



# **PLANNING COMMITTEE REPORT**

**TO:** Planning Committee North

**BY:** Head of Development and Building Control

**DATE:** 2<sup>nd</sup> November 2021

**DEVELOPMENT:** Variation of conditions 1 and 25 of previously approved application DC/19/0123 (Erection of two employment buildings for use classes B1(c) and B8 with associated access, car parking and landscaping) to allow for amendments to the proposed scheme in relation to boundary treatments and changes to the permitted hours of operation.

**SITE:** Plot C1 Oakhurst Business Park Wilberforce Way Southwater West Sussex

**WARD:** Southwater North

**APPLICATION:** DC/21/1607

**APPLICANT:** Name: c/o Agent Address:

**REASON FOR INCLUSION ON THE AGENDA:** More than eight persons in different households have made written representations within the consultation period raising material planning considerations that are inconsistent with the recommendation of the Head of Development and Building Control.

**RECOMMENDATION:** To approve planning permission subject to appropriate conditions

## **1. THE PURPOSE OF THIS REPORT**

1.1 To consider the planning application.

### **DESCRIPTION OF THE APPLICATION**

1.2 This S.73 application is pursuant to DC/19/0123 (Erection of two employment buildings for use classes B1(c) and B8 with associated access, car parking and landscaping) and seeks the variation of condition 25 to allow changes to the permitted hours of operation. Condition 25 currently reads

*Regulatory Condition: The premises hereby permitted shall not be open for trade or business (including the receipt and/or dispatch of deliveries, and/or the operation of vehicles, plant/machinery) except between the hours of 07:00 to 18:00 Mondays to Fridays; 07:00 to 13:00 on Saturdays; nor at any time on Sundays, Bank or Public Holidays.*

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

1.3 The current application now seeks the variation as follows:

*'The premises hereby permitted shall not be open for trade of business (including receipt or dispatch of deliveries and /or the operation of vehicles, plant / machinery) except between the hours of 07:00 to 20:00 Mondays to Fridays 07:00 to 18:00 on Saturdays; nor at any time on Sundays Bank or Public Holidays:*

1.4 The application also seeks the variation of condition 1 to replace the approved boundary treatment plan with amended plan 2265 P403J which provide for a 2.4m acoustic fence along the western boundary adjacent to the service road between units 1 and 2.

1.5 The application is supported by a Marketing Report and by a Noise Impact Assessment. No amendments are sought to any other conditions imposed in respect of DC/19/0123.

1.6 The application is a resubmission of DC/21/0087 which originally sought a variation to Condition 25 to permit the following:

- Any 24 hour operations to be restricted to internal only, 7 days a week
- No manufacturing or industrial processes to take place within the buildings except between 07:00hrs– 20.00hrs Monday – Friday, 07:00 – 18:00hrs Saturdays, and not at all on Sundays, Bank Holidays or Public Holidays
- No dispatch or receipt of deliveries to take place from the site except between 07:00hrs– 20.00hrs Monday – Friday, 07:00 – 18:00hrs Saturdays, and not at all on Sundays, Bank Holidays or Public Holidays

1.7 DC/21/0087 was subsequently refused by the Planning Committee (North) on the 12<sup>th</sup> June 2021 for the following reason:

*'The proposed alteration to the hours of operation would result in significant harm and a negative impact on the amenities of neighbouring occupiers by way of noise and disturbance that would not be outweighed by the benefits, contrary to Policy 33 of the HDPF'.*

1.8 The current application (DC/21/1607) and the refused application (DC/21/0087) differ in that the unrestricted internal 24 hour operations have now been removed from the current proposals and the acoustic fence has been raised from 2m in height as previously sought to 2.4m to provide additional protection to the private amenities of residential dwellings on Martindales.

#### DESCRIPTION OF THE SITE

1.9 The site is located in Oakhurst Business Park which is an established business facility in Southwater and is within the defined Built-Up Area Boundary of the village. The site is also located within a designated Key Employment Area as described in Policy 9 of the HDPF. The site is located approximately 4km to the south of Horsham, and is classified as a Small Town/Larger Village in Policy 3 of the Horsham District Planning Framework (HDPF) which means it is a 'settlement with a good range of services and facilities, strong community networks and local employment provision'. The existing business park is a well-established site comprising several large business units, including the RSPCA headquarters.

1.10 The site is bounded to the north and east by the access road into the Business Park (Blakes Farm Road) and beyond this the A24. To the south are existing units within the Oakhurst Business Park; and to the west is a residential estate (Martindales) and an area of woodland including a pond.

- 1.11 The site has an extant permission for the erection of two employment buildings for use class B1 (c) and B8 (DC/19/0123) but is currently undeveloped and is overgrown with shrubs and trees. Public Right of Way (1669) runs from the Worthing Road, through the centre of the site and across Blakes Farm Road.
- 1.12 The existing landscaping and vegetation forms a landscaping buffer zone which aligns itself along the north western boundary of the application site on Oakhurst Business Park adjacent to the rear gardens of numbers 12-16 Martindales and the rear garden area of numbers 3-11 Martindales. Since its creation, the vegetation has matured, and provides visual screening between the Business Park and the nearby properties. The buffer zone in this location currently varies in width between 17m and 19m between the proposed commercial unit (Unit 2) and the rear garden boundaries.

## 2. INTRODUCTION

### STATUTORY BACKGROUND

- 2.1 The Town and Country Planning Act 1990.

