

For: PLANNING AND REGULATION COMMITTEE – 5 SEPTEMBER 2016

By: ACTING DIRECTOR FOR ENVIRONMENT AND ECONOMY (STRATEGY & INFRASTRUCTURE PLANNING)

Development Proposed:

The continuation of the development permitted by SUT/APF/616/7 (the modification and installation of new rail sidings) without complying with condition 7 (to allow trains to be unloaded up to 2200 hours Monday through Friday) at The Portway, Appleford Sidings, Appleford, Oxfordshire, OX14 4PJ

Division Affected: Sutton Courtenay and Marcham
Contact Officer: Mary Thompson **Tel:** 01865 815901
Location: Appleford Rail Sidings
Application No: MW.0025/16 P16/V0480/CM
Applicant: Hanson Quarry Products Europe Limited
District Council Area: Vale of White Horse
Date Received: 25 January 2016
Consultation Period: 18 February – 10 March 2016

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Recommendation

The report recommends that the application (MW.0025/16) be **REFUSED**.

- Part 1 – Facts and Background

Location (see plan 1)

1. The site lies within the Sutton Courtenay minerals and waste complex, to the west of Appleford and east of Sutton Courtenay. Didcot lies 1.6 kilometres (1 mile) to the south. The rail sidings lie in the central part of the site to the north of the Portway road and site offices.

Site and Setting

2. The railway line branches off the main Oxford to London line and opens into four sidings within the site, two of which are used by the applicant and two of which are leased to FCC for waste import.
3. To the north is a restored area of landfill and an area of industrial development, to the south are site offices, industrial development and the Portway road. To the west lies Corridor Road and to the east the main railway line and properties on Main Road in Appleford. The nearest properties are located approximately 300 metres from the end of the rail sidings closest to them. Properties at Chambrai Close lie approximately 600 metres north east of the unloading area.

Background and History of the Site

4. Planning permission for the sidings was first granted in 1972 (reference P633/72). A subsequent permission for a different rail configuration was granted in 1976 (reference SUT/APF/616/7).
5. In 2013 the applicant submitted a Certificate of Lawfulness for Proposed Use or Development (CLOPUD) application to establish the lawful uses at the site. During this process it was established that permission SUT/APF/616/7 had replaced the earlier consent and its conditions apply.
6. There was no condition to control working hours on the earlier consent, but SUT/APF/616/7 did include a condition controlling this to ensure operations cease by 6pm on weekdays. Therefore, prior to 2013 the applicant had been unloading trains from the sidings overnight. Since the 2013 CLOPUD established that the earlier consent is no longer extant, they have generally been complying with the working hours condition on permission SUT/APF/616/7.

Details of the Development

7. Condition 5 on permission SUT/APF/616/7 states that no unloading of trains shall take place, except between 7.00 am to 6.00 pm Mondays to Fridays and 7.00 am to 1.00 pm on Saturdays.

8. It is proposed to alter the wording of this condition so that it states that trains can be unloaded between 7.00 am and 10.00 pm Mondays to Fridays. It is not proposed to change the permitted unloading hours for Saturdays. Operations are not permitted on a Sunday and no change is proposed to this.
9. The applicant has explained that the reason for the proposed change is that due to the time it takes to unload a train, the current hours mean that trains cannot utilise the 4.00 pm to 5.00 pm delivery slot. This restricts the volume of material which can be imported. Extending the weekday hours to 10.00 pm would allow an extra train per day into the depot. The applicant estimates that an extra train would not come in every day, but on average twice per week.
10. The applicant estimates that it can take up to 4 hours to unload a train and therefore if a train arrives at 5.00 pm it could take until 9.00 pm to unload. Therefore, an extra hour until 10.00 pm has been sought, in order to allow for instances where the train arrives late.
11. Condition 5 does not control the hours for trains to arrive or depart. However, the applicant has stated that the train would leave soon after unloading was complete.
12. The applicant generally uses the rail sidings to import aggregate. However, the 2013 CLOPUD established that the sidings are not limited to importing minerals and waste related materials and so the applicant can also use them to import other materials associated with the industrial uses.
13. No other changes are proposed to the existing conditions on the consent.
14. The application is accompanied by a noise assessment. This shows that noise levels at properties in Chambrai Close would exceed existing measured background levels by between by up to 6 decibels between 7.00pm and 8.00 pm, 7 decibels between 8.00 pm and 9.00 pm and 8 decibels between 9.00 pm and 10.00 pm.
15. In response to the objection to the application from the Environmental Health Officer, the applicant has suggested that they would be happy with a condition which specified an end time of 9.00 pm rather than 10.00 pm as originally proposed. They would also be happy to restrict these late trains to 150 occasions in any 12 months period. They have also indicated that they would accept a condition making the change to the condition temporary for one year to allow the Minerals Planning Authority time to assess the impact before a decision is made on whether permanent consent should be granted for evening operations.

