

Borough Green **560474 156858** **1 September 2009** **TM/09/01765/FL**
Borough Green And
Long Mill

Proposal: Removal of conditions, being condition 10 of TM/83/166,
condition 9 of TM/87/1591 and condition 7 of TM/00/00461 to
allow goods vehicles to be in operation on an unrestricted
basis
Location: Hornet Business Estate Quarry Hill Road Borough Green
Sevenoaks Kent TN15 8QW
Applicant: Hornet Engineering Ltd

1. Description:

- 1.1 Conditions 10 of TM/83/166 and 9 of TM/87/1591, are the same and state the following:

“The arrival and departure of goods vehicles shall be permitted only between the hours of 7 a.m. to 6 p.m. Monday to Friday and 7 a.m. to 1 p.m. Saturdays. No deliveries or despatch of goods shall take place on Sundays and Public Holidays”.

Reason: In the interests of the residential amenities of the locality so as to avoid disturbance by reason of noise.”

- 1.2 Condition 7 of TM/00/00461/FL is worded slightly differently, but applies the restriction as the earlier conditions on the movement of goods vehicles to and from the site.
- 1.3 The applicant’s rationale behind the application is that he has now entered into an agreement with Hanson which allows him and persons authorised by him to pass over and along the Haul Road with or without vehicles. The Haul Road is an unadopted private way located to the north of the application site. It was constructed to carry goods vehicles travelling to and from Isles Quarries, which are located adjacent to the site, whilst those quarries were being worked. This private way enables vehicles to travel between the quarries and the A25 to the north without needing to travel along Quarry Hill Road and/or Rocks Road which are narrow and flanked by residential properties. It is this applicant’s ability now to use this alternative route rather than Quarry Hill Road and Rocks Road that the applicant believes would overcome the necessity for the disputed conditions.
- 1.4 As the description indicates, the application was initially submitted to remove these conditions from three permissions that relate to the erection of industrial buildings within this site. Discussions have been held with the applicant and his agent to investigate whether the conditions could be varied instead of removed. However, having discussed this proposition at some length with the Chief Solicitor, we have concluded that it is not possible to construct a suitable amended condition that

would achieve the desired outcome for the applicant, whilst also protecting the residential amenity of local residents and that would meet the tests for conditions set out in Circular 01/95. The applicant has now, however, confirmed his agreement to enter into a Planning Obligation under s106 of the Town and Country Planning Act to govern how goods vehicles access and leave the site, should planning permission be granted removing the specified conditions.

2. Reason for reporting to Committee:

- 2.1 The application was called in by the local members as it is considered to be controversial.

3. The Site:

- 3.1 The site of the Hornet Industrial Estate, as well as the eastern section of the Haul Road, is located within the settlement confines of Borough Green, following the adoption of the Development Land Allocations DPD (DLADPD) in April 2008. The western section of the Haul Road is located outside the settlement confines of Borough Green, within the Green Belt.
- 3.2 The Hornet Industrial Estate contains a single office building and 7 industrial/warehouse units arranged along the southern and eastern parts of the site. Isles Quarry West, which is allocated under policy H2 of the DLA DPD for residential development adjoins the site to the south. Open countryside adjoins the site to the west.

4. Planning History:

MK/4/57/46A Grant with conditions 1 May 1946

Fitting shop.

MK/4/66/43 Grant with conditions 20 May 1966

A plant maintenance workshop, for Amalgamated Roadstone Corporation Ltd.

TM/81/798 Grant with conditions 29 September 1981

Erection of two storey offices and continued use of existing building without complying with condition (iii) of planning permission MK/4/66/43 relating to restriction of use to plant maintenance workshop only by Arc Ltd.

TM/83/166 Grant with conditions 22 April 1983

Outline application for erection of industrial units for production and storage (total, 900 sq. metres) to south of existing industrial building.

