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02/2020/0989

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WARD : Ruthin

WARD MEMBER(S): Cllr Emrys Wynne (c)
Cllr Bobby Feeley
Cllr Huw Hilditch Roberts

APPLICATION NO: 02/2020/0989/ PS

PROPOSAL: Variation of condition no. 7 of planning permission code no. 02/2020/0251 to allow the use of noise generating machinery between 0800 - 17.30 Monday to Friday and 08.00 - 12.30 on Saturdays

LOCATION: Former Wynnstay Stores Park Road Ruthin

APPLICANT: Mr Michael Hall G Parry Home Improvements Ltd.

CONSTRAINTS: B Flood Zone
Within 67m Of Trunk Road

PUBLICITY UNDERTAKEN: Site Notice - Yes
Press Notice - No
Neighbour letters - Yes

REASON(S) APPLICATION REPORTED TO COMMITTEE:
Scheme of Delegation Part 2

- Recommendation to grant / approve – Town / Community Council objection

CONSULTATION RESPONSES:

RUTHIN TOWN COUNCIL-

Objection. 'The Committee was against allowing the variation of the condition as the machinery noise would create a disturbance detrimental to the amenity of nearby residents'.

DENBIGHSHIRE COUNTY COUNCIL CONSULTEEES –

Public Protection Officer-

Support the variation of the condition to allow the use of noise generating activities on the site during work hours only. Recommend a condition which restricts the use of the noise generating equipment to opening hours only and not before 8am.

RESPONSE TO PUBLICITY:

In objection

Representations received from:

June Cain, Golygfa, 12 Troed y Rhiw, Ruthin
Nick Banks, Nant y Ceirw, Rhydtalog Road, Graianrhyd
Gillian Griffiths, 5 Troed y Rhiw, Ruthin
Ffion Roberts, The Mill Childcare Centre, Lon Parcwr
Wayne Jones, 19 Canol y Dre, Ruthin

Summary of planning based representations in objection:

Lack of detail in submission

Insufficient information submitted to consider the impacts on the adjacent residents, business and surrounding areas

Need to know the frequency of use of the equipment and machinery

Details of the types of machinery and equipment not specified

Details of what is involved in the 'repurposing/recycling' of materials not provided.

Details of the types and amounts of waste to be stored, where it is stored on site and how it is distributed after processing

Details shown on a site plan to show where machinery/equipment/waste is stored

Impacts to residential amenity

Concerns over the vibrations of the machinery impacting on residents

Concerns over noise pollution, dust and air pollution

Excessive noise from the site which will impact the local environment

Impacts on the outdoor environment and daily functioning of nursery adjacent

Noise pollution can impact child development

Impacts to enjoyment of own home by noises from site during the day

Compliance

Applicants not adhering to the conditions approved on previous permission and are arriving earlier to the site than the agreed opening times and on Sundays when the site should be shut.

Waste is left uncovered and noise generating machinery/equipment is being used on the site.

EXPIRY DATE OF APPLICATION: 28/02/2021

REASONS FOR DELAY IN DECISION: N/A

PLANNING ASSESSMENT:

1. THE PROPOSAL:

1.1 Summary of proposals

1.1.1 A Variation of Condition 7 on planning permission Ref 02/2020/0251 is sought in order to permit a change of use of buildings and land from A1 Retail to a Builder's Yard/B8 Warehouse/Storage Use (retrospective application) previously approved, originally at Planning Committee on 15/07/2020.

1.1.2 The change sought involves the variation to Condition 7 to allow the use of noise generating machinery between the hours of 08.00 – 17.30 Monday to Friday and 08.00- 12.30 on Saturdays. The condition stated that *no* noise generating equipment shall be permitted to be used on site including cement mixers, grinders, circular saws, electric drills, pneumatic nail guns, or any sawing and hammering undertaken without the prior written consent of the Local Planning Authority.

The application proposes that in order to operate effectively, the business needs to use some noise generating equipment on occasion during the working day and have requested that equipment is allowed to be used during the approved opening times of the business: 08.00 – 17.30 Monday to Friday and 08.00- 12.30 on Saturdays.

The Case Officer has sought clarification of the types of equipment intended to be used at the site and the applicant has provided a list and explained that most of the work is on sites and not at the yard but in order to keep on top of operations in the yard, to keep it tidy and to enable works to be carried out efficiently some equipment is required including, dumpers, excavators, hand power tools (including drills, saws, nail guns, grinders etc), other hand tools including (saws, hammers, screwdrivers) cement mixers, pneumatic drills, crusher, fork lift truck, pallet truck and trolleys.

