

Hearing Statement

Appeal Reference:

APP/Y0435/W/20/3252373

Planning application reference:

19/02771/FULMMA

Yeomans Drive,
Blakelands

December 2020

Our reference: 726

Date of issue: 10 December 2020

Smith Jenkins Ltd

1 Cannon Harnett Court, Wolverton Mill, Milton Keynes, MK12 5NF

Tel: 01908 410422

Contents

1	Introduction	1
2	Background	2
3	The Case on Behalf of GLPC	6

Appendix

1	Smith Jenkins letter to PINS dated 16 th November 2020
2	Great Linford Parish Council consultee response to 19/02771/FULMMA
3	Decision Notice 16/03023/FUL dated 17 th January 2018
4	Committee Report for 16/03023/FUL dated 11 th May 2017

1 Introduction

- 1.1 Smith Jenkins Ltd are instructed by Great Linford Parish Council (GLPC) in respect of the appeal made by GUPI 6 Limited against the refusal of Milton Keynes Council (MKC) (the local planning authority (LPA)) to grant planning permission (MKC reference 19/02771/FULMMA) for development at 1 Yeomans Drive, Blakelands, Milton Keynes, MK14 5AN.
- 1.2 We have written to the Planning Inspectorate (letter dated 16th November 2020 and attached at **Appendix 1**) to confirm that GLPC wish to participate in the forthcoming hearing as a third party. Smith Jenkins have not received acknowledgement of this letter or confirmation that the Inspector will allow GLPC to participate. This statement has been prepared on the basis that GLPC will be able to fully participate in the hearing sessions.
- 1.3 GLPC were a consultee to the planning application. Representations were made on behalf of the Parish to all relevant planning applications. GLPC's response on the application subject to this appeal is contained in **Appendix 2**.
- 1.4 Planning permission was refused by Milton Keynes Council on 22nd January 2020 for two reasons, namely:
- (1) The proposed variation of Condition 12 (HGV Operating Hours) of planning permission 18/02341/FUL, due to HGV movements on the application site at unsociable hours of the day together with the proximity of the development and those movements to neighbouring residential properties, would lead to unacceptable noise and disturbance to adjacent and nearby residents within the locality, to the detriment of their residential amenity. The proposal is therefore contrary to Policies D3 and D4 of Plan:MK.
- (2) Planning Contributions were secured under application 18/02341/FUL towards Public Art and Carbon Neutrality. If approved, this application would form a stand alone planning permission, and as such, is required to render the application acceptable. No such agreement has been submitted with the current application. The application is therefore contrary to Polices SC1 and CC1 of Plan:MK, and NP14B of the Great Linford North Neighbourhood Plan in this regard.
- 1.5 GLPC are of the view that reason for refusal number 2 is a matter to be determined between MKC and the Appellant. GLPC support reason for refusal number 1, and this hearing statement concerns itself with the details in respect of that reason alone.
- 1.6 This Statement sets out the background to the development of this site, before addressing the context for the reason for refusal, and why conditions 1, 12 and 19 should not be amended on planning permission reference 18/02341/FUL. It is the view of GLPC that these conditions should remain in full.
- 1.7 GLPC do not wish to repeat matters that are well documented elsewhere. The Appellant adequately describes the site in their Statement of Case, as well as providing the relevant documents in respect of the proposal. If required during the hearing, GLPC will refer to the documents provided by the main parties.