TM/83/167 Grant 22 April 1983

Construction of an industrial building of 360 sq. m. adjacent and to south of existing Arcontrol Production building to form new paint shop and test bay, including part re-cladding of existing building.

TM/85/1181 Grant with conditions 25 November 1985

Two storey office building with septic tank drainage.

TM/87/1591 Grant with conditions 18 November 1987

Building to house testing, painting and sub-assembly shops together with related office and mess room facilities.

TM/92/01273/RM Grant with conditions 28 January 1993

Details of landscaping and boundary treatment submitted pursuant to condition (vi) of permission TM/87/1591 (building to house testing, painting and sub-assembly shops etc).

TM/00/00461/FL Grant with conditions 23 June 2000

Single storey industrial building as an extension to existing factory

TM/05/01653/FL Grant with conditions 26 August 2005

Removal of condition restricting subdivision of industrial property and to allow office building to be occupied independently of the industrial units within the site; changes to external appearance of existing buildings

TM/05/01653/FL Grant With Conditions 26 August 2005

Removal of condition restricting subdivision of industrial property and to allow office building to be occupied independently of the industrial units within the site; changes to external appearance of existing buildings

TM/05/04031/FL Grant With Conditions 13 February 2006

Change of use from B1and B2 to B1, B2 and B8

TM/09/01898/FL Pending consideration

Change of use of land for industrial/warehouse use and the erection of terrace of four industrial warehouse units for use for purposes falling within use classes B1, B2 or B8, with associated access and parking provision

5. Consultees:

5.1 PC: The means of access to the site is noted. The current application relates only to the Hornet HGV traffic. Other vehicles have no right of use of the Haul Road until such time as it is adopted. It is considered that the following conditions should be applied to any permission granted:

1. Vehicles over 7.5 tonnes should be time-restricted to entering/leaving the site 6am to 10pm Monday-Friday and 7am to 1pm Saturdays only. No movements on Sundays or Bank Holidays.

2. No time restrictions on vehicles 7.5 tonnes or less.

3. Access restrictions should apply to all commercial vehicles: HGVs and others, both entering and leaving this site must use only the Dark Hill Haul Road at all times.

4. Any lease granted in connection with this site must include the above conditions. This is considered essential for all points, particularly no. 3.

5.2 KCC (Highways): I have no objections to the proposal in respect of highway matters. Earlier this year the applicant secured an easement permitting them to be able to use the Haul Road to gain access and egress from the business estate. This provides for better HGV access with the potential for reducing the amount of traffic using Quarry Hill Road and Rocks Road to the A25.

5.3 DHH: The main environmental health issue raised by this application is night-time noise from vehicle movements to and from the site.

5.3.1 British Standard 8233:1999 "*Sound insulation and noise reduction for buildings – Code of practice*" is referred to in PPG24. The World Health Organisation (WHO) "*Guidelines for Community Noise*" 1999 provides health-based community noise guidelines.

5.3.2 I understand that the applicant has secured the necessary consents to permit the lawful use of the former haul road by vehicles going to and from the Hornet Business Estate. Accordingly my evaluation of the noise affecting existing houses is based on the assumption that goods vehicles use this road to access and egress the site.

5.3.3 Following a site visit, it is unlikely that there will be more than one movement of a single heavy goods vehicle (>3500g) in any five minute period at night and accordingly the noise environment for nearby residential properties will be considered as being "good" as defined within BS 8233 and will also meet the WHO criterion.

5.3.4 Noise emissions from light goods vehicles (<3500 kg) are typically 10 dB(A) lower than those from HGVs and I am satisfied that engine and exhaust noise from their movement to, from and within the site during the night will not exceed the noise criterion or cause significant detriment to the aural amenity of nearby residents, although they may on occasions be audible in bedrooms having open windows.

5.3.5 In the light of these considerations, DHH has withdrawn the holding objection raised initially. DHH has noted that a portion of the landscape screening on the bund to the north of the application site requires full reinstatement.

