Horsham District Council

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Dear Mr Reid,

APP/Z3825/W/24/3349245 - Bury Hill Landscape Supplies, Lower Broadbridge Farm Billingshurst Road, Broadbridge Heath, Horsham, RH12 3LR

Following the submission of the appeal against the refusal the variation of conditions 9, 10, and 13 of planning approval reference DC/23/0578, the Local Planning Authority would refer the Inspector to the Delegated Report, and would like to reiterate the reasons for refusal as follows.

Refusal Reason 1

It has not been demonstrated to the satisfaction of the Local Planning Authority that the variation to conditions 9, 10 and 13 would not result in a greater level and intensity of activity and consequently a greater level of noise and disturbance. It has not therefore been demonstrated that the proposed variations would not adversely and unacceptably impact the amenities and sensitivities of neighbouring properties and users of land, contrary to Policy 33 of the Horsham District Planning Framework (2015).

Taking the relevant conditions individually:

9 ***Regulatory Condition**: The buildings shaded in grey and labelled as "Existing Bagging Plant Operation" on plan drawing BLS/2020/MK1 rev B shall be used for the purposes of blending, screening, and storage of landscape materials only. At no times shall the operations hereby permitted take place outside of the buildings.*

Reason: To safeguard the amenities of the nearby neighbouring properties and in accordance with Policy 33 of the Horsham District Planning Framework (2015).

The purpose of this condition is to safeguard the amenities of nearby residential properties by limiting the activity taking place outside of the buildings. This condition was considered reasonable and necessary due to potential harm arising to nearby residential properties through noise and activity outside of the buildings.

The variation of condition sought to allow the operational activities, which include blending, screening, and storage of landscape materials, to take place outside of the buildings. It was suggested that condition 5 of the planning approval would sufficiently control potential noise nuisance.

No evidence was provided at application stage to demonstrate that the carrying out of activities outside of the building would not harm the amenities of nearby neighbouring properties. It was considered that undertaking these activities outside of the building could result in odourous and fugitive dust emissions that would detrimental to the amenities of nearby residential properties and users of land.

10 ***Regulatory Condition****: The extended yard area to the north, as referenced on plan drawing BLS/2020/MK2 shall be used for the storage of pallets and parked unladen vehicles only, and shall not be used for the storage of any finished or unfinished product or material. Any pallets stored/stacked in this area shall not exceed a total height of 3m.*

Reason: To safeguard the amenities of the nearby neighbouring properties and in accordance with Policy 33 of the Horsham District Planning Framework (2015).

The purpose of this condition is to safeguard the amenities of nearby residential properties by limiting the activity taking place within the extended yard area. This condition was considered reasonable and necessary due to potential harm arising to nearby residential properties through noise and activity within the yard area.

The variation of the condition sought to allow the storage of finished and unfinished products and materials, as well as the storage of pallets and parked unladen vehicles within the yard area to the north. It was suggested that condition 5 of the planning approval, which seeks to limit noise when measured from the site boundary with the A281 to no greater than 55 dB LAeq, 1 hour (freefield).

No evidence was provided at application stage to demonstrate that the activities sought by the condition variation could be undertaken within the noise limitation of condition 5, and it had not therefore been demonstrated that the proposed activities would not result in adverse harm to the amenities of neighbouring properties.

13 ***Regulatory Condition****: No externally located plant or equipment shall be installed or operated without the prior written approval of the Local Planning Authority by way of formal application.*

Reason: To safeguard the amenities of the nearby residential properties and users of land and in accordance with Policy 33 of the Horsham District Planning Framework (2015).

The purpose of this condition was to safeguard the amenities of nearby residential properties by restricting the installation and operation of externally located plant or equipment. This condition was considered reasonable and necessary to safeguard the amenities of nearby residential properties and users of land.

The variation of condition sought to add reference to ‘fixed’ within the condition in order to allow moveable plant and machinery that the operation may require.

The condition in its current state was considered to serve a planning purpose as plant and machinery in the open air is likely to have distinctive acoustic noise signatures compared to broad band noise from road traffic which characterises the ambient noise environment. Retention of the condition was considered necessary to restrict distinctive noise signatures that would otherwise result in harm to amenities of nearby neighbouring properties.