### RELEVANT PLANNING POLICIES

The following Policies are considered to be relevant to the assessment of this application:

#### **National Planning Policy Framework**

##### **Horsham District Planning Framework (HDPF 2015)**

- Policy 1 - Strategic Policy: Sustainable Development
- Policy 2 - Strategic Policy: Strategic Development
- Policy 3 - Strategic Policy: Development Hierarchy
- Policy 4 - Strategic Policy: Settlement Expansion
- Policy 7 - Strategic Policy: Economic Growth
- Policy 9 - Employment Development
- Policy 24 - Strategic Policy: Environmental Protection
- Policy 25 - Strategic Policy: The Natural Environment and Landscape Character
- Policy 26 - Strategic Policy: Countryside Protection
- Policy 31 - Green Infrastructure and Biodiversity
- Policy 32 - Strategic Policy: The Quality of New Development
- Policy 33 - Development Principles
- Policy 34 - Cultural and Heritage Assets
- Policy 35 - Strategic Policy: Climate Change
- Policy 36 - Strategic Policy: Appropriate Energy Use
- Policy 37 - Sustainable Construction
- Policy 38 - Strategic Policy: Flooding
- Policy 39 - Strategic Policy: Infrastructure Provision
- Policy 40 - Sustainable Transport
- Policy 41 - Parking

##### **West Sussex Joint Minerals Local Plan (2018)**

- Policy M9 - Safeguarding Minerals

##### Supplementary Planning Guidance:

- Community Infrastructure Levy (CIL) Charging Schedule (2017)

### RELEVANT NEIGHBOURHOOD PLAN

The Southwater Neighbourhood Plan is relevant to the appeal. Following the Referendum on the 6 May 2020 the plan was approved and now forms part of the development plan for the district. The relevant policies include the following:

Draft Policy SNP 1 Core Principles  
Draft Policy SNP 4 Keeping our Roads Moving  
Draft Policy SNP 15 Driving in the 21 Century  
Draft Policy SNP 16 Design  
Draft Policy SNP 17 Site levels  
Draft Policy SNP 18 A Treed Landscape

#### PLANNING HISTORY AND RELEVANT APPLICATIONS

|              |  |                                     |
|--------------|--|-------------------------------------|
| DC/19/0123   | Erection of two employment buildings for use classes B1(c) and B8 with associated access, car parking and landscaping.   | Application Permitted on 11.02.2020 |
| DISC/20/0051 | Approval of details reserved by conditions, 3 Levels, 4 CEMP, 5 Drainage Strategy, 9 Biodiversity enhancement layout, 19 LEMP, 21 Cycle storage, and 23 Refuse and Recycling to approved application DC/19/0123  | Application Permitted on 15.06.2020 |
| DISC/20/0252 | Approval of details reserved by conditions 7 and 8 to approved application DC/19/0123  | Application Permitted on 26.10.2020 |
| DC/21/0087   | Variation of Condition 1 of previously approved application DC/19/0123 (Erection of two employment buildings for use classes B1(c) and B8 with associated access, car parking and landscaping) Relating to the approved boundary treatments plan, and variation of condition 25 (Hours of opening) to enable increased hours of operation at the site. | Application Refused on 15.06.2021   |

### 3. OUTCOME OF CONSULTATIONS

- 3.1 Where consultation responses have been summarised, it should be noted that Officers have had consideration of the full comments received, which are available to view on the public file at [www.horsham.gov.uk](http://www.horsham.gov.uk)

#### INTERNAL CONSULTATIONS

**HDC Environmental Health:** No Objection

**HDC Landscape Architect:** Comment

It is not clear whether the noise assessment report has given its results assuming an acoustic fence is already in place or not. As stated, the noise assessment originally was based upon units for B2 use and not for B1(c)/B8 that are normally significantly quieter. As per biodiversity enhancements approved under DISC/20/0051, a species-rich hedgerow is to provide connectivity across the site and retained woodland to the west, where the acoustic fence is now intended. Where a soft treatment was previously proposed, there appears little space available for the planting to now be implemented, further urbanizing this location both at the access and as you pass through the development on the PRoW.

It is not clear what further clearance of existing woodland is needed and clarification is requested.

## **HDC Economic Development: Comment**

Economic Development supports the changes to the restriction on operating hours and has no comments on the amendment to condition 1. We view the current restriction as a barrier to attracting inward investment at this site and our previous comments on DC/21/0087 remain valid in relation this application.

### Previous comments DC/21/0087

Economic Development supports the removal of the restriction on operating hours and has no comments on the amendment to condition 1.

Removing the restriction on operating hours for the site would facilitate flexibility for the businesses looking to move into the units. The applicant and marketing agent indicate that there has been substantial interest in the facilities, with two businesses quoted as the potential purchaser occupiers. However, the restriction risks businesses losing interest in the site with parties already having walked away based on the lack of flexibility.

In order to attract inward investment, we need to meet the needs of businesses and investors to showcase Horsham's potential as an economic location to invest in. In terms of this proposal, the potential occupiers are indicated as being located outside the District and therefore this is an inward investment opportunity which would contribute towards local economic growth. Nevertheless, the restriction on opening hours presents a barrier to this opportunity materialising; the marketing agent has highlighted that the potential occupiers would not proceed without 24/7 access. As outlined under Priority 1 of our Economic Strategy, inward investment plays a vital role in addressing the challenges we face with regards to the number of residents having to seek jobs outside of the District. The risk is that we become a 'dormitory district' if we cannot provide enough local job opportunities and miss out on opportunities for inward investment.

Furthermore, in order to meet Priority 2 of our Economic Strategy, we need to offer a range of quality commercial floorspace to provide opportunities for businesses to grow and remain here. Much of the District's commercial floorspace is outdated and these units have an advantage as they are set to provide high quality units. Yet this proposal also highlights that parties interested in this type of accommodation, view the flexibility of 24/7 access as one of their priorities. If we are to foster the ability of businesses to 'grow and remain here' we not only need to provide high quality commercial floorspace but also ensure that there are as few barriers to business growth and inward investment as possible, by being able to meet businesses' priorities.

Overall, Economic Development supports the removal of the restriction on the opening hours. We view the current restriction as a barrier to attracting inward investment at this site.