5.3.6 It is not possible to determine to what extent HGV noise at night would constrain the design of any future residential development with the adjacent Isles Quarry West site but such impact could be mitigated by the erection of an acoustic barrier to the south of the Hornet Business Estate access road of sufficient height to break line of sight between a high level lorry exhaust/air intake and openable windows to bedrooms in any future residential development.

5.4 Private reps: (including public Notices): 7/0X/1S/2R: 1 letter of support and 2 letters of objection have been received. The comments received are as follows:

- I would support the application providing that the permission is conditioned to route all HGVs via the Haul Road.
- Removal of the restrictions of heavy goods vehicle movements to the industrial estate at the rear of my property will cause my family and my neighbours noise disturbance 24hours, seven days a week. At least with the restricted movements between 7am and 4pm with no Sunday working would give us respite. I would be content that the restriction could be amended to 7am to 7pm 6 days a week.
- Please have regard to the noise generated from the activities on site if an HGV was permitted to arrive on site late at night. It is not only the noise of an engine and wheels, but warning alarms, the radio in the cab, shouting between driver and staff and siren of a fork lift truck.

6. Determining Issues:

6.1 The main issue concerning this application relates to noise disturbance to local residents (those located within Quarry Hill Road, Rocks Road, Conyerd Road, for example).

6.2 Policy CP 1 of the TMBCS states at point 3 that the need for development will be balanced against the need to protect the environment. When determining planning applications the quality of residential amenity will be preserved.

6.3 Saved Policy P3/17 of the TMBLP relates to the impact of noise from transport related sources upon residential amenity. It states at point 3 that in considering proposals for noise generating development, the proposal should not have a significant adverse noise impact on any nearby noise-sensitive uses.

6.4 PPG 24 refers at paragraph 10 to Noisy Development. It states:

“Much of the development which is necessary for the creation of jobs and the construction and improvement of essential infrastructure will generate noise. The Planning system should not place unjustifiable obstacles in the way of such development. Nevertheless, local planning authorities must ensure that development does not cause an unacceptable degree of disturbance. They should also bear in mind that subsequent intensification or change of use may result in greater intrusion and they may wish to consider the use of appropriate conditions.”

6.5 The reason for the imposition of the conditions was to prevent goods vehicles accessing and leaving this commercial site from travelling past a number of residential properties during nights and weekends and harming their amenity.

6.6 It is evident that the Parish Council is not against the principle of changing the access arrangement to and from this site, providing that residential amenity can continue to be protected.

6.7 This is a matter that has been given much consideration and the use of an alternative condition was contemplated and discussed with the applicant and the Borough Council’s legal advisers. The alternative condition sought to limit the route of goods vehicles when accessing and leaving the site so that such vehicles accessing the site during anti social hours do so only via the Haul Road (i.e. outside the hours of the day/days of the week referred to in the conditions, the subject of this application). However, legal advice was that the use of such a condition attached to a planning permission is unlikely to safeguard the amenity of residential properties as similar conditions have been found to be ultra vires because it was not possible to enforce a condition such as this to ensure that all vehicles concerned would use a prescribed route.

6.8 However, case law does show that a Planning Obligation (legal agreement or unilateral undertaking) under s106 of the Town and Country Planning Act 1990 **could** be used to require goods vehicles to use a prescribed route. This is because the applicant would enter into an agreement that would put the onus on him to police the site and impose penalties on drivers/contractors/companies that do not use the prescribed route. It is on this basis that it is considered possible to use a s106 agreement to require goods vehicles to use only the Haul Road to access and leave the site during unsociable hours. Of course consideration must be given as to whether this arrangement would nevertheless result in unacceptable detriment to the amenity of local residents.

