

SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL

REPORT TO: Planning Committee

1st August 2007

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

S/1048/07/F – COTTENHAM

Variation of Condition 6 of Planning Application S/1184/74/F for the Extension of Hours of Operation of Machinery. Retrospective Details of Plant and Machinery Installed in Accordance with Condition 3 of Planning Application S/1184/74/F. Retrospective Permission for External Equipment Comprising of Extract Fans, Flues and Air Condensing Units

Unit J, Broad Lane Industrial Estate, Broad Lane, for The Whitfield Group

Recommendation: Approve

Date for Determination: 18th July 2007

Notes:

This Application has been reported to the Planning Committee for determination because of the Parish Councils recommendation of refusal being contrary to the recommendation of officers.

Members will visit this site on Monday 30th July 2007

Site and Proposal

1. Unit J is an industrial unit currently occupied by the firm Chemex. The unit is situated within the Broad Lane Industrial Estate within the village framework of Cottenham. The industrial estate contains many other units of a variety of uses and is accessed via Broad Lane. There are several residential areas which surround the industrial estate, with the static mobile home site, Cottenham Park to the north east of Unit J and the cul-de-sac Courtyard Way to the south east, both of which contain the nearest residential dwellings to the application site. Chemex is a Cambridge based company involved in analysing chemicals and compounds within either water borne samples or soil samples. In doing so the firm requires both the use of fume cupboards and cooling equipment.
2. The proposals are retrospective as the applicants have installed plant and equipment without the prior approval of the Local Planning Authority and have been using this equipment outside of their permitted hours of operation. The plant and machinery installed includes all external works, which have been carried out to the unit, which includes 1 air condensing unit and 6 extract flues to the southeast elevation and the acoustic enclosure located upon the rear elevation. An enforcement notice and abatement notice have been served upon the applicants and due to this the applicant is seeking to address the breaches of condition and noise nuisance through a retrospective planning application. These enforcement notices have been put on hold until this application is determined.
3. The unit is restricted by condition 6 of planning application S/1184/74/F, which states, no machinery shall be used between the hours of 6pm and 8am on weekdays and



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shall not be used on Sundays and bank holidays. The applicants have stated that the machinery would require in part to be running 24 hours, 7 days a week, albeit not all at once. Within the additional information submitted the applicant has stated that in order to run tests they would need 1 flue, 2 air conditioning units, 1 refrigeration condenser and 1 exhaust unit to be in operation over night. The remainder of the equipment will then only be required during normal working hours, which are 07.00 hours to 20.00 hours. However, there is no condition in place to restrict the hours of use to this unit, simply the hours of operation of all machinery. The applicant has amended the application to include plans showing the housing to the external extract fans as well as supporting information detailing the equipment and machinery that is required to run within working hours and at night.

Planning History

4. **Planning Application S/1184/74/F** - was approved for the change of use of Unit J from Warehousing to a Light Industrial Use. Within this consent were several attached conditions. Condition 3 of this consent required that power driven machinery shall not be used on site without the prior consent of the Local Planning Authority, Condition 6 of this application required that machinery shall not be used between the hours of 6pm and 8am on weekdays, and shall not be used on Sundays and Bank Holidays. These conditions were attached to this consent to safeguard the interests other users of land in the vicinity.
5. **Planning Application S/1347/97/F** for the variation of Condition 6 of planning application S/1184/74/F to extend the hours of operation for machinery to 07.00 hours to 22.00 hours was refused on the grounds that the proposed extension of hours would result in increased vehicle movements and operations resulting in increased noise, disturbance and loss of amenity to those adjoining residents when background noise levels are generally low.
6. **Planning Application S/2348/07/F** - for the retrospective permission of external extractor fan attenuators and acoustic enclosures was withdrawn. This application sought to resolve the outstanding noise nuisance and outstanding external works to Unit J in an attempt to address the enforcement and abatement notice which was served upon the applicants. This application did not contain the sufficient information to resolve the outstanding issues on the site and would have been refused. However, it was the decision of officers to negotiate the issues at hand and request a detailed application outlying all outstanding issues at the site whilst postponing enforcement action until such an application could be determined. This decision was made on the premise that approximately 80% of the attenuation required to satisfy the Local Plan Environmental Standards had already been carried out albeit retrospectively.

Planning Policy

7. **Planning Policy Guidance 24 (PPG24)** Planning and Noise, outlines the considerations to be taken into account in determining applications for activities which will generate noise.
8. **Policy P5/6** of the Cambridgeshire and Peterborough Structure Plan 2003 ("The County Structure Plan") Seeks the development or expansion of existing firms will generally be given preference over development by firms wishing to move into the area, provided the scale of growth does not conflict with other policies of the Structure or Local Plan.

