

"As background information I would like to detail the steps that have already been taken to minimise any potential noise nuisance eliminating from our premises at Foston Farm Produce Limited, Hay Lane, Foston, Derbyshire.

1. Major distribution to retail customers has been moved from our Foston site to Stone, Staffordshire, thereby eliminating approximately 12 heavy goods vehicle movements per day. This has been done on an experimental basis commencing 1st March and will continue until 1st June and is in advance of the expected planning approval for extended working hours. If approval is not granted distribution must re-commence from the Foston site.
2. Our van sales distribution situated at Foston Farm has been transferred to Brackley, Northamptonshire this eliminates six heavy goods vehicles grade 2, movements from the Foston site. Again this is in preparation for the expected approval of the extended working hours and would be reversed if approval were not given.
3. A new road from the rear of the site connecting to Woodyard Lane has been completed thereby eliminating the need to bring commercial and staff vehicles through the village of Foston and along Hay Lane.
4. We are now operating 2 x 17 seater personnel buses thereby eliminating the need for workers to bring their own cars onto site. These are currently carrying approximately half our current factory workforce; plans to extend this service are in hand subject to approval of the planning approval.
5. The introduction of lower noise compressors for our refrigeration and the siting of the compressors on the extreme north edge of the site have eliminated a potential noise source which could have been a significant factor for complaints from Lawn House. Our restrictions and enforcement of our own vehicles and "third party vehicles" arriving on site has significantly reduced noise levels from running engines and refrigeration motors.
6. The nitrogen tunnel flue has been insulated and baffled to reduce noise of the exhaust gases
7. Extra noise insulation has been used when renovating the offices to minimise noise to our nearest neighbours. These offices were maintenance workshops and offices prior to their reconstruction and were responsible for a potential major noise nuisance to our neighbours. The engineering department is now situated at the furthest point from our neighbour's premises and is insulated by the factory buildings.

Future proposals

- a) We currently refrigerate the factory premises during our production period. If the factory was to go to 24 hr working it would be constantly refrigerated and the present system of opening all outer doors when cleaning would be changed. It would be cost effective to maintain the cooler atmosphere during the shorter period of clean down and all external doors would be kept closed.
- b) Transport of product from the factory would be limited to full loads of finished product direct to our distribution point at Stone, Staffordshire and van sales depot and Brackley, thereby reducing the number of vehicle movements at Foston.

- c) It is planned to move the current freezing facility (nitrogen tunnel) from its current location to a purpose built unit to the north of the existing buildings thereby eliminating the potential noise nuisance to Lawn Farm.
- d) All commercial and staff vehicles will enter the premises via Woodyard Lane eliminating noise and other nuisances for the residents of Hay Lane.
- e) The front entrance to Hay Lane would be restricted to office staff and visitors only.
- f) Extra insulation to the existing refrigerated equipment situated closest to the Hay Lane entrance to reduce existing noise levels.

With reference to Section 7 conclusions and recommendations (see above) it would seem that there is two potential areas which may need to be addressed regarding the implementation of the proposed 24hr working.

1. Nitrogen Tunnel Exhaust

It is proposed that the nitrogen tunnel should not work after 22.00 hrs on each day until this unit has been re-sited away from our current neighbours. You will see from the above that this is planned in the next 12 months subject to planning approval. Further noise insulation or baffling at its current position is not practical.

2. Fork Lift and pallet trucks

It is not expected for fork lifts or pallet trucks to be working outside during the night shift. Extra racking inside the factory environment will enable packaging to be stored internally for the night-time operation. Any movements will be severely restricted if not eliminated.

Following a further meeting more specific suggestions along the above lines have been put forward as a basis for agreeing conditions and a Section 106 Agreement.

You can see from the above, Freeman Quality Products Limited who are the owners of Foston Farm Produce Limited have taken unprecedented steps at a very high cost to eliminate nuisance noise levels and have a programme to continue to do so. This is to ensure the very best environment for our workers as well as our neighbours in the local area.

