

<b>Parish:</b>	<b>Tilney St Lawrence</b>	
<b>Proposal:</b>	<b>Variation of condition 4 of planning permission 17/01298/F to change hours of operation</b>	
<b>Location:</b>	<b>Holly Manor Lynn Road Tilney All Saints Norfolk</b>	
<b>Applicant:</b>	<b>Mr N Barker</b>	
<b>Case No:</b>	<b>18/01090/F (Full Application)</b>	
<b>Case Officer:</b>	<b>Mrs C Dorgan</b>	<b>Date for Determination: 10 August 2018 Extension of Time Expiry Date: 5 October 2018</b>

**Reason for Referral to Planning Committee** – The application was deferred at 3 September 2018 meeting.

**Neighbourhood Plan:** No

**Members Update**

This application was referred to the Planning Committee on 3 September 2018, when Members decided to defer their decision to allow Officers time to investigate the options for the wording of the revised condition.

Members were aware of the neighbour complaints related to the site, and considered whether the revised hours of operation could be granted on a 'trial basis' for a period of 6 months.

Having sought legal advice, there is the option to revise the wording of the planning condition to read-

No machinery shall be operated, no process shall be carried out and no deliveries taken at or despatched from the workshop building outside the hours of 07:00 – 18:00 on weekdays, 08:00 – 13:00 on Saturday nor at any time on Sundays Bank or Public Holidays for a period of 6 months from the date of this planning consent. After this period of 6 months the hours of operation will be 07:00 – 17:00 on weekdays nor at any time on Saturdays Sundays, Bank or Public Holidays.

This would provide the applicant with extended working hours for a period of 6 months, and will enable the Council to determine whether there are any neighbour amenity issues created as a result. If after 6 months the extended working hours are deemed to be successful the applicant would then be required to submit another planning application to retain the new hours of operation(as detailed above).

Members will need to bear in mind how this temporary period of time will be monitored, and how it could be considered to be successful taking into account the current extent and nature of complaints received to date.

Members should consider whether the aforementioned condition should replace proposed Condition 4.

### **Case Summary**

The site is located on the south eastern side of Lynn Road, Tilney High End, to the south west of the village approximately 500m from the junction with School Road. The site comprises a large house with approval for a builders yard with a complex of farm buildings which have been converted to an office and store, a newly constructed workshop building, planning consent for an additional storage building and an area used for outside storage of building materials to the east of the site.

The application proposes a variation of Condition 4 of planning permission 17/01298/F. It was originally proposed that the amended condition would allow for the business to operate until 6pm on Monday to Friday and between 7am and 1pm on Saturdays and at no time on Sundays, Bank or Public holidays. Saturday hours have since been amended to between 8am and 1pm.

There are 2 other applications which seek to amend the hours of operation condition to make it consistent across the site (refs. 18/01088/F and 18/01089/F).

### **Key Issues**

- \* Principle of Development and Planning History
- \* Neighbour Amenity Issues

### **Recommendation**

**APPROVE**

## **THE APPLICATION**

The site is located on the south eastern side of Lynn Road, Tilney High End, to the south west of the village approximately 500m from the junction with School Road. The site comprises a large dwelling with associated farm buildings/ structures served off a long access road to the north of the barns.

To the north east of the site are existing residential properties.

The site is also located within the buffer zone to the Islington Heronry Site of Special Scientific Interest, but this application has no impact upon the SSSI.

The application proposes a variation of Condition 4 of planning permission 17/01298/F. It was originally proposed that the amended condition will allow for works to operate until 6pm on Monday to Friday and between 7am and 1pm on Saturdays and at no time on Sundays, Bank or public holidays. Saturday hours have since been amended to between 8am and 1pm.

The use of the site for a builders yard, storage and office is already established under planning consent reference 14/01126/F and appeal decisions APP/V2635/C/16/3146551 and 3146770. Also consent was granted for conversion of workshop to an office and a replacement workshop on February 2017 (15/01963/F), and for an additional building for storage in October 2017 (17/01298/F) at Planning Committee.

## **SUPPORTING CASE**

This application is made under S73 of the Town and Country Planning Act. It seeks to vary the time constraints imposed via conditions on the previous planning permissions. It is proposed to amend the conditions to include an additional hour of working up until 6pm Monday to Friday, and to allow for working on Saturday mornings.