9. **Policy ES6** of the South Cambridgeshire Local Plan 2004 ("The Local Plan") states that the Council will attempt to use appropriate planning conditions, to minimise the impact of noise and pollution on noise-sensitive development arising from any new industrial, commercial or recreational activities.
10. **Policy EM7** of the South Cambridgeshire Local Plan 2004 ("The Local Plan") states that the development or expansion of existing firms will generally be given preference over development by firms wishing to move into the area, provided the scale of growth does not conflict with other policies of the Structure or Local Plan.
11. **Local Development Framework** - 2007 Policy ET/5 encourages the expansion of existing firms save where it consolidates a non-confirming use or causes problems with traffic, noise, pollution or other damage to the environment. Policies NE/15 and NE/16 deal with noise pollution and emissions.

Consultation

12. **Cottenham Parish Council** - *strongly recommends Refusal for this Application on the following grounds:*

Unit J is located adjacent to residential dwellings. Condition 6 of the original Planning Permission S/1184/74/F states that "Machinery shall not be used between the hours of 6pm and 8am on week days, and shall not be used on Sundays and Bank Holidays", Reason for this Condition "To safeguard the interests of other users of land in the vicinity". A Planning Application S/1345/97/F sought to vary the hours of operation for Unit J this was refused for the following reasons "Broad Lane Industrial Estate is located close to residential properties, particularly to the north east there are a number of mobile homes – The proposal is unacceptable in that the proposed extension of hours will result in increased vehicular movements and operations resulting in increased noise, disturbance and loss of amenity to those adjoining residents when background noise levels are generally low". Indeed two further applications were made in 1997, Unit A – S/1347/97/F and Unit F – S/1346/97/F and both refused for the same reasons. Within the supporting documents there does not appear to be any clear justification as to why Chemex need to work extra hours. Indeed it has been brought to the attention of the Parish Council that Chemex already are working outside of permitted hours. If SCDC were minded to grant permission for extended working hours then a precedent would be set whereby all units located at this site may apply for extended working hours.

13. Condition 3 of the original Planning Permission S/1187/74 states that "Power driven machinery shall not be used on the site without the prior consent of the Local Planning Authority" again this was "To safeguard the interests of other users of land in the vicinity" and to ensure that the adjacent residential dwellings were unaffected by any activities undertaken on this site. As noted this is a Retrospective Application with said machinery being put in place in the summer of 2005, Cottenham Parish Council recommends Refusal as the installation of Plant and Machinery has had an extremely detrimental effect on those residents living adjacent due to the noise levels experienced during out of permitted hours operation.
14. This application leads directly to the Retrospective Application for permission for External Equipment Comprising of Extract Fans, Flues and Air Condensing Units. As already stated these were installed in 2005 without gaining prior planning permission and the applicant has shown scant regard to the problems that have arisen for adjacent residents. Within the application are the findings of an independent consultant re noise levels for these units. There appears to be inconsistencies as the

indication is that the noise emanating from this site is acceptable, figures do indicate that some units are within the required acceptable noise level but other units are not. Of interest is the figure of 40d3(A) found when all units are running at once. As these units appear to be currently running 24 hours a day 7 days a week this would mean that the current noise level is unacceptable and has led to a loss of amenity for the adjacent residents. Whilst attempts have been made to try to minimise the noise nuisance for adjacent residents this has been far from successful.

15. Concerns are also raised re Health and Safety as a fire exit is now blocked by a extractor fan.
16. Cottenham Parish Council further comment that were SCDC minded to approve this application they would do so with a condition applied that all external Plant and Machinery must be relocated within the building.
17. **Chief Environmental Health Officer** - has recently carried out nighttime surveys at the complainant's property in Courtyard Way in respect of the nighttime noise of the plant and equipment at Unit J. These surveys took place with the cooperation of the acoustic consultants retained by the applicants. The complainant did not feel able to permit measurements to be taken from within his dwelling and therefore the readings were based on outdoor readings instead. The acoustic consultants were working to ensure that with plant operating under normal night time conditions the corresponding noise at the nearest dwelling due to this plant is acceptable within the defined limits described below.
 - The World Health Organisation states that a level of 30db(A) is suitable to protect vulnerable groups against sleep disturbance. BS8223:1999 states that a level of 30db(A) within bedrooms represents "good" conditions and a level of 35db(A) represents "reasonable" conditions.
18. The acoustic consultant has advised the applicants that subsequent to the recent works of sound attenuation to the extract fans and fume cupboards, the survey indicates that the level of noise inside the complainant's house produced during the night by plant at Unit J would easily comply with the above guidance and represents better than "good" conditions. In my professional subjective opinion the noise nuisance has therefore been abated. However, in order to ensure that an acceptable noise level is achieved at the nearest dwelling(s), with Unit J operating under their normal night time condition it will be appropriate to recommend that a condition be imposed on any consent granted in respect of the applicants and Unit J that limits the level of noise at the nearest dwelling(s) to 35db(A). This would then prohibit all of the fume cupboard extract fans operating simultaneously at night. Although theoretically possible, as I understand that it would not it be required in practice.
19. **The Building Control Department** states that a satisfactory escape routes must be available from the rear fire exit door.