## **OUTSIDE AGENCIES**

**WSCC Highways:** No Objection

**Ecology Consultant:** No Objection

**Southern Water:** No Objection

**WSCC Flood Risk Management:** No Objection

**WSCC Rights of Way:** Objection

**Archaeology:** No Objection

### **Natural England:** Objection (standing advice)

It cannot be concluded that existing abstraction within the Sussex North Water Supply Zone is not having an adverse effect on the integrity of the Arun Valley SAC/SPA/Ramsar sites. Developments within Sussex North must therefore not add to this impact and one way of achieving this is to demonstrate water neutrality. The definition of water neutrality is the use of water in the supply area before the development is the same or lower after the development is in place.

To achieve this Natural England is working in partnership with all the relevant authorities to secure water neutrality collectively through a water neutrality strategy. Whilst the strategy is evolving, Natural England advises that decisions on planning applications should await its completion. However, if there are applications which a planning authority deems critical to proceed in the absence of the strategy, then Natural England advises that any application needs to demonstrate water neutrality.

### **Southwater Parish Council:** Object

- There is no valid reason for extending the hours of operation to that originally sought which reflected the proximity of neighbouring residential dwellings.
- The change in hours of operation is based on the applicants not finding tenants during an exceptional period of disturbance to the economy and has not demonstrated that the units cannot be let indefinitely.
- The Council Objects on the basis of the additional noise pollution from the extended hours and the impact it would have on the neighbouring residential properties.

### **PUBLIC CONSULTATIONS**

There are a total of 17 neighbour letters received - 17 Objections (including 2 from the same household)

Objections are based on the following

- Highway traffic and safety
- Concerns regarding HGV impacts and on street parking
- Visual amenity and impact on street scene
- Erection of Fence / ineffective fence (gap) / boundary treatment
- Impacts on countryside / semi rural area and natural habitat and ecology
- Vacant units in vicinity, new units not required
- Proximity to residential dwellings in Martindales
- Overdevelopment
- Blocked light
- Impact on the Public Right Of Way
- Health and Safety issues
- Health concerns arising from noise and lack of sleep, stress levels, shift work
- 24/7 unloading and unloading
- Noise and Light pollution

## **4. HOW THE PROPOSED COURSE OF ACTION WILL PROMOTE HUMAN RIGHTS**

- 4.1 Article 8 (Right to respect of a Private and Family Life) and Article 1 of the First Protocol (Protection of Property) of the Human Rights Act 1998 are relevant to this application, Consideration of Human rights forms part of the planning assessment below.

## **5. HOW THE PROPOSAL WILL HELP TO REDUCE CRIME AND DISORDER**

- 5.1 It is not considered that the development would be likely to have any significant impact on crime and disorder.

## **6. PLANNING ASSESSMENTS**

- 6.1 The National Planning Policy Framework 2018 and relevant Planning Practice Guidance (updated) states within the Flexible Options for Planning Permissions (March 2014), that an application can be made under section 73 of the Town and Country Planning Act 1990 to vary or remove conditions associated with a planning permission.
- 6.2 The main issues arising from this application under section 73 of the Town and Country Planning Act is the effect of removing or varying condition 25 on the private amenity of nearby occupiers and the visual impact of the proposed acoustic fence.

### **Background**

- 6.3 Planning permission was granted under DC/19/0123 on the 11 February 2020 for the erection of two employment buildings for use Classes B1(c) and B8 with associated access, car parking and landscaping. Condition 25 of that permission restricted hours of operation at the site in the interest of protecting the amenities of neighbouring residents:

*Regulatory Condition: The premises hereby permitted shall not be open for trade or business (including the receipt and/or dispatch of deliveries, and/or the operation of vehicles, plant/machinery) except between the hours of 07:00 to 18:00 Mondays to Fridays; 07:00 to 13:00 on Saturdays; nor at any time on Sundays, Bank or Public Holidays.*

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

- 6.4 The application seeks to relax this condition to allow an extra 2 hours of working in the evening Mondays to Fridays, and an extra 5 hours on Saturday afternoon. The revised condition would read as follows:

*The premises hereby permitted shall not be open for trade of business (including receipt or dispatch of deliveries and /or the operation of vehicles, plant / machinery) except between the hours of 07:00 to 20:00 Mondays to Fridays 07:00 to 18:00 on Saturdays; nor at any time on Sundays Bank or Public Holidays:*

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

- 6.5 As advised in paragraph 1.8 above, the current application (DC/21/1607) and the refused application (DC/21/0087) differ only in that the unrestricted internal 24 hour operations have now been removed from the proposals currently being considered.
- 6.6 It should be noted that a similar application for extension of opening hours until 9pm weekdays and 6pm Saturdays at Units 22-29 in the southern corner of the same Oakhurst Business Park was refused by the Planning (North Committee) at the committee meeting on the 7<sup>th</sup> September 2021, as follows:

*The proposed alteration to the hours of operation condition would result in significant harm to the amenities of neighbouring occupiers by way of noise and disturbance that would not outweigh the benefits, contrary to policy 33 of the Horsham District Planning Framework (2015)*

- 6.7 The refusal of the above application, whilst a material consideration, is not a reason in itself to recommend refusal of this current application which should be considered and determined on its individual merits. It should be noted that the hours of operation as currently sought are less than those previously considered in respect of both applications, whilst the refusal at Units 22-29 was in a different part of the Business Park with a differing arrangement with nearby residential uses.

### **Principle of Development**

- 6.8 The principle of the development in respect of the two commercial buildings for B1(c) and B8 uses has already been established by virtue of the extant planning permission granted under DC/19/0123. The principle of the development for the erection of the two commercial buildings, as previously approved, is not therefore considered as part of this application.
- 6.9 The Southwater Neighbourhood Development Plan (2019-2031) has passed through referendum and now forms part of the development plan for the district. There are no policies within the Neighbourhood Plan that affect the principle of development on this site whilst the HDPF remains unchanged since the initial application determination.