• **Part 2 – Other Viewpoints**

Representations

16. Three letters of representation have been received. These are summarised below.
17. Representation 1 – Object to excessive noise in the evenings and to the increase in ground vibrations. These already create a nuisance.
18. Representation 2 – Object to application on grounds of noise pollution during unsociable hours and dust pollution. Unloading already causes noise nuisance, extending this into the evening will impact quality of life, house prices and wildlife. Noise will seem louder in the evenings. During the summer it would affect residents relaxing outside and in winter noise pollution could be increased by weather conditions.
19. Representation 3 – Object. Already have noise during the daytime which is intrusive whilst in the garden. Have experienced loud noise from the site until 10.00 pm already which sounded like a train. This was in February with the windows closed; it would be unbearable with them open.

Consultation Responses

20. Sutton Courtenay Parish Council – Objects to the extension of time for unloading to 10.00 pm due to the potential for noise nuisance to the community from late evening operations, particularly in summer when windows in houses are open. The need to extend the hours is not justified as the applicant states that the occasions when unloading to 10.00 pm would be rare.
21. Appleford Parish Council – Object due to the additional nuisance and noise to residents.
22. Didcot Parish Council – Didcot Town Council has no strong views on the application.
23. Vale of White Horse District Council Planning – No objection subject to environmental health being satisfied there will be no adverse impact on nearby residential properties.
24. Vale of White Horse District Council Environment Health – Recommends refusal - the acoustic report suggests an increase in external noise levels at nearby properties which would represent a significant loss of amenity for local residents.
25. Environment Agency – No comments; there is no need to consult the Environment Agency on applications such as this.

26. Thames Water – No objection. The application does not affect Thames Water.
27. Network Rail – No response at time of writing report
28. OCC Transport Development Control – No response at time of writing report
29. OCC Biodiversity – Objection - Further information is required in order to assess the impact of extended hours on biodiversity, especially in relation to floodlighting and noise.
30. OCC Drainage – No objection.

Part 3 – Relevant Planning Documents

Relevant Planning Policies – (See policy annex attached to this Agenda)

31. Development should be decided in accordance with the Development Plan unless material considerations indicate otherwise.
32. The relevant development plan documents are:
 - The Vale of White Horse Local Plan 2011 (VLP) Saved policies
 - The Oxfordshire Minerals and Waste Local Plan (OMWLP)1996
33. The Draft Oxfordshire Minerals and Waste Local Plan Core Strategy (OMWCS) is not yet adopted but was submitted to the Secretary of State for independent examination in January 2016. Therefore, the plan is at an advanced stage and the draft policies can be applied as relevant.
34. The Vale of White Horse District Council's Local Plan 2031 Part One was submitted to the Secretary of State for independent examination in March 2015. Hearings took place in September 2015 and stage 2 of the examination took place in February 2016. Therefore, as with the OMWCS the plan is at an advanced stage and the draft policies can be applied as relevant.

Relevant Policies

35. The relevant development plan policies are:
 - Vale of White Horse Local Plan (VLP) 2011
DC9 – Neighbouring amenity
 - Oxfordshire Minerals & Waste Local Plan (OMWLP) 1996
PE18 – Imposition of conditions to protect amenity
36. The relevant emerging plan policies are:

- Draft Oxfordshire Minerals and Waste Core Strategy (OMWCS)
 - C1 – Sustainable development
 - C5 - Local environment, amenity and economy
 - C10 – Transport
 - M6 - Aggregate rail depots
- Draft Vale of White Horse Local Plan 2031 (VLP 2031)
 - Core Policy 1 – Presumption in favour of sustainable development
 - Core Policy 46 – Conservation and Improvement of Biodiversity