The proposed amended hours will fit in with normal working hours associated with a builders yard and within the building industry. The current time restrictions have resulted in the applicant having to turn away deliveries which has had an impact on the effective operation of the business which currently employs 15 members of staff and up to 30 contractors out in the field.

The proposed additional hours of operation will not extend the use to an unsociable hour on week day afternoons and the hours proposed on a Saturday are not considered unreasonable given that works would commence after typical waking hours and would cease before typical afternoon enjoyment of neighbouring residential amenities. The additional working hours will allow the business to operate within the normal working hours of the building industry, thereby allowing for the retention and promotion of this employment use.

The use of the site has already been assessed by the Local Planning Authority and it was established that no undue harm would be caused to local residents by reasons of noise and disturbance, hence the development being permitted. The additional hours are not unsociable and will cause no harm to the amenities of neighbouring residents.

In accordance with paragraph 80 of the NPPF, significant weight should be placed on the need to support economic growth and productivity, taking into account local business needs. The proposed variation of condition would address a specific local business need and would support the economic sustainability of an existing business. In accordance with paragraph 80 of the NPPF, this should be afforded significant weight.

The proposal complies with policy CS10 of the Core Strategy in that it seeks to promote and retain an existing employment use. It also complies with DM5 of the SADMP as it will have no adverse impact on the amenity of others by reasons of (amongst other issues) overlooking, overbearing, overshadowing, noise, or light pollution.

The proposed variation of condition complies with policies of the Development Plan and with National Policy. It is therefore respectfully requested that the application is permitted.

## **PLANNING HISTORY**

17/01545/F: Application Permitted: 18/10/17 - Variation of condition 1 of planning permission 15/01963/F to amend drawings to display an excavator - Holly Manor

17/01298/F: Application Permitted: 05/10/17 - Proposed Storage Building - Holly Manor

15/01963/DISC\_A: Discharge of Condition final letter: 30/05/17 - Discharge of conditions 2 and 6 of planning permission 15/01963/F: Proposed workshop conversion to office and replacement workshop - 1 Ivy Farm

14/01126/DISC\_B: Discharge of Condition final letter: 31/05/17 - Discharge of conditions 3, 4 and 6 of planning permission 14/01126/F: Change of use of agricultural barn and hay stores to builders yard, storage and office - Holly Manor

16/01537/F: Application Permitted: 17/10/16 - Retention of gates and wall - Holly Manor

15/01963/F: Application Permitted: 06/03/17 - Proposed workshop conversion to office and replacement workshop - Ivy Farm

14/01126/DISC\_A: Discharge of Condition final letter: 21/09/15 - Discharge of conditions 3, 4 and 6 of planning permission 14/01126/F: Change of use of agricultural barn and hay stores to builders yard, storage and office - Ivy Farm  
14/01129/DISC\_A: Discharge of Condition final letter: 13/01/15 - DISCHARGE OF CONDITION 5 AND 6: Proposed change of use from agricultural out-buildings to domestic use and the retention and completion of an extension and alterations to existing dwelling - Ivy Farm  
14/01322/F: Application Permitted: 10/11/14 - Retention of proposed temporary office - Ivy Farm  
14/01129/F: Application Permitted: 03/10/14 - Proposed change of use from agricultural out-buildings to domestic use and the retention and completion of an extension and alterations to existing dwelling - Ivy Farm  
14/01126/F: Application Permitted: 05/11/14 - Change of use of agricultural barn and hay stores to builders yard, storage and office - Ivy Farm  
08/01584/F: Application Permitted: 07/08/08 - Conversion of barn/outbuilding to form residential dwelling - Ivy Farm  
2/95/0763/CU: Application Permitted: 09/08/95 - Change of use to residential care home - Ivy Farm  
2/02/1942/CU: Application Permitted: 17/03/03 - Change of use of barn and outbuildings to craft centre with bed/breakfast accommodation - Ivy Farm  
04/00648/CU: Application Permitted: 08/09/04 - Conversion of barns to 5 residential units - Barns At Ivy Farm

## **RESPONSE TO CONSULTATION**

**Parish Council: OBJECT.** Complaints have been received regarding noise, causing a nuisance to neighbours; and failure to comply with previous conditions.

### **Community Safety and Neighbourhood Nuisance:**

This team received thirteen complaints over the use of this site, albeit that some were not related to noise (three were about bonfires and one was re lighting), and we undertook several investigations over a long period of time which also included visits by officers during the daytime, at evenings and at weekends. The main issue of the complaints was that the original hours of plant/machinery operation were not being adhered to, causing noise which affected the complainants. The role of the Community Safety and Neighbourhood Nuisance Team is to determine if a Statutory Nuisance exists and as such we need to determine that the noise unreasonably and substantially interfered with the use or enjoyment of the complainants property. This is a higher test than establishing that working hour conditions were being breached.

