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Proposal:	Application under Section 73 for removal of condition 14 of planning permission TM/96/00238/FL (seven industrial units) to allow the 24 hour movement of heavy goods vehicles
Location:	Priory Park Ditton Court Quarry Mills Road Quarry Wood Aylesford Kent
Applicant:	Indigo

1. Description:

1.1 This application proposes the removal of a planning condition restricting the number of HGV vehicle movements to and from the Priory Park Industrial Estate between the hours of 22:00 and 06:00. The restriction does not apply to vehicles under 7.5 tons in weight. The application is submitted with regard to the development as a whole and is not submitted by any particular operator on the site. The condition currently limits the number of HGV movements between the hours of 22:00 to 06:00 to a maximum of 429 spread over seven days and within individual time slots. A copy of the table setting out the movements is attached as Annex 3.

1.2 The wording of the condition is as follows:

'No heavy goods vehicles shall enter or leave the site outside the hours of 06.00hrs and 22.00hrs other than as set out in Table 1 of the Grub Taylor Report dated May 1992 (as reproduced as Appendix 4 of the Report Number 61/92 by Moir Hands Associates dated 13 May 1992)

Reason: In the interests of residential amenity

1.3 The applicant has submitted a supporting statement and noise assessments that reach the following conclusions:

- The condition is not relevant to the development as the figures it is based on were those of a single warehouse and distribution centre rather than the seven individual units approved. The condition also restricts the owner from using the industrial park to its full potential, to the detriment of employment needs in the borough*
- In assessing the impact of noise on sleep using World Health Organisation (WHO) guidelines it is considered that the site could accommodate up to 560 vehicle movements per night without exceeding WHO guidelines for noise levels avoiding sleep disturbance. This figure is way above reasonable expectation for the site with a more likely figure being 150 HGV movements.*

- *Given this information it is considered that the impact on residential amenity of removing condition 14 would be negligible in that the increase in maximum and ambient noise levels would be approximately 2dB which would not be noticeable nor exceed the most stringent limits of the WHO guidelines for community noise (1999). The degree of restriction is disproportionate to the expected environmental impact of the site.*

2. The Site:

- 2.1 The application site is in the former Ragstone quarry at the south western end of the Quarry Wood industrial estate. The application to which the condition in question was attached has been part implemented with construction not started on three of the units proposed.

3. Planning History:

- 3.1 There have been numerous applications on the site, the most relevant of which are as follows:
- 3.2 TM/00/01396/FL Approved 25.08.2000
Amendment to planning permission TM/96/00238/FL to substitute 5 smaller industrial units for one large unit.
- 3.3 TM/00/01154/FL Approved 29.09.2000
Retrospective application under S.73 and S.73(A) for removal of part (A) of condition 15 of permission TM/96/00238/FL (seven industrial units) to allow the development without construction of the acoustic barrier on top of the existing bunding.
- 3.4 TM/98/00704/ORM Approved 20.05.1998
Amendments to elevational treatment to and subdivision of unit 7 of permission TM/96/00238/FL.
- 3.5 TM/96/00238/FL Approved 05.12.1996
B1, B2 and B8 use classes development comprising 7 units with access from Mills Road and associated site construction and engineering works.
- 3.6 TM/89/1390 Approved 31.05.1990
Details of industrial development comprising 43 units with associated site construction engineering works pursuant to TM/83/1250.
- 3.7 TM/88/01824 Approved 27.09.1991
Distribution depot including vehicle workshop and ancillary buildings, light industrial development comprising 14 units with access and associated site construction/engineering works.
- 3.8 TM/83/1250 Approved 27.11.1985
Outline application for mixed development.

4. Consultees:

- 4.1 Ditton PC: Strongly objects to this application because to allow 24 hour movement of heavy goods vehicles would be detrimental to the local amenity. The businesses were aware of the restrictions when they first occupied the site and to remove them would cause much distress to local residents.

Comments repeated following revised information from applicants.

- 4.2 Aylesford PC: Strongly objects. Condition 14 was put in place to protect local residents and resulted from protests received on the Somerfield Warehouse project. The proposed 300-350 lorry movements during an 8 hour overnight period are totally unacceptable and averages a lorry movement every 90 seconds. We would expect the TMBC officers and Councillors to take appropriate action in support of this objection.

