

MC/16/2281

Date Received: 24 May, 2016

Location: Buttercrook Wharf (Saga Fashions), Vicarage Lane, Hoo St Werburgh, Rochester, ME3 9LQ

Proposal: Variation of conditions of planning application MC/15/3106 (construction of employment building (Class B1) and associated development including access, car parking, hardsurfacing, boundary treatment, drainage and landscaping):

2(d)(resurfacing of car park and drainage works);  
2(h)(landscaping); and  
11 (implementation of the landscaping)

Applicant: Saga Fashions

Agent: Mr Tony Allen Allen Planning Ltd The Old Fire Station EC Salt Lane SALISBURY SP1 1DU

Ward Peninsula

Case Officer Chris Butler

Contact Number 01634 331700

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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 27 July 2016.**

**Recommendation - Approval with Conditions**

- 1 The development hereby permitted shall be carried out in accordance with the following approved plans and documents: Location Plan SA/15/162.01, Block Plan SA/15/162.02, Proposed Elevations SA/15/162.05A and SA/15/162.06A, Proposed Floor Plan SA/15/162.07 Site Elevations SA/15/162.08, Landscape Planting 2004/13/B/1M, Drizit Wheeled Bin Spill Kit details, TamLite Lighting Compact Floodlight Product Data Sheet, Covered cycle store as supplied by Bike Dock Solutions, the Design and Access Statement (revised October 2015) and the email from Tom La Dell dated 07.01.16

Reason: for the avoidance of doubt and in the interests of proper planning.

- 2 The requirements of the Enforcement Notice dated 4 July 2013 shall be complied with by 15 January 2017, unless the works listed as a. b. c. e. f. and g. below, related to:

- a. The removal of the section of concrete roadway on the eastern side of the site and the reinstatement of that area of land;
- b. The removal of the material deposited beneath the oak tree in the north east corner of the site strictly in accordance with the specified details;
- c. The painting of the walls and roof as specified [see also condition 6 below];
- e. The replacement of the boundary fencing to a height of no more than 2m;
- f. The provision of the cycle store and storage enclosure;
- g. The provision of the Drizit Spill Kit on site

are completed by 31st May 2016 and the works listed as d. and h. below, related to:

d. The resurfacing of the car park and the drainage works including the installation of the oil interceptor; and

h. The landscaping of the site in accordance with the specified details [see also condition 11 below],

are completed by 1st December 2016.

Reason: to ensure the development is completed in a satisfactory manner and to ensure compliance with Paragraphs 123 of the NPPF, the NPPG related to Noise, DEFRA's Noise Policy Statement for England and policies BNE1, BNE2, BNE6, BNE23 and BNE35 of the saved policies of the adopted Medway Local Plan 2003.

- 3 The site shall only be used for any purpose falling within Use Class B1 of the Town and Country Planning (Use Classes) Order 1987 (as amended).

Reason: in the interests of the amenities of the locality and to accord with policies BNE1, BNE2 and BNE3 of the Medway Local Plan 2003.

- 4 No industrial processes including the storage of waste and other materials, plant or equipment, repairs or maintenance activities shall take place outside any of the buildings on the site, save that waste and other materials may be stored within the designated storage enclosure at the southern end of the car park.

Reason: to maintain the visual and rural amenities of the area and to ensure compliance with policies BNE1, BNE2 and BNE3 of the Medway Local Plan 2003.

- 5 The use of the building including any delivery or loading of goods and materials shall only take place between the hours of 0700 to 1800 Mondays to Fridays and between the hours of 0800 to 1300 on Saturdays; there shall be no working on Sundays or public or bank holidays.

Reason: to regulate and control the permitted development in the interests of amenity in accordance with policies BNE2 and BNE3 of the Medway Local

Plan 2003.

- 6 The painting of the building specified shall take place prior to 31<sup>st</sup> May 2016 and again prior to 31<sup>st</sup> May 2026 unless otherwise agreed in writing by the Local Planning Authority.

Reason: To ensure a continuous satisfactory appearance of the building in accordance with policy BNE1 of the Medway Local Plan 2003.

- 7 Only the external lighting shown on the submitted and approved drawings shall be provided and no other external lighting shall be provided without the prior permission of the local planning authority. The lighting on the new building shall only be lit within the operational hours of use as specified in condition 5 above.

Reason: to prevent light disturbance to bird populations in the adjacent SSSI, SPA/Ramsar site to accord with policy BNE35 of the Medway Local Plan.

