

**Land Adjacent Railway Lines East Of Reservoir
Grimsbury Green
Banbury**

18/01826/CM

Applicant: Tarmac Trading Ltd.

Proposal: Application to continue the development permitted by CHN.45/90 (permanent consent for coated Roadstone) without complying with conditions 2, 3, 4, 5, 8, 12, 13 and 16 (to remove hours of working for asphalt plant to allow operations at any time of day or night and to update plans to relocate existing office, canteen and WC). (OCC Ref.: MW.0117/18)

Ward: Banbury Cross And Neithrop

Councillors: Cllr Hannah Banfield
Cllr Surinder Dhesi
Cllr Cassi Perry

Reason for Referral: County Council notification

Expiry Date: 15 November 2018 **Committee Date:** 13 December 2018

Recommendation: CDC to raise observations to the proposal

EXECUTIVE SUMMARY OF PROPOSALS AND RECOMMENDATION

Proposal

The application relates to the existing Tarmac site to the north of Banbury, which is west of the railway line and east of the River Cherwell and Grimsbury Reservoir. A public right of way runs to the south of the site and there are ecological records within the vicinity.

The application proposes to vary a number of planning conditions that are on the current planning application which controls the site. The conditions to be varied relate to operating hours, the point of access to the site, the retention of hedgerows/ trees and the position of buildings on the site including the office, canteen and WC.

Consultations

As Cherwell District Council is a consultee only, the application has not been publicised (although OCC will have publicised the application as required). In order to inform the response CDC should provide, internal consultations have been undertaken and these are reported and referred to throughout the report.

Planning Policy

The application has also been assessed against the relevant policies in the NPPF, the adopted Local Plan and other relevant guidance.

Conclusion

The report concludes that it is recommended that CDC raise observations and concerns to the proposal, particularly the proposed changes to operating hours due to the potential for objections to be raised by local residents in respect of environmental matters.

RECOMMENDATION – RAISE OBSERVATIONS TO THE CONSULTATION REQUEST

Members are advised that the above is a summary of the proposals and key issues contained in the main report below which provides full details of all consultation responses, planning policies, the Officer's assessment and recommendations, and Members are advised that this summary should be read in conjunction with the detailed report.

MAIN REPORT

1. APPLICATION SITE AND LOCALITY

- 1.1. The application site is to the north of Banbury Town Centre, accessed from Hennef Way and Water Works Road. The land sits to the west of the railway line, with the River Cherwell and Grimsbury Reservoir to the west (with intervening land between).
- 1.2. The site is run by Tarmac, who source construction materials and which is served by a rail depot, which is safeguarded for the importation of aggregate into Oxfordshire by Policy M9 of the Oxfordshire Minerals and Waste Local Plan Core Strategy September 2017.
- 1.3. In terms of site constraints, there are ecological records within the vicinity and the land is potentially contaminated. A public right of way runs to the south of the site.

2. DESCRIPTION OF PROPOSED DEVELOPMENT

- 2.1. This application is a notification from Oxfordshire County Council who are considering an application made under S73 of the Town and County Planning Act 1990 (as amended) to vary a number of planning conditions that are imposed on the current permission for the site (granted by CHN.45/90). The original permission was amended with a full permission granted in 2003. It is the conditions from the 2003 permission that are proposed to be varied.
- 2.2. The conditions to be varied relate to operating hours, the point of access to the site, the retention of hedgerows/ trees and the position of buildings on the site including the office, canteen and WC.

3. RELEVANT PLANNING HISTORY

- 3.1. The County Council are also considering an application for a temporary expansion to the Tarmac site, on the land to the west of the existing site to be used as a rail unloading and aggregate storage and distribution facility with associated infrastructure on the land. This proposal is required to service a contract for planned national infrastructure projects including the HS2 development.

4. PRE-APPLICATION DISCUSSIONS

- 4.1. No pre-application discussions have taken place by Cherwell District Council with regard to this proposal given this is a County Matter.

5. RESPONSE TO PUBLICITY

- 5.1. Cherwell District Council have not publicised the application as this application is a consultation only. Oxfordshire County Council is responsible for publicising the

application in accordance with the requirements of the Town and Country Planning (Development Management Procedure) Order 2015.

6. RESPONSE TO CONSULTATION

6.1. Internal consultations have been undertaken with the Environmental Protection Team and their comments are summarised as follows:

6.2. CDC ENVIRONMENTAL PROTECTION: No comments in respect of contaminated land, odour, light or air quality. In respect of noise, mitigation is proposed including the use of Bottom Discharge Units rather than a grabber which should help (and could improve), the noise environment. A condition to require noise mitigation measures identified to be in place before overnight working begins would be required. If there is any failure of the mitigation, then work should cease until this is fixed. Further information is sought in relation to the proposed direction of travel of the trains, where the locomotive would be when the unloading is being carried out and whether the engine can be turned off during unloading. There is a concern that if the locomotive is idling south of the drop off site, then this will increase noise levels for the residents near the line south of Hennef Way. A condition should be imposed to restrict HGV movements.