### **Water Neutrality**

- 6.10 Since the determination of the previous application a material consideration that must now be considered are matters relating to water neutrality. Under the Conservation of Habitats and Species Regulations 2017 (s.63), as competent authority, it is this Council's duty to consider the impact of development on protected species and habitats. These Regulations and the Natural England Position Statement of 23 September 2021 summarised in the Consultation responses above, are material considerations that carry great weight.
- 6.11 In this instance there is no evidence that water consumption will evidentially increase from the extra working hours being proposed. This is because water neutrality must be considered against the fallback position of the existing full planning permission DC/19/0123 for the same units on this site that can be lawfully implemented. In this context, any increase in water consumption that may arise from the extended hours of operation is likely to be minimal and not of a level that would result in a significant impact on water abstraction in the Arun Valley, either individually or in combination with other plans or projects. This application has therefore been screened pursuant to s.63 of the Conservation of Habitats and Species Regulations 2017 as not requiring an Appropriate Assessment. To reduce the use of water on site, a condition is recommended requiring details of water efficiency measures to be submitted for approval by the Local Planning Authority. This will provide a betterment for water usage for this development.

### **Need for Variation of Hours of Operation**

- 6.12 The supporting Planning Statement and Marketing Report (as previously submitted with DC/21/0087 by SHW January 2021) and submitted with this application advises that there has been strong interest in the buildings from potential occupiers with 34 logged active enquire at the time the application was made and 4 parties with a serious interest wishing to enter into discussions. It is also advised that there has been an average of 100 individual hits for the property per months and also 5 to 20 brochure downloads per month since the marketing agency was engaged at the beginning of 2019. The marketing report confirms that the type of occupiers have ranged from storage and distribution and last mile logistics and companies seeking units for light manufacturing / assembly.
- 6.13 Recent information submitted with the current application states that *'there are two potential occupiers that have interest in the units provided the extended operational hours*



*are approved*'. It is further advised that *'Advise from the Marketing Agent remains that unless extended operational hours can be obtained the units will sit vacant for a considerable amount of time with current restrictions.'*

- 6.14 The applicants have submitted a revised Noise Impact Assessment (by Hoare Lea, July 2021) to support their case. The noise Impact Assessment considers noise break out sound levels from the units, the impact from HGV movements and the impact from HGV reversing alarms.
- 6.15 Calculations within the Noise Impact Assessment for break out sounds for units 1 and 2 have been assessed and it is advised that the calculated levels are particularly low and significantly below both the existing daytime and night time ambient noise levels. It is advised that the calculated sound levels for units 1 and 2 at the dwellings to the north therefore fall within a BS4142 rating of 'low impact' at all times and that the levels are particularly low and are significantly below the existing daytime ambient noise levels.
- 6.16 Calculations within the Noise Impact Assessment in respect of HGV movements for each unit, taking into account distance attenuation and the barrier attenuation of the 2.4 acoustic fence, demonstrate that the cumulative noise experienced at the nearest dwelling from HGV movements within the service yards would result in BS4142 rating of 'low impact' at all times during the proposed operational hours. This is a result of the distance from the service yard to the dwellings, and also as a result of the screening provided by the buildings and also the acoustic fence.
- 6.17 Calculations within the Noise Impact Assessment in respect of noise levels for HGV reversing alarms for each unit, taking into account distance attenuation and barrier attenuation, have also been calculated for units 1 and 2 respectively. It is advised that the cumulative noise experienced at the nearest residential dwelling from the reversing alarms within the service areas would result in a BS4142 rating of 'low impact' at all times during the proposed operational hours. Information submitted by the applicants therefore states that HGV reversing alarms will not be detrimental to the residential amenity of neighbouring properties.
- 6.18 From the information provided within the Noise Impact Assessment, it is advised that the development is very unlikely to give rise to noise disturbance as a result of the proposed amendments to the operational hours sought under Condition 25, as the noise levels at the adjacent noise sensitive properties on Martindales achieve a rating of low impact at all times, and the proposed acoustic fence along with the orientation of the service yards away from residential properties would help protect the amenities of these properties.
- 6.19 The Council's Economic Development Department have been consulted and have advised as before that removing the restriction on operating hours for the site would facilitate flexibility for the businesses looking to move into the units, noting that in order to attract inward investment, the Council needs to meet the needs of businesses and investors to showcase Horsham's potential as an economic location to invest in. They advise that in terms of this proposal, the potential occupiers are indicated as being located outside the District and therefore this is an inward investment opportunity which would contribute towards local economic growth. The restriction on opening hours presents a barrier to this opportunity materialising, with the applicant's marketing agent highlighting that the potential occupiers would not proceed without 24/7 access.
- 6.20 Chapter 2 of the National Planning Policy Framework (NPPF) seeks to achieve sustainable economic growth by helping to build a strong, responsive and competitive economy by ensuring that sufficient land of the right types is available in the right places and at the right time to support growth, innovation and improved productivity; and by identifying and coordinating the provision of infrastructure. Furthermore, Paragraph 80 of the NPPF states that Planning Policies and Decisions should help to create conditions in which businesses

can invest, expand and adapt. Significant weight should be placed on the need to support economic growth and productivity.

- 6.21 In this context the benefit of relaxing condition 25 in order to better attract future occupiers and economic opportunities for the district is a material consideration that weighs in favour of the applicant's proposals.