The Appellant has now submitted a further Technical Noise Assessment by WBM Acoustics Ltd. It is outlined that the Technical Note presents the results of noise level measurements undertaken at the suggested monitoring location and considers the noise generated by activities on the site, including the operations that normally occur outside the bagging building. The Report outlines that the relevant activities, as measured from the suggested noise monitoring position, did not exceed the 55dB LAeq 1 hour (freefield) as required by condition 5 of the planning approval. The Report states that the existing bund would afford some noise attenuation to the nearby residential properties, with the relationship between the bund and the location of the outside bagging operations considered to further mitigate impact.

Following consultation with the Council's Environmental Health Officer, the site has a history of industrial noise complaints which demonstrate that, despite the proximity of the A281, noise from commercial activities at the site has the potential to be intrusive to neighbouring occupiers. This is principally due to the character of commercial noise which is different to the predominantly broadband noise associated with passing traffic. The need to account for acoustic features of industrial noise such as tonality, impulsivity and intermittency are recognised in BS 41422014+A1:2019 "Methods for rating and assessing industrial and commercial sound". The conditions as imposed were intended to allow the Appellant to develop the business, while at the same time resolving the conflict with residential amenity that had occurred in the past. Since the application was permitted, a new residential development has been allowed on appeal to the south of the application site at Lower Broadbridge Farm, Billingshurst Road, Broadbridge Heath. The Noise Assessment for this later development assumed that the current planning restrictions would be maintained. The nature of the noise environment, and the relationship of the site with the nearby residential properties and road, are material considerations relevant to the assessment of the proposed variation of conditions.

The noise limit of 55 dB LAeq was designed to be applied in conjunction with the conditions that seek to control the external activity at the site. The LAeq metric is an average value and only considers one element of commercial or industrial noise. As noted, the assessment of commercial or industrial noise also requires consideration of acoustic character, including tonality, impulsivity, and intermittency. If the conditions are to be varied, the change in noise should be assessed using the procedures set out in BS 4142:2014+A1:2019.

Although noise and dust can be dealt with as a statutory nuisance, it is important to note that nuisance is a basic safeguarding standard and does not equate to amenity as considered under the planning framework. Businesses have a legal defence against proceedings for statutory nuisance which require that the business undertake reasonable steps to limit any nuisance. However, businesses are not obligated to prevent nuisance. As such, conditions attached to planning consents afford a greater level of protection against the impacts of commercial development.

It is recognised that the bund affords a better perception of noise attenuation, but the degree of protection is dependent on the plant used and its location on the site. For example, large screening machinery may be taller than the bund and so any benefit from the bund would be reduced or even negated. While locating the mobile plant adjacent to the bund would optimise noise attenuation, this cannot be guaranteed and would not be considered a reasonable requirement that could be enforced by condition. It was for this reason that condition 13 was imposed. This condition is not prescriptive and does not prevent the operator from conducting their business, and only requires the Appellant to provide details of the plant so that any issues can be identified and resolved at an early stage. Appendix D to the Technical Note gives details of operational noise levels from existing plant in use at the site. These show that even at moderate distances the operational noise would be significant. For example, at 35 metres, noise from the screener and loading shovel would measure 79 dBA Lmax. This demonstrates and justifies why the condition is not limited to static plant only. This is considered reasonable and necessary to ensure that the operations do not have an adverse impact on the amenities of nearby residential properties and users of land. Condition 9 was imposed to work alongside these other conditions in order to control the environmental impacts of activities undertaken in the open air, including noise and fugitive dust emissions.

The conditions as imposed are considered appropriate in order to control potential noise arising from operational activities within the site, including within and outside of the buildings. These conditions were imposed following consideration of the noise generating activities and the context of site, including the noise character of the site and wider surroundings, the relationship to the nearby residential properties, and the relationship with the A281. The conditions as imposed are considered to secure an appropriate level of protection to avoid adverse impacts on the amenities of nearby neighbouring properties and users of land.

Conclusion

The Council remains of the view that the scheme as submitted would be contrary to the relevant policies of the Horsham District Planning Framework and NPPF. The Inspector is therefore respectfully requested to dismiss the appeal.

Yours sincerely,

Tamara Dale
Applications Team
Horsham District Council