

## **Urgent Update: Planning Committee 14 December 2023**

### **Item 16 Pages 54 - 74**

#### **Field Adjacent to Dancing Green Lenham Road Headcorn Kent TN27 9LG**

##### **APPLICATION: 23/502511/FULL**

##### **Update to conditions as they are set out in the published agenda.**

**Page 58 - Condition 11 (add following as missing condition 11)** The approved motor vehicle repair use and the veterans drop-in centre shall only operate within the confines of the approved building and no activities shall take place in the open areas of the site. Reason: In the interests of amenity.

**Page 59 - Condition 17 (noise from plant and machinery) – amended to remove requirement for an acoustic report whilst retaining requirement for plant or machinery to adhere to specified noise levels. (deletions crossed through - additions underlined).**

~~Prior to the installation of any plant and equipment that is required in connection with the approved building and use, an Acoustic Report shall be submitted to and approved in writing by the Local Planning Authority. The Acoustic Report shall seek to show that The rating level of noise emitted from the proposed plant and equipment that are required in connection with the approved building and use (determined using the guidance of BS 4142: 2014 Rating for industrial noise affecting mixed residential and Industrial areas) shall be ~~is~~ 5dB below the existing measured background noise level LA90, T. In exceptional circumstances, such as areas with a very low background or where assessment penalties total above 5 the applicant's consultants should contact the Council's Environmental Protection Team (ehadmin@midkent.gov.uk) to agree a site specific target level. Any mitigation measures approved through this condition shall be implemented prior to first use of the plant and equipment and retained at all times thereafter. Reason: In the interests of aural amenity.~~

**Page 59 - Condition 20 (operating hours) amended to provide separate operating times for the ground floor motor vehicle use and the first-floor veterans drop-in centre.**

~~The motor vehicle repair use on the ground floor of the building use hereby approved shall not operate outside the hours of 0800hrs to 1830hrs Monday to ~~Saturday~~ Saturday and 0800hrs to 1400hrs on a Sunday. The veterans drop-in centre on the first floor of the building shall not operate outside the hours of 0800hrs to 2200hrs Monday to Saturday and 1000hrs to 2000hrs on Sundays and bank holidays.~~

Reason: In the interests of amenity.

##### **Additional background information**

##### **Change from s106 Unilateral Undertaking to planning conditions 18 and 19.**

At the planning committee on the 21 September 2023, it was resolved to grant planning permission subject to a section 106 unilateral undertaking. This was in line with the comments from the Planning Inspector in his decision to dismiss the earlier appeal in September 2022.

A section 106 unilateral undertaking can take some time to be drafted and a period of up to 6 months is normally allowed for the completion of the document. As a s106 rests with

the land all those with an interest in the land need to be signatories to the document including mortgagees.

The key difference between s.106 and a planning condition is that a local planning authority does not have to exhaust the remedies that are available to it under Part VII of the Town and Country Planning Act 1990 (enforcement notices, etc.). The Council can seek to enforce a s106 obligation by way of injunction as indicated in the Court of Appeal decision in Avon CC v Millard (1985) 50 P&CR 275.

In cases where there is non-compliance with conditions imposed by a planning permission, the local planning authority have the discretion to take enforcement action, where considered expedient to do so having regard to the development plan and any other material considerations. In such instances, officers would aim to resolve matters by negotiation as a first option rather than take legal action that can be costly and protracted.

Planning permission was granted for the development based only on the specified use and as a departure from both the adopted Local Plan and the normal constraints on development in the countryside.

In these circumstances a s.106 Unilateral Undertaking was the most appropriate option to secure the benefits of the proposal long term. However, with the advice from the applicant that their mortgagees have refused to sign the Unilateral Undertaking (prepared by the Council on the applicant's behalf) an insistence on a Unilateral Undertaking would be a reason for the project not being progressed. As set out above, it is also highlighted that should the requirements of conditions 18 and 19 not be met the Council retains powers to take enforcement action.

With the refusal of applicant's mortgagees to endorse the draft s.106 unilateral undertaking with regard to the applicant's business plan, the requirements of the s106 unilateral undertaking can now be secured through planning conditions (conditions 18 and 19).