2 Background

- 2.1 The background to this appeal is considerable, and is currently the subject of an investigation by Milton Keynes Council. The details of this investigation will no doubt be covered by others, and GLPC only concern themselves with the issues relating to this appeal, namely the Appellant's application to amend planning conditions in relation to the hours of operation of the warehouse.
- 2.2 It is however, pertinent to set out the background to the inclusion of these conditions on the original planning permission.
- 2.3 Planning permission (MKC reference: 16/03023/FUL) was originally granted for the development of this site, described as "*Demolition of existing B8 storage and distribution warehouse, and erection of a new B8 storage and distribution warehouse with ancillary B1 floorspace and associated works*" on 17th January 2018. A copy of the decision notice is enclosed at **Appendix 3**.
- 2.4 The decision notice was issued without a number of conditions attached to it, which were included in the original report to committee. The report to committee, dated 11th May 2017 included 21 conditions. These are listed on the report to committee, as enclosed in **Appendix 4**. The Inspector will note that the decision notice only includes 10 of those conditions.
- 2.5 Condition 10 states:

There shall be no heavy good vehicles, entering, existing [sic] or operating within the site outside of the hours of 07:00 to 21:00 Monday to Friday and 10:00 to 16:00 on Saturdays, Sundays and Bank Holidays.

- 2.6 The reason for the imposition of the condition states:

To protect the amenity of adjacent residential properties from adverse noise pollution.

- 2.7 The additional conditions that related to the protection of residential amenity that were excluded from the decision notice included:

Proposed condition 8: Prior to construction of any part of the development above ground floor slab level, details of external lighting including security lighting shall be submitted to and approved in writing by the local planning authority. The plans shall show lighting proposed in accordance with BS5489 standards and detail how the presence of bats in the area has been taken into account. The development shall thereafter be carried out in accordance with the approved details.

Reason: To ensure that the development does not detract from residential amenity and the appearance of the locality and in the interests of ecology and crime prevention in accordance with Policies D1, and D2A, and NE3 of the Milton Keynes Local Plan 2001-2011 and CS19 of the Core Strategy.

Proposed Condition 17: Prior to any development above slab level, a Noise Management Plan shall be submitted to and approved in writing by the Local Planning Authority, The Plan shall then be updated, in order to reflect operations on the site.

Reason: To ensure the development does not cause unacceptable noise pollution to the detriment of residential amenity.

- 2.8 In determining the application, Officers reported the following response from Environmental Health Officers:

5.51 The Council's Environmental Health Officer has been consulted on the proposed development and in their response, no objection has been raised in terms of the noise generation and proximity to neighbouring properties. The Environmental Health officer has recommended a series of conditions to ensure the development would be acceptable in terms of the proximity to neighbouring dwellings. These conditions are recommended at section 6.0 of the report and these cover the following:

- *Submission of a Noise Management Plan*
- *Any plant/air handling units on the roof to be directed away from the residential units and/or suitably screened*
- *The retention of the noise barrier*
- *Requirement for vehicles operating on the site to be fitted with fully functioning broadband (white noise) reversing alarms.*

5.52 As such, in regard to potential noise pollution, the proposed development would accord with saved policy D1(iv) of the Milton Keynes Local Plan 2001- 2011 with suitable conditions recommended at Section 6.0 of this report.

- 2.9 GLPC have requested the original consultee response from Environmental Health, as it is not available on the application file. We are informed by Planning Officers that the document is lost and therefore not available.
- 2.10 At Section A3.8 of the report to committee (page 36), the Environmental Health Manager comments are reported more fully. In respect of noise, this states:

- A Noise Management Plan to be in place for site activities and the Council is to be furnished with a copy. The Plan is to be maintained up to date in order to reflect operations on the site.

- To reduce noise impact, the Noise Management Plan is to include controls on trailer unit parking and night time loading activities to ensure internal noise events at the nearest noise sensitive receiver do not exceed 45dB LAFMax in line with World Health Organisation Guidelines on Community Noise 1999. (Levels to be determined by calculation as opposed to measurement inside the property)

- Broadband (white noise) reversing alarms fitted to vehicles operating on the site.

- Any plant/air handling units which are roof mounted are to be directed away from residential and / or suitably screened. To limit noise impact the installed plant is to operate at 5dB below background levels at the nearest noise sensitive receiver.

- The proposed 4m acoustic barrier is to be retained

- 2.11 Having determined that conditions were missing from the original planning permission, MKC issued a Section 102 Order. The Section 102 Order was made including a condition which states:

All external lighting within the site shall be turned off outside of the hours of 07:00 to 21:00 Monday – Friday and 10:00 to 16:00 on Saturdays, Sundays and Bank Holidays.

