

## **Item No. 14**

<b>APPLICATION NUMBER</b>	<b>CB/12/03000/VOC</b>
<b>LOCATION</b>	<b>Market Garden Nurseries, 64 High Road, Beeston, Sandy, SG19 1PB</b>
<b>PROPOSAL</b>	<b>Variation of condition 4 (hours of operation and delivery) of planning approval reference CB/11/03441/VOC to allow for the operation of machinery and deliveries on Saturday between 0800 hours to 1600 Hours.</b>
<b>PARISH</b>	<b>Sandy</b>
<b>WARD</b>	<b>Sandy</b>
<b>WARD COUNCILLORS</b>	
<b>CASE OFFICER</b>	<b>Amy Lack</b>
<b>DATE REGISTERED</b>	<b>17 August 2012</b>
<b>EXPIRY DATE</b>	<b>12 October 2012</b>
<b>APPLICANT</b>	<b>Big Timber</b>
<b>AGENT</b>	<b>DLP Planning Ltd</b>
<b>REASON FOR COMMITTEE TO DETERMINE</b>	<b>Called in by Cllr Aldis and Cllr Maudlin due to local concerns regarding the development</b>
<b>RECOMMENDED DECISION</b>	<b>Variation of Condition - Granted</b>

### **Site Location:**

The application site, 64 High Road, Beeston, was formerly occupied by Thelsid Nursery. The site comprises: an unoccupied bungalow dwelling to the northern corner of the site, adjacent to the northbound A1 trunk road; a detached Atcost building to the southwest of the site; and a concrete access route through the site.

Access to the site can be made directly from the A1 or via a single width track from Orchard Close. This track also serves as footpath no.40.

The site does not fall within a Conservation area. It does not fall within a development envelope and as such lies wholly within the open countryside as defined by the proposals map.

This application has been submitted in conjunction with three other Section 73 applications which relate to this application site. Planning references: CB/12/03045/VOC; CB/12/03046/VOC; and CB/12/03047/VOC.

### **The Application:**

This Section 73 application seeks to vary condition 4 in respect to hours of operation at the site attached to planning reference CB/11/03441/VOC. CB/11/03441/VOC is

an extant S73 application which was approved at appeal and varies the same condition that was imposed to control the hours of operation on the original application CB/11/01546/FULL. CB/11/01546/FULL is the extant permission approved for the change of use of the site.

The application to vary condition 4 with respect to hours of operation under planning application reference CB/11/03441/VOC was refused by the Development Management Committee on 9 December 2011. The application proposed the variation of the condition 4 which restricted the hours of vehicular movement and was allowed at appeal by the Inspector who also awarded costs to the appellant. A copy of the Inspectors decision is attached to this report as Appendix A.

The wording of the varied condition, as allowed by the Inspector reads:

There shall be no machinery used at the site, outside the hours of 0730 hours to 1800 hours Monday to Friday and at no time on Saturdays, Sundays, Bank or Public Holidays and there shall be no goods moved within the site or deliveries received or despatched outside the hours of 0600 hours to 1800 hours Monday to Friday and at no time on Saturdays, Sunday, Bank or Public Holidays.

The applicant requests the variation of the above condition to allow for the operation of machinery and deliveries on Saturdays between 0800 hours to 1600 hours. Accordingly, should the application be approved the above condition would be re-worded to read as follows:

There shall be no machinery used at the site, outside the hours of 0730 hours to 1800 hours Monday to Friday or outside the hours of 0800 hours to 1600 hours on Saturdays, and at no time on Sundays, Bank or Public Holidays and there shall be no goods moved within the site or deliveries received or dispatched outside the hours of 0600 hours to 1800 hours Monday to Friday or outside the hours of 0800 hours to 1600 hours on Saturdays and at no time on Sunday, Bank or Public Holidays.

Whilst this application is to vary a condition, in accordance with Section 73 of the Town and Country Planning Act 1990, approval of the application will mean the local planning authority will be issuing a new planning permission for the change of use of the application site. As such, it is necessary to consider whether the development itself is acceptable, taking into consideration any changes in planning policy or guidance and whether the site context has changed. This will be discussed within the main body of the report below under the heading 'Considerations'.