Comments of the Deputy Director for Strategy and Infrastructure Planning

Sustainable Development

37. The NPPF contains a presumption in favour of sustainable development which has environmental, economic and social roles and this is reflected in OMWCS policy C1 and Core Policy 1 of the VLP 2031. The extension of unloading hours to allow an additional train to be unloaded per day as necessary would contribute towards sustainable development as rail is a more sustainable method of transporting aggregate than road. OMWCS paragraph 6.54 states that the harm caused by the movement of minerals by road can be reduced by encouraging the uptake of alternative transport methods such as rail. Policy C10 states that where possible minerals development should be located to enable the transport of minerals by rail. It would have an environmental role through the transportation of aggregate by rail rather than road, an economic role through its contribution towards providing the materials necessary for the provision of infrastructure and a social role through the provision of employment to the local community and the resources necessary for the creation of a high quality built environment.
38. Enabling an extra train per day would encourage the uptake of mineral transport by rail in accordance with OMWCS policy C10 and with the principle of sustainable development. Therefore, subject to there not being other material considerations indicating otherwise, the application should be approved.

Rail Depots

39. The OMWCS recognises that there will be an ongoing need for importation of aggregate minerals not found in Oxfordshire and policy M6 safeguards existing aggregate rail depots, including Appleford Sidings.
40. Although this policy is relevant to the site and generally supports the use of Appleford Sidings for the import of aggregate, it is not directly helpful in assessing the proposal to extend unloading hours.

Amenity

41. OMWLP policy PE18 refers to the Code of Practice which sets out guidance on hours of working for which the standard hours are 7.00 am to 6.00 pm on weekdays and 7.00 am to 1.00 pm on Saturdays, noise, dust and transport. OMWCS policy C5 states that proposals for minerals and waste development shall demonstrate that there would be no adverse impact on the local environment, human health or residential amenity, including from noise, dust, traffic and air quality.
42. VLP policy DC9 states that development will not be permitted if it would unacceptably harm the amenities of neighbouring properties and the wider environment in terms of a number of factors including noise or vibration, dust, pollution or external lighting.
43. The proposal to extend the hours of unloading at the rail siding has the potential to increase noise disturbance outside of normal operating hours. Three local residents have objected to the proposal as they are concerned about the impact on their amenity from the additional noise. Unloading of trains already takes place earlier in the day and on occasion trains have been unloaded later than currently permitted. Therefore, the residents' concern about the potential noise impact is based on prior experience of the proposed activity.
44. There has been an objection from the Environmental Health Officer, who has considered the noise level predictions for Chambrai Close and concluded that the proposal would lead to significant loss of amenity for local residents at this location due to noise impacts.
45. The applicant has suggested that the proposals could be modified to bring forward the latest time for unloading to 9.00 pm, limit the number of days when there are trains unloaded after 6.00 pm to 150 a year and to accept a temporary consent for one year to allow the impact of the proposals to be fully assessed. However, the Environmental Health Officer has not provided a different consultation response and his objection still stands.
46. In my view, the unloading of trains after 6.00 pm in the evening is likely to have an impact on amenity due to noise. This is shown by the noise assessment and by complaints which have been made in the past after trains being unloaded in the evening. This impact on amenity would still occur even if the proposals were modified as the applicant suggests. The Environmental Health Officer has objected to the proposal and has interpreted the impact as representing a significant loss of amenity for local residents. Therefore, the proposals are contrary to policies which protect residential amenity, including OMWLP policy PE18, VLP policy DC9 and draft OMWCS policy C5.

Biodiversity

47. NPPF paragraph 9 states that pursuing sustainable development involves seeking positive improvements in the quality of the natural environment including moving from a net loss to achieving net gains for nature. Paragraph 109 states that the planning system should contribute to and enhance the natural environment by minimising impacts on biodiversity and providing net gains in biodiversity. NPPF Paragraph 118 states that if significant harm resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused.
48. VLP 2031 Core Policy 46 states that a net loss of biodiversity will be avoided. Development likely to result in the loss, deterioration or harm to habitats or species of importance to biodiversity will not be permitted unless the need for the development outweighs the adverse effect on biodiversity, it can be demonstrated that it could not be reasonably located on an alternative site and measures can be provided to avoid, mitigate or compensate the adverse effects. Species of importance to biodiversity are defined as legally protected species. The policy goes on to state that habitats and areas which are not designated can still have a significant biodiversity value within their local context and these habitats will be given due weight in determining planning applications.
49. The Ecologist Planner has objected to the application because no ecological information was submitted with the application and this information is needed in order to assess the potential impact of the use of flood lighting on wildlife such as bats and ground nesting birds. If adverse impacts leading to significant harm are identified, details of mitigation and compensation would be needed to ensure that there is no net loss in biodiversity.
50. The Ecologist Planner has identified the potential for an impact on bats, which are a legally protected species, and ground nesting birds, which are all protected whilst nesting. Therefore, further details of this potential impact are needed to assess whether the proposals would comply with VLP 2031 Core Policy 46.
51. This further information was requested from the applicant but it has not been provided. Therefore, it is not possible to assess the impacts of the development on biodiversity, not possible to establish whether impacts on biodiversity have been minimised and not possible to assess whether significant harm would result. In this circumstance, a cautious approach must be taken and planning permission should be refused as required by the NPPF.