### Amenity Impacts

- 6.22 Policies 32 and 33 of the HDPF seek to ensure an attractive, functional, accessible, safe and adaptable environment avoiding unacceptable harm to the amenity of occupiers/users of nearby property and land through overlooking or noise.
- 6.23 The separation distance between the north western boundary of the application site and the rear elevations of the residential properties at 12 – 16 Martindales is between approximately 22m and 25m (17m -19m to the back of their gardens). A narrow landscape buffer with mature trees extends across the rear of these houses which is to be retained.
- 6.24 The close relationship of the site with these properties at 12-16 Martindales is such that they would be easily exposed to noise disturbance from operations at the site. This was the key consideration in the imposition of Condition 25 in its current form. The numerous objections to the application proposals submitted by nearby residents are noted in this respect and attest to the sensitivity of the site.
- 6.25 To support their case for the relaxation of Condition 25 to allow extended operational hours as sought, the applicants have submitted a revised Noise Impact Assessment. The updated Noise Impact Assessment (2021) has identified that the original Noise Impact Assessment (2018) considered under DC/19/0123 was based on the proposed units being occupied as B2 use, not the B1(c) /B8 uses applied for and was modelled on a higher number of HGV movements than predicted within the Transport Statement. The Applicants state that in practice B1(c) and B8 uses are normally significantly quieter than the B2 use modelled in the original assessment. The Applicants have further advised that in order to consider the worst case scenario it has been assumed for the purposes of the assessment that both units will be used for B8 purposes as by definition, noting that B1(c) operations should be able to be carried out within residential areas without detriment to the amenity.
- 6.26 The conclusions within the updated Noise Impact Assessment (2021) state that 'Noise break-out from the units themselves will be significantly (>15dB) lower than those presented in the submitted noise report. A reassessment of all these activities in accordance with BS 4142 indicates that the noise impact of the proposed development would readily achieve a condition of 'low impact' at the nearest residential properties. Assessment of activity noise levels for the proposed development indicates that daytime and night time BS 8233 internal criteria would readily be achieved at the nearest dwellings when windows are open. It is noted that the predicted noise levels at the dwellings from the proposed development are significantly below the existing ambient and background noise climate and, consequently, are unlikely to be noticeable. On this basis, it is considered that the development is very unlikely to give rise to noise disturbance, based upon the relaxed hours as sought with no 24 /hour operations as previously proposed.
- 6.27 The Council's Environmental Health officers have reviewed the applicant's submission and have no objection to the hours proposed.
- 6.28 The applicants have confirmed that the previous party's interested in occupying the units are still as previously advised and as such the information relating to the working patterns of the prospective tenants who would be acquiring the freehold of each unit is relevant. The applicants are seeking to ensure they have sufficient flexibility in the occupation of

their respective units to ensure their longevity within Horsham. The prospective occupiers for Unit 1 would use the site for storage, packaging and distribution of products manufactured off-site, working normally 8.30am – 5pm including Saturday but needing flexibility for instances where meetings with visitors or potential clients overrun, or an increase in orders requires later working hours to meet the demand. The prospective occupiers for Unit 2 are mainly clerical office based, with the warehousing/storage of product and some light assembly taking place within the unit using hand tools only. Operating hours within this unit would be between 8am – 6pm, again, with some aspects running later into the evening should an increase in orders that require packing, or if meetings overrun.

6.29 Whilst these prospective occupiers would likely have a limited impact beyond the hours already permitted, it is not possible to restrict occupation to these un-named businesses only therefore regard must still be had to the potential for alternative businesses to occupy the units in a more intensive manner. Following careful consideration officers recommend the following amendments to condition 25 to enable more flexible working practices whilst suitably protecting the nearby residents of Martindales from undue noise disturbances:

- No manufacturing or industrial processes shall take place within the buildings except between 07:00hrs– 20.00hrs Monday – Friday, 07:00 – 18:00hrs Saturdays, and not at all on Sundays, Bank Holidays or Public Holidays
- No dispatch or receipt of deliveries shall take place from the site except between 07:00hrs– 20.00hrs Monday – Friday, 07:00 – 18:00hrs Saturdays, and not at all on Sundays, Bank Holidays or Public Holidays

6.30 In reaching this recommendation, regard should be had to a number of complimentary conditions already secured within the existing planning permission that would continue to take effect, namely:

- Condition 11 sought to limit the use of building services plant unless and until full details of plant to be installed as well as noise mitigation measures to mitigate against any adverse impacts on neighbouring amenity have been agreed and implemented;
- Condition 12 required a separate noise management plan to include hours of operation and management responsibilities during all operating hours to be agreed, including details requiring measures to control noise from all activities, including equipment plant, or building services, and details minimising noise from vehicles deliveries and servicing, all to be approved by the local planning authority prior to occupation. This condition also states that the noise management plan shall be regularly reviewed to ensure that it takes account of current operational practices on site, thereby allowing the opportunity for it to be reviewed and amended to address any concerns raised and to ensure that the amended noise management plan is implemented and operated in accordance with the approved details;
- Condition 13 required a scheme of sound insulation works to reduce the escape of noise from all units in accordance with the Noise Impact Assessment as previously submitted with that application;
- Condition 14 required a report / letter from a competent person confirming that the building has been constructed in accordance with recommendation within the Noise Impact Assessment dated 28 September 2018;
- Condition 15 required that no other plant shall be installed or operated without prior written approval of the Local Planning Authority by way of a formal application and requires an acoustic assessment and mitigation as part of any application to safeguard the amenities of nearby residents at 1 - 16 Martindales;
- Condition 16 required a post installation noise assessment to be carried out to confirm compliance with noise criteria prior to the use or operation of any plant, machinery or equipment or building services plant.

- 6.31 The applicants have also included a 2.4m acoustic barrier (previously 2m) along the western boundary adjacent to the service road between units 1 and 2 to further reduce noise impact upon the residential properties to the rear. This acoustic fence is not considered to result in any adverse visual harm to amenities as it is within the confines of the business park and not readily visible to occupiers of private dwellings and would further assist in minimising noise break-out.
- 6.32 On the basis of the above, and having careful regard to the proximity of the site to the adjacent properties at Martindales, the proposed amendments to conditions 1 and 25 as now revised are considered to retain an acceptable impact on neighbouring amenity in accordance with Policies 32 and 33 of the HDPF.

### **Other**

- 6.33 It is noted that WSCC PROW have raised concerns regarding the installation of the 2m high acoustic barrier in relation to the vehicles crossing the public right of way and the visibility splay that is provided by the palisade fence. As pedestrians, walkers and runners, including children and their dogs will be using the public footpath it is advised that there is uncertainty that the proposal allows adequate visibility when vehicles are emerging to cross the public right of way. Although it is accepted that there will be partial visibility provided by a palisade fence further details of this would be required. This issue can be addressed through additional information to be submitted as part of the requirements of condition 18 which includes details of boundary treatments. It is noted that no objections were raised in regards to this matter under the previously approved application.

