

Parish:	Marshland St James	
Proposal:	REMOVAL OR VARIATION OF CONDITION 2 OF PLANNING PERMISSION 19/01247/F: Retrospective sub-division of old industrial unit	
Location:	Rapiscan Systems Vacant Middle Drove Marshland St James PE14 8JT	
Applicant:	MCR Property Group	
Case No:	20/02044/F (Full Application)	
Case Officer:	Mr K Wilkinson	Date for Determination: 4 February 2021 Extension of Time Expiry Date: 11 March 2022

Reason for Referral to Planning Committee – At the instruction of the Planning Committee Sifting Panel (09.02.22) and the views of the Parish Council are contrary to the Officer recommendation.

Neighbourhood Plan: No

Case Summary

The application site lies on the western side of Middle Drove, Marshland St James, close to Neep's Bridge over the Middle Level Main Drain, approx. 2km south of its junction with School Road.

Planning permission is sought to vary hours of operation of a collection of industrial units, to allow additional indoor working at the start and end of the currently authorised timeframes.

Key Issues

- Site History
- Principle of the development
- Impact upon residential amenity of nearby properties
- Other material considerations

Recommendation

APPROVE

THE APPLICATION

Planning permission is sought to vary condition 2 attached to planning permission granted under ref: 19/01247/F which states as follows:

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“2. No machinery shall be operated, no process or work shall be carried out and no deliveries shall be taken at, or despatched from, the site outside the hours of 0800 to 1800 Mondays to Fridays, 0900 to 1300 on Saturdays, nor at any time on Sundays, Bank or Public Holidays.

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 and Policy DM15 of the SADMPP.”

The new wording for condition 2 proposed by the applicants is as follows:

“No deliveries shall be taken at, or despatched from, the site outside the hours of 0800 to 1800 Mondays to Fridays, 0900 to 1300 on Saturdays, nor at any time on Sundays, Bank or Public Holidays.

No machinery shall be operated, no process or work shall be carried out outside the hours of 0600 to 1900 Mondays to Fridays, 0600 to 1400 on Saturdays, nor at any time on Sundays, Bank or Public Holidays.

Free-field ambient noise levels at the red line boundary defined in the Noise Management Plan, P4236/R02a/PJK, due to noise breaking out of the industrial units should not exceed 40dBLAeq,15min between 0600 to 0800 and 1800 to 1900 Monday to Friday and 0600 to 0900h and 1300 to 1400h on Saturdays.”

This essentially seeks to allow additional working within the buildings between 6-8am and 6-7pm Monday to Friday plus 6-9am and 1-2pm on Saturday (i.e. a further 7 hours of work per week). During those additional hours where necessary all windows and roller shutter doors in certain units will be closed.

SUPPORTING CASE

The agent has submitted the following statement in support of this proposal:

“The application seeks to amend the delivery and working hours for the existing 9 local businesses on the site which currently employs 70 people. The primary reason for the application is to help sustain the existing local businesses and jobs in this rural location.

The application site has been in use as an employment/ industrial site since the 1970’s where, prior to sub-division works, had been used much more intensively with in excess of 160 employees working on the site for Herbert Engineering/Systems. This involved longer hours of work and significantly more deliveries and activity taking place both in the early hours of the morning and weekends.

As members will note from the planning officer’s report, the application originally sought to allow a wider range of hours for deliveries and works on the site. Following lengthy discussions with planning officers and the Environmental Health Officer (EHO) the application has been substantially amended.

In response to concerns raised by residents and the EHO the application has been amended to remove any extension to the hours in which deliveries can be taken at, or despatched from, the site.

Notwithstanding this and the fact that there are no restrictions on the hours of vehicles entering and exiting the site itself, the applicant has agreed with officers, as part of a detailed Noise

Management Plan, that any HGV's entering the site outside the permitted offloading/loading hours, are to park away from residential properties in a specific area of the site.

In terms of hours of working inside the buildings following detailed discussions with the EHO the applicant/businesses on the site have agreed to reduce the number of additional hours sought in the application. A robust and widely accepted noise level planning condition is proposed and as part of a detailed Noise Management Plan, a noise complaint management system is proposed and would be in place in the unlikely event that a noise complaint be received.

Accordingly, the application proposals are fully in accordance with both development plan and national planning policy with support from both your planning and environmental health officers. We therefore respectfully ask councillors to support planning officer's recommendation and grant planning permission for the proposal."

