

Our Ref: 02B720869
Your Ref: APP/P1940/W/21/3289305



12/04/2022

Aisosa Charles-Enoma
By email: aisosa.charles@planninginspectorate.gov.uk

Dear Aisosa Charles-Enoma

Town and Country Planning Act 1990 Appeal by BCL (Maple Cross) LLP
Employment Land to the north of Maple Cross Lodge, Maple Cross, Rickmansworth,
Hertfordshire, WD3 9SE
PINS Ref. APP/P1940/W/21/3289305

We write further to our correspondence via email dated 24th March 2022 which sought to reserve the right to provide rebuttal evidence in advance of the Inquiry event if required, given the paucity of detail in the R6 Statement of Case, a great deal of which was contradicted by subsequent email correspondence, when it should have contained the full particulars of their case.

We note that the Council has not provided a proof of evidence and has instead provided representations to the Inspector (CD6.3.1). These representations, along with the updated Statement of Common Ground (SoCG) (CD5.24), confirm that the only matters in dispute between the Council and the Appellant are draft conditions 20 (Noise Assessment) and 37 (Hours of Use/Operation). We welcome this updated position and the Council's engagement in the updated SoCG to clarify its position. We also note there is no evidence to support the Council's case in respect of these conditions.

The Council's Representations to the Inspector (CD6.3.1, para. 14) confirms that it intends to rely on submitted evidence of the officer's report to the 8th February Extraordinary Planning Committee (CD3.10) as amended or added to by the Council's Statement of Case (CD5.9) and Addendum Statement of Case (CD5.14) and the Statement of Common Ground, and does not propose to give or call another person to give evidence at the Inquiry.

Whilst the Post CMC Note of the 2nd March (CD5.22, para.7) confirms that the matter of noise will be dealt with by way of round table discussion, the Appellant is unclear as to how the conditions proposed by the Appellant (CD5.23) would otherwise lead to the refusal of the scheme as a whole on the basis that Condition 20 as currently drafted (and not agreed) and Condition 37 in its entirety did not form part of the officer's original recommendation to committee (CD3.1).

The Council's Representations to the Inspector (CD6.3.1, para. 16) conclude that there are no sound and or clear cut reasons for refusal of the appeal development and that its measurable benefits outweigh any material harm (if any) that it is suggested it might cause.

The matter in relation to both these conditions concerns noise. The Appellant has written to the Council to seek clarification regarding the evidence base for this position, given the officers' recommendation to committee (CD3.1).

The Evidence of Tim Sturgess recognises that it is essential to build a specification that ensures units have the maximum market appeal, of which access and hours of use is a hugely important issue (CD.6.1.3, Appendix X – Section 3.0). This is a site which has been allocated to meet the identified need for employment land in the Plan period.

The Council's latest position is unclear. Condition 37 seeks to restrict the hours of use/operation. Whilst it specifically references deliveries, the condition as worded restricts the use of the development as a whole. The reason for the condition is to safeguard the amenities of the occupiers of neighbouring properties. Therefore, where the use/operation taking place within the proposed buildings would not result in generating noise/disturbance, the amenities of occupiers of the neighbouring properties cannot be affected.

The purpose of proposed Condition 20 is to ensure that nearby residential properties are not subjected to excessive noise and disturbance. Condition 20 covers all noise associated with fixed or mobile mechanical plant on buildings, within the application site, and commercial activity including deliveries and vehicle movements within the car park and service yards.

Therefore, where it has been demonstrated under proposed Condition 20 that there would be no unacceptable adverse impact on nearby existing residential properties from external noise sources, it would be unnecessary to restrict hours of use/operation as proposed by Condition 37.

In terms of hours of use, DTRE has confirmed that the type of development proposed by the appeal is reliant on unrestricted hours to operate on a flexible shift pattern, make best use of the facility and maximise production and/or delivery flexibility (particularly outside of peak hours in transport terms) to satisfy their customers' requirements.

Restrictive working hours would deter occupier and therefore investor interest, which unnecessarily would frustrate the allocation from coming forward, contrary to the requirements of the development plan.

The inclusion of a restrictive condition relating to hours of use would render it unsuitable for potential occupiers and therefore preclude the site from coming forward for employment use (see Tim Sturgess Proof of Evidence CD6.1.1, Section 7). This in turn would remove the potential for the site to respond to the identified need for employment land and therefore have the effect of frustrating the adopted site allocation.

The site has been allocated for employment use through the local plan process and it follows that the Council considers it an appropriate site for standard employment functions to occur which would include 24-hour operation. This is supported by the officers' original recommendation which did not include any restrictive conditions.



Yours faithfully

A handwritten signature in black ink that reads "Avison Young".

Tim Sturgess
Director

For and on behalf of Avison Young (UK) Limited