## **National Guidance**

## **National Planning Policy Framework (2012)**

Section 1 - Building a Strong, competitive economy (paragraph 19)  
Section 3 - Supporting a prosperous rural community (paragraph 28)  
Section 7 - Requiring good design (paragraph 56)

Circular 11/95 - The use of Conditions in Planning Permissions

## **Regional Spatial Strategy East of England Plan (2008)**

SS1: Achieving Sustainable Development  
ENV7: Quality in the Built Environment

## **Core Strategy and Development Management Policies (2009)**

CS14	High Quality Development
DM3	High Quality Development
DM4	Development within and Beyond Settlement Envelopes
DM12	Horticultural and Redundant Agricultural Site

## **Supplementary Planning Guidance**

Design in Central Bedfordshire; A guide for Development (2010)

## **Planning History**

CB/12/03047/VOC	Variation of Condition No 5 on Permission CB/11/01546/FULL dated 15/09/2011 to be varied to: No goods, waste or other materials shall be stored, stacked or deposited outside the building(s) to a height exceeding 5 metres, unless otherwise agreed in writing by the local planning authority. Pending consideration.
CB/12/03046/VOC	Removal of Condition No.4 on Permission CB/12/01201/FULL Dated 02/08/2012 -in relation to Highways Access from the A1. Pending consideration.
CB/12/03045/VOC	Variation of Condition No. 4 on Application No. CB/11/03441/VOC dated 08/06/2012 From: There shall be no machinery used at the site, outside the hours of 0730 hours to 1800 hours Monday to Friday and at no time on Saturdays, Sundays, Bank or Public Holidays and there shall be no goods moved within the site or deliveries received or despatched outside the hours of 0600 hours to 1800 hours Monday to Friday and at no time on Saturdays, Sundays, Bank or Public Holidays. To: There shall be no machinery used at the site outside the

hours of 0730 hours to 1800 hours Monday to Friday or outside the hours of 0800 hours to 1600 hours on Saturdays, and at no time on Sundays, Bank or Public Holidays and there shall be no goods moved within the site or deliveries received or despatched outside the hours of 0600 to 1900 hours Monday to Friday or outside the hours of 0800 hours to 1600 hours on Saturdays and at no time on Sundays, Bank or Public Holidays. Pending consideration.

- CB/12/00483/FULL Re-cladding and minor alterations to elevations of existing building. Granted.
- CB/11/03441/VOC Variation of Condition: Change condition 4 (hours of vehicular movement) of Planning Permission CB/11/01546/FULL. Refused. Allowed at Appeal.
- CB/11/01546/FULL Change of use from nursery/horticultural site to commercial timber yard (Sui Generis). Granted.

**Representations:  
(Parish & Neighbours)**

Sandy Town Council No objection. By allowing the operation of machinery and deliveries on Saturday between 0800 hours and 1200 hours this would afford flexibility for the business without too much disruption to residents.

Neighbours The owner/occupiers of the following addresses have submitted representations in objection to the application:

- 2 Orchard Road, Beeston
- 21 Orchard Road, Beeston
- 29 Orchard Road, Beeston
- 19 The Crescent, Beeston
- 32 The Green, Beeston
- 37a The Green, Beeston
- 41 The Green, Beeston

The representations can be summarised as follows;

- The current pending applications and a previous applications to vary conditions dilute and erode the safeguards of the original permission;
- The proposal will result in increased noise and disturbance at weekends and in the evening;
- The timber yard will be highly industrial in nature compared to the low-level agricultural business previously at the site;

- The use of Footpath 40 (a farm track and public footpath) is dangerous, this application will only exacerbated this impact
- Will continual applications be submitted for more and more development at this site?
- No works to improve the A1 access have been undertake to date;
- Even if this current application is rejected the applicant will appeal and win, there is no mechanism for local residents to raise a counter appeal.

In addition to the above representations received a petition has also been submitted on behalf of resident's of The Green and Orchard Road containing 43 signatures.

This objects to the proposal for the following reasons:

- By virtue of the change to conditions the timber yard could dominate residents lives seven days a week;
- Residents object to the removal of a condition to allow development, or allow its permanent removal;
- An increase in traffic has already been noticed and this will only get worse;
- HGV accessing the site via footpath 40 is unacceptable;
- At the committee meeting on 27 June 2012 Cllr Maudlin expressed concern for the time restrictive condition to be in place otherwise deliveries would make life untenable for residents;
- Removal of condition 4, even as lenience would leave continual use of Footpath 40 open for appeal;
- The A1 access should become In and Out. the view of this site for vehicles travelling northbound is less obstructed than other village openings and clearer than Orchard Road after a bend.

The above is a summery of the comments received. A full copy of the petition can be reviewed on the application file.

## **Publicity**

Site notice	Posted on a telegraph pole at the end of the concrete access track/footpath 40 - 04.09.12
Press advert	07.09.2012

## **Consultations/Publicity responses**

Highway Agency	No objection.  The applicant is currently engaged with the Highway Agency in delivering the highway improvements that have been
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conditioned.