When commenting on additional noise report comments still stand. This report illustrates that the local residents will be subjected to increased noise levels.

- 4.3 KCC (Highways) No objections as easing restriction may marginally ease pressure on the road network at busier times.

- 4.4 DHH: Condition 14 of Planning Permission TM/96/238 says:

No heavy goods vehicles shall enter or leave the site outside of the hours of 06.00 to 22.00 other than as set out in Table 1 (page 11) of the Grub Taylor Report dated May 1992 (as reproduced as Appendix 4 of the Report Number 61/92 by Moir Hands Acoustics dated 13 May 1992)

Reason: In the interests of residential amenity

- 4.4.1 Table 1 referred to in the condition permits a total of 429 HGV movements in a week during the hours of 22.00 to 06.00. One movement is permitted on Sunday/Monday night and on the other six nights the number ranges between 55-88 with an average of 71. These vehicle movements are based on the anticipated situation when a "Gateway" supermarket distribution depot was proposed.
- 4.4.2 The application is supported by two reports from Adnitt Acoustics. Local residents have commissioned a review of the Adnitt reports – this is contained in two reports from Moir Hands, the acoustic consultants who have acted for the applicants in respect of earlier applications at Priory Park.
- 4.4.3 The purpose of condition 14 is to protect residential amenity and it is therefore necessary to have regard to the available guidance on acceptable levels of environmental noise. Because condition 14 relates to the night-time period (22.00 – 06.00) it is the guidance on sleep disturbance that is particularly relevant in relation to this application.

4.4.4 The most appropriate guidance is contained in the World Health Organisation (WHO) “Guidelines for Community Noise (1999)”. These say that in order to avoid negative effects on sleep, the noise level inside bedrooms should not exceed 30dB LA_{eq} and 45dB LA_{max} during the 8 hour period 23.00 to 07.00. The LA_{eq} criteria is intended to relate to continuous noise and the LA_{max} criteria to peak noise levels from single sound events. In order to meet these internal guidelines, the noise levels at the outside facades of residential buildings should not exceed 45dB LA_{eq} and 60dB LA_{max}. This is to enable the occupants to sleep with windows open and assumes that the noise reduction from outside to inside with the window partly open is 15dB. [Note: PPG 24 says that noise reduction through an open window is in the range 10-15dB.]

4.4.5 The applicant’s acoustic consultant (Adnitt) has been advised by his client that a more robust estimate of typical HGV volumes is 150 movements in the period 22.00-06.00 (average per night) based on existing uses and volume projections for those units not yet completed. This compares with the average of 71 movements derived from Table 1 and condition 14

4.4.6 Adnitt have calculated the noise impacts – LA_{eq} and LA_{max} of increasing HGV movements to 150. The results, calculated as outside façade noise levels, are:

Location	Condition 14 HGV Movements	Projected HGV Movements	Difference
Acorn	35.9 LA _{eq}	38.3 LA _{eq}	+2.4
Grove/Ffinch Cl	54.8 LA _{max}	56.6 LA _{max}	+1.8
Ragstone Court	28.0 LA _{eq} 45.5 LA _{max}	30.4 LA _{eq} 46.3 LA _{max}	+ 2.4 + 0.8

4.4.7 The applicant’s consultant concludes that the impact on residential amenity of increases of this magnitude would be negligible – they would not be noticeable or exceed the WHO Guidelines. He considers that the number of movements would need to double to around 300 before a noticeable change occurred. Noise levels would still be within WHO Guidelines.

4.4.8 The reports prepared by Moir Hands on behalf of local residents, whilst raising a number of queries on and criticisms of the Adnitt reports, conclude that an increase in the number of vehicles entering and leaving the site overnight, over and above that currently allowed, is supportable but there must be a limit

4.4.9 It is suggested that this limit should be expressed either in terms of the noise reaching neighbouring dwellings or as a limit on the number of lorry movements, to 150, with the latter being preferable.