- 8 No loud speakers, tannoy systems or other type of speaker system shall be installed within the site either freestanding or on the exterior of a building without the prior written permission of the local planning authority.

Reason: in the interests of the amenities of the area and to prevent noise disturbance to bird populations in the adjacent SSSI, SPA/Ramsar site to accord with policy BNE35 of the Medway Local Plan 2003.

- 9 Notwithstanding the provisions of any Development Order, no building shall be extended or altered, no plant or machinery installed, no sewer, main, pipe, cable or other apparatus provided and no hard surfaces shall be laid other than those shown on the approved drawings unless planning permission has been granted on application to the local planning authority.

Reason: to ensure that the development does not prejudice the amenities of the area or the nature conservation interests of the locality to accord with policies BNE1, BNE2 and BNE35 of the Medway Local Plan 2003.

- 10 The areas identified for vehicle parking, loading and unloading and turning shall be kept available for such uses at all times and no development, whether or not permitted by a development Order, shall be carried out on those areas or in such positions as to prevent such use.

Reason: to ensure adequate accommodation for the parking, loading and off-loading and turning of vehicles within the site to avoid hazardous conditions on the public highway in accordance with policy T13 and BNE23 of the Medway Local Plan.

- 11 All planting, seeding and turfing comprised in the approved scheme of landscaping shall be carried out prior to 1st December 2016. Any trees or plants that within 10 years of planting: are removed or become seriously damaged or diseased shall be replaced in the next planting season with

others of a similar size and species unless the Local Planning Authority gives written consent to any variation.

Reason: Pursuant to Section 197 of the Town and Country Planning Act 1990 and to ensure a satisfactory appearance and character of the site in accordance with policies BNE1 and BNE6 of the Medway Local Plan 2003.

**For the reasons for this recommendation for approval please see Planning Appraisal Section and Conclusions at the end of this report.**

## **Proposal**

This application is made under Section 73 of the Town and Country planning Act 1990 (as amended) and seeks a variation of conditions of the approved scheme MC/15/3106:

- 2(d)(resurfacing of car park and drainage works);
- 2(h)(landscaping); and
- 11 (implementation of the landscaping)

by seeking consent to allow a delay in the planting of the agreed landscaping scheme to be completed by 1 December 2016 and the replacement of tarmac with concrete to resurface the existing car park.

It should be noted that the applicant originally sought to include the variation of Condition 2)b (painting of the walls and roof of the building) and Condition 06 (Period within which the painting of the building had to taken place). However, following pre-application advice, these have now been withdrawn from the application.

## **Relevant Planning History**

MC/15/3106	Construction of employment building (Class B1) and associated development including access, car parking, hardsurfacing, boundary treatment, drainage and landscaping. Decision Approval With Conditions Decided 15/01/2016
MC/14/2251	Details pursuant to conditions 3,11,15,16 and 17 of appeal decision APP/A2280/C/13/2203075 (MC/11/2379) for construction of manufacturing unit and alterations to existing office building, alterations to car parking and associated landscaping Decision Decided Appeal Decided
MC/13/3347	Details pursuant to conditions 3, 11, 15 and 17 of planning permission MC/11/2379 construction of manufacturing unit and alterations to existing office building, alterations to car parking and associated landscaping

Decision Split Decision  
Decided 03/03/2014

MC/12/0252 Details pursuant to conditions 3, 11, 15, 16 and 17 of planning permission MC/11/2379 construction of manufacturing unit and alterations to existing office building, alterations to car parking and associated landscaping  
Decision Refusal  
Decided 07/12/2012

MC/11/2379 Construction of manufacturing unit and alterations to existing office building, alterations to car parking and associated landscaping  
Decision Approval  
Decided 18/11/2011

## **Representations**

The application has been advertised on site and by individual neighbour notification to the owners and occupiers of neighbouring properties.

The Environment Agency and Hoo St. Werburgh Parish Council have also been consulted.

**Hoo St Werburgh Parish Council** has written **objecting** to this application stating that they consider that the original conditions of planning should have been adhered to and that Medway Council should insist that the applicants meet their planning obligations.

**One local resident objects** to this submission on the basis that they consider this matter has gone on far too long and there appears no logical reason why the decision of the Inspectorate should not have been implemented long ago.

## **Development Plan**

The development plan for the area comprises the saved policies of the Medway Local Plan 2003 and the Kent Waste Local Plan 1998. The saved policies contained in these documents and used in the processing of this application have been assessed against the provisions of the National Planning Policy Framework (NPPF) and are considered to be consistent.