Archaeology	No objection. The applicant has already supplied an archaeological desk-based assessment for this site and is working to fulfil the requirements of condition 5 (Archaeology) of planning consent CB/12/01201/FULL. The variation of the condition will have no impact upon the archaeological interest of this site and therefore I have no objection to this application.
Public protection	<p>There is a condition on the current permission relating to machinery noise and so to allow working on a Saturday (i.e. wood working in the workshop) should not have any significant adverse impact upon the amenity of the nearby residential dwellings because this condition will protect against noise disturbance.</p> <p>However, if allowing Saturday working there are concerns regarding the noise and disturbance from deliveries and goods being dispatched from the site. It is suggested that HGV movements are restricted, either in volume, or number of Saturdays/evenings to minimise or restrict any additional impacts. This would then allow a degree of flexibility for the business operator whilst maintaining some control over the activities.</p>
Highway authority	No comment.
Ramblers Association	Subject to a safe and clear passage during any works carried out at the site no objection is raised to the proposals to vary conditions.
Minerals and waste	An amendment to a previously approved development there are no further comments to make.
Bedfordshire and River Ivel internal drainage board	No comment.

### **Determining Issues**

This application seeks to vary condition 4 attached to the variation of condition application approved by the Inspector at appeal under local planning authority reference CB/11/03441/VOC.

By approval of CB/11/03441/VOC a fresh planning permission was granted for the change of use of the site. Essentially there are two extant permissions for the change of use to a timber yard: the original permission CB/11/01546/FULL; and the more recent permission, CB/11/03341/VOC.

The proposed development in all cases, inclusive of this current application to further vary condition 4 is identical. Therefore the assessment of the application turns to the principle of varying the condition, whether or not there have been any changes in planning policy or guidance and whether the site context has changed.

### Changes to Planning Policy and Guidance

The following key changes have been made to Planning Policy and Guidance since the determination of the original application:

- National Planning Policy Framework (2012)
- Car parking standards (2012)

Review of the recently adopted Central Government guidance and this Council's guidance does not introduce any significantly different planning considerations and does not alter the policy background against which the proposal needs to be assessed.

Notwithstanding this the National Planning Policy Framework (2012) does place an emphasis upon the importance of local planning authorities removing barriers to businesses. Section 1 - Building a strong, competitive economy, paragraph 19 states that the Government is committed to ensuring that the planning system does everything it can to support economic growth. Planning should operate to encourage and not act as an impediment to sustainable growth. Therefore significant weight should be placed on the need to support economic growth through the planning system and not impede it.

### Changes in circumstances on site

Since the grant of planning reference CB/11/03341/VOC an application for the erection of two warehouses under planning reference CB/12/01201/FULL has been approved on the site.

Neither material change in circumstance is considered to jeopardise the acceptability of changing the use of the site to a commercial timber yard. Accordingly, from the consultation responses received, an inspection of the site and surroundings the main considerations of the application are;

1. Principle of varying condition 4
2. Principle of development
3. Impact upon the visual amenity of the surrounding area
4. Impact of the proposal on surrounding residential amenity
5. Highway Safety
6. Rights of way
7. Other issues
8. Conclusion

### **Considerations**

#### **1. Principle of varying condition 4**

The application proposes the variation of condition 4. The applicant would like permission to operate machinery on the site, move goods within the site and receive and dispatch deliveries on a Saturday between 0800 hours and 1600 hours. Currently no activity may take place on site, nor deliveries received and dispatched on a Saturday.

In the covering letter submitted with the application the applicant states that variation to the condition as proposed will allow the occasional use of the timber yard site on Saturdays so that the business may respond to commercial demand and seasonal variations in construction. In justifying the variation of this condition the applicant refers to the Inspector's decision to approved planning application reference CB/11/03441/VOC and his consideration of weekday activity at the site. The Inspector concluded that deliveries to and from the site an hour and a half earlier than that restricted to 0730 hours by condition 4 on the original permission for the use of the site (CB/11/01546/FULL) would not be harmful to the living conditions of nearby residents and therefore not necessary to make the change of use of the site acceptable. As such, the Inspector found the variation of the condition to increase hours of operation in conjunction with the approved use acceptable and the Development Management Committee's decision to refuse the application was overturned by the Inspector and subsequently costs awarded to the appellants.

The condition was originally imposed to protect the residential amenity of neighbouring properties. In the Inspector's decision he notes that the nearest dwellings to the site are to the side of the access road on The Green and that vehicles in connection with the development would have to pass approximately 10 metres from the nearest of these properties. There is a high conifer hedge to the rear of these residential properties and there are no windows on the side wall which face the road. Despite the residential nature of Orchard Road the Inspector acknowledged that this road exists as a through route and is open to all traffic at all times, further to this the eastern end of this road is already affected by the persistent noise of heavy traffic travelling along the A1. The Inspector goes on to note that the movement of a small number of lorries along the access road and Orchard Road early in the morning would generate some noise but that this is unlikely to be greater than could have occurred under the previous unrestricted use. He also notes that the noise of a goods vehicle moving slowly is not a sudden or intrusive noise.

These conclusions drawn by the Inspector in his consideration to allow deliveries to and from the site from 0600 hours Monday to Friday as opposed to 0730 as originally approved are likely to be unchanged when considering the receipt and dispatch of deliveries to and from the site on a Saturday.

