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VIA PLANNING PORTAL

34410/A3/SH/SC/RS

21 December 2022

Dear Rachael,

LAMBERT BROTHERS HAULAGE LTD, WOODSIDE AVENUE, EASTLEIGH **SECTION 73A APPLICATION FOR VARIATION OF CONDITION 27 ATTACHED TO F/21/91183**

Please find enclosed a Section 73A (of the Town and Country Planning Act 1990) application in relation to Planning Permission Ref: F/21/91183 on behalf of the applicant Oxenwood Real Estate LLP ("Oxenwood").

This Section 73A application seeks to vary condition 27 attached to planning permission F/21/91183 that restricts the hours of use of the site as a whole.

Planning permission was granted for development on 04 February 2022 for the following description of development:

Erection of Units 1-4 for flexible industrial use (Use Classes B2 and B8) and Unit 5 for builders' merchant and external storage, including storage, distribution and ancillary trade counter (Sui Generis Use)

A separate Section 96 Non-Material Amendment application has been submitted at the same time as this application in order to change the description of development to the following:

Erection of a building for flexible industrial use (Use Classes B2 and B8) and erection of a building for builders' merchant and external storage, including storage, distribution and ancillary trade counter (Sui Generis Use)

Given the S96 procedure has a shorter determination period of 28 days, it is anticipated that the updated description of development would be applicable at the time of any determination of this application. Nevertheless, the proposed amendment to the original permission under this application is considered to be within the scope of both the original description of development and amended description of development sought. Therefore, procedurally a Section 73A application is suitable.

Background

Condition 27 attached to planning permission F/21/91183 states:

The development hereby approved shall not operate or be open to customers and no deliveries shall be received to or dispatched from the site except between the hours of 0600 to 1900 Monday to Saturday and 0800 and 1600 on Sundays or Bank Holidays.

Reason: To protect the amenity of the occupiers of nearby residential properties.

Oxenwood has received interest from prospective occupiers who seek to operate from the units 1-4 under the original permission which were permitted for flexible industrial use. However, the condition is proving to be a limiting and deterring factor for prospective occupiers, as the restriction in hours of use would curb their respective business operations.

To resolve this matter, it is proposed that Condition 27 be amended to solely refer to the builders' merchant part of the scheme, as follows:

The building and external areas hereby approved as a Builders Merchant and external storage, including storage, distribution and ancillary trade counter (Sui Generis Use) shall only operate or be open to customers between the following hours:

**0600 to 1900 Monday to Saturday; and
0800 and 1600 on Sundays or Bank Holidays.**

Deliveries shall be taken at or dispatched from the building and external areas hereby approved as a Builders Merchant and external storage, including storage, distribution and ancillary trade counter (Sui Generis Use) only between these hours.

Reason: To protect the amenity of the occupiers of nearby residential properties.

The wording of the condition as proposed is to ensure precision that the intention of the condition is to restrict hours of opening, operation, and deliveries to the building and external areas used in connection to the Builders' Merchant only.

Justification

Eastleigh Borough Local Plan 2016-2036 was adopted by the Council on 25 April 2022. Policy DM1(a)(i) states that all new development should not have an unacceptable impact on residential amenities of both new and existing residents. Policy DM8 – Pollution states that development will not be permitted if it is likely to cause loss of amenity or impact on public health or other unacceptable environmental impacts through, inter alia, noise. The policy's supporting text at paragraph 5.49 states that *"the Council will expect the developer to take into account existing noise levels and foreseeable changes to these. In doing so, developers must avoid significant adverse noise impacts to residential amenities."*

This requirement is consistent with paragraph 174 of the NPPF which requires that planning decisions contribute to enhancing the natural and local environment, by amongst other things, preventing new and existing development from contributing to, being put at unacceptable risk from, or being adversely affected by, unacceptable levels of noise pollution. In addition, Paragraph 130 requires that development ensures a high standard of amenity for existing and future users.