One of the biggest complaints has been the noise, vibrations and disruption caused by heavy vehicles down Hay Lane which is a residential area. By eliminating this traffic, we believe we are improving the environment for local residents. Noise levels have significantly reduced following our efforts over the last 4 years by replacing noisy compressors, resiting other plant, new working practices and policing noise levels from our own vehicles and those of our suppliers.

All this has been at great cost to the company. For the company to survive and continue to offer employment in this rural location the company needs to increase its service levels to its retail and food service customers, most of which are already operating 24 hrs, 7 days a week."

The applicant's agent is mindful of the passage of time since this application was submitted and is concerned that the past planning history of the site is obscuring the intention of the application.

That is to address the long-term future of the company whilst still protecting the amenities of the residents of the area. There is also concern that the Environmental Health Manager's comments are not substantiating his views with technical data despite large quantities of data having been provided?

Planning History

The net result of the history of this site has been the establishment of a major food producer employing significant numbers of people. The last application was for the conversion and extension of original farm buildings to create offices for the company. A full copy of the site history is available on the file. The Local Planning Authority has been the subject of an unfavourable ombudsman report that arose from its original handling of a complaint that resulted in the establishment of the factory use on the site. Much of what has happened since is as a result of the enlargement/adaption of the established use.

Responses to Consultations

Foston and Scropton Parish Council has strongly objected to the proposal on the grounds that

- a) There would be additional traffic on a busy lane, that does not lend itself to more heavy traffic, this would be especially so now that the Seddons application has been approved. The verges are frequently overgrown and these restrict visibility.
- b) The floodlights would be basically in the middle of a field and cast light far and wide.
- c) A haulage firm had its application turned down on the basis of increased traffic levels. The application form is silent on expected traffic levels.
- d) The development would decrease house values and the quality of life for residents.
- e) There is no need for the proposed road and this would open up more land for development and be an encroachment into the green belt.
- f) There is very strong concern about noise levels, the survey produced some interesting results and the Parish Council knows from experience of other similar uses in the parish that the 'hum' identified carries on at night.
- g) Noise has always been an issue from this site even when there were fewer lorries. Resident's lives will be changed with more lorries and longer hours of production and more lorries on Woodyard Lane.

Church Broughton Parish Council oppose the application on the grounds that: -

- a) There would be an increase in traffic on Woodyard Lane
- b) The extension of the industrial footprint
- c) Reduction in visual amenity by the introduction of large vehicles into the open countryside
- d) And the introduction of 24 hour working.

The County Highways Authority has no objection subject to the provision of a visibility sight line requiring the removal of a hedge to the south. The HA has also drawn attention to the need for repairs to the highway verge. Members may recall that a contribution to the cost of those repairs was negotiated arising from another application further up Woodyard Lane, a request for a matching contribution of £7500 has been made to these applicants. Any response will be reported at the meeting.

The Environmental Health Manager has objected to the 24 hour working proposed in the application on the grounds that there is a strong potential for sleep disturbance at night when general background noise sources are lower (A50 traffic noise). The company's own consultants

have identified that there is a potential for sleep disturbance from, in particular, the nitrogen cooling/freezing system as a constant source of noise. There are other noises such as radio, tannoy, vehicle and general staff noise that also cause concern about this aspect of the application.

The Environmental Health Manager is concerned that whilst the constant noise sources can be adequately controlled by condition as could the hours of operation of the tannoy and radio, other matters such as staff shouting and forklift clatters and bangs etc. could not be so conditioned in a way that would be readily enforced. These concerns were confirmed by the trial period of 24 hour operation where the banging from cleaning operations and the raised voices referred to above were apparent to the consultants. The report does not then address these issues.

Another area causes concern that relates to the delivery of goods to the factory at night. The report originally referred to noise from reversing alarms. This did not feature in the later report. There was also reference to the noise from air brakes discharging being audible in the receptor dwelling. Whilst the operators may have argued that 24 hour operation would reduce the number of deliveries, the Environmental Health Manager is concerned that any delivery at night could cause sleep disturbance and therefore be a statutory nuisance.