- 6.9 The DHH considers it unlikely that two HGV movements would occur to and from this site within a 5 minute timeframe and I concur with that judgement. As a result, DHH believes that residents in the locality would still be afforded a good noise environment as defined with the relevant British Standard and the WHO guidelines and as such the proposed development should still allow for a “reasonable” night’s sleep.
- 6.10 I therefore consider that allowing vehicle movements to occur at night and during the weekends along the Haul Road is unlikely to significantly detract from the amenity of local residents.
- 6.11 The site itself is not subject to controls governing working hours and, as such, vehicles can be loaded/unloaded at any time of the day or day of the week without breaching planning conditions. Therefore, whilst the relaxation of the current conditions could create more activity during the night or at weekends, the noise generated by this activity within the site would be no worse than can already lawfully occur at this time from a planning point of view.
- 6.12 It must also be taken into consideration that the applicant has expressed the desire to route **all** goods traffic accessing and leaving the site along the Haul Road, not just that which would occur during nights and weekends. Therefore, there is the potential for improvement to the amenity of residents living in Quarry Hill Road, Rocks Road and other adjacent roads as goods vehicles from this site may no longer travel past these properties during the day time. Whilst it is not possible to require all traffic to access and leave the site via the Haul Road, as that route is far easier to use for goods vehicles than Quarry Hill Road or Rocks Road, this is more likely to happen in reality.
- 6.13 In light of the above, I do not consider that the use of the Haul Road by goods vehicles during the nights and at weekends would cause such disturbance to residential amenity of existing residential properties that would render the proposed alternative to the current conditions unacceptable. Accordingly, I consider that the proposed development complies with policy CP 1 of the TMBCS, saved policy P3/17 and current Government guidance contained within PPG 24 as it would not cause a unacceptable degree of disturbance to local residents.
- 6.14 With regard to the “missing” section of landscape screening identified by DHH, Members will note from paragraph 6.8 of my report on application TM/09/01898/FL (which follows this report) that young trees have been planted to fill this gap.
- 6.15 I note the comments of the PC. For clarification the applicant (and his successors) and any persons authorised by him have the right to use the Haul Road, not necessarily traffic generated by the tenants within the Hornet site. Concerning the condition suggested by the PC regarding time restrictions, as has been stated in paragraph 6.7 of this report, a condition is not considered to be appropriate in this instance.

- 6.16 Members may be aware that the site lies immediately to the north of Isles Quarry West, which is designated for residential development (200 units) under policies CP 18 of the TMBCS and H2 of the DLA DPD. The designation of this adjacent site for housing development is a material consideration in this case and needs to be given appropriate weight. i.e. the amenity of future residents of this adjacent land needs to be considered.
- 6.17 Whilst the site is designated for residential development, no planning application has been submitted for the adjacent site at Isles Quarry West at the time of writing this report. Whilst the Borough Council has received informal enquiries over the last 2 years from two separate parties, an informal enquiry for a proposed residential development is **not** currently being considered by Officers. Consequently, there are no details at this time of the likely number, layout or position of the proposed dwellings within this site.
- 6.18 Furthermore, Policy H 2 (criterion c) requires any residential development of the Isles Quarry Site to have regard to the potential environmental impact of continuing employment use on the upper platform (which includes the application site), which is not to be incorporated in to the residential development. The policy requires the future residential development within Isles Quarry West to have a satisfactory noise climate that complies with saved policy P3/17 of the TMBLP. The onus is, therefore, upon the eventual developer of the Isles Quarry site to design a residential scheme in the knowledge that the employment use within the current application site can continue to operate.
- 6.19 Therefore, I do not consider that significant weight can be given to the likely impact of the proposed development upon the future residents of Isles Quarry West as a defined scheme has not yet gone through the planning application process and indeed any scheme will need to be designed to enable the residential properties to have an acceptable aural environment in any event.
- 6.20 The proposal has not received an objection from Kent Highway Services as the use of the Haul Road is considered to be an improvement in terms of HGV access to and from the site.
- 6.21 I would, therefore, recommend that planning permission be granted removing the conditions, but only if a s106 obligation is entered into by the applicant that requires goods vehicles accessing and leaving the site to do so via the Haul Road during the nights and at weekends. The agreement will need to contain an obligation on the applicant to impose penalties on drivers/contractors who breach the agreed route of access to and from the site. The applicant would be in breach of the agreement if such penalties were not imposed by him.
- 6.22 Members will note that a second application regarding development within this site is also on the agenda for consideration tonight (Ref. TM/09/01898/FL). This seeks permission to change the use of land to B1, B2 and B8 uses and to erect 4 industrial/warehouse buildings on land immediately to the west of the existing

