

DELEGATED DECISION OFFICER REPORT

AUTHORISATION	INITIALS	DATE
File completed and officer recommendation:	RD	15.08.2019
Planning Development Manager authorisation:	TF	15.08.2019
Admin checks / despatch completed	<i>[Signature]</i>	15/08/19
Technician Final Checks/ Scanned / LC Notified / UU Emails:	<i>[Signature]</i>	15/8/19

Application: 19/00397/FUL **Town / Parish:** Ramsey & Parkeston Parish Council

Applicant: Flying Trade Ltd

Address: 3A Europa Way Ramsey Harwich

Development: Variation of conditions 5) 24hr movements required, 7 days a week and 6) 24hr unloading/loading required 7 days a week and removal of condition 1) to Planning Application 07/00838/FUL.

1. Town / Parish Council

Ramsey and Parkeston Parish Council

We note the error in the application stating the location being in Ramsey, whereas the site is located in Parkeston.

The Ramsey and Parkeston Parish Council object robustly to all proposals within this planning application with relevant issues addressed in bold below and support our comments with 3 photographs to show the close proximity and 'screening' in place between the site and residential properties and hotel accommodation along the full length of Garland Road.

Current relevant conditions as set in Application No: 07/00838/FUL and Reasons as given in the Decision Notice published by Tendring District Council on 29th May 2007:

1) There shall be no storage of equipment, goods or materials outside the building except within the areas of the site outline in orange and numbered 1 and 3 on the amended 1:5000 scale layout plan (received 12th November 2007)

Reason - To retain control of the outside storage areas in the interests safeguarding the visual amenity of the area and protecting the amenities of nearby residents to the site.

The Parish Council strongly support the reason as given in the Decision Notice and recommend that this condition should remain in place.

5) There shall be no outside working, manoeuvring of heavy goods vehicles or trailer movements in the areas of the site as outline various colours identified 1, 2C, 2S, 3,4,5,6,7 on the amended 1:500 scale layout plan (received 12th November 2007) outside the hours of 0700:00 and 21:30 Mondays to Saturdays and not at any time on Sundays or Public Holidays.

Reason - To protect the residential amenity of the residents of Garland Road to the north of the site in the evening and early mornings from possible noise disturbance from such activities.

1. The Parish Council strongly support the reason given and would add that the areas 2C, 2S, 3,4,5,6 identified on the amended layout plan (received 12th November 2007) lay just 30 meters on the boundary to residential properties along Garland Road, Parkeston.

2. We draw your attention to the Noise Assessment carried out on behalf of Surya by Sound Acoustics Limited, Author Keiron Durrant BSc (Hons) MSc MIOA on 7th August 2007 using guidance contained in PPG 24 'Planning and Noise' issued September 1994, together with BS4142, is a British Standard that describes methods for rating and assessing industrial and commercial sound.

In the published report the Author states that:

a) "The recorded HGV and forklift activities from our survey all took place during the period 06:30 to 0830hrs" - referring to Decision Notice 07/00838/Full dated 29th May 2007 - Condition No.11 "operations do not begin before 7:00am".

This proves a breach of condition 11.

b) "The proposed development to be assessed with see the yard at the northern end of the site used for HGV trailer parking activities and forklift operations.

This means that there may be noise generated by reversing, turning unhitching and hitching of trailers, airbrakes, door slams and pulling away with and without trailers as well as unloading and loading activities with forklifts."

The current application No: 19/00397/FUL for 24/7 working would make it unbearable for residents not to have any guaranteed 'noise free' time or guaranteed disturbance free sleep from the industry and is indicated by the Author in his report that the assessment for night time working proved:

"According to PPG24 and BS4142 an excess or rating over background level of +10dB indicates that complaints are likely and an excess of +5dB is said to be of marginal significance, the results of the BS4142 assessment without remedial measures indicate that complaints are likely at all times. In order to reduce the noise level which is equivalent to the 'marginal significance' criterion of +5dB it will be necessary to install an acoustic fence providing 13.5dB attenuation or 5dB attenuation depending on whether a 6am or 7am start is desired."

