

MC/14/1429

Date Received: 22 May, 2014

Location: Flanders Farm (Land Adjacent To Bellwood Cottages), Ratcliffe Highway, St Mary Hoo, Rochester, ME3 8QD

Proposal: Variation of condition 14 on planning permission MC/08/1121 to allow changes to the hours of operation

Applicant: AC Goatham and Son

Agent: Mr Ogden Bloomfields 77 Commercial Road Paddock Wood Tonbridge Kent TN12 6DS

Ward Peninsula

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**Recommendation of Officers to the Planning Committee, to be considered and determined by the Planning Committee at a meeting to be held on 10 September, 2014.**

#### **Recommendation - Refusal**

- 1 The proposed variation in the hours will result in an unacceptable impact on the amenities of the occupiers of the closest residential properties in the vicinity of the site, which they could reasonable expect to be able to continue to enjoy in this rural location. As such the proposed variation in the hours of operation would result in a development that is contrary to Paragraph 123 of the National Planning Policy Framework, DEFRA's Noise Policy for England 2010 and Policy BNE2 of the Local Plan.

#### **Proposals**

This application seeks a variation of condition 14 of planning permission MC/08/1121 to allow changes to the hours of operation at this site. Condition 14 of the outline planning permission for the complex stated:

*"The use hereby permitted shall only operate between the hours of 6:30 to 18:30 Mondays to Fridays inclusive and between the hours of 7:00 to 13:00 on Saturdays and at no times on Sundays and, Public Holidays unless otherwise agreed in writing by the Local Planning Authority."*

The reason for imposing the conditions was:

*"To regulate and control the permitted development in the interests of amenity in accordance with Policy BNE2 of the Medway Local Plan 2003."*

This is an application to vary the hours in the following manner:

A: the packhouse and store buildings (including the offices and staff facilities) to be used between 06:30 and 20:30;

B: the lorry parking area (with the adjacent fruit bin storage the subject of MC/14/1414) to be used between 07:00 and 20:00 Monday to Saturday with no Sunday working;

C: the loading dock and access to the east to be used between 06:30 and 22:00.

There is a note to suggest that there will be seasonal variation, but the applicant is unable to provide exact details as they advise that these will be in response to particular conditions.

### **Relevant Planning History**

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| MC/14/1812 | EIA Screening opinion in relation to the proposed construction of a new packhouse and store.<br>Decision: not EIA Development<br>Decided 16 July 2014   |
| MC/14/1737 | Change of use of land and creation of an access, provision of a hardstanding and noise attenuation barrier and the stationing of diesel fuel storage tanks and delivery point<br>Decision - Still Current   |
| MC/14/1418 | Change of use of land and creation of a area of hardstanding to provide for the stationing and storage of 6 caravans for agricultural workers<br>Decision - Still Current                                   |
| MC/14/1415 | Retention of diesel fuel storage tanks and delivery point<br>Decision - Still Current   |
| MC/14/1414 | Retention of a hardstanding for the storage of agricultural fruit bins<br>Decision - Still Current  |
| MC/14/1407 | Retention of two smoking shelters<br>Decision – Approved<br>Decided – 14 August 2014  |
| MC/14/0936 | Details pursuant to condition 10 of planning permission MC/08/1121<br>- Outline application for construction of a fruit processing and storage facility with associated parking<br>Decision - Still Current |
| MC/14/0778 | Erection of a noise attenuation barrier<br>Decision – Approved<br>Decided   |

- MC/13/2742 Application to remove condition 14 (hours of operation) of planning permission MC/08/1121  
Decision Withdrawn by Applicant  
Decided 8 May, 2014
- MC/13/2741 Variation of condition 1 to allow for a minor material amendment to planning permission MC/11/2579 to alter the elevations of the buildings with the insertion of additional openings and the extension of the hardstanding area to the southwestern end of the buildings  
Decision Approval with Conditions  
Decided 13 March, 2014
- MC/13/2740 The change of use and creation of an area of hardstanding to provide for the stationing and storage of 6 caravans for agricultural workers, the change of use and the creation of an area of hardstanding for storage of apple bins and the parking of vehicles including HGVs and the erection of two smoking shelters  
Decision Withdrawn by Applicant  
Decided 8 May, 2014
- MC/12/1542 Application for Prior Notification under Part 6 of the Town and Country Planning (General Permitted Development) Order 1995 (as amended) for the construction of a reservoir  
Decision No Application Required  
Decided 25/07/2012
- MC/12/1537 Details pursuant to condition 19 of planning permission MC/08/1121 - Outline application for construction of a fruit processing and storage facility with associated parking  
Decision Discharge of Conditions  
Decided 25/07/2012
- MC/12/1432 Details pursuant to condition 3 of MC/11/2579 for application for approval of reserved matters (layout, scale, appearance, access & landscaping) pursuant to outline permission MC/08/1121 for construction of a fruit processing & storage facility with associated access  
Decision Discharge of Conditions  
Decided 29/08/2012
- MC/11/2579 Application for approval of reserved matters (layout, scale, appearance, access & landscaping) pursuant to outline permission MC/08/1121 for construction of a fruit processing & storage facility with associated access  
Decision Approval With Conditions  
Decided 25/04/2012
- MC/08/1121 Outline application for construction of a fruit processing and storage facility with associated parking  
Decision Approval with Conditions