In terms of frequency of use, trucks, trolleys and wheeled equipment are to be used on a daily basis. Hand power tools are used occasionally each week to prepare materials for site or for recycling- 10-15 mins at a time and is usually used inside the warehouse to cut timber, plastic pipes, cladding, MDF, ply etc. The rock crusher is used rarely- once or twice a week for recycling purposes and can last 20-30 minutes, it is rarely used every week. The pneumatic drills and cement mixers are only stored on the yard till they are required on site.

1.2 Description of site and surroundings

- 1.2.1 The site is an existing detached warehouse building located to the north of Park Road in the northern industrial part of Ruthin. There is parking provided to the east side of the building near the entrance. The west side of the building is used for external storage.
- 1.2.2 To the west of the site is a residential estate Canol y Dre which has rear garden fences which back onto a rear alleyway which abuts the boundary of the site. To the east is the car park area for the Ruthin Craft Centre.
- 1.2.3 Directly to the north of the site is The Mill Childcare Centre and other industrial units including a timber yard and JCB depot which are within the allocated PSE2 employment use area as defined in the LDP. The Llys Awelon care home and Troed y Rhiw estate is directly opposite on the other side of Park Street to the south.

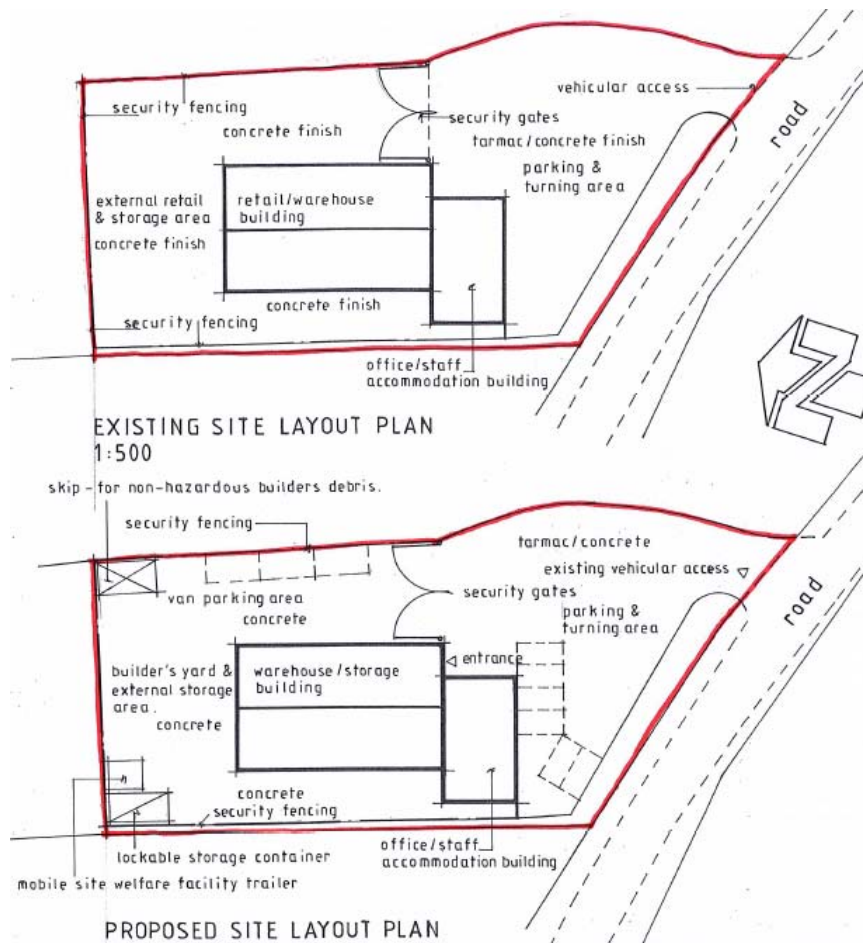
1.3 Relevant planning constraints/considerations

- 1.3.1 The site is located within the development boundary of Ruthin as described in the LDP. The site abuts the PSE2 employment use area as defined in the LDP but is not within it.

1.4 Relevant planning history

- 1.4.1 The original scheme sought retrospective planning permission for the change of use of buildings and land from A1 retail/B8 Warehouse use to B1 builder's yard /B8 Warehouse/Storage use. The proposal included external storage of materials and the siting of a skip, storage container and welfare block including parking to the front of the building.