Mindful of the Inspector's decision; the use of an existing road; and the unrestricted use of the site over the whole of the weekend by the previous horticultural/nursery use, the principle of varying the condition is considered acceptable.

## **2. Principle of development**



The principle of the development to change the use of the application site from a nursery/horticultural site to a commercial timber yard (*sui generis*) has been accepted by approval of extant planning permission CB/11/01546/FULL. There have been no changes in circumstances or site context which have altered this, nor any fundamental change to the policy and guidance background against which the proposal needs to be assessed. The site is located adjacent to the built form of Beeston, which in itself does not benefit from any defined settlement envelope and therefore is wholly within the open countryside. Policy DM12 of the Central Bedfordshire Adopted Core Strategy and Development Management Policies (2009) still applies and deals with the re-use of redundant horticultural sites.

This policy states that proposals for commercial development on horticultural sites in the countryside will be approved if they are considered acceptable in terms of their:

- Scale, layout and design in relation to their setting;
- Assimilation into the rural setting and impact on the surrounding countryside;
- Relationship with the road network and neighbouring rural settlements;
- Potential relationship on existing local retail facilities; and
- Provision of suitable vehicular and pedestrian access arrangements.

The preamble to the policy states:

*'... it is considered that the change of use of horticultural sites ... to similar small-scale and low impact commercial uses may be appropriate; particularly in the context of the Core Strategy where emphasis has been placed on creating additional employment opportunities across the district.'*

The criteria set out above are considered further within this report; however the change of use to commercial is considered acceptable in principle.

### **3. Impact upon the visual amenity of the surrounding area**

The variation of the condition to allow for hours of operation on Saturdays will not have any significant adverse impact upon the visual amenity of the surrounding area.

The proposed layout of the site remains unchanged. The boundary of the closest neighbouring residential property is approximately 60 metres away and given its siting immediately adjacent to the A1 trunk road, the character of the use in this location is not considered to be at odds with the appearance of the rural area.

When the change of use of the site was originally considered, a number of third party representations raised concern with respect to increased traffic, including heavy vehicles using Footpath 40 and Orchard Road when exiting the site and the impact this would have on the character and amenity of The Green. It is acknowledged that the number of traffic movements on these roads are likely to

increase with the new use and there will be a balance therefore between the site developing economically and the potential harm this may have on the character and appearance of the surrounding area.

Documentation was submitted with the original application which remains pertinent to this proposal, outlining the use of this access with the former use of the site for a number of heavy commercial transport vehicles associated with the original nursery/horticultural use of the site. Presently, there is a consent on the site for 5 vehicles, of which one is a 44 tonne articulated lorry and thus Footpath 40 and Orchard Road has historically been used by heavy vehicles for the movement of goods. Although the number of traffic movements on these roads is likely to increase by changing the use of the site, the agent has advised that HGV movements for the commercial timber use would likely be 2-3 per week with car movements of staff and trade persons more daily. This is not considered to be a significant amount of heavy traffic to detract from the character and appearance of The Green to an unacceptable degree.

For these reasons the proposal to vary condition 4 and the new permission which would be granted by virtue of approving this Section 73 application is unlikely to have any undue impact upon the visual amenity of the surrounding area and is therefore considered to accord with Policy DM3 of the Core Strategy Development Management Policies (2009) and Central Government guidance contained within the National Planning Policy Framework (2012).

#### **4. Impact of the proposal on surrounding residential amenity**

The variation of condition 4 to increase the hours during which machinery can be used on the site, when the movements of goods within the site and deliveries can be received and dispatched to take place on a Saturday is unlikely to have any significant adverse impact upon the residential amenity of neighbouring occupiers to the extent that would warrant refusal of this application.

For the reasons rehearsed above under the heading '*Principle of varying condition 4*' the Inspector's reasoning for approval of allowing deliveries to and from the site to commence at 0600 is material in considering the impact that operations on a Saturday would have upon the residential amenity of nearby occupiers. The physical constraints of the site remain unchanged with the nearest dwellings to the site at side of the access road on The Green and vehicles in connection with the development would have to pass approximately 10 metres from the nearest of these properties. The high conifer hedge to the rear of these properties and lack of windows on the side wall which face mitigate the impact of vehicular movement along the road. Despite the residential nature of Orchard Road the Inspector acknowledged that: this road exists as a through route; is open to all traffic at all times; and the eastern end of this road is already affected by the persistent noise of heavy traffic travelling along the A1. These factors are all relevant to the context on a typical Saturday in the same way they were applicable in the Inspector falling to approve the impact of extending hours on a weekday.

Further to this, while the small number of lorries along the access road and Orchard Road at the weekend would generate some noise this is unlikely to be greater than could have occurred under the previous unrestricted use with respect to vehicle movements, as concluded by the Inspector. He also points out that the noise of a goods vehicle moving slowly is not a sudden or intrusive noise.