In each of these cases there was insufficient evidence to substantiate any formal action under the statutory nuisance provisions. We therefore have no grounds to object. Sections 2 and 3 of the Noise Management Plan for this site dated 23 June 2015, reference NDT4821/15218 (condition 4 of 14/01126/F refers), identify basic noise control measures for the site, and compliance with this should have continued to date. As aspects of this document would become out of date with any changes to hours, we request that the following condition is attached to any approval issued:

'No operation of machinery or plant shall occur outside of the hours of 0700-1700 until a scheme to protect the neighbours from noise has been submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented as approved before the approved hours are brought into use.'

## **REPRESENTATIONS**

**FOUR** letters of **OBJECTION** received from the neighbouring three dwellings, The Walnuts, Walnut Tree Cottage and Walnut Barn. The issues raised are-

- The conditions were imposed to protect amenity of neighbouring residents. Nothing has changed to warrant removal of conditions. Any relaxation would adversely affect neighbouring properties. The site has turned from an old farmhouse to a commercial unit, with the disturbance being unbearable.
- Submitted many complaints over the years re noise and disturbance, now with loud music at 9-10pm from a caravan in the yard where someone is living.
- The company has increased operations, and it is not standard practice for construction works to operate 11 hours a day. They usually cease at 4pm Monday to Friday. It is grossly unfair to allow approx. 60hours of operation knowing an even great detrimental effect on residential amenity.
- Current restrictions have not hindered growth of business. The application states that the present time restrictions are causing delivery problems which is difficult to believe apart from the fact that most building materials are delivered direct to the relevant site.
- It has been established that there has been a failure by the Planning Department to deal with this development in the correct manner and we have been consistently let down. I trust that more consideration will be afforded to the residents of the 3 remaining properties on this occasion.

## **LDF CORE STRATEGY POLICIES**

**CS06** - Development in Rural Areas

**CS08** - Sustainable Development

**CS10** - The Economy

## **SITE ALLOCATIONS AND DEVELOPMENT MANAGEMENT POLICIES PLAN 2016**

**DM15** – Environment, Design and Amenity

## **NATIONAL GUIDANCE**

National Planning Policy Framework (NPPF)  
Planning Practice Guidance (PPG)

National Planning Policy Framework – sets out the Government’s planning policies for England and how these are expected to be applied.

National Planning Practice Guidance - Provides National Planning Practice Guidance, in support of and in addition to the NPPF

## **PLANNING CONSIDERATIONS**

- Principle of Development and Planning History
- Neighbour Amenity Issues

## **Principle of Development and Planning History**

The site falls outside the development boundary for Tilney All Saints, which is categorised as a Rural Village in the adopted Local Plan.

The use is already accepted on site as a result of the planning consent and appeal decisions. The site was the subject of an appeal against an Enforcement Notice: 'without planning permission, the unauthorised material change of use of agricultural barn and hay stores to builder's yard, storage and office'. The Enforcement Notice was quashed and the Inspector established that there was no dispute that the site was being used as a builder's yard, with associated storage and office space but it was the Council's view that the use lapsed upon non-compliance of the conditions. The Inspector did not agree and concluded that the failure to comply with the conditions had not resulted in an unauthorised use as described in the notice, and that planning permission for the use of land remains intact.

There were further planning consents for the conversion of the workshop to an office and the construction of a new workshop building (ref: 15/01963/F). Also the construction of a second storage building (ref: 17/01298/F), which is yet to be constructed but will be sited to the rear of the first workshop, both of which are in the place of steel agricultural shelters to the east of the site.

The proposed application is to vary condition 4 of planning consent 17/01298/F to amend the working hours of the site. In principle the use of the site is already established and so consideration should be given to the balance between supporting local business and the amenity of neighbouring dwellings which should be considered in accordance with policy DM15.

## **Neighbour Amenity Issues**

The existing Condition 4 of 17/01298/F states-

'No machinery shall be operated, no process shall be carried out and no deliveries taken at or despatched from the workshop building outside the hours of 07:00 – 17:00 on weekdays nor at any time on Saturdays Sundays, Bank or Public Holidays.'

