



Development Control Committee

5 January 2017

Planning Application DC/16/1810/VAR The Barn, Low Green Barn, Low Green, Nowton

Date	17 August 2016	Expiry Date:	1 December 2016
Registered:			(following extension of time)
Case Officer:	Adam Ford	Recommendation:	Approve
Parish:	Nowton	Ward:	Horringer & Whelnetham

Proposal: Variation of Condition 10 of E/89/1085/P to allow working hours of 08.00 to 18.30 on Mondays, 06:00 to 18:30 Tuesdays to Fridays inclusive and 06.00 to 16:00 on Saturdays; no work to take place anytime on Bank holidays or Sundays.

Site: The Barn, Low Green Barn, Low Green, Nowton IP29 5ND

Applicant: Mr Mark D Proctor

Synopsis:

Application under Section 73 of Town and Country Planning Act 1990 and the (Listed Building and Conservation Areas) Act 1990 and associated matters.

Recommendation:

It is recommended that the Committee determine the attached application and associated matters.

CONTACT CASE OFFICER:

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Background:

Having been presented to the SEBC Delegation Panel on 30 November 2016, the Panel has taken the decision that this application should be considered by the Development Control Committee with an accompanying site visit.

This site visit is scheduled for Tuesday 3 January 2017.

Proposal:

1. Planning permission is sought to vary Condition 10 as imposed by permission E/89/1085/P. This extant and implemented planning permission provides consent for the property in question to operate as a B1 industrial unit.

Condition 10 (Working Hours):

- Condition 10 of E/89/1085/P **currently** limits the unit's opening hours to:
 - Monday: 7am – 6:30pm
 - Tuesday: 7am – 6:30pm
 - Wednesday: 7am – 6:30pm
 - Thursday: 7am – 6:30pm
 - Friday: 7am – 6:30pm
 - Saturday: 7am – 12:30pm
 - Sundays: no working permitted
- The applicant wishes alter the hours in accordance with the below schedule:
 - Monday: 8am – 6:30pm
 - Tuesday: 6am – 6:30pm
 - Wednesday: 6am – 6:30pm
 - Thursday: 6am – 6:30pm
 - Friday: 6am – 6:30pm
 - Saturday: 6am – 16:00pm
 - Sundays and Bank Holidays: no working permitted
- No further alterations or variations are proposed or sought.

Alterations and subsequent amendments

2. It is important to note that current application has been amended since the initial submission. The original application sought to vary the opening hours of the unit to enable the bakery to operate from 5am, Monday to Saturday. Following a number of visits to the site and extensive consultation with the Council's Public Health and Housing Officers, this proposal was deemed to be unacceptable due to the detrimental impact,

upon residential amenity that a 5am start would impose. Whilst the site is generally remote there is an existing off site dwelling to the north that was sufficiently close to warrant very careful consideration of the amenity impacts arising.

3. Accordingly, the applicant has amended the scope of the submission so that a 5am start time is no longer proposed; instead, the revised submission seeks consent to open from 8am on a Monday and from 6am Tuesday through to Saturday. Sunday remains a 'non-working' day.
4. The documents referred to hereafter therefore relate to the revised details as submitted by the applicant. It should also be noted, following the revised submission, that new letters of objection – and indeed some now of support, including from the Parish Council – have been received by the Council. These are discussed in due course within the relevant section below.

Application Supporting Material:

5. Information submitted with the application as follows:
 - Application form
 - Planning statement (revised)
 - Site Plan (area outlined in red is subject to the application: not the site in its entirety across which the 1989 permission prevails)

Site Details:

6. The application property is an existing industrial premises located within the Nowton Business Centre. Planning permission was granted for the building to be used for B1 purposes in 1989.
7. The site is considered to be within the open countryside due its location between, but outside, of the defined settlements of Bury St. Edmunds to the North and Great Whelnetham to the South.
8. With the exception of the Nowton Business Park, the site is bounded by open countryside and agricultural fields. On its immediate eastern fringe, the site shares a boundary with a private residential dwelling, whilst further north lies Nowton Park; a local wildlife area. The prevailing character and land use of the surrounding area is therefore open countryside.
9. The site is neither listed nor located within a conservation area.