7. RELEVANT PLANNING POLICY AND GUIDANCE

7.1. Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.

7.2. The Cherwell Local Plan 2011-2031 - Part 1 was formally adopted by Cherwell District Council on 20th July 2015 and provides the strategic planning policy framework for the District to 2031. The Local Plan 2011-2031 – Part 1 replaced a number of the ‘saved’ policies of the adopted Cherwell Local Plan 1996 though many of its policies are retained and remain part of the development plan. The relevant planning policies of Cherwell District’s statutory Development Plan are set out below:

CHERWELL LOCAL PLAN 2011 - 2031 PART 1 (CLP 2031 Part 1)

- SLE5 – High Speed Rail 2 – London to Birmingham
- ESD15 - The Character of the Built and Historic Environment

CHERWELL LOCAL PLAN 1996 SAVED POLICIES (CLP 1996)

- C28 – Layout, design and external appearance of new development
- ENV1 – Development likely to cause detrimental levels of pollution

7.3. Other Material Planning Considerations

- National Planning Policy Framework (NPPF)
- Planning Practice Guidance (PPG)
- Banbury Vision and Masterplan SPD (December 2016)
- Oxfordshire Minerals and Waste Local Plan Part 1 – Core Strategy September 2017
- Saved Policies of the Oxfordshire Minerals and Waste Local Plan (1996)

8. APPRAISAL

- 8.1. The key issue for consideration in this case is the impact of the development upon the interests of the Cherwell District.

Affected Conditions

- 8.2. In summary, the current conditions that are proposed to be varied are as follows:

Conditions 3, 4 and 5 relate to working hours. Condition 3 sets approved hours for the operations authorised which are between 04:00 and 19:00hrs Mondays to Saturdays and 08:00 and 17:00hrs on Sundays unless otherwise agreed by the LPA. Condition 4 related to the movement of lorries up to the 31 December 2003 only and condition 5 referred to the extended hours granted by the 2003 permission beyond those granted by the 1990 permission and set out a procedure if any justifiable complaints were received regarding the operations of the site, which involved operations ceasing and the applicant being required to submit details of measures as to how they would overcome those complaints.

Condition 8 currently secures the entrance arrangements to the site from a specific point only.

Condition 12 requires the retention of the existing hedgerow and trees on an embankment as shown on an approved plan.

Condition 13 required the removal of temporary portacabin buildings at the expiration of five years from the date of the planning permission and the land restored to its former condition unless details of buildings of a permanent construction were approved by the LPA in which case those may have replaced the temporary ones.

Condition 16 requires that only the portable offices indicated on the approved plan (or the permanent offices that might have been agreed) to be used only as area offices for Lafarge Aggregates only and for no other purpose and that the area of the offices must not exceed 72 square metres floor space.

Lastly, condition 2 brought together the permission and required that the development be carried out in accordance with the details submitted with the application except as modified by any conditions of the permission.

Reason for proposed change to conditions

- 8.3. The proposed variation of conditions proposes to remove the conditions relating to operating hours to allow the site to operate on a 24/7 basis. This is so that the plant can service contracts for the provision of asphalt for example off peak roadworks. In addition, it seeks to relocate the existing office, canteen and WC from their current locations to new positions to the south of the site, adjacent to the existing car park. An additional office would be erected and the existing car park slightly enlarged and the access gate would also be required to be relocated.
- 8.4. There is also a proposal for a second weighbridge, however this is considered to be permitted development and therefore it does not form part of this particular application.
- 8.5. The planning statement advises that the plant has operated 'out of hours' (i.e. beyond those of the condition) with the prior agreement of the LPA (albeit not within the last 10 years), without any substantiated or justifiable complaints. As such they consider it is no longer necessary to restrict the operation of the plant. Their intention is also to operate the site flexibly rather than continuously (albeit they

would not be restricted from operating continuously if they so wished unless other conditions were imposed). In addition, they raise a number of other benefits that would be felt should the existing conditions be varied as requested.

Policy Position

- 8.6. Policy ENV1 of the Cherwell Local Plan 1996 advises that development which is likely to cause materially detrimental levels of noise, vibration, smell, smoke, fumes or other type of environmental pollution should not normally be permitted. In addition, Policy SLE5 of the Cherwell Local Plan Part 1, relating to HS2, requires that the design and construction of the HS2 Rail Link must minimise adverse links on the environment, local economy and communities. Policy SLE1 also confirms that the construction of HS2 must be managed to minimise the impacts on communities and the environment.