Unlike the variation of condition application considered by the Inspector which only considered the amendment to the hours of the movements of vehicles, this application also seeks to amend the condition to allow the use of machinery at the site between 0800 hours to 1600 hours on Saturdays. As such, little guidance can be found in the conclusions of the Inspector on the potential for noise and disturbance of nearby occupiers with respect to the use of machinery on-site. However, the consultation response received from the Environmental Health Officer is generally supportive of the proposal in this regard. They are of the view that subject to the imposition of the condition imposed to the existing permission (condition 3) that restricts the noise emitting from the use of any plant, machinery, or equipment on site there is unlikely to be any significant impact upon the amenity of nearby residents.

The Environmental Officer's response expressed greater concern at the impact of noise and disturbance from the additional movements of vehicles generated by the variation of the condition which would allow the movements of goods within the site and the receipt and dispatch of deliveries on Saturdays. Accordingly, they suggest imposing a condition to restrict HGV movement, either in volume, or number on Saturdays/evenings to minimise or restrict any additional impacts. However, in light of the Inspector's decision this is not considered reasonable nor necessary when in practice the movements to and from the site are likely to be limited and not cause any significant noise and disturbance to warrant the imposition of such a restrictive condition to make the development acceptable. Further to this is it not considered prudent to impose a condition that would be extremely difficult to monitor and enforce.

With respect to the consideration of the change of use of the site because there have been no material changes surrounding the site nor any change to the policy and guidance background against which the proposal needs to be assessed the proposal remains acceptable. The physical separation of the site from the nearest residential property, means that there will not be any significant impact on their residential amenity.

No. 43 Orchard Road and the property known as Coslodge are adjacent to the access road to the rear of the site. This is a single tarmac road, which serves access to the site and is footpath no. 40. It also appears to serve access to land beyond and behind the application site. The proposed use of the site indicates that staff would use this route as access in and out of the site together with the timber deliveries exiting this direction only, accessing the site from the A1 Footpath 40 and Orchard Road have historically been used by heavy vehicles for the movement of goods in relation to the former nursery/horticulture use of the site. It is acknowledged that the number of traffic movements on these roads

is likely to increase with the new use, although as noted previously, the HGV movements for the commercial timber use would likely be 2-3 per week with car movements of staff and trade persons on a more daily basis. It is therefore considered that the proposed use would not result in any additional negative impact upon the residential amenity of neighbouring properties which would result in a greater impact than that which could occur by use as a nursery.

## **5. Highway Safety**

The Highways Team have raised no objection to this application to vary condition 4 of planning reference CB/11/01546/FULL. Given that there have not been any fundamental changes to the policy and guidance background against which the proposal needs to be assessed and the subsequent applications which have been approved at the application site do not materially alter arrangements that would impact upon highway safety the change of use of the site remains acceptable.

This is subject to the imposition of a condition (condition 2) to ensure that the scheme for signage within the site which has been approved by the submission of details by the applicant to satisfy condition 2 since the grant of the original planning permission is implemented. Implemented as agreed the signage scheme will serve alert drivers leaving the site that they will be driving on Footpath 40 and that the speed limit is 20mph.

It should be noted that consultation of the Highways Agency when considering the extant permission for the change of use supported the use of Footpath 40 and Orchard Road for traffic leaving the site rather than using the A1, as the safest option in highway safety terms.

## **6. Rights of way**

The Rights of Way Officer raises no objection to the variation of this condition. In considering the change of use of the site their original consultation response raised no objections but they commented on the shared access to Beeston Green and whether any traffic calming measures could be considered.

They also suggested a grass verge be created to allow pedestrians to draw off the land when vehicles are passing. Given that the lane and verges do not fall within the application site and do not appear to be under the applicants ownership, the Council cannot attach conditions relating to these issues.

However, details of a scheme for signage (as discussed above) have been submitted and approved in conjunction with condition 2 imposed to extant permission CB/11/01546/FULL. It is recommended that consistent with this requirement of the original permission, a condition be imposed to the approval of this current application to require implementation of the approved signage scheme.

## **8. Other Issues**

Depending on the outcome of the other applications for this site the other conditions cited at the end of the report may need to be revised to reflect the approvals.

The Encyclopaedia of Planning Law and Practice advises that for Section 73 applications local planning authorities are required to consider only the question of the conditions subject to which planning permission should be granted, but that this does not prevent them from looking at the wider consideration affecting the grant of permission. Case law dictates that the authority may be unrestricted in its consideration of the full planning merits of the application, and the result of a successful application under Section 73 is a wholly new permission. Local planning authorities are empowered to grant a Section 73 application subject to conditions differing from those which the previous planning permission was granted. As such, there is a need to revise the planning conditions which were imposed previously to reflect any changes in circumstance.