### Conclusions

- 6.34 Permission has already been granted for the development of two commercial buildings on the application site by virtue of the consent granted under DC/19/0123 and as such the principle of development has already been agreed and is not the subject of consideration in this application. This application seeks only to amend condition 1 (plans) and Condition 25 (operational hours).
- 6.35 The private amenity concerns of local residents are recognised given the relationship and separation distance between the application site and the commercial unit. The applicants have worked to address previous concerns raised by removing the 24/7 internal operational hours previously refused under DC/21/0087. In this respect, it is considered that existing suite of conditions and the revised condition would allow appropriate control over operations within the buildings and associated yards whilst allowing the flexible use of the buildings as sought by the applicants. Furthermore, within the context of the Council's Economic Development Officer's comments as set out above, the proposed amendments would accord with this advice, and would allow the units to operate some flexibility in order to attract occupiers and create opportunities for inward investment and local economic growth within the District, in accordance with the Council's Employment and Economic Growth strategy and in accordance with Policy 9 of the HDPF and the overarching principles of Paragraph 80 of the National Planning Policy Framework.
- 6.36 Overall, having careful regard for the site and its relationship with the nearby dwellings and residential occupiers adjacent to the site, it is recommended that the existing conditions as imposed under DC/19/0123 (specifically Conditions 11, 12, 13, 14, 15 and 16 set out within paragraph 6.29 above), together with the revised condition 25 referred to above, along with the amendments to the boundary treatments plan relating to the proposed acoustic fence, provide sufficient justification to allow the proposed amendments to condition 25 as sought whilst respecting private amenities of the neighbouring residential occupiers.

## 7. RECOMMENDATIONS

7.1 To approve planning permission subject to the following conditions.

Conditions:

1 Plans

2 **Regulatory (Time) Condition:** The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason: To comply with Section 91 of the Town and Country Planning Act 1990.

3 **Regulatory:** The development shall be carried out in accordance with the details of finished floor levels and external ground levels of the development in relation to nearby datum points adjoining the application site as shown on plan No 62479 101 Rev 4 (Drainage Layout) approved under DISC/20/0051, unless alternative details have been submitted to, and approved in writing by the Local Planning Authority prior to commencement of development.

Reason: As this matter is fundamental to control the development in detail in the interests of amenity and visual impact and in accordance with Policy 33 of the Horsham District Planning Framework (2015).

4 **Regulatory:** The development shall be carried out in accordance with the Construction Management Plan (CEMP) (received 05/05/20) and CEMP Biodiversity (Brindle & Green Ltd Report received 26 May 2020) as approved under DISC/20/0051, unless an alternative CEMP has been submitted to, and approved in writing by, the Local Planning Authority prior to the commencement of development. The approved Plan shall be implemented and adhered to throughout the entire construction period.

Reason: As this matter is fundamental in order to consider the potential impacts on the amenity of nearby occupiers and highway safety during construction and in accordance with Policies 33 and 40 of the Horsham District Planning Framework (2015) and to conserve Protected and Priority species and allow the LPA to discharge its duties under the UK habitats Regulations 2017, the Wildlife & Countryside Act 1981 as amended, s40 of the NERC Act 2006 (Priority habitats & species) and Policy 31 of the Horsham District Planning Framework.

5 **Pre-Commencement Condition:** The development shall be carried out in accordance with the approved drainage strategy (Flood Risk Assessment & Drainage Strategy dated 7 April 2020 (ref: 62479 Rev B) as approved under DISC/20/0051 unless alternative details have been submitted to, and approved in writing by the Local Planning Authority prior to commencement of development.

Reason: As this matter is fundamental to ensure that the development is properly drained and to comply with Policy 38 of the Horsham District Planning Framework (2015).

6 **Pre-Commencement Condition:** No development shall commence pursuant to the permission granted, ground clearance, or bringing equipment, machinery or materials onto the site, until the following preliminaries have been completed in the sequence set out below:

- All trees on the site shown for retention on approved drawing (un-numbered) within the Arboricultural Impact Assessment (Brindle and Green dated 17 January 2019 report ref: BG18.200), as well as those off-site whose root protection areas ingress into the site, shall be fully protected throughout all construction works by tree protective

fencing affixed to the ground in full accordance with section 6 of BS 5837 'Trees in Relation to Design, Demolition and Construction - Recommendations' (2012).

- Once installed, the fencing shall be maintained during the course of the development works and until all machinery and surplus materials have been removed from the site.
- Areas so fenced off shall be treated as zones of prohibited access, and shall not be used for the storage of materials, equipment or machinery in any circumstances. No mixing of cement, concrete, or use of other materials or substances shall take place within any tree protective zone, or close enough to such a zone that seepage or displacement of those materials and substances could cause them to enter a zone.

Reason: As this matter is fundamental to ensure the successful and satisfactory protection of important trees and hedgerows on the site in accordance with Policy 33 of the Horsham District Planning Framework (2015).

- 7 **Regulatory:** The development shall be carried out in accordance with the Great Crested Newt Mitigation Licence and the Licenced Method Statements for Great Crested Newts and Hazel Dormice .The approved scheme shall be fully implemented in accordance with details submitted to and as approved by Natural England and as approved under DISC/20/0252 unless alternative details have been submitted to, and approved in writing by the Local Planning Authority prior to commencement of development.

Reason: To conserve Protected and priority species and allow the LPA to discharge its duties under the UK Habitats Regulation 2017, the Wildlife & Countryside Act 1981 as amended and s40 of the NERC Act 2006 and s17 Crime and Disorder Act 1998.

- 8 **Regulatory:** The development shall strictly accord with the schedule of materials as set out and approved under DISC/20/0252 unless an alternative scheme has been submitted to and approved in writing by the Local Planning Authority, prior to commencement of development

Reason: As this matter is fundamental to enable the Local Planning Authority to control the development in detail in the interests of amenity by endeavouring to achieve a building of visual quality in accordance with Policy 33 of the Horsham District Planning Framework (2015).