The overall conclusion on the 24 hour operation is that whilst measures could be put in place that would bring the operations at the factory in line with best practice, there is doubt that the factory could operate for 24 hours a day without causing disturbance to the residents of the main receptor dwelling. The control of noise associated with vehicles, doors slamming, etc. would be very difficult and impracticable to control by condition and all have the potential to give rise to complaints.

The Environmental Health Manager would want to be notified if the permission was to be granted so that he could consider appropriate conditions to ensure that the best practicable means are employed to reduce the potential for noise disturbance to residents. The only action that would be sustainable if permission were granted would be to ensure that the company was employing the best practicable means of reducing noise. If a nuisance is caused in spite of this, the defence would still stand. The Council could, therefore, be in a position where a noise nuisance is being caused but it is unable to take action to remedy the situation

A complaint concerning noise from the site is currently being considered.

In addition, in a previous application for extended hours, the Environmental Health Manager recommended refusal at that time and permission was not granted

There is no objection to the provision of an access on to Woodyard Lane and the benefits that would accrue to residents of Hay Lane are acknowledged. There would be an impact on the houses on Woodyard Lane but that route already has a degree of commercial traffic.

Responses to Publicity

Four letters of support have been received that make the following points: -

- a) Having lived in Hay Lane now for over seven years some residents have seen the traffic volumes relating to the Plant increase dramatically and the nature of the vehicles themselves is such that they are having a seriously deleterious effect upon the whole of the lane south of the Plant and specifically upon property and foundations.
- b) The noise and vibration associated with these vehicles, due to our proximity to the lane, pervades our house to such an extent that our quality of life is impaired.
- c) It is believed that, because the lane is a narrow pretty lane with traditional grass verges that attracts leisure traffic in the form of pedestrians, cycles and horses, it is simply a question of time before there is a serious road accident involving one (or more) of these heavy commercial vehicles. There is very little room to pass these large vehicles and hence the lane, being bounded by seven residential properties, is totally unsuitable for this traffic. We would further point out that the traffic from the north of Hay Lane has also grown significantly as people commute to access the new A50 trunk road from the villages to the north.
- d) On the other hand, Woodyard Lane is much wider and much more suited to industrial usage as can be seen from the very nature of the properties located therein and their proximity to the designated Industrial Park.
- e) Indeed the access problem that has developed in Hay Lane is so bad that the owners of Foston Farm Products themselves have recognised the danger and have taken a very responsible attitude to addressing the situation.
- f) It seems incredulous that their application should not receive the whole-hearted support of all and one can only presume that objectors to this proposal are seeking personal benefit or following some other Machiavellian motive against the greater public good. to improve the quality of life for the long-suffering residents of Hay Lane.
- g) The Committee is urged to support this application

Two letters of objection to the development has been received: -

- a) This planning application extends the curtilage of this industrial development into what was open countryside. The formation of an access road across this agricultural land would potentially allow space for 'topsy' like growth of this industrial unit on its inappropriate residential/agricultural location and should be resisted. Industrial land is available in the near vicinity.
- b) The Planning Committee should consider the track record of this operator: -Continuously developing without applying for permission, which limits the rights to object and the Planning Departments involvement in ensuring appropriate development in the open countryside. Then ignoring conditions imposed when planning approval is applied for retrospectively.
- c) This application should not even be considered until the acoustic barrier on the southern boundary, a condition of the granting of planning permission Reg. no. 9/2000/0743/F is erected. If the Planning Committee are to give this application consideration we require that the Environmental Health Department first carry out a study to determine the impact that this development would have on our amenity with regard to the volume, quantity and direction from this additional source of noise.
- d) It is noted on the application that 24 hours, 7 days a week use is applied for. The current working hours and access by delivery vehicles is restricted to protect our amenity. There should be no extension to the working hours or times that lorry access permitted on this site. There is currently an agreement between DEH and FFP that no overnight access or parking is allowed on the site for visiting vehicles. These vehicles are refrigerated units where any overnight parking

would require motors running to refrigerate their contents noisy vehicle movements would cause unacceptable noise nuisance and disturbance of sleep. Currently delivery lorries are instructed by a notice on the western access gate to switch off refrigeration motors whilst on the site. In order to protect our amenity this instruction should apply to any eastern access created.