## **Planning Appraisal**

### *Background*

The application site relates to an area of land approximately 0.55ha in area, located outside of the village boundary of Hoo St Werburgh, about half a kilometre to the south of the village, within the rural area, but at the eastern end of an existing employment area (Vicarage Lane, Hoo St Werburgh) identified in the Medway Local

Plan 2003. Planning Permission was granted in 2011 for the construction of manufacturing unit and alterations to existing office building, alterations to car parking and associated landscaping. However, the development was not implemented in accordance with the approved plans and the Council issued an enforcement notice in 2013 requiring demolition of the building and restoration works to the site.

An appeal against the enforcement notice was lodged with the appointed Planning Inspector (PI); whilst upholding the enforcement notice with variations, he also allowed the appeal, in part, granting planning permission on the application deemed to have been made for the depositing of materials to raise land levels across the Site, the construction of the commercial building on the site, with supporting infrastructure including car parking area and paths, drainage system, lighting, gas tanks and gas system, and the construction of a roadway to the rear of the commercial building, terminating at the south-eastern corner of the new building. This appeal was granted, subject to the imposition of 5 conditions, one of which required details of hard surfacing materials to be approved (See Planning Condition 1) b) of appeal decision APP/A2280/C/13/2203075). All of these conditions were imposed for reasons in the interests of the character and amenities of the area, thus ensuring that the approved development would be mitigated against any adverse impacts.

Disappointingly, the applicants failed to submitted the details in the time required by the appeal decision and a further appeal submitted by the applicant, regarding the submission details pursuant to original deemed consent allowed on appeal was turned away by the Planning Inspectorate as they considered that the appellants had failed to comply with the terms of the conditions imposed.

As a result, the owners of the building found themselves back in the position where they had no planning consent for the development, as constructed, and the original Planning Enforcement Notice could be construed as coming back into effect. This left the Local Planning Authority (LPA) in a difficult position in that a PI had previously allowed the development deeming it to be acceptable subject to the imposition of conditions. In the light of this fact, the LPA had to consider whether it was expedient to pursue further enforcement action or whether to seek to resolve the outstanding matters by the further negotiation and submission of a new full planning application. The LPA chose the latter course of action bearing in mind the Governments National Planning Practice Guidance (NPPG) related to "Ensuring Effective Enforcement" which states at Paragraph ID 17b-011-20140306:

*"Enforcement action should... be proportionate to the breach of planning control to which it relates and taken when it is expedient to do so. Where the balance of public interest lies will vary from case to case. In deciding, in each case, what is the most appropriate way forward, local planning authorities should usually avoid taking formal enforcement action where:*

- *there is a trivial or technical breach of control which causes no material harm or adverse impact on the amenity of the site or the surrounding area;*
- *development is acceptable on its planning merits and formal enforcement action would solely be to regularise the development;*
- *in their assessment, the local planning authority considers that an application is the appropriate way forward to regularise the situation, for example, where*

*planning conditions may need to be imposed."*

Clearly, in terms of the above, a PI had already concluded that the development was acceptable, in part, subject to the imposition of planning conditions. In the light of this, the effect of pursuing further enforcement action would be likely to be seen as not expedient in terms of bullet points 2 and 3, above. The LPA therefore sought to negotiate a new submission, which sought to regularise the development, as agreed in the appeal by the PI. This application was considered under planning reference MC/15/3106 and sought to regularise the employment building (B1), as built, together with associated development including access, car parking, hardsurfacing, boundary treatment, drainage and landscaping. Other ancillary works included within the submission were:

- raising some of the land levels by deposit of materials excavated during the construction of the foundations;
- enlargement of the car park;
- construction of a new concrete roadway around to the eastern side of the new building;
- construction of a new boundary fence as the site was enlarged from that attached to the original office building;
- provision of external lights on the new building.

In addition to the above, the application also proposed to:

- Painting of the walls to a brown colour;
- Painting the roof to a darker grey;
- Resurfacing the car park with concrete;
- Provide parking spaces for some 19/20 cars, together with a cycle parking facility;
- Providing drainage to the road and car park, with an oil interceptor;
- Removing part of the concrete road on the eastern side of the site;
- Reducing the height of the boundary fencing;
- Providing an enclosed area for exterior storage of pallets and other recyclable materials; and
- Landscaping the site, including removing spoil from beneath the oak tree that was deposited during the construction of the building.