As you will note, throughout the determination of the original application there was discussion with EBC's Environmental Health Officer over the impacts of the Builders' Merchant on residential properties to the south of the site, beyond the railway line. As a result, the Environmental Health Officer sought an hours of use condition to ensure there was no potential disturbance to those properties from the operations of the Builders' Merchant. However, Condition 27 was subsequently imposed on the whole site.

As per the approved plans, the building housing the other units (known as Units 1-4 on the original permission) are located on the southern part of the site, and any outside movement associated with these units would be to the north, with the proposed building providing an acoustic buffer to the south. This building is also further away from the residential properties than the Builders' Merchant and, as per the noise assessment submitted in support of the application, were demonstrated to not have any unacceptable significant adverse noise impacts on the residential properties nearby. The first Environmental Health consultee response confirms they agree this position (as appended to this covering letter).

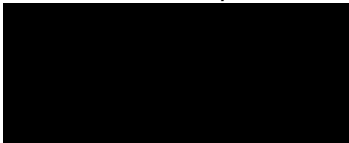
We therefore consider that the proposed amendment to Condition 27 would not result in any unacceptable significant adverse impact on neighbouring amenity relating to noise.

Furthermore, the wider industrial estate within which this site is positioned, together with the previous operations at this site, are not restricted by an hours of use condition and therefore it is typical for traffic movement to and from units along Woodside Road to occur outside of the prescribed hours. For these reasons, the imposition created by Condition 27 on the hours of use for the whole site is considered to be unreasonable and unnecessary, which is contrary to paragraph 56 of the NPPF on the use of conditions. Furthermore, the noise assessment submitted with the original application demonstrated, in accordance with Policy DM1(a)(i) and DM8 and its supporting text, as set out above, that the units 1-4 on that submission would not result in adverse noise impacts to residential amenities. Therefore, the removal of this condition would continue to comply with Local Plan policy.

The proposed change to Condition 27 would be a minor amendment to the planning permission that would be acceptable against Eastleigh's Development Plan and the NPPF and should therefore be approved without delay.

The requisite fee of £234 (exc. service charge) has been paid via separate cover. I trust that the enclosed information is sufficient, but please do not hesitate to contact myself or Sarah Cross (sarah.cross@bartonwillmore.co.uk) should you require any additional information at this stage.

Yours sincerely



ROBIN SHEPHERD
Planning Director

enc. As listed

Re F/21/91183 Lambert Brothers Haulage Ltd, Woodside Avenue, SO50 4ZR

We refer to:

- “Former Lamberts Brothers Haulage Site, on land at Woodside Avenue and Woodside Road Noise Impact Assessment” ref 18410-HYD-ZZ-XX-RP-Y-1001, dated 20 July 2021
- Site Plan – Block Plan, ref SES-pHp-XX-XX-DR-A-4467-A101 rev P8, dated July 2021
- Planning Statement, ref 32529/A3, dated 22 July 2021
- Design and Access Statement, revision P05, dated July 2021

(1) Noise Impact

We understand the planning and placemaking rationale for the proposed development layout compromising Units 1 to 4 set to the back of the site beside the railway embankment with front facing entrance and delivery, including articulated lorries manoeuvring and docking on the new hardstanding. The level access (or docking) for lorries is set aside from car park, cycle park and entrance, although it is noted there is potential conflict between lorries and car parking. Both however are quite fully screened acoustically from the nearest noise sensitive receiver, The Sidings on Judd Close.

The Sidings comprises apartments over three storeys with opening windows to all aspects, including over to the application site, the closest portion of which is Unit 05. The Unit 5 building is a ‘gateway’ to the development and overall, substantially tidies up and repurposed the uses for the future. The area remains commercial, and this has been the case before The Sidings were built and occupied.

The ambient noise in this location appears from the same sources over a long-established period. These comprise rail and road traffic and commercial activities. This in our opinion is the baseline which should hold into the future through good planning. And, so we accept the commercial noise as is as long this is reasonably controlled without significant intensification and new operating hours with elevated noise emissions. It seems reasonable also to take it that good maintenance helps to keep noise emissions to the same existing level and from time to time when plant and equipment is due for ordinary replacement due to age etc, emissions for new plant and machinery nowadays are less than what they were years ago. This is due to intervention by regulation.

