

REFERENCE NO - 19/500705/FULL			
APPLICATION PROPOSAL			
Variation of condition 20 of 14/502010/OUT to allow Saturday working hours start time to be changed from 9:00am to 8:00am (total working hours 8:00am to 13:00pm).			
ADDRESS Hen And Duckhurst Farm, Marden Road, Staplehurst, TN12 0PD			
SUMMARY OF REASONS FOR RECOMMENDATION – (APPROVE SUBJECT TO CONDITIONS)			
<ul style="list-style-type: none"> • There is separate Environmental Protection legislation that addresses noise and environmental nuisance on construction sites. • For this reason, Condition 20 does not pass the relevant legal and policy tests for attaching planning conditions in that it is not necessary, relevant to planning, nor reasonable. • For these reasons and as explained below, it is recommended that Condition 20 is removed altogether. 			
REASON FOR REFERRAL TO COMMITTEE			
Staplehurst Parish Council recommends refusal and referral to Planning Committee if officers are minded to approve.			
WARD Staplehurst	PARISH COUNCIL Staplehurst	APPLICANT Mr Jon Collcutt (BDW Homes) AGENT N/A	
DECISION DUE DATE 02/07/2019		PUBLICITY EXPIRY DATE 17/04/19	
RELEVANT PLANNING HISTORY			
App No	Proposal	Decision	Date
17/506306	Approval of reserved matters application for the erection of 250 dwellings (Appearance, Landscaping, Layout and Scale being sought) and details of Conditions 5, 7, 9, and 10 relating to phasing, landscaping and ecology, pursuant to 14/502010/OUT	APPROVED	15/06/18
14/502010	Outline application for the erection of residential development for up to 250 dwellings with access and garaging with access considered at this stage and all other matters reserved for future consideration.	APPROVED	03/02/17

1.0 DESCRIPTION OF SITE

1.01 The application relates to the 'Hen and Duckhurst' housing site which has permission for 250 dwellings which are under construction. The site is on the west side of Staplehurst to the north of Marden Road and allocated for housing under policy H1(48).

2.0 PROPOSAL

2.01 The application seeks to vary condition 20 of the outline permission which restricts working hours of construction as follows:

"During the construction period, no construction or deliveries to the site shall take place on Sundays or Bank Holidays or outside the following times:

0800 to 1800 on Mondays to Fridays; and 0900 to 1300 on Saturdays.

Reason: In the interests of amenities of the occupiers of surrounding properties."

2.02 The applicant is seeking to start an hour earlier on Saturdays from 8am to 1pm.

3.0 POLICY AND OTHER CONSIDERATIONS

- Maidstone Borough Local Plan (2011-2031): SS1, SP10, H1, H1(48), DM1
- Kent Waste and Minerals Plan 2016
- National Planning Policy Framework (NPPF)
- Planning Practice Guidance (PPG)

4.0 LOCAL REPRESENTATIONS

4.01 **Staplehurst Parish Council:** Recommend refusal and referral to Planning Committee.

"Councillors expressed disappointment with the application and the management of works at Hen & Duckhurst Farm. They commented that the permissible working hours were often being exceeded and not being enforced. It was RESOLVED to recommend REFUSAL and to request referral to MBC Planning Committee were the officer minded to approve the application."

4.02 **Local Residents:** 16 representations received raising the following (summarised) points:

- Will cause more noise and disturbance.
- Should not have to put up with more noise.
- Significant noise occurs from the site.
- Times should be adhered to.
- Construction will take a number of years.

- Condition is being breached already.
- Mud and dirt on roads.
- Parking on local roads.

5.0 APPRAISAL

5.01 Whilst the applicant is seeking to vary condition 20 to allow work to start an hour earlier on Saturdays, it is considered that the grounds for imposing a condition on working hours should actually be re-visited. This is because issues of noise and disturbance are dealt with under separate Environmental Protection legislation and such a condition controlling working hours should not be imposed on planning permissions.