Reason: to protect the amenity of the adjacent residential properties from adverse light pollution.

- 2.12 A second planning application (MKC reference: 18/02341/FUL) was made to the LPA in September 2018. The report to committee on 8th November 2018, set out the Council's position in respect of noise. This stated:

5.74 In response, the proposed development incorporates a 4m high acoustic barrier along the north eastern corner of the application site. The benefits of this acoustic barrier have been assessed within the noise assessment which concludes the barrier in conjunction with complementary management controls, would ensure that the 24 hour loading activities are feasible and would not result in an unacceptable loss of amenity to the nearest identified noise sensitive receptors (i.e. the residential properties along Bessemer Court).

5.75 The Council's Environmental Health Officer has not yet responded to the current application. However, there is not a material change in the circumstances between the former application and current submission; as such the development is considered acceptable subject to suitable conditions. Notwithstanding this, a full technical review is being undertaken and an update will be provided to the Committee.

- 2.13 The second report to Committee from April 2019 addresses the matters of the missing conditions in recommending the grant of planning permission. Paragraph 3.5 of the Report states:

Of most importance is that the conditions missed off the Original Permission when the decision notice was issued on 17th January 2018, can now be reinstated (or revised following submission of additional information since 17 January 2018 and forming part of this application), and would mitigate the impact of the development for the neighbouring residents, to the same extent and in accordance with what was intended when members resolved to grant planning permission for the Original Permission in May 2017. Effectively, this resolves the concern regarding the missing conditions.

- 2.14 It is very clear, from both the reasons for the imposition of the conditions, and the inclusion of those conditions specifically in the second application, that those conditions are attached to the planning permission to mitigate the impact of the development on the neighbouring residents. These were considered necessary by Officers in order to protect the residential amenity of neighbours, regardless of the requirements of the Development Plan. This is site specific issue which is addressed through the imposition of planning conditions.

- 2.15 Officers, in their consideration of that application, set out their reasoning on why the application was acceptable on the grounds of noise and disturbance, which remain unaltered from the original planning permission:

7.68 In response, the proposed development incorporates a 4m high acoustic barrier along the north eastern corner of the application site. The benefits of this acoustic barrier have been assessed within the noise assessment which concludes the barrier in conjunction with complementary management controls, would ensure that the proposal would not result in an unacceptable loss of amenity to the nearest identified noise sensitive receptors (i.e. the residential properties along Bessemer Court).

7.69 The Council's Environmental Health Officer has confirmed that the development is acceptable in those terms subject to conditions. There has not been a material change in the circumstances since the approved Original Permission and the current submission; and as such the development is considered acceptable subject to suitable conditions relating to the submission of a Noise Management Plan, HGV vehicles operating on the site shall be fitted with broadband (White noise

reversing alarms, noise limitations on any plant, and securing a noise barrier. Subject to such conditions, the proposal complies with Policy D4 of Plan:MK.

- 2.16 There are extensive comments in the report to committee from Environmental Health officers in respect of noise. We do not repeat these here. However, it is worth noting that the response included the following statement:

It is expected that the Noise Management Plan will include evidence of how acceptable levels of noise generated from site will be controlled to meet the requirements of BS4142:201 and how internal noise events at the nearest noise sensitive receiver will not to exceed 45dB LAFMax in line with World Health Organisation Guidelines on Community Noise 1999.

- 2.17 Planning permission was issued on 11th April 2019. This permission was subject to 19 planning conditions. The permission included the following conditions:

(12) There shall be no heavy goods vehicles, entering, exiting or operating within the site outside of the hours of 07:00 to 21:00 Monday to Friday and 10:00 to 16:00 on Saturdays, Sundays and Bank Holidays.

Reason: To protect the amenity of adjacent residential properties from adverse noise pollution.