The application was submitted as a result of an enforcement warning notice and was granted at Planning Committee subject to the imposition of conditions.



Approved site plan layout

- 1.5 Developments/changes since the original submission
 1.5.1 Additional information provided by applicant on type of equipment and frequency of use.
- 1.6 Other relevant background information
 1.6.1 None.
- 2. DETAILS OF PLANNING HISTORY:**
 02/2020/0251 Change of use of buildings and land from A1 Retail to a Builder's Yard/B8 Warehouse/Storage Use (retrospective application), GRANTED at Planning Committee on 15/07/2020
- 02/2017/1130 Lawful Development Certificate for the existing use of the site as Class A1 Retail, GRANTED 17/01/2018.
- 02/2011/1253 Erection of extension to warehouse and covered porch area, GRANTED 20/12/2011
- 2/11024 - Proposed Use Of Building Granted Planning Permission Under 2/9623 Granted 20/4/90
- 2/9623 - Erection Of Building For Storage In Connection With Retail Premises Granted – 21/10/88
- 2/8875 - Siting Of Portakabin To Be Used As A Retail Shop For A Temporary Period Granted 11/9/87

3. RELEVANT POLICIES AND GUIDANCE:

3.1 Local Policy/Guidance

The main planning policies and guidance are considered to be:
Denbighshire Local Development Plan (adopted 4th June 2013)

Policy RD1 – Sustainable development and good standard design

Policy PSE2 – Land for employment uses

Supplementary Planning Guidance

None of direct relevance.

3.2 Government Policy / Guidance

Planning Policy Wales Edition 10 December 2018

Development Control Manual November 2016

Technical Advice Notes:

TAN 4 Retail and Commercial Development (2016)

TAN 11 Noise (1997)

TAN 23 Economic Development (2014)

Circulars:

Welsh Government Circular 016/2014 The use of Planning Conditions for Development Management (October 2014)

4. MAIN PLANNING CONSIDERATIONS:

In terms of general guidance on matters relevant to the consideration of a planning application, Section 9.1.2 of the Development Management Manual (DMM) confirms the requirement that planning applications 'must be determined in accordance with the approved or adopted development plan for the area, unless material considerations indicate otherwise'. It advises that material considerations must be relevant to the regulation of the development and use of land in the public interest, and fairly and reasonably relate to the development concerned.

The DMM further states that material considerations can include the number, size, layout, design and appearance of buildings, the means of access, landscaping, service availability and the impact on the neighbourhood and on the environment (Section 9.4).

The DMM has to be considered in conjunction with Planning Policy Wales, Edition 10 (December 2018) and other relevant legislation.

The following paragraphs in Section 4 of the report therefore refer to the policies of the Denbighshire Local Development Plan, and to the material planning considerations which are considered to be of relevance to the proposal.

4.1 The main land use planning issues in relation to the application are considered to be:

1.1.1 Principle

1.1.1 Residential amenity and noise

1.2 In relation to the main planning considerations:

1.2.1 Principle

An application can be made under section 73 of the Town and Country Planning Act 1990 to vary or remove conditions associated with a planning permission. One of the uses of a section 73 application is to seek a minor material amendment, where there is a relevant condition that can be varied.

Whilst the principle of the change of use was established through the grant of the original planning application at Planning Committee, this was subject to the compliance with conditions, one of which (condition 7) controlled noise generating equipment from being used at the site due to the site being in close proximity to residential properties.

The original application was approved as a builder's yard and Officers are of the opinion that it is not unreasonable to expect a degree of noise from equipment to be used in the daily functioning of the yard, be it through the movement of materials around the yard and in/out of the warehouse, preparing materials for off-site use and unloading on return to the yard.

Welsh Government Circular 016/2014 contains 6 tests on the imposition of conditions which include whether conditions are:

- i. Necessary
- ii. Relevant to planning
- iii. Relevant to the development
- iv. Enforceable
- v. Precise
- vi. Reasonable

Officers consider that the attachment of a condition which restricts any noise generating equipment from being used on the builders yard at any time to be unreasonable and a potential duplication of controls which may be covered by separate noise nuisance legislation.

Officers conclude that the proposal to vary the condition to allow noise generating equipment to use used on the site during the hours of operation to be acceptable in principle. Further assessment of the impacts of the proposal will be in the remainder of the report.