"Surya might like to consider adopting 'broadband' reversing alarms on vehicles whenever new HGV's are brought into the fleet. Traditional alarms are tonal and clearly stand out above the ambient noise even at considerable distance from the alarm. The 'broadband' or 'wideband' alarm provides a clear audible warning at the workplace but due to the sound energy being spread over a wider frequency range tends to blend into the background noise at longer distances"

The Parish Council is unaware of any such recommendations being carried out by Surya.

6) No loading or unloading of vehicles shall take place on the site other than within the areas of the site outlined yellow and numbered 7 and numbered 8 on the amended 1:500 scale layout plan (received 12th November 2007).

Reason - To retain control of the area of loading/unloading to safeguard residential amenity particularly in respect of any potential noise nuisance if not so controlled.

In addition to the comments above the Parish Council wish to bring to attention the DEFRA (Department for Environment Food and Rural Affairs) Noise Policy Statement for England (NPSE) published March 2010:

- "Noise Policy Vision: Promote good health and a good quality of life through the effect management of noise within the context of Government policy on sustainable development."
- "Noise Policy Aims: avoid significant impacts on health and quality of life"
- "NPSE 'noise' includes: 'environmental noise' which includes noise from transportation sources."
- "sound only becomes noise (often defined as 'unwanted sound') when it exists in the wrong place or at the wrong time such that it causes or contributes to some harmful or otherwise unwanted effect, like annoyance or sleep disturbance."
- "It is recognised that noise exposure can cause annoyance and sleep disturbance both of which impact on quality of life. It is also agreed by many experts that annoyance and sleep disturbance can give rise to adverse health effects and that there is emerging evidence that long term exposure to some types of transport noise can additionally cause an increased risk of direct health effects."

Should the request for Variations/removal of any of the conditions set in Planning Application 07/00838/FUL be granted then it would allow a working practice of 24/7 which will indisputably impact on the health and quality of life for the residents of Garland Road, and other residents within Parkeston and robustly recommend that Application No: 19/00397/FUL is REFUSED in full. We fully support all the comments submitted directly by residents to the Tendring DC as of 26/05/2019 website as listed below.

Mr Michael Roots 31 Garland Road Parkeston Harwich Essex CO12 4PB (Objects) Comment submitted date: Tue 21 May 2019 I object to the application due to noise disturbances that have and will continue to occur if this application is passed. The disturbances have been so bad that my children have awoken at all times in the night and have only managed to get some sleep by sleeping on the sofa on more than one occasion. A 10 year old girl should not be driven from their bed by an inconsiderate neighbour making too much noise. I have even found myself struggling with sleep and therefore working the following day. During a mediation meeting with Surya on 27/03/2019 promises and compromises were made to limit noise and working hours. These promises have been continually ignored and this application is clearly a way to dodge future fines and restrictions imposed by the council due to our complaints. With regards to the removal of condition 1 it appears Surya have ignored that one anyway as the back fence area has become a dumping/storage area for all types of junk/working equipment. I feel I have been unable to enjoy my outside space at my property due to the noise levels emitted even in the day. I have been logging complaints with the Tendring Out of Hours service on a regular basis with regards to the droaning noise from the factory and the lorries loading/unloading/using the weighbridge. any application made for this premises must be considerate to the surrounding village and its inhabitants. The constant violations of the conditions set in previous planning applications show that Surya just don't care about anyone

else.

Mr Marcus Needham 9 Garland Road Parkeston Harwich Essex CO12 4PB (Objects) Comment submitted date: Tue 21 May 2019 While I applaud the success of the business, the removal of a basic protection for residents is not acceptable. I recall when the status of this site was changed, along with a promise of no outside working. Well over the years this site has been a nightmare of noise, pollution and mess. Most of the protective trees have long gone and areas never intended for commercial use, used for all sorts of industrial purposes.

I am a former cancer patient and have researched the topic in depth. My main concern is an increase in harmful pollutants into the local environment. Marcus Needham MA. BSc (Hons). BA (Hons)

Mr D Bell 71 Garland Road Parkeston Harwich Essex CO12 4PA (Objects) Comment submitted date: Mon 20 May 2019 Allowing a 24hr operation this close to a residential area should be refused. We already have to put up with constant noise 365 days of the year from extractor fans that were installed 2 years ago, the almost constant noise of fork lift trucks and horns sounding for no reason, dust and smell. This company has no regards whatsoever for the people who have to live around them.