This application was approved, subject to conditions, on 15 January 2016 (see the planning history section above). Some of the works secured by the conditions imposed under this planning consent have been complied with, some are currently being implemented, whilst others are subject to this application in that the applicant is seeking to vary conditions: 2(d)(resurfacing of car park and drainage works); 2(h)(landscaping); and 11 (implementation of the landscaping), by seeking consent to allow a delay in the planting of the agreed landscaping scheme to be completed by 1 December 2016; and by seeking agreement to replace tarmac, as they claim was previously specified for the resurfacing of the existing car park with concrete.

#### Assessment of proposed alterations to conditions

Bearing in mind the above, the main considerations related to this Section 73 submission has to be the wording of the conditions in question, the reason for their

imposition and any justification put forward to justify allowing the variation, when considered against the reason the conditions were imposed in the first instance.

Condition 2 states:

*"The requirements of the enforcement notice dated 4 July 2013 shall be complied with within 12 months unless the following works are completed by 31<sup>st</sup> May 2016:*

- a. The removal of the section of concrete roadway on the eastern side of the site and the reinstatement of that area of land;*
- b. The removal of the material deposited beneath the oak tree in the north east corner of the site strictly in accordance with the specified details;*
- c. The painting of both the walls and roof as specified [see also condition 6 below];*
- d. The resurfacing of the car park and the drainage works including the installation of the oil interceptor;*
- e. The replacement of the boundary fencing to a height of no more than 2m;*
- f. The provision of the cycle store and storage enclosure;*
- g. The provision of the Drizit Spill Kit on site;*
- h. The landscaping of the site in accordance with the specified details [see also condition 11 below]."*

The reason for imposing the condition was stated as *"...to ensure the development is completed in a satisfactory manner and to ensure compliance with policies BNE1, BNE2, BNE3, BNE23, BNE35 and CF13 of the Medway Local Plan 2003."*

Condition 11 states:

*"All planting, seeding and turfing comprised in the approved scheme of landscaping shall be carried out prior to 31<sup>st</sup> May 2016. Any trees or plants which within 10 years of planting are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species unless the local planning authority gives written consent to any variation."*

The reason for imposing the condition was states as *"Pursuant to s197 of the Town and Country Planning Act 1990 and to ensure a satisfactory appearance and character of the site in accordance with policies BNE1 and BNE6 of the Medway Local Plan 2003."*

*Conditions 2)h. (Landscaping of the site in accordance with the specified details) and 11 (Landscaping Implementation)*

Dealing with the landscaping matters first (Condition 2h. and Condition 11). Planning application MC/15/3106 considered and approved the details of landscaping (see drawing number 2004/13/B/1 Revision M, received 5th December 2015). Condition 2 and condition 11 specified that the works detailed within the condition had to be completed by the 31st May 2016. This timing created the applicant a problem, in that by the time they began to consider the implementation of the planting, as approved, they found that they were already outside of the ideal planting periods, which ended in late March/early April. The applicant's Landscape Consultant advised them that if they were to undertake the landscape planting within the remaining time scale



available to them the planting would be unlikely to survive.

Members will be aware that there are certain times of the year when certain planting and seeding should take place to give that planting/seeding the optimum chance of survival. Indeed, it is considered that the applicant's Landscape Consultant are correct in that planting undertaken in mid to late April through to the end of May would be unlikely to survive. Clearly, to achieve the objectives of providing good and healthy planting, that has the best chance of survival, it would be more appropriate to secure its planting in the next available planting period that commences in October this year. Indeed the end period, by which time the planning has to be secured, as suggested by the applicant, being 1st December 2016 is considered to be an acceptable level of time to implement the development, especially when considering the level of landscaping that needs to be implemented.

Securing the landscaping within the revised period would still ensure that the development is completed within an appropriate time frame, where the planting will have the best chance of survival, whilst ensuring that the development would be completed in a satisfactory manner and ensuring the development is acceptable in terms of ensuring the character and appearance of the site is maintained. The variation of these conditions would still ensure that the development will comply with Paragraphs 123 of the NPPF, the NPPG related to Noise, DEFRA's Noise Policy Statement for England, Section 197 of the Town and Country Planning Act, 1990 (as amended) and policies BNE1, BNE2, BNE6 and BNE35 of the saved policies of the adopted Local Plan.