In view of the above, our focus is on the proposed plans for Unit 05 and noise emissions, particularly in the early morning from 0600 as applied for. It seems to us generally, there is established use for heavy vehicle movements into and out of the yard and manoeuvring inside for the loading and offloading of goods. The scale of the site is probably an indication of the extent of activity that can take place over a short period of time, say for 15 minutes. And so, in general, we look to consider any new plant and equipment that is particularly noisy and has the potential to disrupt and elevate the ambient noise level, which we assume dwelling holders have grown used to.

It is certainly not our intention to constrain use of the site for continuation of business and usefulness of the site for new operators. But there seems to be a moot point about ‘agent of change’ principle complicated by pre-existing acceptance of current or what will be past use of the site after development. This seems problematic to unravel, but in simple terms if there is no change to the ambient noise, we see coexistence continuing as much as it is currently.

In contrast it is a common tendency for applicants to consider incremental increases acceptable in so called terms of “context”, “audible difference”, “likelihood of complaints”. However, this would be to say more noise is tolerable than that which is currently tolerated. And besides, planning must

consider the wider matter of greater changes in ambient noise happening when more than one site makes a seemingly small or tolerated incremental increases in noise. Then there is the character of the noise and whether it remains anonymous, forgotten or has new identity which may disrupt the sensitive receivers.

We trust this helps to explain our view for planning to consider. Moving on to the technical details of the noise impact assessment, our observation follows with recommendation.

Reference is made to BS4142 "Method for rating and assessing industrial and commercial sound" but unfortunately, no comment is made on the significance if a new noise called a 'Rating Level' when it is 10 dB below the background noise level and so will be unlikely to cause complaints. We agree with part of para 4.1.2 item (c) that "The lower the rating level is relative to the measured background sound level, the less likely it is that the specific sound level will have an adverse impact or a significant noise impact". The "Specific" sound level is the new or altered noise source under consideration in assessment.

Noise survey carried out by the applicant during acceptable meteorological conditions over Monday 29 March to Tuesday 30 March 2021, reveals that at the measurement location (The Sidings) the existing ambient noise level, commonly heard as the average noise level is LAeq(16 hour) 57 dB(A) daytime, LAeq,(8hour) 56 dB night-time. Judging from the measurement location being on the façade least exposed to noise from Woodside Avenue, the noise levels reported are probably from railway traffic, commercial noise from the application site and others and local road traffic such as on Judd Close. The background noise level is usually as heard between noisy events such as intermittent railway traffic and particularly noisy vehicles amongst a general consistent experience. BS4142 describes this index of noise as the level exceeded for 90 per cent of the time as "...an underlying level of sound over a period, T, and might in part be an indication of relative quietness at a given location. It does not reflect the occurrence of transient and/or higher sound level events and is generally governed by continuous or semi continuous sounds". At the noise survey location this was measured to be LA90(1 hour) 51 dB for a typical daytime and LA90(15 minutes) 41 dB for a typical night-time.

Looking at the plot of noise levels in para 6.1, both ambient and background levels increase from a minimum at about 0100 and gradually increase to approximately the highest during the 24 hours between about 0500 to 0700, after which noise reduces to consistent levels through to about 2000 after which they dip down again. We are not informed by the report what the is reason for the 0500 to 0700 hours noisier levels as surveyor's comments are not included in the report. We would like to receive this information because it is important for considering the noise impacts from the new site as following.

A computer model was created by the applicant to describe the levels of noise emanating from noise sources that are presented to be typical of the future operation on the site. This is of course predictive, but we assume a fair representation of what might be and hopefully a 'worst case' at that. The sources are three lorries driving on the site, idling, and unloading and one forklift and located in the yard outside the building. We assume and it is a reasonable expectation that noise generated inside the building will not 'break out' in sufficient level to compare with externally operating plant and equipment. This is a design consideration which is easily conditioned through planning consent.