In this respect condition 6 of the original approval sought the provision of a new improved access from the A1 as part of the development. The permission for the timber yard use required full details of the improved access to be submitted and approved by the Council prior to the commencement of the development. The applicant has submitted details to satisfy this condition and these have been approved following consultation with the Highways Agency. As such, it is necessary to revise the condition to reflect this progress and to require the implementation of the approved scheme in accordance with the applicant's intentions as stated in their original application.

The applicant is progressing a S278 Agreement with the Highways Agency, including preparing the technical matters and highways drawings, drainage drawings and the like, but found this a lengthy process and one which is subject to external delays and unforeseen issues.

Mindful of Central Government advice contained within the National Planning Policy Framework (2012) which places an emphasis upon the importance of local planning authorities removing barriers to businesses. It requires the planning system to do everything it can to support economic growth and should operate to encourage, not act as an impediment to sustainable growth. Accordingly, significant weight must be placed on the need to support the timber yard business on this site and the economic growth it will contribute, not impede it. At the same time the Council must have regard to highway safety. It is therefore considered reasonable and appropriate to allow the use to commence on site with the requirement to provide the new access from the A1 within 12 months from the date of the approval.

This arrangement has the benefit of allowing the applicant to operate their business from the site while at the same time secure the new A1 access which in the longer term will benefit the local residents by reducing HGV movements associated with the application site. It is accepted that initially allowing the use to commence prior to completion of the improvements to the access will result in

additional traffic in Orchard Road, The Green and along footpath 40. However, the appeal Inspector did not consider the use of the rear access or the impact on nearby dwellings to be unacceptable. He considered vehicular movements to and from the site, and noted this road exists as a through route and is open to all traffic at all times. Further to this the eastern end of this road is already affected by the persistent noise of heavy traffic travelling along the A1. The Inspector also noted that while traffic movement would generate some noise and it is unlikely to be greater than could have occurred under the previous unrestricted use. He also remarked that the noise of a goods vehicle moving slowly is not a sudden or intrusive noise.

Accordingly, it is recommended that condition 6 be replaced with the following condition:

6. Within 12 months from the date of the approval the access improvements from the A1 as detailed on drawing numbers 101 P1; 100 B; and the Stage 2 Road Safety Audit reference 11119-JJF- S2RSA-B (February 2012) and approved by the local planning authority on 06.06.2012 in connection with planning application reference CB/11/01546/FULL shall be fully completed. Thereafter the new access shall be used as the sole access for all deliveries to the application site.

## **9. Conclusion**

It is recommended that the variation of condition 4 of planning reference CB/11/01546/FULL be approved. This additional activity will not have any significant adverse impact upon the character and appearance of the site or surrounding area, nor the amenity of neighbouring properties.

The proposed development is identical to that considered by extant planning permission CB/11/01546/FULL and CB/11/03441/VOC the assessment of the application turns to whether or not there have been any changes in planning policy or guidance and whether the site context has changed. Review of the recently adopted Central Government guidance and this Council's guidance do not introduce any significantly different planning considerations and do not alter the policy background against which the proposal needs to be assessed. Mindful of the approval of subsequent applications on the site, there have been no material changes in circumstance considered to jeopardise the acceptability of changing the use of the site to a commercial timber yard.

All other conditions as imposed to the original permission remain necessary to make the development acceptable. As such, the new permission for this development which will be granted by virtue of the approval of this Section 73 application, is subject to those conditions imposed to CB/11/01546/FULL and re-imposed to CB/11/03441/VOC, with the exception of condition 2 and condition 6 of this original permission for which the local planning authority have already

approved details and shall be re-worded to reflect this position.

It is recommended this application be approved.

### **Recommendation**

That the variation of condition 4 be granted subject to the following conditions:

- 1 The development shall begin not later than three years from the date of this permission.

Reason: To comply with Section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

- 2 Prior to the first use of the application site as a commercial timber yard the advanced signing scheme as detailed on drawing numbers BE1316T-001-02 and approved by the local planning authority on 16.04.2012 in connection with planning application reference CB/11/01546/FULL shall be fully implemented in accordance with the approved details.

Reason: In the interest of highway safety and for the avoidance of doubt in accordance with Policy DM3 of the Adopted Core Strategy Development Management Policies (2009).

- 3 Noise resulting from the use of any plant, machinery or equipment shall not exceed a level of 5dBA below the existing background level (or 10bDA if there is a tonal distinctive quality) when measured or calculated according to BS4142:1997, at a point one metre external to the nearest noise sensitive building.

Reason: to preserve the residential amenity of neighbouring properties in accordance with policy DM3 of the Core Strategy and Development Management Policies (2009) and Central Government guidance contained within the National Planning Policy Framework (2012).