PLANNING HISTORY

22/00140/A: Pending decision: Advertisement application for 2 x roadside non-illuminated business signs

19/01247/F: Application Permitted: 02/12/19 - Retrospective sub-division of old industrial unit (Delegated decision)

06/01041/F: Application Permitted: 26/06/06 - Construction of free-standing building for washing, drying and storing (Delegated decision)

2/99/1215/F: Application Permitted: 02/11/99 - Extension to existing factory after demolition of building (Delegated decision)

2/98/1107/F: Application Permitted: 18/09/98 - Use of building without complying with Condition 2 of planning permissions 2/87/3177/F 2/89/4102/F and 2/90/0307/F to allow General Industrial Use (Delegated decision)

2/97/0247/F: Application Permitted: 21/03/97 - Extension to office block (Delegated decision)

2/93/1589/F: Application Permitted: 15/12/93 - Extension to factory (Delegated decision)

2/93/1184/F: Application Permitted: 15/09/93 - Loading bay extension to existing works (Delegated decision)

Front/SE portion of overall site area:

12/01869/F: Application Permitted: 01/03/13 - Extension to existing factory to form storage area (Delegated decision)

RESPONSE TO CONSULTATION

Parish Council: OBJECT due to noise or disturbance resulting from use, including proposed hours of operation which would have a detrimental impact on amenity of neighbours and highways concerns regarding any extension to the periods of operation.

Environmental Health & Housing – Community Safety & Neighbourhood Nuisance: NO OBJECTION – subject to new condition restricting uses and addition of an informative note to be added to any consent.

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REPRESENTATIONS

A total of **TWELVE** items of correspondence (8 no. to initial scheme and 4 no. to amended proposal) from **6** no. households raising **OBJECTION** on the following summarised grounds:

- Noise levels from site are already causing sleep disturbance and enjoyment of our house and garden.
- Unacceptable that the burden of complaint lies with the local residents – it is for the owners to explain the restrictions to the tenants.
- There is no reason to vary the existing condition of use.
- The ability to start work at 0600 every weekday and a Saturday. They are already doing this with cars coming into the site from 0530 and this is having a significant impact on our quality of life. Our preference would be that they are allowed to start work at 0700 on a weekday with the noise restriction in place but not until 0800 on a Saturday as this will have a significant impact on the glamping business.
- There is still the allowance for HGVs arriving at any time. This is already causing a lot of disruption to us as again this already happening and our house shakes when they go past so I must request that this is not allowed to happen and that HGVs must arrive and depart during the agreed working hours.
- The HGV holding area is still at the back of our first meadow and if these arrivals and departures are allowed 24 hours a day it means that we will NOT be able to use the first meadow for glamping at all and will halve our business revenue.
- The house and meadow and farm cottages have all been sold to individuals who bought the properties knowing that the current planning regulation were in place. Also planning was granted for our glamping business again with the industrial site working hours taken into consideration. This outweighs the history of the site.
- The Noise survey carried out has taken place when strangely there were minimal movements or staff on site. I would propose an independent survey be utilised over a period of time. The following morning it was back to normal high levels.
- Impact to surrounding property values.
- No issue with the current operational hours if they are followed and controlled.
- No signage stating operational hours or required noise levels anywhere to be seen.
- Impact upon wildlife.
- Unsure how "Only welding" can be achieved without the associated noise of grinding, cutting or movement/positioning of the materials being joined.
- Unacceptable that the burden of complaint resides purely on the residents.

LDF CORE STRATEGY POLICIES

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)

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PLANNING CONSIDERATIONS

Site History

It is evident from aerial imagery and the Planning History section above, that there have been industrial uses on this site since the early 1970s (formerly operated by RJ Herbert Engineering Ltd until 2017) and from research it appears that general industrial use (Class B2) was authorised in 1998 when the business evolved from local market potato graders into the world-wide market, and changing most latterly to commercial conveyor systems used in airports. However, hours of operation were not restricted/conditioned (with the exception of the washing facility permitted in 2006).

The property was bought by the current owners/applicants and planning permission was granted under application ref: 19/01247/F for the retrospective sub-division into smaller units and mix of Class B1, B2 & B8 uses.

It is clear that the former business evolved and expanded over time and nearby dwellings were occupied by owners/relations, so the activity was somewhat self-controlled, however circumstances and ownerships had significantly changed in the interim. Our CSNN colleagues suggested a condition to the effect of : “No machinery shall be operated, no process or work shall be carried out and no deliveries shall be taken at or despatched from the site outside the hours of 0800 to 1800 on weekdays, 0900 to 1300 on Saturdays nor at any time on Sundays, Bank or Public Holidays.” This was attached to that permission as Condition 2. No other operational restrictions were imposed.

Principle of the Development

Core Strategy Policy CS08 of the LDF states inter alia:

“All new development in the borough should be of high quality design. New development will be required to demonstrate its ability to: protect and enhance the historic environment; enrich the attraction of the borough as an exceptional place to live, work and visit; respond to the context and character of places in West Norfolk by ensuring that the scale, density, layout and access will enhance the quality of the environment; optimise site potential, making the best use of land including the use of brownfield land; enhance community wellbeing by being accessible, inclusive, locally distinctive, safe and by promoting healthy lifestyles (see Policy CS14 Community & culture); achieve high standards of sustainable design.”