The resulting noise level from the yard equipment at The Sidings is calculated by the applicant to be LAeq(15 minute or 1 hour) 51 dB. This is lower than the existing measured ambient noise level and about the same as the background noise. As we are not informed what the measured ambient noise

included, we cannot see whether if this was existing site noise from lorries etc and if this is the case, what was the level of noise from these. Is it the same 51 dB(A) as calculated or lower? If the applicant had used a second monitoring location close to the boundary of the site and existing operations matters would be clearer.

Assuming the worst case that the site was not operating, then the new ambient noise level would be an addition of say 58 dB(A) at 0600 plus 51 dB(A) from new plant operating as predicted, thus resulting in a marginally higher combined level of 59 dB(A). On the face of it, this appears acceptable if the noise is generally anonymous. With a BS4142 assessment comparing new site noise of LAeq(15min) 51 dB night-time with the background sound level of say LA90(15min) 57 dB, the conclusion of the noise assessment at para 10 "Noise from the operation of the proposed development is predicted to have a low impact on local sensitive receiver..." is reasonable, as long as if the noise is not intermittent or and has other character such as disguisable tones that can make noise of the same level more impacting to the receiver. We agree with this conclusion with the caveat we mention if controls are in place to ensure the noise emissions will not be more than has been assumed for the noise predictions. These are for:

- Externally operating forklift
- Lorries in the yard, also external
- Breakout noise from with the building
- Building services noise
- Cumulative noise impact from other units (1 to 4)

These controls supported by the 'Best Practice Mitigation' (para 8.4). These are 'soft' controls in our view and pick up on operational behaviour which is good. They are sometimes troublesome to enforce though and may have less effect in practice as much as this is difficult to quantify in calculations for an assessment of noise impact.

Turning back to the calculations of noise impact from yard equipment, we note the forklift, lorries and other equipment were taken by the applicant to be non-tonal. It is however a common problem we experience that sometimes operator cannot change tonal vehicle movement alarms as fitted as standard by the manufacturer to broadband or other alternative movement alarms and we are often reminded that safety comes first. This is not a justification for the noise in the first instance, however. Para 8.4 recognises this by saying "Non-tonal reversing alarms should be used where possible". Rather than has been presented by the applicant as the better case on no tonal alarms in the noise assessment, we see the outcome is not actually the possible worst case and the worst as we explain is plausible for reasons.

BS4142 on the other hand provides guidance on how to assess tones, as well as intermittent and characterful sounds. The net effect of these when totalling up the 'Rating Level' for the new noise is that it is greater than without tones and intermittency. With such risk built into the applicant's assessment, this approach does reflect of an increasing likelihood of impact experienced by the noise sensitive receiver such The Sidings.

We also have concern on the limitation the report places on the time the forklift will be used to two minutes in every 15 minutes. The report has not explained how this will be achieved such as through Section 106 agreement or other means. It is doubtful however that operators could reasonably operate under such a condition as it could be restrictive to business and this we seek to avoid. The problem with the forklift noise is that the average noise level increases by 3 decibels for every doubling the time it operates. So, say for two minutes more than assumed by the report it is plus 3

dB, another four minutes 6 dB and up to 100% of the time for 15 minutes, plus 9 dB. Herein lies more risk of impact to The Sidings.

Referring to Table 7 “Modelled Noise Sources”, the two-minute forklift noise emission equates to a sound power level expressed over a time averaging 15 minutes of 83 dB(A). By comparison, lorry noise which possibly sounds like the pre-existing site operations is much greater. This is acceptable if the caveat assuming non tonal activity and operating time for the forklift is reasonable, will be the case in real life. Then there is consideration for the intermittent use of the forklift if it is in short bursts, say not exceeding the two minutes in total, backwards and forwards, lifting with varying throttle settings with sound radiating from the engine and body and from the exhaust pipe. The same can also be said when limiting the time lorry engines are on and what power, stop start in the yard, sound of breaks, body rattle and so forth. Movements of lorries and plant in a yard especially constrained in available space is not smooth nor gradual.

Presumably, when loading and unloading a lorry, time efficiency is primarily important for the operator. We consequently are concerned therefore the worst case has not been presented in the report and this may put future tenants / operators at risk of exceeding planning noise limits from a condition we seek and facing action under the Environmental Protection Act 1990.