(17) Prior to occupation, a Noise Management Plan shall be submitted to and approved in writing by the Local Planning Authority, and the recommendations within the Plan shall be fully implemented and adhered to. The Plan shall then be updated, in order to reflect operations on the site.

Reason: To ensure the development does not cause unacceptable noise pollution to the detriment of residential amenity.

(19) Prior to the installation of any external lighting, details of external lighting including security lighting shall be submitted to and approved in writing by the local planning authority. The plans shall show lighting proposed in accordance with BS5489 standards. The development shall thereafter be carried out in accordance with the approved details.

Reason: To ensure that the development does not detract from residential amenity and appearance of the locality.

- 2.18 A number of discharge of condition applications have been made by the Appellant, including submission of details in respect of condition 19, installation of external lighting (MKC reference 19/01031/DISCON).

3 The Case on Behalf of GLPC

3.1 The Appellant describes the proposal succinctly in their Planning Statement, dated October 2019. At section 4, the proposal is described as follows:

4.1. Planning permission is sought for the variation of conditions 1, 12 and 19 of the Existing Permission.

4.2. The primary objective of this application is to seek to vary condition 12 to allow HGVs to operate from loading docks 3 to 13, 17 and 18 on a 24/7 basis and to allow HGVs to operate from all loading docks during all daytime hours (07:00 to 23:00 on weekdays, weekends and Bank Holidays)

4.3. The application is accompanied by a Noise Assessment, produced by Sharps Redmore, which justifies the above. To minimise noise effects, the Noise Assessment proposes the erection of a Dock Enclosure to docks 3 to 9 and additional Acoustic Screens adjacent to docks 10 and 17.

4.4. The introduction of the Dock Enclosure and Acoustic Screens means it has been necessary to amend and update some of the plans approved and listed on the 18/02341/FUL Decision Notice. This application, therefore, also seeks the variation of conditions 1 and 19 as a direct consequence of the introduction of the Dock Enclosure and Acoustic Screens.

3.2 The Appellant seeks to vary condition 12 to read:

There shall be no heavy goods vehicles operating from delivery docks 1, 2, 14, 15 and 16 (as illustrated on Proposed Site Plan 16022_PL05 F) outside of the hours of 07:00 to 23:00

3.3 Condition 12 of the planning permission states:

There shall be no heavy goods vehicles, entering, exiting or operating within the site outside of the hours of 07:00 to 21:00 Monday to Friday and 10:00 to 16:00 on Saturdays, Sundays and Bank Holidays.

3.4 GLPC made representations on the planning application, following the Parish Council meeting on 11th November 2019. Those representations are included in Appendix 2. GLPC succinctly set out the implications for the proposed change to planning condition number 12. These are as follows:

1. To allow HGVs to operate from loading docks 3 to 13, 17 and 18 on the basis of 24 hour a day, 7 day a week working
2. To allow HGVs to operate from **all** loading docks during all daytime hours (07:00 to 23:00 on weekdays, weekends and Bank Holidays)
3. The HGV operational restriction only apply to docks 1, 2, 14, 15 and 16 during recognised night-time hours (23:00 to 07:00)
4. To allow HGVs to operate from all loading docks during all daytime hours (07:00 to 23:00 on weekdays, weekends and bank holidays)

- 3.5 If the proposed variation is approved, in addition to points 1 to 4 above, HGVs will be allowed to enter and exit the site over 24 hours. This is something the existing condition expressly prevents HGVs from doing. The Inspector will note that there are 35 trailer parking bays on the site, all of which can be operated during the 24 hour period. Equally, the area located closest to residents is identified as a turning circle for HGVs. This would be utilised during both day and night time working, and the use of this part of the site is not restricted by the Appellant’s proposed variation to the condition.
- 3.6 The current condition prevents all HGVs operating on site after 9pm during the week, and outside of the hours of 10am to 4pm on weekends and bank holidays. The Appellant proposes to extend the 9pm curfew to 11pm, and for these working hours to be in place 7 days a week. The condition was imposed to reflect the proximity of the warehouses to residential dwellings and for the residential amenity of occupants of those dwellings to be maintained. That is the express purpose of the condition.
- 3.7 The relationship of these dwellings, the location of the loading bays proposed for 24 hour working and the areas where HGVs can operate is shown graphically in the plan attached to their representation, and replicated in Figure 1 below.