Planning History:

10. SE/00/1474/P - Continued use of building for storage and distribution (Class B8) with ancillary offices. Refused.
11. E/89/1085/P - Erection of extension (following demolition of existing open fronted cattle shed) and alterations to existing farm building associated with conversion and use for industrial purposes. Approved.
12. E/88/3870/P - Change of use of redundant farm building to industrial unit for design and development of opto-electronic, electronic and electro-mechanical systems. Approved

Consultations:

13. Public Health and Housing:

14. Original application (5am start)

15. In response to the original application, Public Health and Housing provided extensive comments; in the interest of completeness, these are replicated below:
16. *The current Planning Approval for the site, granted in 1989, restricts the site and buildings for Class B1 (Business) uses only although Class B1 also includes- Offices (other than those that fall within A2), research and development of products and processes and light industry which would be considered to be appropriate in a residential area. In order to protect the amenities of nearby premises, Condition 10 limits the hours of work to between 07:00 and 18:30 hours on Monday to Fridays and 07:00 to 12:30 hours on Saturdays only; in addition, noise conditions have been imposed to limit noise from operations conducted on the premises during the stated working hours and at any other time.*
17. *Whilst a planning application to vary the hours of working at this particular premise would generally be considered to be inappropriate, due to the close proximity of the residential property, Public Health and Housing are obliged to consider the impact of this specific application, based on the activities undertaken at the application site.*
18. *Following a site visit and discussions with the Baker, Mr Proctor, it is understood that he generally arrives at The Barn at approximately 5am and enters the building through the personnel door, located in the middle of the main building. He then switches on the bakers oven, which is electric, and checks equipment and provers. A member of staff will normally arrive on site at around 5.30am to take orders off the answerphone in the office and prepare orders by writing them on a white board within the main preparation area. From around 6am, doughs are mixed, using a large mixer located at the eastern end of the bakery, then the dough is prepared, by hand, on a range of stainless steel tables, prior to proving. The breads and pastries are then shaped, cut and baked from 7am.*

19. *On arrival on site, whilst the roller shutter door was open to head height, no noise was audible outside of the building and no radio was heard playing from within the building. The equipment used within the bakery is generally quiet in operation with the baker's oven, convection oven, prover, fridge and retarder making no noise. In addition, there is a pastry laminator, two roll presses and two dough mixers which do make some mechanical noise although this is very unlikely to be audible at the boundary of the application site with the personnel and roller shutter doors down. I understand that the roller shutter door is kept closed until 7am, then opened up to allow the delivery van to be loaded.*
20. *With regard to deliveries to the bakery, I understand that there is a flour delivery on a Thursday at around 8am and a further delivery of sundry items on a Friday during the late morning/early afternoon. No deliveries arrive prior to 7am or after 5pm.*
21. *Having reviewed the activities undertaken at The Barn, particularly between 5am and 7am, as advised by the applicant, Public Health and Housing would not wish to object to the variation of Condition 10 to allow the working hours to be extended to between 05:00 and 18.30 hours, Monday to Saturday inclusive.*
22. *However, whilst Low Green Barn is accessed directly off the highway, to the rear of the residential property fronting the site, the traffic flow along the highway is generally low, particularly late into the evening and very early morning, and the background noise levels will be very low. The arrival and parking up of at least two vehicles prior to 7am at the application site, and noise from the shutting of the car doors, is therefore likely to be audible at the residential premises. Whilst this type of noise would not be considered to be a statutory noise nuisance in accordance with the provisions of section 79 of the Environmental Protection Act 1990, it may still give rise to some lack of amenity to the adjacent residential occupiers.*
23. *In addition, it is noted from the Statement of Intent that the applicant may need to finish at 7pm on busy days, although no baking will be produced after 7pm. Public Health and Housing would not wish to see an extension of the finishing hours and would expect the bakery to vacated by 18:30, with no working on site at any time on Sundays, Bank or Public Holidays.*
24. *With regard to the proposal to provide teaching sessions on Saturdays between 9am and 4pm, I understand that these sessions are normally undertaken only twice each month and whilst there is likely to be additional vehicle movements at the front of The Barn during these sessions, there is unlikely to be any additional noise which will impact on the adjacent residential occupier.*
25. *If planning consent is granted in respect of the proposed variation of Condition 10 of Planning Approval E/89/1085/P, it is recommended that*