Mrs Julie Whittington Elm Villa 7 Garland Road Parkeston Harwich Essex CO12 4PB (Objects) Comment submitted date: Mon 20 May 2019 24/7 movements, loading and unloading would cause a lot of night time disturbance to the houses along Garland Road as they are directly behind the factory site. These houses were built long before the factory as a residential area. The fans running 24 hours a day are already a nuisance at night, reversing vehicles beeping and engine noise possibly throughout the night seems an unreasonable request.

Mrs Jill Armstrong 33 Garland Road Parkeston Harwich Essex CO12 4PB (Objects) Comment submitted date: Sat 18 May 2019 The Surya Rice factory is directly behind our property, and has kept us awake for a very long time, until we lodged a complaint with environmental health, as our health was suffering due to lack of sleep. We have had two sound monitors, last year, and the factory was advised to comply with the planning regulations. They did for a short while, but then went back to moving lorries and containers at night and on Sundays, which was against planning permission. We have rung out of hours at environmental health on each occasion that we were disturbed, which amounts to over a hundred phone calls, and emails to Neil Foreman, a meeting with Surya rice, and though some nights have been better, I cannot imagine living with the lorries and containers and forklift trucks moving around, hooting, clanking and banging 24/7. So therefore we strongly object to this application. Surely it is a human right to have a good nights sleep?

2. Consultation Responses

Environmental Protection

Recommend refusal unless the applicant can demonstrate that the nearby noise sensitive premises do not suffer loss of amenity by reason of noise nuisance from loading/unloading and other activities on site.

ECC Highways Dept

The information that was submitted in association with the application has been fully considered by the Highway Authority. In accordance

with Policy DM19 any proposals that generate a significant number of heavy goods vehicles movements will be located in close proximity and or connected to a Strategic route. The site is located off a private road and has direct access onto the A120. It is noted from the application form that this is 'short term' only and concerns condition Nos 1, 5 and 6, therefore:

As such the Highway Authority does not object to the proposals as submitted.

Informative 1: All work within or affecting the highway is to be laid out and constructed by prior arrangement with and to the requirements and specifications of the Highway Authority; all details shall be agreed before the commencement of works.

The applicants should be advised to contact the Development Management Team by email at development.management@essexhighways.org or by post to:

SMO1 - Essex Highways
Colchester Highways Depot,
653 The Crescent,
Colchester
CO4 9YQ

The Highway Authority cannot accept any liability for costs associated with a developer's improvement. This includes design check safety audits, site supervision, commuted sums for maintenance and any potential claims under Part 1 and Part 2 of the Land Compensation Act 1973. To protect the Highway Authority against such compensation claims a cash deposit or bond may be required.

3. Planning History

91/00915/FUL	Grain store and cleaning, general storage, trailer and container repairs, new doorways.	Refused	29.10.1991
91/01300/FUL	Change of use of part building from storage [Use Class B8] to storage and repackaging of rice, including cleaning, milling and grading of rice grain, prior to distribution [Use Class B1] stationing of 2 No.portakabin office.	Approved	07.01.1992
93/00033/FUL	Change of use from storage [Class B8] to storage, cleaning, milling, grading and repacking rice, prior to distribution [Class B1] and the erection of additional rice storage facility	Approved	09.03.1993
07/00838/FUL	Variation of planning permission TEN/93/00033 conditions 2, 3, 4, 6 and 9 and TEN/91/01300 conditions 2, 3, 4 and 6 and proposed warehouse use.	Approved	14.11.2007
19/00397/FUL	Variation of conditions 5) 24hr	Current	

movements required, 7 days a week and 6) 24hr unloading/loading required 7 days a week and removal of condition 1) to Planning Application 07/00838/FUL.