1.2.2 Residential Amenity and Noise

Local Development Plan Policy RD 1 test (i) requires due regard to issues of siting, layout, form, character, design, materials, aspect, microclimate and intensity of use of land / buildings and spaces between buildings, which touch on the potential for impact on residential amenity; test (vi) sets the requirement to assess the impact of development on the amenities of local residents, other land and property users, or characteristics of the locality, in terms of increased activity, disturbance, noise, dust, fumes, litter, drainage, light pollution, etc..

The Development Management Manual advises at paragraph 9.4.3 that material considerations must be fairly and reasonably related to the development concerned, and can include the number, size, layout, design and appearance of buildings, the means of access, landscaping, service availability and the impact on the neighbourhood and on the environment; and the effects of a development on, for example, health, public safety and crime. The residential amenity impacts of development should therefore be regarded as a potential material consideration.

Representations have been received on the application in relation to the noise disturbance to residential properties at Canol y Dre and Troed y Rhiw and the adjacent nursery by the use of noise generating equipment at the yard, the use of heavy machinery causing vibrations and the dust generation.

The immediate locality of the site is characterised by a mix of residential and employment uses including a children's nursery to the north. To the west is the Canol y Dre housing estate which is separated by an alley way between the fences and properties have approximately 6-10m of garden depth from the rear elevation to the boundary of the site. The Troed y Rhiw estate is approximately 30m to the south.

Having regard to the comments received regarding the noise issues at the site, Officers acknowledge that there may be some additional noise generation through the different movements of the day to day operation of the site compared to the previous use when Wynnstay Stores occupied the site. This includes the loading and unloading of building materials as opposed to farming materials and the times of the day when the site would need to be accessed by employees- i.e early to collect materials for the jobs they are working on that day and so that they can travel to the work site. It is also acknowledged that other noise generating activities would be undertaken on the builder's yard in order for it to function efficiently, including the movement of materials around the yard with forklift trucks and pallet trucks, the use of hand power tools to prepare materials for site and other equipment used in the recycling/ repurposing of materials.

A Public Protection Officer has dealt with a number of noise complaints at the site and is supportive of the variation of the condition to allow the use of noise generating activities on the site during work hours. They have recommend a condition which restricts the use of the noise generating equipment to opening hours only and not before 8am.

The applicant has confirmed that the use of machinery such as fork lift and pallet trucks takes place regularly on the site and the use of hand power tools takes place primarily within the warehouse. They confirm that no fabrication is taking place on site and the use of the crusher is rare and lasts for a maximum of 30 mins at a time.

Having regard to the comments made about the dust generation from the waste materials stored on site, Officers conclude that conditions imposed on the original planning application (ref.02/2020/0251) shall control this issue and it is not relevant to the current application.

Having regard to the information provided by the applicant and the comments from the Council's Public Protection officer, it is considered the impact on residential amenity through the use noise generating equipment would not be unacceptable subject to the imposition of a variation to the original condition to ensure that no noise generating equipment is used on site outside of the hours of opening in order protect the amenity of neighbouring properties. Any statutory noise complaints would be investigated accordingly by the Public Protection Section of the Council and would be assessed against independent noise legislation, separate to Planning legislation.

Other matters

Well – being of Future Generations (Wales) Act 2015

The Well-being of Future Generations (Wales) Act 2015 imposes a duty on the Council not only to carry out sustainable development, but also to take reasonable steps in exercising its functions to meet its sustainable development (or well-being) objectives. The Act sets a requirement to demonstrate in relation to each application determined, how the development complies with the Act.

The report on this application has taken into account the requirements of Section 3 'Well-being duties on public bodies' and Section 5 'The Sustainable Development Principles' of the Well-being of Future Generations (Wales) Act 2015. The recommendation is made in accordance with the Act's sustainable development principle through its contribution towards Welsh Governments well-being objective of supporting safe, cohesive and resilient communities. It is therefore considered that there would be no significant or unacceptable impact upon the achievement of well-being objectives as a result of the proposed recommendation.

SUMMARY AND CONCLUSIONS:

The variation of condition is considered acceptable and is recommended for approval.

RECOMMENDATION: APPROVE

Condition 7 on planning permission ref 02/2020/0251 now reads as follows:

No noise generating equipment shall be permitted to be used on site outside of the hours of 0800 to 1730 Monday to Friday and 0800 to 1230 on Saturdays. No noise generating equipment shall be permitted to be used on site on Sundays or Bank Holidays.

Reason: In the interests of residential amenity.