- 9 **Regulatory:** The development hereby permitted shall only be implemented in strict accordance with approved Biodiversity Enhancement Layout (Brindle & Green July 2019 and Habitat Enhancement Plan (Feb 2020 as included in Appendix 2 of the Landscape and Ecological Management Plan (Brindle & Green March 2020) approved under DISC/20/0051

Reason: To enhance Protected and Priority Species and allow the LPA to discharge its duties under the s40 of the NERC Act 2006 (Priority habitats & species) and Policy 31 of the Horsham District Planning Framework.

- 10 **Pre-Occupation Condition:** Prior to the first occupation or use of any part of the development hereby permitted, the mitigation measures set out in Chapter 6 of the approved Air Quality Assessment [Hoare Lea (For Tungsten Properties Ltd), Air Quality Assessment Rev 01 dated 20 December 2018] shall have been implemented along with the provision of 4 vehicle charging points, two per unit. These mitigation measures shall be retained as such thereafter.

Reason: To mitigate the impact of the development on air quality within the District and to sustain compliance with and contribute towards EU limit values or national objectives for pollutants in accordance with Policies 24 & 41 of the Horsham District Planning Framework (2015).

- 11 **Pre-Occupation Condition:** No building services plant shall be operated until full details, including the location of the plant to be installed and any noise mitigation measures, have been submitted to and been approved in writing by the Local Planning Authority. This plant shall demonstrate accordance with the measures set out in Chapter 10 of the Noise Impact Assessment [Hoare Lea, 28th September 2018, Rev 01] to mitigate any adverse impacts on neighbouring amenity. These measures shall be fully installed prior to first operation of the plant and shall be retained as such thereafter.

Reason: To safeguard the amenities of adjacent residents in accordance with Policy 33 of the Horsham District Planning Framework (2015).

- 12 **Pre-Occupation Condition:** The use hereby permitted shall not commence until a noise management plan has been submitted and approved in writing by the local planning authority. This should include but not be limited to, hours of operation, management responsibilities during all operating hours, measures to control noise from all activities and operations at the site (including the operation of any equipment plant, or building services) and minimising noise from vehicles, deliveries and servicing. The noise management plan shall be regularly reviewed to ensure that it takes account of current operational practices at the site. Where any activities or operations that give rise to concerns of impact to local amenity are received by the operator or the Local Planning Authority the noise management plan shall be reviewed. Any changes to the noise management plan necessary to address these concerns shall implemented to the satisfaction of the Local Planning Authority. The use hereby permitted shall thereafter be operated in accordance with the approved details.

Reason: In order to ensure that the safe operation of the development and to protection of the amenities of nearby residents, in accordance with Polices 33 and 40 of the Horsham District Planning Framework (2015).

- 13 **Pre-Occupation Condition:** A scheme of sound insulation works to reduce the escape of noise from all units shall be drawn up. As a minimum the scheme shall achieve the targets for sound reduction as set out in the Noise Impact Assessment prepared by Hoare Lea dated 28 September 2018 and shall include assessment of the noise escape from all building openings, flues and ducts. The scheme shall be submitted to and approved in writing by the local planning authority. The scheme as approved by the local planning authority shall be fully installed before the development is occupied.

Reason: In order to ensure that the safe operation of the development and to protection of the amenities of nearby residents, in accordance with Polices 33 and 40 of the Horsham District Planning Framework (2015).

- 14 **Pre-Occupation Condition:** Prior to occupation of any unit a letter report prepared by a competent person shall be provided which confirms the unit has been constructed in accordance with the recommendations of Noise Impact Assessment prepared by Hoare Lea dated 28 September 2018. Any additional steps required to mitigate noise shall be detailed and implemented, as necessary. The report shall be submitted to and approved in writing by the local planning authority. The details as approved shall thereafter be permanently retained.

Reason: In order to ensure that the safe operation of the development and to protection of the amenities of nearby residents, in accordance with Polices 33 and 40 of the Horsham District Planning Framework (2015).

- 15 **Pre-Occupation Condition:** No plant shall be installed or operated without the prior written approval of the Local Planning Authority by way of formal application. An acoustic assessment and mitigation will be needed as part of any such application.

Reason: To safeguard the amenities of [1-16 Martindale's and in accordance with Policy 33 of the Horsham District Planning Framework (2015).

- 16 **Pre-Occupation Condition:** The use hereby permitted, or the operation of any plant, machinery, equipment or building services plant, shall not commence until a post-installation noise assessment has been carried out to confirm compliance with the noise criteria. The scheme shall be implemented in accordance with the approved details and attenuation measures, and they shall be permanently retained and maintained in working order for the duration of the use and their operation.

Reason: In order to ensure that the safe operation of the development and to protection of the amenities of nearby residents, in accordance with Policies 33 and 40 of the Horsham District Planning Framework (2015).

- 17 **Pre-Occupation Condition:** No part of the development shall be first occupied until such time as the vehicular access and car parking spaces serving the development have been constructed in accordance with the details shown on the drawing titled Proposed Site Plan and numbered P400 rev H. The car parking spaces permitted shall thereafter be retained as such for their designated use.

Reason: In the interests of road safety and in accordance with Policies 40 and 41 of the Horsham District Planning Framework (2015).

- 18 **Pre-Occupation Condition:** Prior to the first occupation of any part of the development hereby permitted, full details of all hard and soft landscaping works shall have been submitted to and approved, in writing, by the Local Planning Authority. The details shall include plans and measures addressing the following:
- Details of all existing trees and planting to be retained
  - Details of all proposed trees and planting, including schedules specifying species, planting size, densities and plant numbers and tree pit details
  - Details of all hard surfacing materials and finishes
  - Details of all boundary treatments to include the recommendations set out in Chapter 10 of the Noise Impact Assessment [Hoare Lea, 28th September 2018, Rev 01]
  - Details of all external lighting including their hours of operation and a lighting design scheme for Biodiversity showing how and where external bat sensitive lighting will be installed (with provision of appropriate lighting contour plans, Isolux drawings and an appropriate technical specification).
  - Details of the management of the landscaping within the site.