any permission is personal to the applicant, in respect of The Friendly Loaf Company and in relation to The Barn premises only.

26. *In addition, whilst it is noted that there are no specific conditions with regard to deliveries to or dispatches from the application site within the current planning consent, it is recommended that the following condition is included in any consent granted:*

27. *No deliveries to or dispatches from the application site shall be carried out prior to 07:00 or after 18:30 hours on Mondays to Fridays, or prior to 07:00 or after 12:30 hours on a Saturday.*

28. Revised application (6am start)

29. *Further to my previous memorandum of the 20 September 2016, Public Health and Housing have reviewed the revised Planning Statement, dated 11 October 2016, submitted by the applicant and would not wish to raise any objections to the proposed, amended working hours.*

30. *As previously stated, if planning consent is granted, it is recommended that any permission is personal to the applicant, in respect of The Friendly Loaf Company and in relation to The Barn premises only.*

31. *In addition, whilst it is noted that there are no specific conditions with regard to deliveries to or dispatches from the application site within the current planning consent, it is recommended that the following condition is included in any consent granted:*

32. *No deliveries to or dispatches from the application site shall be carried out prior to 07:00 or after 18:30 hours on Mondays to Fridays, or prior to 07:00 or after 12:30 hours on a Saturday.*

33. **Highways Authority:** No objection lodged due to there being no impact on the highway.

Representations:

34. Parish Council:

- **Original application (5am start):**
- Objection lodged owing to perceived impact on existing residential amenity

- **Revised application (6am start)**
- Unanimous support provided for the application following the revised hours with a request that the same conditions, as suggested by Public Health, be imposed.

35. Public comments

36. As with the above, multiple comments have received from members of

the public with respect to this application. Full and unremitted details of these can be seen the Council's website but a summary is provided below:

3 Low Green

37. Four separately submitted objections were received from the same property, 3 Low Green. Given that they arise from the same neighbouring property, these four objections have been amalgamated with the following concerns being raised:

- Perceived loss of amenity due to proximity of premises
- Concerns raised with respect to an increase in noise levels arising from increased traffic and fumes arising from the baking process. The noise levels are believed to be exacerbated by the steel nature of the building.
- Reference is made to an alleged breach of planning control with respect to sales of produce and the provision of baking courses.
- Attention drawn to the justification for the imposition of the 1989 planning permission being conditioned; i.e. to protect neighbouring amenity.
- Further attention drawn to the alleged stricter restrictions imposed upon neighbouring commercial properties with the suggestion that a potential variation in the current condition under consideration sets a precedent for further relaxations of other extant planning conditions.
- Use of a B1 unit is inappropriate for proposed activities with frequent 7pm finishes being recorded.
- Reference is made to the fact that 3 Low Green is a listed property and this should therefore be relevant to the determination process.
- The visits made by Public Health have been unrepresentative of the wider, on-going issues.
- Reference is made to a case which is perceived to be similar, albeit in Lambeth.
- The revised hours do not make the application any more acceptable; the loss of amenity remains. Examples of unacceptable activities are then provided.
- The smells from the unit remain and continue to impact the property.
- The applicant's statement is inaccurate and misleading.
- Granting permission sets a precedent for other tenants to alter and extend their hours.