4. Relevant Policies / Government Guidance

National Planning Policy Framework 2019 (NPPF)
National Planning Policy Guidance (PPG)

Tendring District Local Plan (Adopted 2007)

ER1	Employment Sites
ER2	Principal Business and Industrial Areas
ER3	Protection of Employment Land
COM20	Air Pollution/Air Quality
COM22	Noise Pollution
COM23	General Pollution
QL11	Environmental Impacts and Compatibility of Uses

Tendring District Local Plan 2013-2033 and Beyond Publication Draft (June 2017)

SP4	Providing for Employment and Retail
PP6	Employment Sites

Status of the Local Plan

The 'development plan' for Tendring is the 2007 'adopted' Local Plan. Paragraph 213 of the NPPF (2019) allows local planning authorities to give due weight to adopted albeit outdated policies according to their degree of consistency with the policies in the NPPF. Paragraph 48 of the NPPF also allows weight to be given to policies in emerging plans according to their stage of preparation, the extent to which there are unresolved objections to relevant policies and the degree of consistency with national policy. As of 16th June 2017, the emerging Local Plan for Tendring is the Tendring District Local Plan 2013-2033 and Beyond Publication Draft.

Section 1 of the Local Plan (which sets out the strategy for growth across North Essex including Tendring, Colchester and Braintree) was examined in January and May 2018 and the Inspector's initial findings were published in June 2018. They raise concerns, very specifically, about the three 'Garden Communities' proposed in north Essex along the A120 designed to deliver longer-term sustainable growth in the latter half of the plan period and beyond 2033. Further work is required to address the Inspector's concerns and the North Essex Authorities are considering how best to proceed.

With more work required to demonstrate the soundness of the Local Plan, its policies cannot yet carry the full weight of adopted policy, however they can carry some weight in the determination of planning applications. The examination of Section 2 of the Local Plan will progress once matters in relation to Section 1 have been resolved. Where emerging policies are particularly relevant to a planning application and can be given some weight in line with the principles set out in paragraph 48 of the NPPF, they will be considered and, where appropriate, referred to in decision notices. In general terms however, more weight will be given to policies in the NPPF and the adopted Local Plan.

5. Officer Appraisal (including Site Description and Proposal)

Site Description

The application site is 1.8 hectares in size and located at the north-west end of Europa Way, an industrial Estate located to the south of the village of Parkeston. Present on-site are two large

warehouses (units 3 & 4) and a silo attached to unit 4. (To the north of unit 4 is the employee's car parking area.) The site is currently occupied by Surya Rice with activities involving the storage, milling and packing of rice grain. To the south and east of the site are other warehouses and works yards, whilst to the north are residential properties that front Garland Road. The northern boundary of the site is marked by close boarded/wire fencing and a scattering of trees, some of which are the subject of tree preservation orders (TPO's). The western boundary is marked by dense hedgerow and trees.

Due to the topography of the area the industrial estate is set on lower land than Station Road to the east of the site.

Proposal

This application proposes 24 Hour movements, 7 days a week and 24 hour unloading /loading, 7 days a week.

In addition it proposes the removal of Condition 1 and seeks variation of Conditions 5 and 6 of planning consent 07/00838/FUL.

Each Condition has been reprised below for ease of reference;

Condition 1

There shall be no storage of equipment, goods or materials outside the buildings except within the areas of the site as shown outlined in orange and numbered 1 and 3 on the amended 1:500 scale layout plan (received 12 November 2007).

Condition 5

There shall be no outside working, manouvering of heavy goods vehicles or trailer movements in the area of the site as outlined in various colours and identified 1, 2C, 2S, 3, 4, 5, 6, 7 on the amended 1:500 scale layout plan (received 12 November 2007) Outside the hours of 7.00 and 21:30 Monday to Saturdays and not at any time on Sundays or Public Holidays.

Condition 6

No Loading or unloading of vehicles shall take place on the site other than within the areas of the site outlined yellow and numbered 7 and numbered 8 on the amended 1:500 scale layout plan (received 12th November 2007).

Appraisal

The main issues to be considered in the determination of this application are:

- The Policy Context
- Planning History
- Local representation
- Impact upon Residential Amenity
- Other Considerations

Policy Context

The site is allocated in the Adopted Local Plan as Protected Employment Land and a Principal Business and Industrial Area where Policies ER1, ER2 and ER3 of the Tendring District Local Plan (TDLC) apply.

These policies relate to the promotion of growth and enterprise in designated areas and state that proposals will be permitted where they will not;

- create cramped development,
- cause traffic problems or
- detrimentally affect the character of the area and adjacent residential properties.

Policies COM20, COM22 and COM23 are also relevant as they advise on the effects of noise, air and general pollution.

These policies state that sensitive proposals located near housing shall not be permitted unless mitigated measures are proposed which would adequately mitigate against the adverse effect of pollution at all times. A core principle of the NPPF is to "always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings.