e) It is noted that access to the site is through the premises of E. Bentley. Planning approval on application Reg. no. 4/1997/0090/U restricted working on that site to daytime hours for the

amenity of local residents. We have not been advised of any alteration to this condition and therefore insist that there should be no access through this site to the proposed FFP road out of daytime working hours. Another condition of this grant of planning permission stipulated additional planting on the western boundary. This has not been carried out and removal of original planting is now proposed by this application.

f) It is requested that should any permission be granted that extension of appropriate acoustic fencing and screening is imposed as a condition.

g) It should also require E. Bentley / FFP to reinstate / redefine the footpath on their northern boundary, Parish of Foston and Scropton Footpath Number 8 DO1994. The objectors believe the access running from Woodyard Lane to Hay Lane has been wired over and the sign removed.

h) Any approval should again stipulate that no diversification of the business should take place on the FFP site. (There are rumours locally that a vehicle hire operation is being considered by FFP).

In response to the Noise Impact Assessment the following comments have been made in two further letters of objection from one dwelling: -

a) The original notification was misleading in that it made no reference to 24 hour operation. The company was attempting to hide this by slipping it in the main body to the form rather than referring to it in the 'proposals' section of the form. The Local Planning Authority has refused several applications in the past to protect residents amenities. The grant of permission would result in a 154% increase in working hours and could give rise to a 400% increase in production and all the associated noise and traffic movement that would generate.

b) The first noise survey did not include Lawn Farm as a noise receptor. It is thought that the noise consultants were advised that the house was part of the factory operation. This is another example of the company seeking to mislead the Council and others.

c) Thus when noise monitoring was undertaken, the company was aware of the process and tailored its operations to suit the facts. Another example of it seeking to mislead the Council. No noise readings were taken during the working day. However, the Noise Impact Assessment sets out very good reasons for refusing the application it has no relevance in assessing the impact of 24 hour working. It took place when the factory was operating in a different way to that that is the norm and is unrepresentative of the normal working day.

d) By applying for the new access the company is acknowledging that Hay Lane is not a suitable location and this is an indictment in itself.

e) The time has arrived to redress the situation. The Council should acknowledge that there is an impact on the occupiers of Lawn Farm since it allowed the factory to become established without planning permission and without appropriate controls. The Council should now control noise pollution and improve the amenity of the residents and their quality of life. Lawn House is now dwarfed by the factory, the expansion of the factory site should not be allowed. It will open the doors to further expansion of the built part of the site.

f) Daytime noise caused one the occupiers of the adjacent house to cease working at night as she could not sleep during the day because of the noise, 24 hour working will make the situation worse only nighttime working would be louder as background levels are lower. The residents are or about to be retired and want to enjoy the amenity of their home. Please will Councillors

consider the proposal as if it was next to their own homes and they would be affected by the noise.

g) Most of the workers live outside the parish and are either bussed in or drive to work. There would be no increase in local employment. The council should not be intimidated by threats to reduce staff if the application were not permitted as any new staff would be recruited from outside South Derbyshire.

h) There are numerous noises that affect amenity such as vehicles driving into and out of the site, engines running whilst deliveries are made, staff noise around the site, fork lift trucks dumping pallets, reversing horns and music and announcements over the tannoy system. The nitrogen system noise is often intolerable during the day being a constant drone. The applicants have stated that it would not operate after 2200 until it is moved. How can the Council have confidence in this assurance.

i) Other aspects such as nitrogen, diesel and light pollution cause concern to occupiers.