- Noise, smell and working hours are inappropriate given the site context

Bennet Homes and Pakenham Water Mill

38. Support provided for the application.

Policy:

39. The following policies of the Joint Development Management Policies Document and the St Edmundsbury Core Strategy December 2010 have been taken into account in the consideration of this application:

40. Joint Development Management Policies Document:

- Policy DM1 : Presumption in Favour of Sustainable Development
- Policy DM2: Creating Places – Development Principles and Local Distinctiveness
- Policy DM5: Development in the countryside

41. St Edmundsbury Core Strategy December 2010

- Policy CS3 – Design and Local Distinctiveness

Other Planning Policy:

42. National Planning Policy Framework (2012) core principles and paragraphs 56 – 68

Officer Comment:

43. The issues to be considered in the determination of the application are:

- Principle of development with respect to varying conditions
- Impact on neighbouring amenity
- Other matters.

44. In line with the National Planning Policy Framework, Policy DM1 provides that there will be a presumption in favour of sustainable development unless other material and adverse impacts of the proposal would significantly and demonstrably outweigh the benefits. Policy DM2 goes on to provide that, when taking mitigation measures into effect, residential amenity should not be unjustifiably or demonstrably threatened.

45. In this instance, the application seeks to vary a number of conditions which, when considered against policy DM1 and DM2 (and where relevant DM5) are not considered to give rise to unjustifiable harm.

- **Increased opening hours**

46. Presently, the unit has planning permission, as granted in 1989, to open during the following hours:

- Monday: 7am – 6:30pm
- Tuesday: 7am – 6:30pm
- Wednesday: 7am – 6:30pm
- Thursday: 7am – 6:30pm
- Friday: 7am – 6:30pm
- Saturday: 7am – 12:30pm
- Sundays: no working permitted

47. However, the applicant wishes to amend these hours and is seeking permission, through this application for the following hours:

- Monday: 8am – 6:30pm
- Tuesday: 6am – 6:30pm
- Wednesday: 6am – 6:30pm
- Thursday: 6am – 6:30pm
- Friday: 6am – 6:30pm
- Saturday: 6am – 4:00pm
- Sundays: no working permitted

48. This represents an additional hour at the beginning of each day (Tuesday to Saturday) with a later start time now proposed for Mondays. The Saturday hours are to be extended to include a closing time of 16:00. It should be noted that this represents a concession on the applicant's part who initially applied for a 5am start. Positive negotiations however have enabled the applicant and Council to reach what is considered a compromise in this regard.

49. It is, of course, noted that the adjacent property, being 3 Low Green, has objected to the extended opening hours on the basis that it would have an unjustifiable impact on residential amenity and the enjoyment of a private dwelling. This impact can be deconstructed to noise, smell and general nuisance arising from activity in close proximity. This must be respected and given very careful consideration given the potential for activity and associated noise, and given the proximity of the off site dwelling to the business, given the lack of intervening boundary treatment, and given the fact that activity will occur at times that might readily be considered unsocial.

50. Much of the material submitted within the objections relate to an alleged breach of planning control concerning the use class of the building. This concern is not relevant to the consideration of this application and as such, shall not be discussed further. To clarify, however, following a multitude of visits to the site, the Council remain satisfied that the present use of the building is commensurate with that of a B1 use class and that, therefore, it is only the hours and consequential impact that are at issue, not the use.