Decided 19/01/2011

MC/07/0200 Outline application for construction of a fruit processing and storage facility with associated parking  
Decision Refusal  
Decided 24/07/2007  
Appeal Withdrawn

## Representations

The application has been advertised on site and by individual neighbour notifications to the owners and occupiers of properties in the vicinity.

## Objectors

Due to the number of current applications (see history section above), some representations have been made on a combined basis with some referring generally to the operations of the packhouse complex. Nine letters / e-mails of objection, from different addresses, have been received. The representations refer to the fact that developments have taken place without permission or in a different form to that permitted and allege breach of the conditions on the permission, including hours of use. Additionally the objections of a general nature, which are summarised below, point out:

- that this is a rural location and the complex has been constructed on agricultural land 'that should not be used for industrial premises';
- There is concern that produce is not local and may be foreign;
- It is suggested that the jobs are not for local people;
- The whole operation is unsightly;
- Late night usage with lights, traffic movements with beepers causes disturbance to residents and adverse impact to wildlife; and
- Obstructions to public rights of way and adverse impact on health and safety are alleged.

In relation to this specific application the submitted representations, which are summarised below, refer to:

- Detriment to residential amenity (as current operation)
- Noise nuisance; it is suggested that the assessment contains insufficient data
- An assessment should be made once the noise barrier is in place.
- The application includes vague references to 'overflow operations'
- It is alleged that the applicant has a history of failure to comply with conditions and cannot be expected to do so in future
- Late night operation will include floodlights
- There is no need given the type of produce.

The **applicant's** submitted statement with the submission that makes general points related to the benefits of the business locally. It state that:

- 1 in 6 of home grown apples sold in Britain are grown and supplied by this company;
- The company has awards for fruit growing and is involved in research in top fruit;
- The facility was built in 2013 with DEFRA grant funding;
- The company has invested some £10m on this site alone, which has removed 11000 road miles from operations and saved carbon;
- The company contributes an estimated £100m to the Kent economy in the last 7 years. It employs 230 full time equivalent staff, 300+ seasonal staff and 'influences' some 1200 jobs in Kent.

**High Halstow Parish Council** has written advising that they have no objection.

**Hoo St Werburgh Parish Council** object. This Parish Council refers to non-compliance with this and other conditions and raises concern in relation to non compliance with policies BNE2 and BNE26.

### **Development Plan**

The Development Plan for the area comprises the adopted Medway Local Plan 2003 (Local Plan). The policies referred to within this document and used in the processing of this application have been assessed against the National Planning Policy Framework, 2012 and are considered to conform.

### **Planning Appraisal**

#### *Background*

Flanders Farm is a packhouse and store complex situated on the north side of the Ratcliffe Highway between Hoo and High Halstow. It has been constructed following an outline planning permission (MC/08/1121) granted in January 2011. There are two main buildings with access off the old section of Ratcliffe Highway and hardstanding at either end, car parking to the south and a detention reservoir to the north east. Additional developments have been undertaken including the construction of a hardstanding for storage of fruit bins and a diesel tank with pumps on the eastern side and a hardstanding for the stationing of caravans on the north side. The complex is used for storing, sorting and packing top fruit (apples) and serves some 34 farms.

Since its completion in 2013 the development has been the subject of a number of complaints from people in the area alleging failure to comply with various conditions as well as adverse impact on amenities from noise and lights. This application related to one of those areas of complaint and seeks to vary condition 14 of planning permission MC/08/1121 to allow changes to the hours of operation at this site as specified in the Proposals section above.

The complex is in the open countryside with orchards to the north, south and west. Some of the orchards were cleared to make way for the complex. There is a public

footpath running east west along the site boundary to the north east of the complex. The site is within the Area of Local Landscape Importance (ALLI) identified in the Local Plan and the Hoo Peninsula Farmland in the Medway Landscape Character Assessment.