*Condition 2)d. (Completion of the resurfacing of the car park and drainage works, including installation of the oil interceptor.)*

Turning to the proposal to vary Planning Condition 2)d, the applicant has stated in his submission that he is seeking to use concrete to resurface the carpark as opposed to using tarmac. However, whilst approved drawing SA/15/162.02 shows the parking area being surfaced in tarmac, this plan also shows the road located to the north and eastern sides of the approved employment building being retained as concrete. To further complicate matters, the submitted application form makes no reference to the proposed surfacing material to the car parking areas, only referring to the Planning Statement that does not appear to exist other than in the form of the Design and Access Statement that also sets out the Applicants planning considerations of the proposal. Additionally, this confusion is added to by virtue of the fact that the approved landscaping plan to MC/15/3106 (drawing number 2004/13/B/1 Revision M) shows both the parking/turning area and the road located to the north and eastern sides of the approved employment building, as approved by MC/15/3106, being retained as concrete. The submitted Design and Access Statement also states at paragraph 7.25:

*"The existing car park will be concrete surfaced providing car parking for circa 20 cars and also delivery areas for larger vehicles this will allow all vehicles to enter and leave the site in a forward gear. The car parking layout is provided in Figure 3 below."*  
(Underlining is my emphasis.)

Figure 3 in the Design and Access Statement also specifies concrete surfacing to that parking and turning area (underlining is officer's emphasis.)

It would appear that the reference to tarmac on drawing SA/15/162.02 is an error, especially when no other reference to tarmac is made through-out the documentation and drawing number 2004/13/B/1 Revision M shows both the parking area and the road located to the north and eastern sides of the approved employment building, as approved by MC/15/3106, being retained as concrete and the Design and Access Statement also specifically refers to the car parking area being concrete. Indeed the Director's Delegated Report on application MC/15/3106 within the proposals section specifically refers to the "*resurfacing of the car park with concrete...*" and neither condition 2 or the wording within part 2)d. of this condition specifies the use of tarmac.

Bearing in mind all of the above factors, it is considered that the Council reached its decision on the basis of concrete being used for the resurfacing of the car park and that there is no need to vary the wording to condition 2)d. as concrete was the surface material considered in that application. This leaves the applicant's request to allow the resurfacing of the car parking area to be undertaken before the 01 December 2016. No justification has been given as to why an extended period is required with regard to this aspect of Planning Condition 2.

Despite no justification being put forward, there was a significant amount of work specified within the wording of Condition 2 that was required to be undertaken by the end of May. The applicant has instructed works to be undertaken in regard to a number of the matters detailed in that condition and it is not considered unreasonable that the applicant may have had some time slippage in relation to complying with the timings to undertake and complete that list of works. This being the case, especially in the light of the fact that the applicant is seeking to resolve the matter within an identified timescale, it is not considered unreasonable for the timing in relation to planning condition 2) d. be extended until 1st December 2016.

### Other Matters

Paragraph 207 of the NPPF states "*effective enforcement is important as a means of maintaining public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control...*" Furthermore, the NPPG in regard to "Ensuring Effective Enforcement" states: "*In deciding whether enforcement action is taken, local planning authorities should, where relevant, have regard to the potential impact on the health, housing needs and welfare of those affected by the proposed action, and those who are affected by a breach of planning control.*" See paragraph ID: 17b-003-20140306. It is clear from this Government advise that enforcement should not be used purely in a punitive way and that careful, sound and justifiable judgements need to be reached when pursuing the service or prosecution of an enforcement notice.

In addition to the above point, it should be noted that the applicant originally sought to include the variation of Conditions 2)b. (painting of the walls and roof of the building) and Condition 06 (period within which the painting of the building had to taken place) within this submission, but these have been withdrawn from consideration in this

application.

### Local Finance Considerations

*None*

### **Conclusions and Reasons for Approval**

For the reasons set out above, the variation to condition 2, specifically the objectives and timings for the completion of parts d. (resurfacing of car park and drainage works) and (h)(landscaping) and the variation to condition 11 (landscaping implemented) are considered to be acceptable and compliant with Paragraphs 123 of the NPPF, the NPPG related to noise, DEFRA's Noise Policy Statement for England, Section 197 of the Town and Country Planning Act, 1990 (as amended) and policies BNE1, BNE2, BNE6, BNE23 and BNE35 of the saved policies of the adopted Local Plan.

This application is being reported to the Members of the Planning Committee due to the comments of Hoo St. Werburgh Parish Council, which are contrary to the recommendations set out in these papers.

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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://publicaccess.medway.gov.uk/online-applications/>