Core Strategy Policy CS10 states inter alia:

“The Council will support the rural economy and diversification through a rural exception approach to new development within the countryside; and through a criteria based approach to retaining employment land and premises. Permission may be granted on land which would not otherwise be appropriate for development for an employment generating use which meets a local business need. Any development must satisfy the following criteria:

- It should be appropriate in size and scale to the local area;
- It should be adjacent to the settlement;
- The proposed development and use will not be detrimental to the local environment or local residents.”

Policy DM15 of the SADMPP states inter alia:

“Development must protect and enhance the amenity of the wider environment including its heritage and cultural value. Proposals will be assessed against their impact on neighbouring

uses and their occupants as well as the amenity of any future occupiers of the proposed development. Proposals will be assessed against a number of factors including:

...Noise...Light pollution...

Development that has a significant adverse impact on the amenity of others or which is of a poor design will be refused.”

The NPPF states:

“130. Planning policies and decisions should ensure that developments: ...(f) create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users; and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience.

174. Planning policies and decisions should contribute to and enhance the natural and local environment by:

...e) preventing new and existing development from contributing to, being put at unacceptable risk from, or being adversely affected by, unacceptable levels of soil, air, water or noise pollution or land instability. Development should, wherever possible, help to improve local environmental conditions...

187. Planning policies and decisions should ensure that new development can be integrated effectively with existing businesses and community facilities (such as places of worship, pubs, music venues and sports clubs). Existing businesses and facilities should not have unreasonable restrictions placed on them as a result of development permitted after they were established. Where the operation of an existing business or community facility could have a significant adverse effect on new development (including changes of use) in its vicinity, the applicant (or ‘agent of change’) should be required to provide suitable mitigation before the development has been completed.”

These will be addressed in the next part of this report.

Impact upon residential amenity of nearby properties

This application initially sought to allow more extensive operations at, and deliveries to/from, the site (including Sundays and Bank Holidays), but this was amended following protracted negotiations with our CSNN colleagues.

As stated above, the proposed new wording as agreed by all parties for condition 2, is as follows:

“No deliveries shall be taken at, or despatched from, the site outside the hours of 0800 to 1800 Mondays to Fridays, 0900 to 1300 on Saturdays, nor at any time on Sundays, Bank or Public Holidays.

No machinery shall be operated, no process or work shall be carried out outside the hours of 0600 to 1900 Mondays to Fridays, 0600 to 1400 on Saturdays, nor at any time on Sundays, Bank or Public Holidays.

Free-field ambient noise levels at the red line boundary defined in the Noise Management Plan, P4236/R02a/PJK, due to noise breaking out of the industrial units should not exceed 40dBLAeq,15min between 0600 to 0800 and 1800 to 1900 Monday to Friday and 0600 to 0900h and 1300 to 1400h on Saturdays.”

This essentially seeks to allow additional working within the buildings between 6-8am and 6-7pm Monday to Friday plus 6-9am and 1-2pm on Saturday (i.e. a further 19 hours of work per week). During those additional hours where necessary all windows, high-level vents and roller shutter doors in certain units will be closed. Four of the nine units are affected which lie towards the rear of the site and contain the following businesses: East Anglia Steel, Securafence, JM Technical and Selfcair Manufacturing.

The proposal is accompanied by a Noise Management Plan produced by consultant acoustic engineers. Our Environmental Health Manager (Community & Partnerships) states the following in response to this submission:

“Further to the amended noise report and withdrawal of proposed new delivery hours for this application, as outlined in the planning agent’s letter of the 18th January and AEC REPORT: P4236/R02a/PJK, I am satisfied that the proposed conditions can be agreed.

I have noted public concern about ancillary noise associated with welding activities and general site noise. This is addressed within the noise report and the applicant is reminded of the need to undertake appropriate training for staff and also the potential requirement for additional noise attenuation.

I would ask that in addition to the proposed conditions in the applicant’s letter that the Statutory Nuisance informative, is also added to any permission granted.”