- 4 There shall be no machinery used at the site, outside the hours of 0730 hours to 1800 hours Monday to Friday or outside the hours of 0800 hours to 1600 hours on Saturdays, and at no time on Sundays, Bank or Public Holidays and there shall be no goods moved within the site or deliveries received or dispatched outside the hours of 0600 hours to 1800 hours Monday to Friday or outside the hours of 0800 hours to 1600 hours on Saturdays and at no time on Sunday, Bank or Public Holidays.

Reason: To safeguard the residential amenity of neighbouring properties in accordance with policy DM3 of the Core Strategy and Development Plan Policies (2009) and Central Government advice contained within the National Planning Policy Framework (2012).

- 5 No goods, waste or other materials shall be stored, stacked or deposited outside the building(s) to a height exceeding 4metres, unless otherwise agreed in writing by the local planning authority.

Reason: To safeguard the amenities of neighbouring properties in accordance with Policy DM3 of the Core Strategy and Development Management Policies (2009).

- 6 Within 12 months from the date of this approval the access improvements from the A1 as detailed on drawing numbers 101 P1; 100 B; and the Stage 2 Road Safety Audit reference 11119-JJF- S2RSA-B (February 2012) and approved by the local planning authority on 06.06.2012 in connection with planning application reference CB/11/01546/FULL shall be fully completed. Thereafter the new access shall be used as the sole access for all deliveries to the application site.

Reason: To ensure that the A1 will continue to fulfil its purpose as part of a national system of routes for through traffic, in accordance with Section 10(2) of the Highways Act 1980; for the safety of traffic on that road; and to safeguard the residential amenity of nearby occupiers.

- 7 The development hereby approved is solely for the change of use of the land and does not grant permission for any buildings indicated on previously submitted plans in conjunction with planning application reference CB/11/01546/FULL.

Reason: For the avoidance of doubt.

### **Reasons for Granting**

The proposed change of use from a horticultural/nursery use to a commercial timber yard will not have any significant adverse impact upon the character of the surrounding area, the residential amenity currently enjoyed by nearby occupiers, highway safety or archaeological heritage assets.

The variation condition 4 of planning application reference CB/11/03441/FULL to allow: the use of machinery at the site; the movement of goods within the site; and the receipt and dispatch of deliveries to and from the site would not have a significant adverse impact upon the character of the surrounding area, the residential amenity currently enjoyed by nearby occupiers, nor would it have any adverse implications for highway safety.

For the above reasons the variation of condition 4 of planning application reference CB/11/03441/FULL is acceptable and the change of use from a horticultural/nursery use to a commercial timber yard remains compliant with policies CS14; DM3; DM4 and DM12 of the Core Strategy and Management Policies (2009) and Central Government guidance contained within the National Planning Policy Framework (2012) in particular paragraph 19 with respect to supporting economic growth and paragraph 56 with respect to good design.





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## Appeal Decision

Site visit made on 8 June 2012

by **Richard High BA MA MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 6 July 2012

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### Appeal Ref: **APP/P0240/A/12/2168412**

### **64 High Road, Beeston, Sandy, Bedfordshire, SG19 2BU**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr James Bartram against the decision of Central Bedfordshire Council.
- The application Ref CB/11/03441/VOC, dated 3 October 2011, was refused by notice dated 9 December 2011.
- The application sought permission for change of use from nursery/horticultural use to commercial timber yard without complying with a condition attached to planning permission CB11/01546/FULL dated 15 September 2011 for change of use from nursery/ horticultural site to commercial timber yard.
- The condition in dispute is No 4 which states that: there shall be no machinery used at the site, goods moved within the site, or deliveries received or despatched, outside the hours of 0730 hours and 1800 hours Monday to Friday and at no time on Saturdays, Sundays, Bank or Public Holidays without the prior agreement in writing of the local planning authority.
- The reason given for the condition is: to preserve the residential amenity of neighbouring residential properties in accordance with Policy DM3 of the adopted Core Strategy Development Management Policies.

**Summary of Decision: The appeal is allowed and planning permission is granted subject to conditions set out in the formal decision.**

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### Application for Costs

1. An application for costs has been made by Mr James Bartram against Central Bedfordshire Council. This application is the subject of a separate decision.

### Main Issue

2. The main issue is the effect of the development on the living conditions of the occupants of nearby dwellings if Condition 4 was removed or varied.

### Reasons

3. The appellant seeks a variation of the condition to allow vehicles to leave the site from 6am so as to deliver timber to building sites in London by 7.30am. The appeal site lies adjacent to the A1 Trunk Road. Access to the site is direct from the A1 but vehicles leaving the site do so by means of a narrow, but hard surfaced road, which is also a public footpath, from the rear of the site which

leads to the junction of The Green and Orchard Road from where access is gained via Orchard Road to the A1. The previous use of the site as a nursery had no restriction in relation to operating hours or vehicle movements and was licensed for up to 5 goods vehicles and 4 trailers.