The applicant proposes that this is amended to read-

'Plant/machinery shall only be operated at the premises between the hours of 0700 and 1800 on weekdays, 0700 and 1300 on Saturdays, and at no time on Sundays Bank or Bank/Public Holidays.'

As stated above the applicant originally requested 7am to 1pm however it was considered 8am on a Saturday would be a more reasonable time for neighbouring residents and the applicant is satisfied with this. Further the wording of the Condition should remain as per existing other than the amended operating hours as it gives tighter control. There are a number of objections to the application from the neighbouring dwellings relating to the noise and disturbance of the existing use. They state that it has a detrimental impact on neighbour amenity and is unfair to extend the hours of use. Concerns are raised that as the business grows it will continue to have an adverse impact on neighbours.

The CSNN team have clarified that while there has been ongoing complaints made relating to the use of the site (the majority relating to noise), these have been investigated. In each case there was insufficient evidence and therefore there are no grounds to object to this application. They do however request a condition is attached to ensure a noise protection scheme is submitted and agreed. On the basis of the amended hours of operation, the advice and information provided by the CSNN team indicates on balance it would be difficult

for the Local Planning Authority to substantiate a refusal to the application based on noise, in accordance with Policy DM15.

With regards to the non-compliance with planning conditions and the reported siting of a caravan on the site, any complaint made has and will be picked up by the Enforcement Team and fully investigated.

## **CONCLUSION**

In principle the proposed development is supported by national policy and Local Plan policies CS06 and CS10. The use of the site for a builders yard, storage buildings and an office is already established and this application seeks to amend current hours of operation to increase weekly working days by 1 hour until 6pm, and to work Saturdays between 8am and 1pm. This application has received a number of objections from the three neighbouring dwellings. Having given careful consideration to the objections raised, it is our view that a balance needs to be made between supporting an existing, successful, local employment use with an established planning consent, while protecting the amenity of neighbouring dwellings where they state the existing business does cause them noise and disturbance.

However in the absence on an objection, or any evidence from the CSNN team it is recommended that Members approve the amended condition to allow the business to operate between 7am to 6pm Monday to Fridays, and 8am to 1pm on Saturdays. Previous conditions have been reviewed as part of this application and amended accordingly.

## **RECOMMENDATION:**

**APPROVE** subject to the imposition of the following condition(s):

- 1 Condition: The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
- 1 Reason: To comply with Section 91 of the Town and Country Planning Act, 1990, as amended by Section 51 of the Planning and Compulsory Purchase Act, 2004.
- 2 Condition: The development hereby permitted shall be carried out in accordance with the following approved plans (Drawing Nos SE-803-10B, 11B, and Topographical Survey 4828-1 Parts 1 and 2).
- 2 Reason: For the avoidance of doubt and in the interests of proper planning.
- 3 Condition: No development above foundation level on the new workshop shall take place until a detailed scheme for the sound insulation of the new workshop building has been submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented as approved before the development is brought into use and thereafter maintained as such.
- 3 Reason: In the interests of the amenities of the locality in accordance with the principles of the NPPF.
- 4 Condition: No machinery shall be operated, no process shall be carried out and no deliveries taken at or despatched from the workshop building outside the hours of 07:00 – 18:00 on weekdays, 08:00 – 13:00 on Saturday nor at any time on Sundays Bank or Public Holidays.

- 4 Reason: In order that the Local Planning Authority may retain control over the development in the interests of the amenities of the locality in accordance with the NPPF.
- 5 Condition: The Roller shutter doors on the SW elevation of the workshop and the pedestrian accesses on the SE & NE elevation shall remain closed other than when being used for access and egress from the building.
- 5 Reason: In the interests of the amenities of the locality in accordance with the principles of the NPPF.
- 6 Condition: The use of the workshop shall be limited to the storage of dry goods and equipment only. Works to fabricate or otherwise construct, finish, renew or repair building or other construction related materials including vehicles should be limited to the use of hand tools only.
- 6 Reason: In the interests of the amenities of the locality in accordance with the principles of the NPPF.
- 7 Condition: No operation of machinery or plant shall occur outside of the hours of 0700-1700 Monday to Friday nor at any time on Saturdays, Sundays, Bank or Public holidays until a scheme to protect the neighbours from noise has been submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented as approved before the approved hours specified in Condition 4 are brought into use.
- 7 Reason: To ensure that the amenities of future occupants are safeguarded in accordance with the NPPF.