51. Accordingly, the main element to be considered in the determination of this application is the acceptability of the increased hours. As such, and whilst the public comments are noted, in lieu of an objection from the Council's Public Health department, this aspect of the proposal (the extended hours) is not considered to materially contravene policies DM1 or DM2. The impacts will be limited to the noise arising from vehicles arriving at and departing from the site at the earlier times in question. It is also evident from the comments submitted by the Public Health and Housing Officer that a thorough and meticulous approach has been undertaken in concluding that they *"would not wish to raise any objections to the proposed, amended working hours."*
52. Furthermore, it is possible, as the proposed conditions make clear, that the number of employees on the site can be limited, as can the hours when deliveries arrive at or are dispatched from, the site. On this basis, and with such conditions imposed, it is the case that the only additional effects are those arising from the earlier arrival of a modest number of employees. In this context, and respecting the weight that can be attached in support of this proposal, it is not considered that this would withstand the scrutiny of an appeal in the way that a commencement from 05:00 might very well have done, noting the much more highly unsocial nature of a 05:00 start.
53. Both the public health and housing officer and the Parish Council have requested the permission be made personal to the applicant. However, whilst the rationale behind this is noted, from an objective standpoint, if the principle of the development is deemed to be something that the LPA can support, either with or without the imposition of relevant planning conditions, this assessment is to be made irrespective of *who* ultimately benefits from the amended condition. It is thus proposed that the permission remains one which runs with the land.
54. It is understood that the rationale behind the requested personal permission was to prevent a different operator using the premises in a different fashion, perhaps with a more overt effect upon nearby property. However, Officers are satisfied that if such is the case, and if the use evolves into one which is starting to have significant amenity impacts, then it is likely that this will take it outside of the B1 use class, into a B2 use class. In such a case, permission will be needed as this would be a 'material' change of use. Also, in such a scenario, enforcement action could be brought if expedient. There remains therefore, no justification for a personal permission.
55. Concerns have also been raised that extended hours will give rise to an increased volume of traffic and result in turn in a deterioration of existing residential amenity. However, with respect to the extended hours of opening, there has been no objection from the Highway Authority in this regard to any increased traffic movements and the impact upon highway safety. It should be also noted that the applicant has agreed to the imposition of a condition which limits the number of employees who can be on site prior to 06:30am and, as discussed above, this can therefore be considered satisfactory.

56. It is further noted that a number of the public comments refer to the bakery as being inappropriately located but this is not an issue for consideration since the proposal is a B1 use within a building that has a lawful planning permission for B1 use. The only issue relates to any additional effects arising from the extended hours. Some third party representations also refer to fumes and allegedly unpleasant odours. Whilst such concerns have been noted, these comments are not commensurate with the views from Public Health and Housing.

57. Additionally, whilst this proposal does not seek permission for any form of operational development, the application must be considered with respect to policy DM5 also. Policy DM5 provides that proposals for economic growth and expansion of all types of business and enterprise that recognises the intrinsic character and beauty of the countryside will be permitted where:

- it will not result in the irreversible loss of best and most versatile agricultural land (grades 1, 2 and 3a);
- there will be no significant detrimental impact on the historic environment, character and visual amenity of the landscape or nature conservation and biodiversity interests; and
- there will be no significant adverse impact on the local highway network.

58. As evidenced through the submitted consultation responses and the observations of the case officer, the proposed increase in hours would not materially contravene the above considerations and, in fact, would offer some support through the benefits arising from the growth of this business. The proposal is therefore deemed to be sufficiently compliant with Policy DM5.

59. To ensure sufficient control is retained, as well as amending condition 10 of the 1989 permission, three new conditions are to be imposed.

60. These conditions will seek to limit the number of staff members who are able to be on site before 06:30 and the timings of deliveries / dispatches. In doing this, a number of redundant and unenforceable conditions are to be removed from the 1989 permission. Attention is drawn to the omission of the condition which limits the maximum decibel level of the site; confirmation has been received from Public Health and Housing that this condition is unenforceable; it will therefore be removed from the new decision notice.

61. The third and final new condition to be imposed is designed to mitigate the potential impact caused by potential odour and fumes which may arise from the processes which take place inside the building. Such a condition, if appropriately and unremittingly complied with, will enable the building to retain its B1 use class. The condition requires the

applicant to submit details to the Council which details, in writing, the methods of mechanical extraction to mitigate both odours and fumes. The condition will require the applicant to stipulate a timeframe within which the necessary measures are to be installed and implemented.