4.4.10 The principle of controlling night-time noise from heavy goods vehicle movements has been established by condition 14. In my view the on-going protection of residential amenity is necessary and I do not support the complete

removal of condition 14. I am however, persuaded that it would be appropriate to permit an increase in HGV movements to not more than 150 in any period between 22.00 to 06.00.

4.5 Private Reps: 116/0X/47R/0S + article 8 + press notice. Objections and 147 name petition received raising the following points:

- Affect sleep patterns of local residents.
- Adverse impact on quality of life.
- 24 hour HGV movements would result in an increase in noise pollution.
- Extra noise from reversing sirens, revving engines, air brakes, chillers etc.
- Extra air pollution.
- Deletion of condition would breach Article 8 of the First Schedule and Article 1 of the First Protocol of the Human Rights Act.
- Kent Frozen Foods were fully aware of limitations upon them for night use therefore they should be obliged to accept the existing planning conditions.
- Kent Frozen Foods have already caused complaints regarding noise levels at their site.
- Noise barriers, such as tree foliage do not work.
- No noise barriers erected around the site.
- Land should have been returned to agriculture as originally required.
- Restrictions imposed are entirely reasonable and in accordance with Circular 11/95 in that it is justified by the nature of the development.
- Noise levels have been assessed and measured incorrectly.
- WHO guidelines have not been assessed accurately as they do not take into consideration slow moving and accelerating HGVs.
- Environmental Protection Act 1990 and case law would appear to support the fact that irresistible march of development, to the detriment of environment and amenity, should be curbed.
- The impact would be especially severe during the summer months.
- Knock on impact of light pollution.

- Detrimental impact on local wildlife.

A further five letters of objection have also been received on the additional noise information submitted, reiterating earlier comments.

- 4.6 Local residents have commissioned noise reports from Moir Hands, a noise consultant. The reports submitted query the findings of those submitted with the application. The reports conclude that there is a need to limit HGV vehicle movements but this might be slightly above that suggested as part of the original application.

5. Determining Issues:

- 5.1 The application relates to the removal of the condition limiting the number of HGV movements between the hours of 22:00 and 06:00. There are no restrictions on operating hours on the units nor are there any restrictions imposed on vehicles under 7.5 tons. The original application for industrial and business use on the site approved in 1985 did not impose any restrictions on the hours of operation of the site and none have been proposed since.
- 5.2 The application currently being implemented is subject to a condition restricting the number of HGV movements between 22:00 and 06:00 hours and it is this restriction the applicant wishes to remove. The principal consideration when determining this application is therefore the impact removing the restriction would have on the amenity of the surrounding area. When considering an application under S73, it is open to the LPA refuse permission, or to grant it, or to substitute an alternative condition.
- 5.3 The technical issues regarding the noise implications of removing the condition are covered in DHH comments contained at para. 4.4 of this report. The conclusion reached is that unrestricted HGV movements would result in an adverse impact on residential amenity but the acoustic reports submitted do indicate that there is scope to increase the number of HGV movements allowed.
- 5.4 The fact that there is scope to increase movements is backed up by the application in 2000 to remove the acoustic screening to the north side of the site. This application was supported by a noise assessment by Moir Hands (now acting as the residents' noise consultant) that stated that night time noise levels on site would be well below WHO guidelines and that a 2m fence would not be required.
- 5.5 It is understood that the applicant wishes to remove the condition so that there would be no HGV restriction overnight. Given the comments contained in the applicants supporting statements regarding potential traffic generation on the site if completely built out and also the concerns of DHH it is therefore considered appropriate to amend the condition to allow a greater number of lorry movements in line with the figures submitted by the applicant rather than allow unrestricted use.

6. Recommendation:

6.1 Grant Planning Permission under Section 73 subject to the following conditions:

- 1 No more than 150 Heavy Goods Vehicle Movements shall take place to or from the site as a whole between the hours of 22:00 on one day and 06:00 on the next.

Reason: In the interests of residential amenity.

- 2 All conditions imposed on planning permission TM/96/00238/FL, other than condition 14, are also imposed on this permission, in so far as they are still subsisting and capable of taking effect.

Reason: For the reasons originally cited.

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