In view of the above, please consider a suitable planning mechanism under which new operators apply for use in which they specifically intend and for which they will provide a noise assessment, mitigation measures where needed and noise monitoring at the boundary.

For fixed plant, such as air handling and conditioning and others located outside the building, we recommend the applicant considers this together with breakout noise from the buildings and the cumulative effects of all units operating fully. These we take it will operate the same irrespective of a particular tenant or operator and a full power setting and cumulative impacts can easily be allowed for in calculations.

In getting to that point, it will also be relevant for the applicant to consider the sound insulation of the building envelope such that the designer has an appropriate specification to meet and equally importantly, users such as new tenants know what the noise is that they cannot exceed inside the buildings. The same consideration is needed for loading docks and other openings.

If for example, because there are risks that have not been demonstrated adequately in the current submission, we limit operating hours to daytime hours only with a proviso these can be extended subject to an application to the Local Planning Authority, or if the applicant resists this to agree some notional hours with controls in place assuming a worst-case scenario and a programme of compliance monitoring and audit, the Local Planning Authority will be a reasonable position to conclude upon the outcome for this application. This probably needs to be discussed with the applicant and if it elects to do so, submits a revised noise impact assessment to support the hours and flexibility it seeks. This would then inform conditions for the planning consent including for noise limits.

A few small technical questions for the applicant to also consider:

- Para 8.2 states “ground absorption set to 1 (soft ground)”. We are not informed what the yard surface is, but ordinarily as a paved surface, ground absorption is nil (hard ground) and acoustically reflective.

- Para 8.2 states “Reflection order of 1 on buildings”. We are unsure from Figure 4 “Predicted Noise Levels from Operations (Daytime) – Noise Contour Plot” whether we can see the effects of reflections from the buildings.
- Would a noise contour plot for the night-time be provided if the application continues to request operations in these hours?
- What would be the effect of say using zero emission plant in the yard? Say, electric forklift under worst case operating assumption of 15 minutes continuous operation?
- Can the yard operate say with lorries docking in night-time hours and offloading and loading therefore being carried within the building only? Once docked, presumably lorry engines are switched off.
- Para 8.4, please supplement with a monitoring and audit programme.
- Is the forklift shown by the Design and Access Statement “06 Artists Impressions View from HGV Access Road” generally similar to forklifts mentioned in Noise Impact Assessment “Table 5 “Measured Noise Levels from Forklift Activity”?”
- How have “bangs, clanks, crashes etc from handling materials been included for during the operation of Unit 5?
- What are the pros and cons of replanning for the Unit 5 building to located close to the site boundary besides the railway? Presumably it will be easier for the operator to comply with noise limits in a mirrored or handed site layout, relying less upon ‘soft’ and difficult to oversee management of the yard area?

(2) Air Quality

We note from the Planning Statement vehicle movements will be fewer at times. We are unsure from this however about the effects at other times and therefore both the short term and long-term effects from nitrogen dioxide upon the nearby Air Quality Management Area. We recommend the applicant supplements the narrative on air quality in Section 1.21 of the Planning Statement to be clear on this.

During operation, presumably there will sometimes be open dusty materials kept and handled in the yard and general yard sweepings. What is the impact of these to air sensitive receivers? And what best practice measures can be recommended for the future user? Some builders’ merchants for example place all the heavy, bagged, and granular materials under cover, within a building envelope. Has this been considered for the application site? And what are pros and cons of replanning for the Unit 5 building to located close to the site boundary beside the railway?

(3) Construction

We are not informed what the construction impacts will be and although temporary we have concern for noise and dust emissions from demolition, site preparation, raw materials storage, and foundations. We assume concrete will be premixed and delivered to the site, but the contractor will need to know what is not included for. We recommend the Noise Impact Assessment supplements on construction noise and vibration and somewhere if not in the Planning Statement construction dust is proportionately and appropriately reviewed. A condition for a Construction and Environmental Plan is also a reasonable ask.