62. It should be noted that the adjacent unit is subject to a planning application for a change of use from offices to a nursery (DC/16/1451/FUL refers). The combination of extending the bakery's operating hours and the proposed use of the site for a nursery has the potential to compound adverse impacts upon amenity. Individually, these two applications have been considered acceptable; there is no direct convergence, as the extension to the opening hours of the bakery does not overlap with the time the nursery would be open. It is considered that the proposals, taken cumulatively, would not be materially worse than taken separately.

63. For clarity, the full list of proposed conditions that are to appear on the newly issued permission are as follows:

Condition 1

Within 3 months from the date of this permission, a ventilation and extraction system to control odours and fumes from any baking process shall be installed in accordance with details that first shall have been submitted to and approved in writing by the Local Planning Authority. The details shall include the measures to abate the noise from the systems and a maintenance programme for the systems. Thereafter the systems shall be retained and maintained in complete accordance with the approved details unless the written consent of the Local Planning Authority is obtained for any variation.

Condition 2

The development hereby permitted shall be begun not later than 3 years from the date of this permission.

Condition 3

No work shall take place outside of the hours prescribed below:

- Monday: 8am – 6:30pm
- Tuesday: 6am – 6:30pm
- Wednesday: 6am – 6:30pm
- Thursday: 6am – 6:30pm
- Friday: 6am – 6:30pm
- Saturday: 6am – 16:00pm
- Sundays and bank holidays: no working permitted

Condition 4

No deliveries to or dispatches from the application site shall be carried out prior to 07:00 or after 18:30 hours on Mondays to Fridays, or prior to

07:00 or after 12:30 hours on a Saturday. There shall be no deliveries to or dispatches from the site on a Sunday or bank Holiday.

Condition 5

The roller shutter door, as installed to the North Eastern elevation of the building shall not be opened other than to facilitate the hours of delivery and dispatch as expressly authorised by way of condition 4 of this planning permission.

Condition 6

Prior to 06:30am, there shall be no more than two members of staff present on site at any one time.

Condition 7

The site and building, as outlined in red on the submitted site plan, shall be used for Class B1 uses only, as defined in The Town and Country Planning (Use Classes) Order 1987 (as amended).

Condition 8

No goods, plant or material (including waste material) shall be deposited or displayed in the open without the prior written consent of the Local Planning Authority

Condition 9

Any oil and other chemical storage tanks, buildings, ancillary handling facilities, filling, drawing and overflow pipes shall be enclosed within an impervious bunded area of at least 110% of the tank capacity designed and constructed to the approval and satisfaction of the Local Planning Authority

Condition 10

All surface water from roofs shall be piped direct to a watercourse, surface water sewer or shallow soakaways. Open gullies shall not be installed.

Condition 11

There shall be no discharge of effluent to any watercourse or surface water sewer

Condition 12

There shall be no discharge of trade effluent or chemicals to any septic tank

Conclusion:

In conclusion, the principle and detail of the development is considered to be acceptable and in compliance with relevant development plan policies and the National Planning Policy Framework.

Recommendation:

It is **RECOMMENDED** that planning permission be **granted** subject to the following conditions:

- *U28286 - Fumes and Odour Mitigation*
- *01A - Time Limit Detailed*
- *U28170 - Open Hours*
- *U28175 - Deliveries*
- *U29077 - Roller shutter door opening*
- *U28176 - Staff numbers*
- *U28178 - Use Class: B1*
- *U28180 - External Storage*
- *U28181 - Storage tanks*
- *U28182 - Surface water*
- *U28183 - Effluent 1*
- *U28185 - Trade effluent*

Documents:

All background documents including application forms, drawings and other supporting documentation relating to this application can be viewed online:

<https://planning.westsuffolk.gov.uk/online-applications/applicationDetails.do?activeTab=summary&keyVal=OC3Q3IPD05M00>

Case Officer:
Adam Ford

Date: 19 December