5.02 As the NPPF outlines at paragraph 55, planning conditions should be kept to a minimum and only be imposed where they are:

- 1. necessary;*
- 2. relevant to planning;*
- 3. to the development to be permitted;*
- 4. enforceable;*
- 5. precise;*
- 6. reasonable in all other respects.*

5.03 Case law has also established that a legally valid condition must be relevant to planning, relevant to the development to be permitted, and reasonable.

5.04 A condition controlling construction working hours is not deemed to be necessary, relevant to planning, or reasonable. This is because the Council has specific powers under the Control of Pollution Act 1974 and the Environmental Protection Act 1990 to deal with noise and environmental nuisance, including on construction sites. This allows for a local authority to impose restrictions by serving abatement notices, including in relation to hours of works and noise levels. In addition, matters relating to the construction phase of development are generally not material considerations for planning applications, which relate more to the effects of the development when built (e.g. traffic generation, visual impact, privacy etc.). For these reasons a planning condition is not necessary or relevant to planning as it repeats other legislation which planning conditions should not do. For this reason it is also unreasonable.

5.05 On this basis, the condition does not pass all the legal and policy tests for planning conditions and it is recommended that condition 20 is removed.

5.06 This does not mean that construction can be carried out at any time and the appropriate legislative powers to deal with noise and environmental nuisance can be used where appropriate. The Council also has its own 'Environmental Code of Development Practice' issued by the Environmental Protection Team, which includes construction working hours. This code is intended to give guidance to contractors on the measures that the Council expects them to take to minimise the environmental impacts of their work on the local community.

6.0 CONCLUSION

6.01 For the above reasons, it is recommended that condition 20 is removed altogether.

6.02 Notwithstanding this recommendation, the Council's own 'Environmental Code of Development Practice' actually allows working hours of 8am to 1pm on Saturdays so should Members consider that a condition should remain in place, the variation sought by the applicant to start at 8am on Saturdays would accord with the Code.

6.03 Any grant of permission results in a new planning permission at the site and so all previous conditions that are still relevant and those already approved need to be attached to the permission and these are set out below. The legal agreement attached to the outline consent contains a clause that links it to and binds any subsequent permission so a new legal agreement or deed of variation is not required.

8.0 RECOMMENDATION

GRANT PLANNING PERMISSION subject to the following conditions with delegated powers for the Head of Planning to be able to settle or amend any necessary planning conditions in line with the matters set out in the recommendation and as resolved by the Planning Committee.

1. The development hereby permitted shall be carried out in accordance with the following approved plans under application 14/502010/OUT: Site Location Plan DHA/9702/01 Rev B and drawing site access round about T0191/SK01 RevP4 forming part of Appendix E of Transport assessment report.

Reason: To ensure that the location of the vehicular access is defined.

2. The development shall be carried out in accordance with the phasing details approved under application 17/506306/REM unless otherwise agreed in writing with the local planning authority.

Reason: To ensure that the development is carried out in a satisfactory manner.

3. The development shall be carried out in accordance with the materials approved under application 18/505483/SUB unless otherwise agreed in writing with the local planning authority.

Reason: In the interests of visual amenity of the area and to ensure that the proposed development is satisfactorily integrated with its immediate surroundings.

4. The development shall be carried out in accordance with the hard and soft landscaping and boundary treatments approved under application

17/506306/REM unless otherwise agreed in writing with the local planning authority.

Reason: In the interest of visual amenity of the area.

5. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following first occupation of the dwellings to which the landscaping relates. Any trees or plants, which, within a period of 5 years from the completion of the development die, are removed, or become seriously damaged or diseased, shall be replaced in the next planting season with others of similar size and species.

Reason: In the interest of visual amenity of the area.

6. The development shall be carried out in accordance with the landscape management plan approved under application 17/506306/REM unless otherwise agreed in writing with the local planning authority.