4. I recognise the operational need for the earlier despatch of deliveries in order for the business to be competitive. I also note that Policy CS11 of the Mid-Bedfordshire Core Strategy 2009 encourages the conversion of redundant horticultural or agricultural buildings for employment uses. The appellant indicates that two vehicles per day would be expected to leave the site shortly after 6am, though this could increase somewhat as the business grows.
5. The nearest dwellings to the site are to the side of the access road on The Green and the vehicles would pass about 10m from the nearest of these properties. The dwellings have a high conifer hedge to the rear and there are no windows in the side wall facing the road. Orchard Road is primarily a residential street with the houses set back about 5m from the road. However, it is also a through route and open to all traffic at all times. At its eastern end it is already affected by the persistent noise of heavy traffic on the A1.
6. While the movement of a small number of lorries along the access road and Orchard Road early in morning would generate some noise, there is no reason to believe that this would be greater than could have occurred under the previous use which was not subject to any restriction in respect of vehicle movements. The noise of a goods vehicle moving fairly slowly is not a sudden or particularly intrusive noise.
7. The noise assessment undertaken by Cass Allen Associates compares the noise likely to be generated to the World Health Organisation (WHO) Standards which are reflected in BS8233. These suggest that indoor sound pressure levels should not exceed 45 dB  $L_{AFM_{max}}$  more than 10-15 times per night. It also indicates that the national physical laboratory regards this standard as "the lowest threshold below which the occurrence rates of particular effects can be assumed to be negligible." The assessment concludes that with windows closed there would be no indoor noise above the 45 dB  $L_{AFM_{max}}$ . With windows open this level would be exceeded by a small margin with the smaller lorries used and by a larger margin for the largest lorry. During the survey there were just 4 occurrences of noise above the threshold level to which the small number of vehicle movements between 0600 and 0730 would be added. This would be within the WHO and BS standards.
8. Any dwelling close to a public road may be exposed to noise such as this at any time. No evidence has been submitted to counter the conclusion of the noise assessment that there would not be a harmful level of noise and disturbance if vehicle movements were allowed between 0600 and 0730 hours. I note that the officer report on the proposal also reached this view.
9. The appellant indicates that vehicles would be loaded up the previous night and does not seek any variation in the hours of operation of machinery on the site. While the site is some 60m from the nearest dwellings the more continuous and potentially more penetrating noise of timber cutting machinery could be harmful to the living conditions of residents early in the morning. There is

therefore a case for distinguishing between the movement of vehicles and the operation of machinery in any modified condition.

10. I have taken account of the other objections raised by Sandy Town Council and by local residents. Many of these relate more broadly to the principle of use of The Green and Orchard Road for access as the concerns relating to the absence of footpaths and street lighting, the safety of children and pedestrians and the effects of wear and tear on the road do not relate specifically to the hours of 0600 to 0730. The principle of the change of use to a timber yard and the use of this route by vehicles leaving the site has been established by the original grant of planning permission. Moreover, there is no evidence to suggest that these effects would be significantly different from those associated with the previous use of the site as a nursery.
11. I have taken account of all the other matters that have been raised and conclude that the relaxation of Condition 4 to allow vehicles for the despatch of deliveries from 0600 to 0730 would not be harmful to the living conditions of nearby residents. It would be consistent with the WHO and BS standards regarding the effect of noise on sleeping and would thus be consistent with Policy DM3 of the Central Bedfordshire Core Strategy and Development Management Policies 2009. For these reasons the existing condition fails to meet the terms of the tests for planning conditions in circular 11/95 in that it is not necessary to make the proposal acceptable in planning terms. It is also not reasonable in all other respects having regard to the previously existing arrangements with the nursery on the site.
12. I have therefore allowed the appeal and varied the condition so that vehicles can operate from the site from 6am. I have amended the wording of the amended condition suggested by the local planning authority to clarify the distinction that will remain between the movement of vehicles and the operation of machinery.

**Formal Decision**

13. The appeal is allowed and planning permission is granted for change of use from nursery/ horticultural site to commercial timber yard at 64 High Road, Beeston, Sandy, Bedfordshire, SG19 2BU in accordance with the application Ref CB/11/03441/VOC without compliance with condition number 4 previously imposed on planning permission Ref CB/11/01546/FULL dated 15 September 2011 but subject to the other conditions imposed therein, so far as the same are still subsisting and capable of taking effect and subject to the following new condition:
  - 4) There shall be no machinery used at the site, outside the hours of 0730 hours to 1800 hours Monday to Friday and at no time on Saturdays, Sundays, Bank or Public Holidays and there shall be no goods moved within the site or deliveries received or despatched outside the hours of 0600 hours to 1800 hours Monday to Friday and at no time on Saturdays, Sundays, Bank or Public Holidays.

*Richard High*

INSPECTOR