Representations

20. 6 letters of objection have been received from local residents at Nos. 13, 15 and 11 Courtyard and Nos. 4, 3 and 2 Monet Way, these representations have been summarised below:
 - a. Inaccuracies within the application forms and the description of the development;
 - b. The development is retrospective and this application does not define this;

- c. Insufficient information relating to the proposed hours of operation;
 - d. Previous applications for this site and others within the area have had similar applications refused;
 - e. It has taken since October 2005 to receive an application to even attempt to resolve these issues;
 - f. The noise levels despite being reduced are still unacceptable;
 - g. An extension of hours of operation would set a precedent for other industrial units;
 - h. The external equipment is visually intrusive and has made Unit J an eyesore;
 - i. Inaccuracies within the elevation plans;
 - j. The external equipment has restricted the fire exit to the rear of the site;
 - k. Inaccuracies within the site ownership and site plan;
 - l. The supporting information is questioned with respect to the required operation of the site;
 - m. The noise report does not give an indication of the ambient noise levels when the machinery is switched off;
 - n. Conditions 3 & 6 of S/1184/74/F were put on place for a reason and should not be allowed to be varied or removed;
 - o. The submitted statements are not true as the site has been continuously running out of hours and it is by no means occasional;
 - p. The acoustic consultant cannot be considered as impartial;
 - q. There is noise disturbance from change of shifts at night;
 - r. Residents are used to silence;
 - s. The external equipment could be housed within the building;
 - t. This site is inappropriate for the use of such a business;
21. In addition to the above objections and concerns a petition of local residents was submitted in opposition to this planning application with a total of 36 signatures.
22. The Cottenham Village Design Group has made the following statement "The Design Group encourages the retention of small-scale commercial activities and the development of businesses offering employment opportunities in Cottenham. However, it is also important that businesses respect their residential neighbours. We therefore hope that a successful compromise can be reached whereby the noise from external equipment can be attenuated to the satisfaction of local residents." *It is important to retain and develop Cottenham's character as a working village offering a variety of employment.* (Cottenham Village Design Statement p.7).

Planning Comments – Key Issues

Background

23. Despite there being previous applications to vary the hours of operation of machinery for Unit J and other neighbouring industrial units this application must be determined on its own merits and any such decision cannot be deemed to set a precedent for the area. This application has seen much work done by both the applicant and the Council's Environmental Health officers in order to achieve a good standard of attenuation. The fact that this application is retrospective or that an enforcement and abatement notice have been served is irrelevant as this current application has supplied satisfactory evidence to show adequate sound attenuation, thus abating the noise nuisance and the harm caused from the variation in hours of operation of the said machinery.
24. The applicant is currently in breach of two planning conditions from planning application S/1184/74/F, firstly they are working beyond the hours of 6pm and 8am weekdays and it would appear from the representations received that they have also been in operations upon weekends and bank holidays. Secondly the applicant has brought onto the site several pieces of plant and machinery along with all the external machinery used in conjunction with this, which was also fitted without planning consent. Enforcement action has been suspended until this application can be determined as it would be unreasonable for the Council to pursue such action when the matter could be resolved through the means of a planning application. It is my opinion that since the noise nuisance has been abated that there is no harm caused through the breach of condition and therefore nothing to enforce. However, in accordance with Local Plan Policy ES6 and LDF Policy NE/15 the site can be suitably conditioned to not exceed the maximum sound level (35db(A)) as well as require details and consent for any further plant or machinery that is to be installed within Unit J. This will then allow for the site to be suitably managed in the future avoiding a similar situation from occurring. In addition this would be a suitable time to modernise and improve on the conditions that were attached to the unit as part of the 1974 application.