Policy QL11 of the Tendring Local Plan is also relevant and states;

"All new development should be compatible with surrounding land uses and minimise any adverse environmental impacts. Development will only be permitted if the following criteria are met:

- i. the scale and nature of the development is appropriate to the locality;*
- ii. the development will not have a materially damaging impact on the privacy, daylight or other amenities of occupiers of nearby properties;*
- iii. the development will not lead to material loss or damage to important environmental assets such as buildings of architectural interest, the historic environment, water courses, important archaeological sites and monuments and areas of conservation, recreation, ecological or landscape value;*
- iv. the development, including any additional road traffic arising, will not have a materially damaging impact on air, land, water (including ground water), amenity, health or safety through noise, smell, dust, light, heat, vibration, fumes or other forms of pollution or nuisance; and*
- v. the health, safety or amenity of any occupants or users of the proposed development will not be materially harmed by any pollution from an existing or committed use. Where appropriate, compensatory and/or mitigation measures will be required to resolve or limit environmental impacts."*

A core principle of the NPPF is to "always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings."

Planning History

The industrial estate and associated infrastructure was originally granted planning permission in 1973. This included the provision of a number of warehouses and road.

In 1987, planning permission was granted for a change of use of unit 4 from B8 (storage) to B1 (packaging). In 1992 planning permission (TEN 91/1300) was granted to unit 3 for part change of use from storage (B8) to packing, cleaning, milling and grading of rice (B1).

In 1993, permission was granted (TEN/93/00033) for change of use of unit 4 and the rest of unit 3 for packing, cleaning, milling and grading of rice.

Attached to these two permissions were a number of conditions relating to the level of noise pollution, the control of outside storage, no outside work, the movements of HGV's and the exact use of the warehouses.

In 2007, permission was granted to vary Conditions, 2,3,4,6 and 9 of TEN/93/00033 and Condition 2, 3, 4 and 6 of TEN/91/01300.

Local Representations

The proposal was publicised by way of a site notice, a number of objections were received from local residents in Garland Road to the north of the site, along with a petition containing 43 signatures, raising the following points;

- Increased noise and disturbance
- Unsociable hours of operation
- Impact upon Residential Amenity

Impact upon residential amenity

Whilst Officers acknowledge that residential areas are likely to be sensitive to noise disturbance, it can also be a serious problem in areas where commercial activities co-exist.

Noise associated with storage and distribution uses emanate from a variety of sources, the main ones being:

- vehicles - starting, revving of engines, screeching of tyres, sounding of horns, radios playing, opening and closing of doors, manoeuvring;
- people - the comings and goings of staff (talking, shouting);
- use of equipment associated with the business, (in this instance the operation of the weighing bridge and the constant movements of lorries and entering and exiting the site.)

These sources of noise are especially noticeable in the late evening when local residents have a legitimate expectation that surrounding background noise levels will remain low. In that respect, storage and distribution uses, which often generate frequent vehicle and staff movements, can be particularly annoying and unacceptable.

The weight that the Council will attach to noise disturbance will be greater where there is an increased likelihood that activities are close to or nearby to residential properties/streets.

Objections to planning proposals, based on the harmful effects of noise, may, however, be overcome by means of planning conditions attached to a grant of permission in appropriate cases. If the Council is not satisfied that such objections can be overcome by the imposition of conditions, the application will be refused.

Conditions designed to prevent noise disturbance will generally involve or require some, or all of the following: -

- Restrictions on hours of operation (in predominantly residential areas).
- Restrictions on Sunday operation.
- Restrictions on the use of land within the curtilage of the site e.g. open areas at the front or rear of the site.
- Sound-proofing of the premises i.e. walls and ceilings.
- Double-glazing of windows and installation of self-closing external doors.
- The installation and maintenance of any necessary equipment.
- Restrictions on servicing.

Given the relationship of the site to adjoining residential properties to the north, it was previously considered that the proposal had the potential to give rise to harmful impacts on the amenity of residents through noise and disturbance, loss of privacy and overall loss of amenity.

As a consequence of this a series of Conditions were attached to the granting of planning permission 07/00838/FUL so as to mitigate against the noise impacts of the development (namely conditions 1, 5 and 6).