Conclusions

52. Although rail is a more sustainable form of transport than road, the unloading of trains past the current limit of 6.00 pm has the potential to cause a noise nuisance significantly affecting residential amenity. Therefore, the proposal is not in accordance with policy aimed at protecting local amenity, including OMWLP policy PE18, VLP policy DC9 and draft OMWCS policy C5.
53. The proposal has the potential to impact ecology in the area, for example due to the use of floodlighting. As the applicant has not provided any information about the potential impacts it is not possible to assess their significance, or consider them against relevant planning policy and in the absence of this, a cautious approach must be taken and the potential for significant harm to result must be assumed.

RECOMMENDATION

54. It is **RECOMMENDED** that planning permission for application MW.0025/16 be refused for the following reasons:
- a) **The unloading of trains after 6.00 pm in the evening would cause noise impact which is likely to represent a significant loss of amenity for local residents, contrary to OMWLP policy PE18, VLP policy DC9 and draft OMWCS policy C5.**
 - b) **It has not been demonstrated that the impacts of the extended hours on wildlife would not cause significant harm to biodiversity, contrary to the NPPF paragraph 118 and VLP 2031 Core Policy 46.**

SUSAN HALLIWELL

Acting Director for Environment and Economy (Strategy & Infrastructure Planning)

August 2016

European Protected Species

European Protected Species

European Protected Species (to include in Committee/Delegated reports as an Annex, not on Decision Notices)

The Local Planning Authority in exercising any of their functions, have a legal duty to have regard to the requirements of the Conservation of Species & Habitats Regulations 2010 which identifies 4 main offences for development affecting European Protected Species (EPS).

1. Deliberate capture or killing or injuring of an EPS
2. Deliberate taking or destroying of EPS eggs
3. Deliberate disturbance of a EPS including in particular any disturbance which is likely
 - a) to impair their ability –
 - i) to survive, to breed or reproduce, or to rear or nurture their young, or
 - ii) in the case of animals of a hibernating or migratory species, to hibernate or migrate; or
 - b) to affect significantly the local distribution or abundance of the species to which they belong.
4. Damage or destruction of an EPS breeding site or resting place.

The area around the proposed development site indicates that a European Protected Species is likely to be present. Ecological survey information was not provided to accompany the application.

The proposed development may result in an offence under the Conservation of Species & Habitats Regulations 2010.

Officers therefore have a duty to consider whether the proposal would be likely to secure a licence. To do so the proposals must meet with the three derogation tests which are:

- There are imperative reasons of overriding public interest (e.g. health and safety, economic or social)
- There is no satisfactory alternative
- The action will have no detrimental impact upon population of the species concerned e.g. because adequate compensation is being provided.

It is the applicant's responsibility to ensure that information is submitted which demonstrates compliance with these tests. In your officers opinion evidence has not been submitted to satisfactorily demonstrate that the proposal meets with the three derogation tests if European Protected Species are present and

likely to be affected. It is therefore recommended that the application be refused for the following reason:

It has not been demonstrated to the satisfaction of the LPA that the development can be undertaken without harm to a protected species. It is not considered that the benefits would avoid a net loss in biodiversity, contrary to NPPF paragraphs 9, 109 and 118.

Compliance with National Planning Policy Framework

In accordance with paragraphs 186 and 187 of the NPPF Oxfordshire County Council take a positive and proactive approach to decision making focused on solutions and fostering the delivery of sustainable development. We work with applicants in a positive and proactive manner by;

- offering a pre-application advice service, and
- updating applicants and agents of any issues that may arise in the processing of their application and where possible suggesting solutions.
- In this case the applicant was aware of the need for further ecological information but did not provide this
- The applicant was also aware of the concerns of the Environmental Health Officer. Although the applicant suggested possible modifications to the proposals, the Environmental Health Officer did not remove the objection.

Appleford
Rail Sidings
Plan 1