Noise & Disturbance

25. The applicants have in conjunction with the Council's Environmental Health Department been working in the interim to fully attenuate all external machinery and equipment, which had contributed to the noise nuisance experienced by the local residents. This work has been done retrospectively, with the plant and machinery in use despite the applicants being in breach of condition. Notwithstanding this issue the harm caused from the breach in condition was the resultant noise and disturbance to the local residents from the plant and machinery in place. Therefore due to the machinery now being attenuated the noise levels now conform to the requirements of the Council's environment standards in conjunction with guidance from PPG24 and the World Health Organisation.
26. Whilst the noise and disturbance from Unit J has been significantly reduced, it is recognised that there has been an impact upon the existing background noise levels surrounding the site. However, noise does not necessarily equate to a statutory nuisance. At present the noise levels recorded from the site meet the standards as set out by the World Health Organisation. As stated within the comments from the Council's Environmental Health Officer, now that a satisfactory noise level can be achieved for the applicants to use Unit J to continue their work a Condition shall be

put in place to ensure that the noise level does not rise above the recognised satisfactory standard of 35db(A). The fact that this is a standard for inside a bedroom and can be achieved outside of the nearest property proves that the noise emitted from Unit J to run its machinery overnight would seem a satisfactory compromise between a standard of amenity for the near by residents and the continued use of the industrial unit to meet the applicants needs.

Other Matters

27. It is clear from the additional information submitted that there is an adequate means of escape by re-hanging the door for employees of Unit J to leave the building to the north and follow the open space around the other units. The external plant and machinery albeit implemented in a piece meal fashion is industrial in appearance and is not clearly visible from outside of the industrial estate and therefore does not have a detrimental visual impact upon its surroundings. The boundary with Courtyard Way and Monet Way consists of a small verge sloping up away from Unit J to a high level grated fence with some minimal landscaping such as a series of conifers and various other hedging. The tops of the units at the rear of the site are visible above this screening in part but this area is currently a hard standing area for car parking with a garage block against the boundary with Unit J.
28. The flues to the side elevation do obstruct a footway down the side of the unit. However the side elevation fronts a parking area and the machinery would not hamper access to this area. The landowner of the Industrial Estate, Kindale Ltd, is aware of the development and has raised no objections. I am satisfied that the plans and supporting information received as amended have now rectified all previous inaccuracies within this application. The site has no restriction on hours of employment and as the machinery is now attenuated to a satisfactory degree I see no reason why Condition 1 (detailed below) cannot successfully control the noise levels from this site. Any other resultant noise from deliveries or shift patterns cannot be controlled as part of this application but could be investigated by the Council's Environmental Health Department and dealt with accordingly if it constitutes an statutory noise nuisance.

Recommendation

29. Approve as amended by plans and supporting information received 9th July 2007;

Conditions

1. No machinery shall be used between the hours of 8pm and 7am on weekdays and shall not be used on Sundays and bank holidays with the exception of the following equipment:
 - a. 1 Flue Extract unit;
 - b. 2 Air Conditioning Condensers;
 - c. 1 Refrigeration Condenser;
 - d. 1 Exhaust Unit;(Reason – To ensure that the use of plant and equipment would not be detrimental to the amenities of local residents within the vicinity of the site in accordance Policy NE/15 of the Local Development Framework 2007.)

2. Details of the location and type of any further power driven plant or equipment including equipment for heating, ventilation and for the control or extraction of any odour, dust or fumes from the building but excluding office equipment and vehicles and the location of the outlet from the building of such plant or equipment shall be submitted to and approved in writing by the Local Planning Authority before such plant or equipment is installed; the said plant or equipment shall be installed in accordance with the approved details and with any agreed noise restrictions. (Reason – To ensure that plant and equipment would not be detrimental to the amenities of local residents within the vicinity of the site in accordance Policy NE/15 of the Local Development Framework 2007.)
3. The noise level at the nearest dwelling due to plant at the site shall not exceed a level of 35dB(A) between the hours of [8]pm to [7]am. This shall be expressed as a 'free field' LAeq at a distance of 3 metres from the nearest residential facade, for an appropriate time period (to suit measurement and plant operation conditions). Depending upon measurement conditions, the measurements shall either be taken directly at the noise sensitive location or at a more acoustically suitable location and the corresponding level calculated at the noise sensitive location. Noise from the plant shall be free of any distinct continuous note (whine, hiss, screech or hum) or distinct impulse noise (bangs, clatters or thumps) at the noise sensitive location. (Reason - – To ensure that plant and equipment would not be detrimental to the amenities of local residents within the vicinity of the site)

Informatives

Reasons for Approval

1. The development is considered generally to accord with the Development Plan and particularly the following policies:
 - **Cambridgeshire and Peterborough Structure Plan 2003: Policy P5/6**
 - **Local Development Framework 2007: Policies ET/5, NE15 and NE16**
2. The Impact of Noise Nuisance upon local residents.

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 Reference: **S/2348/07/F, S/1347/97/F, S/1184/74/F & S/1048/07/F**
- Planning Policy Guidance Note 24 - Planning and Noise

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