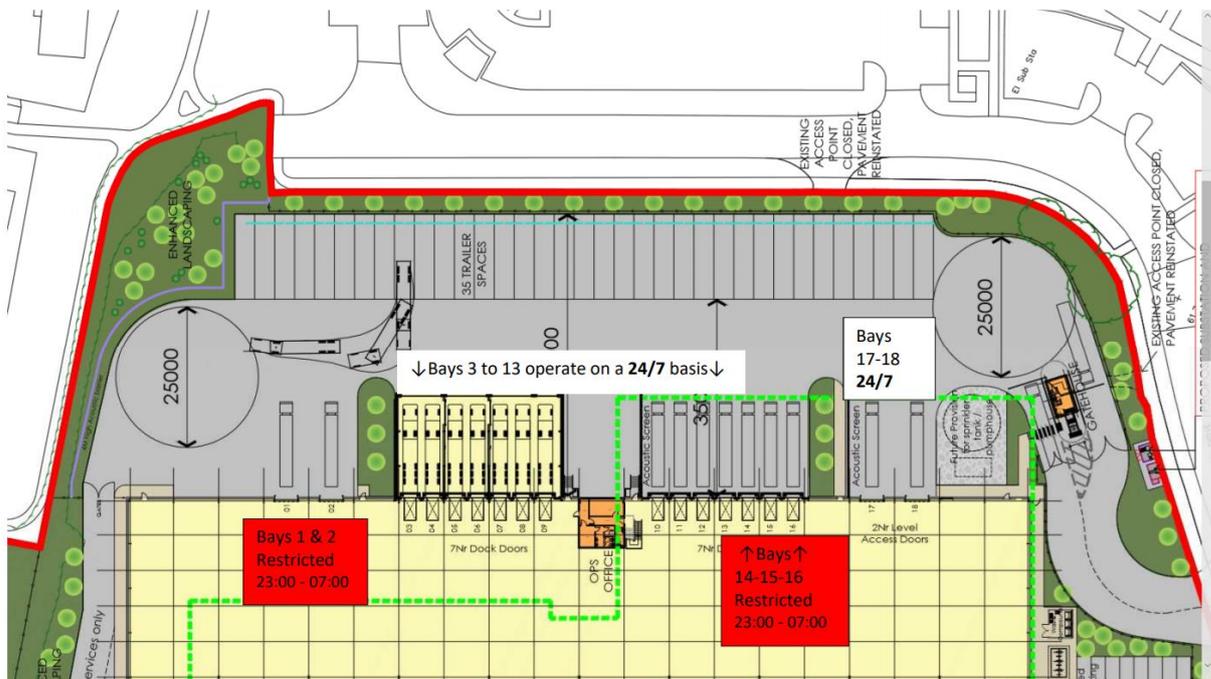


Figure 1: Loading Bays and Proposed Restrictions

- 3.8 Condition 12 states that no heavy goods vehicles should enter, exit or operate within the site outside of the permitted hours. The Appellant seeks to fundamentally change the status of the condition to allow heavy goods vehicles to operate within the site for 24 hours a day. The amendment to the condition only restricts the use of specific docking bays. It is possible therefore for HGVs to arrive on the site, to manoeuvre and park, possibly with engines running in all of the 35 trailer spaces on the site. The turning circle closest to the residents’ homes in Bessemer Court and Telford Way can be used for the manoeuvring of these vehicles, even when loading bays number 1 and 2 are not operating.

3.9 The Appellant's noise assessment only considers the operation of the loading bays, and specifically those that are subject to noise attenuation (acoustic barriers).