The Noise Management Plan introduces an in-house complaints procedure:

- 3.1 *Local residents should be provided with a means by which a noise complaint can be made. This could be in the form of a letter, email, newspaper advert or via a website. Any communication should include a telephone number for noise complaints.*
- 3.2 *Should a noise complaint be received, MCR Property Group will provide an empathetic and polite response in order to minimise the risk of escalation. This will entail making time to fully listen to the complaint, document the details and plan to take appropriate action.*
- 3.3 *Should a noise complaint be received, it will be investigated and if activity noise is clearly above the limits set out in this document, immediate action will be taken to reduce noise levels at source.*
- 3.4 *The responsible person(s) on-site will log the complaint, detailing the time of complaint, address and any action taken. They should be willing to meet with the complainant and/or arrange phone call or meeting where appropriate.*
- 3.5 *Once a complaint has been received, a visual inspection will be undertaken to ensure that all doors, windows and other ventilation openings are closed and there are no areas of disrepair in the external envelope.*
- 3.6 *If complaints continue noise measurements will be undertaken at the location identified as NML on Figure 1 to determine if the noise level limit outlined in Section 1.0 has been exceeded. If the noise level limit has been exceeded and investigation will be undertaken to determine the cause and mitigation measures will be provided.*

This ‘in-house complaints procedure’ is purely a voluntary measure and, albeit a further level of control by the owners/managers of the site, this does not replace the restrictive condition which is enforceable by our Planning function. It is therefore separate from both Planning and Environmental Health enforcement measures. Contrary to third party comments, the onus is not on them to resolve complaints with the owners.

Under the Environmental Protection Act 1990, the Local Authority has a duty to investigate complaints of noise nuisance and should a complaint be received, irrespective of planning consent, the Local Authority may (on determination of a Statutory Nuisance) serve a legal notice requiring any said nuisance to be abated. Failure to comply may result in prosecution.

There are therefore provisions beyond planning control to resolve any statutory nuisance caused by site operations.

Vibration from passing HGVs to existing buildings has been taken into consideration in assessing the impact upon residential amenity. There are no restrictions in terms of the number of deliveries to and from the site during existing operational times and is not considered to be materially affected by this proposal.

Given the noise control measures contained within the Noise Management Plan and definitive noise levels at the relevant site boundaries, these are measurable and considered to be acceptable to both Enforcement and CSNN colleagues. The extended hours of operation at the beginning and end of working days are considered to be acceptable, comply with national guidance, and the provisions of the Development Plan.

Other material considerations

With regards to traffic implications, there are no restrictions upon the number of HGV or other vehicular movements to and from the site. From the consultation response relating to application ref: 19/01247/F, the LHA raised no objection to the proposal, as the Ground Floor Area remained constant and was considered to be self-restricting and consistent in terms of traffic generation.

There are adequate parking and servicing areas contained within the site to meet current standards and accommodate the associated workforce and visitors.

A 'glamping' holiday facility in shepherd huts has been approved on land to the south of the site (April 2012: 20/01832/F). This has been taken into consideration when making this assessment and the industrial units existed prior to that consent.

There are no significant Crime and Disorder issues raised by this proposal.

Additional comments in response to objections raised:

The effect of development (either up or down) upon the value of adjoining properties, is not a material planning consideration.

There are no significant implications relating to wildlife.

Wear and tear upon the bridge is to be expected and is not considered to be grounds for refusal with this application.

CONCLUSION:

This is an application to vary a condition, to allow more flexibility in working arrangements for the occupiers of the industrial units, to help the operation of their businesses. Planning policy is generally supportive of established businesses, although it has to be balanced with impact upon the local residents.

There has been a great deal of discussion and negotiation with Environmental Health (CSNN) to get to a position where a suitably worded and varied condition can be supported, without having an unacceptable impact upon nearby residents.

The proposal is therefore considered to comply with the provisions of Paragraphs 130, 174 & 187 of the NPPF, Policy CS08 of the LDF and Policy DM15 of the SADMPP.

The application is therefore duly recommended for approval.

RECOMMENDATION:

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

- 1 Condition: The development hereby permitted shall be carried out in accordance with the following approved plans: HAL19-HE-110 Revision A, HAL19-HE-200 Revision A, HAL19-HE-201 & HAL19-HE-210 Revision A.
- 1 Reason: For the avoidance of doubt and in the interests of proper planning.
- 2 Condition: No deliveries shall be taken at, or despatched from, the site outside the hours of 0800 to 1800 Mondays to Fridays, 0900 to 1300 on Saturdays, nor at any time on Sundays, Bank or Public Holidays. No machinery shall be operated, no process or work shall be carried out outside the hours of 0600 to 1900 Mondays to Fridays, 0600 to 1400 on Saturdays, nor at any time on Sundays, Bank or Public Holidays. Free-field ambient noise levels at the red line boundary defined in the Noise Management Plan, P4236/R02a/PJK, due to noise breaking out of the industrial unit units should not exceed 40dB(A)eq, 15min between 0600 to 0800 and 1800 to 1900 Monday to Friday and 0600 to 0900h and 1300 to 1400h on Saturdays.
- 2 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 and Policy DM15 of the SADMPP.