Operating Hours and impact on residents

- 8.7. In respect of operating hours, it is considered appropriate to raise concerns with regard to removing conditions controlling working hours which would allow 24/7 operating. This is due to the potential for objections to be raised by local residents in respect of environmental matters. The CDC Environmental Protection Officer has requested further information regarding where trains would be positioned when unloading.
- 8.8. If OCC are to consider this matter to be acceptable, then the recommendations of the noise report must be followed and should be secured by the imposition of conditions. In this regard, it is noted that a 6m barrier is recommended, however this does not appear on the proposed plans and it should be so that the visual impact of this significant height feature can be assessed.
- 8.9. It is also considered appropriate to recommend that there must be a process in place to deal with any complaints received, which should involve operations ceasing during night time hours until the mitigation is put in place. This should be in a similar form to the wording of current planning condition 5.
- 8.10. The CDC Environmental Protection Officer has also recommended restricting hours for HGV movements.
- 8.11. In respect of condition 4, Officers consider there would be no reason to object to its removal because this was a time limited condition up to the end of December 2003 so this is redundant anyway.

Physical changes to site

- 8.12. With regard to other amendments, the proposal seeks to relocate the existing office, canteen and WC to different positions to the south of the site adjacent to the existing car park, the provision of an additional office and the enlargement of the existing car park. Officers would recommend that CDC questions whether this should be agreed by a S73 application and ask that the visual impact of this be fully assessed, including the loss of any existing trees/ vegetation on the embankment. It should also be recommended that any changes to condition 2 should ensure that the wording is explicit regarding any plans that are approved.

Legal Agreement

- 8.13. Officers note that there is a S106 attached to CHN.45/90 which included routing for HGV traffic. It is recommended that the S73 application should be linked to this agreement with any updates included as necessary.

Conclusion

- 8.14. To conclude, it is recommended that CDC raise concerns to the proposal to vary existing conditions, particularly those around operating hours due to the potential for objections to be raised by local residents in respect of environmental matters. The comments through this appraisal should be summarised and provided to OCC as well as the comments from the Environmental Protection Officer.

9. RECOMMENDATION

That Cherwell District Council raises observations to the proposed development with the following comments made:

Cherwell District Council has concerns with this development for the following reasons:

Impact on Residents

- Policy ENV1 of the Cherwell Local Plan 1996 confirms that development that is likely to cause materially detrimental levels of noise, vibration, smell, smoke; fumes or other types of environmental pollution should not normally be permitted. In addition, Policy SLE5 of the Cherwell Local Plan Part 1, relating to HS2, requires that the design and construction of the HS2 Rail Link must minimise adverse links on the environment, local economy and communities. Policy SLE5 also requires the construction of HS2 to be managed to minimise the impacts on communities and the environment. In respect of operating hours, CDC have concerns with regard to removing conditions controlling working hours which would allow 24/7 operating. This is due to the potential for objections to be raised by local residents in respect of environmental matters. The District Council's Environmental Protection Officer has requested further information with regard to the proposed direction of travel of the trains, where the locomotive will be when the unloading is carried out and whether the engine needs to be running or whether it can be turned off. The concern is that if the locomotive is idling to the south of the drop off site, then this will increase noise levels for residents near the line south of Hennef Way.
- It is requested that the recommendations of the noise report must be followed and should be secured by the imposition of conditions. In this regard, it is noted that a 6m barrier is recommended, however this does not appear on the proposed plans and it should be so that the visual impact of this significant height feature can be assessed.
- CDC would recommend that there must be a process in place to deal with any complaints received, which should involve overnight operations ceasing during night time hours until the mitigation is put in place. This should be in a similar form to the wording of current planning condition 5.
- The CDC Environmental Protection Officer has recommended that a condition is imposed to control HGV movements – this should restrict HGV movements to between 06:00 – 20:00 Monday – Friday, between 06:00 – 15:00 Saturdays and 08:00 – 15:00 Sundays and Bank Holidays – it is noted

the start time on Sundays and Bank Holidays is later than proposed, but this is preferable.

- Without sufficient safeguards in place, Cherwell District Council considers there could be conflict with Policy ENV1 of the Cherwell Local Plan 1996 and SLE5 of the Cherwell Local Plan Part 1 in respect of harm to the environment and local communities.
- CDC raises no objections to the removal of condition 4 because this was a time limited condition up to the end of December 2003 so this is redundant anyway.

Changes to Office/Canteen/WC

- With regard to other amendments, the proposal seeks to relocate the existing office, canteen and WC to different positions to the south of the site adjacent to the existing car park, the provision of an additional office and the enlargement of the existing car park. CDC would question whether this should be agreed by a S73 application and would ask that the visual impact of this be fully assessed, including the loss of any existing trees/ vegetation on the embankment. A re-worded condition 2 should be explicit regarding any plans that are approved.
- If OCC agree to the rearrangement of development on the site, then CDC raise no objection to the removal of conditions 13 and 16.

Legal Agreement

- It is noted that there is a S106 attached to CHN.45/90 which included routing for HGV traffic. The S73 application should be linked to this agreement with any updates included as necessary.