3.10 The noise assessment does not take into consideration: the manoeuvring of vehicles within the site, and specifically noise emitted from the air breaks on HGVs; and any noise emitting from the broadband white noise reversing alarms (required by condition 9 of the planning permission). The Appellant has considered the effect of noise from changes to road traffic on the surrounding road network at night. The conclusion of this assessment shows that the increase in the number of HGVs on Yeomans Drive would lead to a 5.4 dB increase in noise however, this is disregarded by the Appellant on the basis that there are no noise sensitive receptors on Yeomans Drive. What the Appellant has not done however, is to assess how the overall increase in HGV movements inside the site from general manoeuvring at night time will effect the background noise level.

3.11 In the Appellant's Supplementary Noise Report (May 2020), consideration is given to potential noise sources during night time in response to comments from the LPA's EHO. At Paragraph 4.54, the Report states:

Similarly, one might assume that reversing alarms from fork lift trucks would result in tonal sounds, which could also be prominent and require some penalty to be applied. However, these activities would be taking place within an enclosed loading dock. There would be no fork lift trucks operating in the yard area at night. Loading and unloading would be solely by use of the purpose-built loading docks. These docks are designed to minimise the break out of noise and, further, at this site, a second enclosure and a number of additional local screens are proposed around the docks which would be used at night. The worst-case sound level from these areas would be below the typical background level in the area when assessed at the worst-case receptor.

3.12 The Appellant acknowledges that impulse or impact sounds (sounds which are sudden or short in duration) are likely to be more prominent than other sounds, which might result in additional adverse effect. Both the original and supplementary Noise Reports both assume that all noise created on site at night will be contained within the acoustically controlled loading docks, and specifically state that no reversing sounds from fork-lift trucks will be heard. However, this is not the case, as HGVs have to arrive on-site to be unloaded and are likely to reverse with an audible reversing noise. This, in its own right, is a noise source that has not been assessed by the Appellant.

3.13 As shown on the site plan, there are 35 trailer spaces located to the east of the loading bays. The plans supplied by the Appellant show an HGV reversing into one of those trailer spaces. This is a source of noise in its own right which the Appellant has failed to model. Therefore, the noise assessment is incorrect because it does not consider all sources of noise during the night.

3.14 Without this information, it is not possible to consider the effect of the proposed change in operating hours of the site on the immediate environment and specifically local residents. As such, the acoustic report is deficient, and permission in this case should be refused. The LPA are correct in the precise wording applied in reason for refusal number 1:

The proposed variation of Condition 12 (HGV Operating Hours) of planning permission 18/02341/FUL, due to HGV movements on the application site at unsociable hours of the day together with the proximity of the development and those movements to neighbouring residential properties, would lead to unacceptable noise and disturbance to adjacent and nearby residents within the locality, to

the detriment of their residential amenity. The proposal is therefore contrary to Policies D3 and D4 of Plan:MK.

- 3.15 It is not simply the unloading and loading from the warehouse that is a noise source, but the wider operation of HGVs across the appeal site as a whole that should be considered.
- 3.16 It is pertinent to note that the Section 102 Order required the imposition of a condition that required all lighting to be turned off outside of operational hours in the interests of residential amenity. While this condition is not attached to the 2019 planning permission, it is relevant to note that it is not only noise that will impact upon residential amenity, but also the light source at the site.
- 3.17 Material to the consideration of this appeal is that residents have a reasonable expectation of noise impact based on the operating conditions of the former warehouse that occupied the site. The Appellant, Planning Officer and development control committee were all aware that the former operators of the warehouse on this site had an informal agreement with residents that restricted the use of the service yard on the northern side of the site at night time. While this may not have been a written agreement, it was a neighbourly arrangement which aided the quiet enjoyment of the residential properties immediately adjacent to the site, and ensured that residential amenity was protected. It is not unrealistic for residents to afford the same degree of enjoyment when the new warehouse is in operation, given that this previous informal agreement was encapsulated in the planning conditions that were part of the most recent planning approval for the site.