buildings within the Hornet Business Estate. Whilst this is a separate matter from the current application, the two are intrinsically linked through the relaxation of conditions sought through this application. This is evident as I have recommended that the same s106 Planning obligation be required in connection with any permission the subject of application TM/09/01898/FL. However Members need to be aware that if planning permission is refused for this application to remove the conditions, then this will have a bearing on application TM/09/01898/FL, as the residential amenity of local residents would still need to be protected from noise and disturbance arising from that development. In the absence of a s.106 obligation, I would suggest the imposition on application TM/09/01898/FL of a similar condition to the ones that currently restrict goods vehicle movements to and from the Hornet site.

7. Recommendation:

7.1 Grant Planning Permission as detailed by Letter dated 14.07.2009, Details of Land Registry dated 14.07.2009, Supporting Statement dated 14.07.2009, Site Plan 002 dated 01.09.2009, Certificate B dated 01.09.2009, Letter dated 01.09.2009, Letter dated 01.09.2009, Section 003 dated 01.09.2009, Letter dated 10.09.2009, Letter dated 16.09.2009, Letter dated 17.09.2009, subject to:

- The applicant entering to a Planning Obligation under section 106 of the Town and Country Planning Act 1990 to achieve the following;

To require all goods vehicles accessing and leaving the site before 0700 hours and after 1800 hours Monday to Friday and before 0700 hours and after 1300 hours on Saturdays and on Sundays and public holidays to do so only via the Haul Road. No deliveries or despatch of goods shall take place on Sundays and public Holidays via Quarry Hill Road or Rocks Road; and

- the following conditions:
1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission. (Z013)

Reason: In pursuance of Section 91 of the Town and Country Planning Act 1990.

2. The area shown on the site layout drawings approved under applications TM/83/166, TM/87/1591 and TM/00/00461/FL as vehicle parking space shall be kept available for such use and no permanent development, whether or not permitted by the Town and Country Planning (General Permitted Development) Order 1995 (or any order amending, revoking and re-enacting that Order) shall be carried out on the land so shown or in such a position as to preclude vehicular access to this reserved parking space.

Reason: Development without provision of adequate accommodation for the parking or garaging of vehicles is likely to lead to hazardous on-street parking.

3. No materials, plant or other equipment of any description shall be kept or stored in the open other than in areas and to such heights as may be approved in writing beforehand by the Local Planning Authority. (I006)

Reason: To avoid obstruction of vehicle parking/manoeuvring areas and to ensure the character and appearance of the development and the locality is not significantly harmed.

4. No manufacturing process or ancillary operation shall be permitted in the service yard except for the delivering and despatch of goods.

Reason: In the interests of the residential amenities of the locality so as to avoid disturbance by reason of noise.

Informative:

1. The applicant is advised to investigate the possibility of fitting broadband variable amplitude reverse alarms to goods vehicles and forklift trucks operating within the application site.
- 7.2 In the event that the applicant does not enter into a legal agreement as set out in paragraph 7.1 of this report within six months of the date that Members resolve to grant permission, then **Refuse Planning Permission** for the following reason:
1. The development would result in unacceptable detriment to the amenities of local residents due to the increase in goods vehicles using residential streets at times when they should expect quiet enjoyment of their property. The development is, therefore contrary to policy CP 1 of the Tonbridge and Malling Borough Core Strategy 2007, saved policy P6/13 of the Tonbridge and Malling Borough Local Plan 1998 and current Government Guidance contained within PPG 24.

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