The approved landscaping scheme shall be fully implemented in accordance with the approved details within the first planting season following the first occupation of any part of the development. Unless otherwise agreed as part of the approved landscaping, no trees or hedges on the site shall be wilfully damaged or uprooted, felled/removed, topped or lopped without the previous written consent of the Local Planning Authority until 5 years after completion of the development. Any proposed planting, which within a period of 5 years, dies, is removed, or becomes seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species unless the Local Planning Authority gives written consent to any variation.

The approved external lighting shall be installed in accordance with the specifications and locations set out in the scheme and maintained thereafter in accordance with the scheme. No external lighting shall be installed without the prior consent from the local planning authority.

Reason: To allow the LPA to discharge its duties under the UK Habitats Regulations 2017, the Wildlife & Countryside Act 1981 as amended and s40 of the NERC Act 2006 (Priority habitats & species) and to protect neighbouring amenity in accordance with Policies 31 and 33 of the HDPF.



- 19 **Regulatory Condition:** The development hereby permitted shall only be implemented in strict accordance with the recommendations of the approved LEMP (Brindle & Green dated February 2020) as submitted and approved under DISC/20/0051.

Reason: To allow the LPA to discharge its duties under the UK Habitats Regulations 2017, the Wildlife & Countryside Act 1981 as amended and s40 of the NERC Act 2006 (Priority habitats & species) and Policy 31 of the Horsham District Planning Framework (2015).

- 20 **Pre-Occupation Condition:** Prior to the first occupation of the unit, the necessary in-building physical infrastructure and external site-wide infrastructure to enable superfast broadband speeds of 30 megabytes per second through full fibre broadband connection shall be provided to the premises.

Reason: To ensure a sustainable development that meets the needs of future occupiers in accordance with Policies 10 and 37 of the Horsham District Planning Framework (2015).

- 21 **Pre Occupation Condition :** No part of the development hereby permitted shall be occupied until the cycle parking facilities serving it have been constructed and made available for use in accordance with the details as approved under DISC/20/0051 and shall thereafter be retained as such.

Reason: To ensure that there is adequate provision for the parking of cycles in accordance with Policy 40 of the Horsham District Planning Framework (2015).

- 22 **Pre-Occupation Condition:** Prior to the first occupation (or use) of any part of the development hereby permitted, a Travel Plan shall be submitted to and approved in writing by the Local Planning Authority. The Travel Plan once approved shall thereafter be implemented as specified within the approved document. The Travel Plan shall be completed in accordance with the latest guidance and good practice documentation as published by the Department for Transport or as advised by the Highway Authority.

Reason: To encourage and promote sustainable transport and in accordance with Policy 40 of the Horsham District Planning Framework (2015).

- 23 **Pre-Occupation Condition:** No part of the development hereby permitted shall be occupied until the provision for the refuse and recycling has been made available for use in accordance with the details approved under DISC/20/0051 and shall therefore be retained as such.

Reason: To ensure the adequate provision of recycling facilities in accordance with Policy 33 of the Horsham District Planning Framework (2015).

- 24 **Regulatory Condition:** No works for the implementation of the development hereby approved shall take place outside of 08:00 hours to 18:00 hours Mondays to Fridays and 08:00 hours to 13:00 hours on Saturdays nor at any time on Sundays, Bank or public Holidays.

Reason: To safeguard the amenities of adjacent occupiers in accordance with Policy 33 of the Horsham District Planning Framework (2015).

- 25 **Regulatory Condition:** No manufacturing or industrial processes shall take place within the buildings except between 07:00hrs – 20:00hrs Monday – Friday, 07:00 - 18:00hrs Saturdays, and not at all on Sundays, Bank Holidays or Public Holidays; No dispatch or receipt of deliveries shall take place from the site between 07:00hrs – 20:00hrs Monday – Fridays, 07:00 -18:00hrs Saturdays, and not at all on Sundays, Bank Holidays or Public Holidays.

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

- 26 **Regulatory Condition:** Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order amending or revoking and/or re-enacting that Order), the premises hereby permitted shall only be used for uses falling with Classes B1(c) and B8, and for no other purposes (including those falling within Class B2 as defined in the Town and Country Planning (Use Classes) Order 1987, or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification) without express planning consent from the Local Planning Authority first being obtained.

Reason: Changes of use as permitted by the Town and Country Planning (General Permitted Development) Order or Use Classes Order 1987 are not considered appropriate in this case due to the unknown and potentially harmful impacts on local amenity under Policy 33 of the Horsham District Planning Framework (2015).

- 27 **Regulatory Condition:** If, during development, contamination not previously identified is found to be present at the site then no further development shall be carried out until a remediation strategy has been submitted to and approved by the local planning authority detailing how this unsuspected contamination shall be dealt with. The remediation strategy shall be implemented as approved.

Reason: To ensure that no unacceptable risks are caused to humans, controlled waters or the wider environment during and following the development works and to ensure that any pollution is dealt with in accordance with Policies 24 and 33 of the Horsham District Planning Framework (2015).

- 28 **Regulatory Condition:** No activities other than loading or unloading shall be undertaken in the open air and no externally located storage of any materials or waste is permitted at any time.

Reason: To safeguard the amenities of neighbouring properties in accordance with Policies 32 and 33 of the Horsham District Planning Framework (2015).

- 29 **Pre-Occupation Condition:** No part of the development hereby permitted shall be occupied until details of water efficiency measures have been submitted to for approval by the Local Planning Authority. The subsequently approved water limiting measures shall thereafter be retained.

Reason: To limit water use in order to improve the sustainability of the development in accordance with Policy 37 of the Horsham District Planning Framework (2015).