Whilst the current development itself is not incompatible with the surrounding land uses, the noise impacts likely to arise during the proposed 24 hour, 7 day a week, operation has the potential to cause adverse impacts on residential amenity.

Under the NPPF, residential Noise Assessment Reports are generally required to support an application where there are likely to be detrimental impacts upon residential amenity.

Typical sources of noise assessed under the NPPF include:

- Road and Rail Noise
- Vibration
- Entertainment Noise such as from bars or nightclubs.
- Mechanical Noise such as air conditioning units
- Industrial Noise

In order to regulate the measurement and assessment of the impact of these sources of noise and vibration, a number of documents exist, known as British Standards.

These include, but are not limited to the following:

BS4142: 2014 - Method for rating industrial noise affecting mixed residential and industrial areas.

BS8233: 2014 - Sound Insulation and Noise Reduction for Buildings - Code of Practice.

The World Health Organisation - Guidelines for Community Noise

The process of undertaking a planning application Noise Assessment Report, generally includes the following steps:

- Measure the existing Noise Environment at and around the proposed new development
- Calculation of internal noise levels within the new development based on planning proposal
- Compare the calculated internal noise level with Local Planning Policy and assess compliance
- If necessary, provide Mitigation Advice to demonstrate that Local Planning Policy can be met

The applicant has failed to submit a Noise Assessment Report in line with the aforementioned guidance in support of the application.

It is worth adding that there have been a number of objections to the proposed development on the grounds of potential increased noise and disturbance.

From an on-site inspection it was found that the Goods/Storage yard and weighing bridge (in daily operation) were in close proximity to the rear gardens and properties in nearby Garland Road. There have been a number of complaints to the Council by local residents with regards to the early morning loading and unloading of vehicles within the site and the operation and use of the weighing bridge, close to the rear windows of properties in Garland Road, disturbing residents.

The relaxation of the aforementioned Conditions (which have been put in place to safeguard the privacy and amenity of adjacent residents) is considered likely only to worsen and exacerbate the current situation.

To vary these Conditions would be contrary to guidance as given by Policies COM20, COM22 and COM23 of the Local Plan which seeks to control and resist sensitive proposals located near housing unless mitigated measures are proposed which adequately mitigate against the adverse effect of pollution at all times.

As such Officers are unwilling to support the application in its current form and recommend that the application be refused.

Other Considerations

None

Conclusion

As established through the granting of planning consent 07/00838/FUL, the principle of storage and distribution use on the site is acceptable. The proposed variation of Conditions 1, 5 and 6 (In the absence of a Noise Assessment Report) would likely result in significant material harm to residential amenity contrary to guidance as given by the NPPF and Policies COM20, COM22, COM23 and QL11 of the Local Plan.

The Application is therefore recommended for Refusal.

6. Recommendation

Refusal - Full

7. Conditions / Reasons for Refusal

Given the relationship of the site to adjoining residential properties to the north, it was previously considered that the proposal had the potential to give rise to harmful impacts on the amenity of residents through noise and disturbance, loss of privacy and overall loss of amenity. As a consequence of this a series of Conditions were attached to the granting of planning permission 07/00838/FUL so as to mitigate against the noise impacts of the development (namely conditions 1, 5 and 6).

To vary these Conditions would be contrary to guidance as given by Policies COM20, COM22 and COM23 of the Local Plan which seeks to control and resist sensitive proposals located near housing unless mitigated measures are proposed which adequately mitigate against the adverse effect of pollution at all times.

Whilst the current development itself is not incompatible with the surrounding land uses, the noise impacts likely to arise during the proposed 24 hour, 7 day a week, operation has the potential to cause adverse impacts on residential amenity.

The application is therefore recommended for Refusal.

8. Informatives

Positive and Proactive Statement

The Local Planning Authority has acted positively and proactively in determining this application by identifying matters of concern with the proposal and discussing those with the Applicant. However, the issues are so fundamental to the proposal that it has not been possible to negotiate a satisfactory way forward and due to the harm which has been clearly identified within the reason(s) for the refusal, approval has not been possible.

Are there any letters to be sent to applicant / agent with the decision? If so please specify:	YES	NO
Are there any third parties to be informed of the decision? If so, please specify:	YES	NO