There are residential properties to the west and south on the old Ratcliffe Highway.

### *Main Issues*

The main issues in the determination of these applications are whether there is justification for the variation in the hours of works, within the various areas of this complex and the resultant impact of the varied hours on character, amenities and appearance of the countryside and local residents having regard to the policies of the development plan and the NPPF.

### *Assessment*

It will be seen from the history that planning permission was granted for the packhouse and store complex which serves a number of fruit farms. It is recognised that this is a business that is integrally linked with local fruit production and contributes to the economy as well as being part of the chain involved in bringing agricultural produce to consumers.

At the same time it is located in the open countryside, with residential properties nearby. It is within an Area of Local Landscape Importance and is visible from an adjacent footpath as well as roads in the vicinity and parts of High Halstow. A number of conditions were imposed on the outline permission to seek to regulate and control the development and safeguard the amenities of the area.

Condition 14 (quoted above) of the planning permission MC/08/1121, for the packhouse, related to the hours of operation and did not differentiate between the different parts of the site. The reason given for the condition was:

To regulate and control the permitted development in the interests of amenity in accordance with Policy BNE2 of the Medway Local Plan 2003.

As noted the business has been running since completion in 2013 and the supporting information says that the condition has been found to be a restriction when fulfilling orders and can conflict with legal requirements in relation to lorry movements. This application seeks to have an alternative condition relating to the hours of operation which applies different hours to different parts of the site.

Taking the proposals in the three parts proposed, the first is to increase the hours of the packhouse and store to cease at 8:30pm rather than 6:30pm and include Sundays and public holidays. This will inevitably include some activity between and around the buildings including the car park to the south of the building, in particular at arrival and departure times. The second relates to the lorry parking area in the northern corner of the site where hours are to increase to 8:00pm Mondays to Saturdays. The third relates to the outside area of the loading dock where the intention is to increase to 10:00pm every day.

The main issue to consider is the impact on the amenities of the area including both the rural amenity as well as residential amenity. In considering this application it is relevant to look at the development as a whole and whether it is acceptable with the new condition. The fact that the development has already taken place has helped with understanding the impacts.

It will be seen from the representations that the hours of operation have given rise to a number of comments from local people including concerns relating to both noise and lighting.

There is clearly a need to balance the interests with, on the one hand a business that contributes to the local economy and provides a service to national retailers and, on the other hand, the amenities of the nearby residential properties and the rural area in which the complex has been built.

The operators are seeking the longest hours in the parts of the site that are closest to residential properties and are outside the building where activities, noise and lighting have the greatest impacts.

The application is accompanied by a noise report that concludes that predicted noise levels overall will fall below the existing background levels. However, some of the individual noise 'events' will certainly exceed the background noise levels. Two points should be noted, firstly the assessments does not appear to take into account the arrival and departure of workers. Secondly, the assessment considers levels of noise as a technical approach, but does not refer to the fact that the noises created are different to those that might otherwise occur in a rural location e.g. movements of significant numbers of fruit bins by fork lift trucks throughout the year.

At the same time the extension of the hours inevitably increases the need to illuminate the exterior of the buildings and the yards. This draws attention to the activities in this otherwise rural location where outside activities would normally be limited to dawn to dusk.

It is clear from the representations that there is disturbance experienced by local residents. This may not be at statutory nuisance level but nevertheless there is evidence of an impact on the amenities enjoyed by the people in the area.

### **Conclusion and Reasons for Recommendation**

Bearing the above in mind, it is considered that the variation in the hours overall as proposed will impact on the amenities of the occupiers of the closest residential properties in the vicinity of the site, which they could reasonable expect to be able to continue to enjoy in this rural location. To extend the hours of operation, as submitted would result in a development which is considered to be contrary to Paragraph 123 of the National Planning Policy Framework, DEFRA's Noise Policy for England 2010 and Policy BNE2 of the Local Plan.

This application would normally fall to be considered under officers' delegated powers but has been reported to Planning Committee for determination due to the number of representations received which express a view contrary to the

recommendation.

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### **Background Papers**

The relevant background papers relating to the individual applications comprise: the applications and all supporting documentation submitted therewith; and items identified in any Relevant History and Representations section within the report.

Any information referred to is available for inspection in the Planning Offices of Medway Council at Gun Wharf, Dock Road, Chatham ME4 4TR and here <http://planning.medway.gov.uk/dconline/AcolNetCGI.gov>