning conditions. This could involve imposing a start time of 07.30 hours on the Collier premises. Alternatively, because the company use part of the site which is subject to an operating hours condition for parking, loading/unloading vehicles and storing materials, it could be argued that they cannot use the unit without complying with conditions relating to the site as a whole. Enforcement proceedings should be instigated. The solicitor has been informed that the Collier business has been in operation for well over 10 years and is an "established use". There is, therefore, no justification for imposing an hours of work condition, which would involve the service of a Discontinuance Order and lay the Council open to a claim for compensation, or taking enforcement action. The Council's solicitor suggests that the Council could, as an alternative, seek an agreement with the landowner of the Collier building to restrict hours of use, but this would depend on the co-operation of the owner. Otherwise action could be taken under the Environmental Protection Act 1990 through the service of an abatement notice if the Council is satisfied a statutory noise nuisance exists or is likely to occur or recur. This latter measure is recommended as the preferred course of action by the Council's solicitor. No statutory noise nuisance has yet been identified.
23. The Council's Environmental Health Officer is satisfied he has been able to monitor the site and differentiate between the permitted traffic to the Collier premises and the other units. The Company has supplied him with the registration numbers of their staff vehicles which has simplified identification. He will make a verbal report on the latest comments received from the applicant's agent.
24. Officers have agreed with the applicant not to consider enforcement action against the current early morning use of the site, which breaches the permitted 08.00 hours, (excluding the use of the Collier premises) until the matter has been considered by the Planning Committee. This has enabled the noise generated between 07.30 and 08.00 hours to be monitored over a long period of time spanning the different seasons.

Recommendation

25. A. Given the objections of the Environmental Health Officer and the overriding drawbacks of the proposed noise management scheme, the reconsidered application should be refused for the reason that:
1. The proposed variation in working hours allowing a 07.30 hours start would result in an unacceptable increase in the level of noise associated with the site during the early morning when background noise levels in this rural area are low, to the detriment of the amenities of neighbouring residential properties, and contrary to Policy ES6 of the South Cambridgeshire Local Plan 2004 which seeks to minimise noise disturbance to residential areas.
- B. Members views on enforcement action are sought. I consider enforcement action should not be undertaken immediately, but powers should be granted to officers to pursue enforcement action against the owner and any offending companies operating on the site should the permitted 08.00 hours starting time continue to be breached after 3 months has elapsed. (This would not apply to Collier Engineering for the reasons given.)

Background Papers: the following background papers were used in the preparation of this report:

- South Cambridgeshire Local Plan 2004
- Cambridgeshire and Peterborough Structure Plan 2003
- Planning File Ref: S/1396/03/F
- Documents referred to in the report including appendices on the website only and reports to previous meetings

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