Reason: In the interest of residential and visual amenity of the area.

7. The development shall be carried out in accordance with the tree and hedge protection measures approved under application 17/506306/REM unless otherwise agreed in writing with the local planning authority.

Reason: To safeguard existing trees to be retained and to ensure a satisfactory setting and external appearance to the development.

8. The development of plots 1-131 and 200-250 shall be carried out in accordance with the ground levels approved under application 17/506306/REM unless otherwise agreed in writing with the local planning authority. No development shall take place on plots 132-199 until details of the proposed slab levels of the building(s) and the existing site levels have been submitted to and approved in writing by the local planning authority and the development shall be completed in accordance with the approved levels;

Reason: In order to secure a satisfactory form of development having regard to the topography of the site.

9. The development shall be carried out in accordance with the construction management plan approved under application 18/505340/SUB unless otherwise agreed in writing with the local planning authority.

Reason: In the interests of residential amenities in the area and in the interests of biodiversity and ecology.

10. The development shall be carried out in accordance with the contamination assessment and mitigation strategy approved under application 18/503826/SUB unless otherwise agreed in writing with the local planning authority.

Reason: In the interests of residential amenities of the area.

11. If during the course of development any contamination is found which has not been identified in the site investigation, additional measures for the remediation of this source of contamination shall be submitted to and approved in writing by the local planning authority. The remediation of the site shall incorporate the approved additional measures.

Reason: In the interests of amenities of the future occupiers of the dwellings.

12. The development shall be carried out in accordance with the archaeological assessment and strategy approved under application 18/503707/SUB unless otherwise agreed in writing with the local planning authority.

Reason: To ensure appropriate assessment of the historic landscape implications of any development proposals and the subsequent mitigation through preservation in situ and integration into main development scheme or preserved by record.

13. The development shall be carried out in accordance with the sustainable surface water drainage scheme approved under application 18/505338/SUB unless otherwise agreed in writing with the local planning authority.

Reason: To prevent flooding by ensuring the satisfactory storage of/disposal of surface water from the site.

14. The development shall be carried out in accordance with the foul drainage details approved under application 18/505338/SUB for plots 1-2, 11-16, 25-32, 211-241, and 247-249 unless otherwise agreed in writing with the local planning authority. No occupation shall take place on any further plots until off-site foul drainage details have been submitted to and approved in writing by the local planning authority.

Reason: To ensure that foul and surface water is satisfactorily managed and disposed of from the site.

15. The development shall be carried out in accordance with the access details approved under application 18/503826/SUB unless otherwise agreed in writing with the local planning authority.

Reason: In the interests of highway safety.

16. The development shall be carried out in accordance with the road and footpath details approved under application 18/505340/SUB unless otherwise agreed in writing with the local planning authority.

Reason: In the interests of highway safety and residential amenities.

17. No dwelling shall be occupied until the following highway works have been implemented in full to the satisfaction of the local planning and highways

authorities unless otherwise agreed in writing with the local planning authority. These works comprise:

- (i) Pedestrian and cycle links to be provided to the existing residential development to the east of the application site via Further Field and Marfield.
- (ii) A link for vehicular traffic through the development site towards Lodge Road is to be safeguarded.
- (iii) Bus boarders are to be provided at two relevant bus stops.
- (iv) Traffic calming is to be provided along Marden Road and the 30 mph speed limit is extended.
- (v) A pedestrian and cycle crossing to be provided on Marden Road to ensure safe access to the village centre from the site.

Reason: In the interests of highway safety and amenity.

18. Cordwood above 20cm in diameter from the site should be retained and placed within the site in locations and quantities to be agreed with the local planning authority prior to any tree felling take place.

Reason: In the interests of biodiversity and ecological enhancement in compliance with NPPF.

19. Within 6 months of the occupation of the 50th dwelling house the public open space shall be accessible to the public as open-space and shall be maintained as such.

Reason: In the interests of amenities of the prospective residents of the development.