j) The company has shown a total disregard for conditions that are imposed. It has been prosecuted in the past for failure to comply with the hours of operation conditions. The current hours of operation condition should be maintained in order to protect residential amenity. The whole tone of the letter of support from the applicants is 'when permission is granted'. The company has been advised on numerous occasions that 24/7 working is not acceptable and it is insisted that this is continued.

k) The factory was allowed to become established in this inappropriate location. The Ombudsman found this to be the case. The case could be reopened by the ombudsman if the council fail to protect the residents. The Council should prevent the drip drip of development of the site. Derbyshire County Council has an appreciation of the situation. The Council should consider ways of redressing the balance and control/restrict the impact on amenity. The peaceful rural location has been marred by this inappropriate development.

l) The company has admitted working outside its permitted hours, as the objectors have complained about disturbing their sleep. They had a trial 24 hour operation as admitted in the NIA and they admit cleaning beyond 2200 at night. The Council should enforce against these breaches. Given the Company's past performance at sticking to conditions, there can be no confidence that it would comply with any new conditions that were imposed. Inaction by the Council in the past has lead to the Company thinking that it is above reprimand and it expects to be rewarded when it operates outside agreements. All the offers made in the managing directors's letter should be disregarded for this reason. For example, distribution moved to Brackley on a trial basis. There is an implied threat that it would be moved back if permission were to be refused.

m) The new road is already in place without any control by the Council - there is a potential for enforcement action if the application is refused.

n) Complaints to the Council about noise from cleaning operation have been ignored in the past. Noise attenuation measures should be implemented and enforced immediately.

o) Development of this scale should be directed towards Dove Valley Park otherwise the Council's Development Strategy would be a shambles.

p) The Council should refuse the application, the Parish Council is against it, it is contrary to the Council's own policies. The Council should listen to its residents rather than rolling over in the interests of developers who have no interest in the community. The hours of operation should be maintained in the interests of residents.

Structure/Local Plan Policies

The relevant policies are:

Joint Structure Plan:

Local Plan:

Planning Considerations

The main issues central to the determination of this application are:

- Conformity with the Development Plan
- The impact of the variation of the hours of operation on neighbouring properties and the consequences for a refusal of permission in this regard
- The impact of the new road and its use of Woodyard Lane, the offer to improve the verges
- The impact of removing heavy goods traffic from Hay Lane.

In addition consideration will need to be given to the complaint about breaching the hours of operation condition.

Planning Assessment

The Development Plan has provision for the expansion of firms on or adjoining their existing sites subject to there being no adverse impact on the environment, neighbours or undue traffic generation.

Noise Issues

Benefits to residents of Hay Lane, with the exception of the nearest neighbour have been identified and should be acknowledged.

This application has been the subject of considerable submissions by the applicants, the neighbour and the Environmental Health Manager over the issue of noise and its potential impact on the occupiers of an adjacent dwelling.

The occupiers of that dwelling have submitted a substantial amount of information setting out their concerns about the potential impact of 24-hour use of the premises on their amenity. There are claims that the operators have breached their existing operating hour's condition during the consideration of this application. There is an admission of this in the Noise Impact Assessment.

The potential of a temporary permission for 24-hour working to assess the impact in an actual night-time working situation was discussed with the applicants in meetings. The company then carried out limited 24-hour operation so their consultants could take actual measurements of noise levels during night-time working, albeit without specific sanction to do so. The neighbours have seen this as a clear breach of the condition.

This complaint is the subject of a separate but related investigation. Nevertheless, Members may wish to take a view on this at this Committee meeting. From an examination of the time line of the complaint, it was made after the objector had read the Noise Impact Assessment. It should also be noted that there have been complaints about the operation of the premises in the past and subsequent investigations have revealed compliance with operating hour conditions. These investigations were undertaken some years ago and not during the period of time that the current

owners of the site have been involved in operating the premises. The current breach was to facilitate a legitimate noise evaluation. Accordingly, the applicants had a clear reason for the breach in relation to necessary investigations into noise effects germane to the proper consideration of the application and it could be seen as harsh to take enforcement/ legal action in the circumstances. However, if a further breach of the operating hours or other conditions occurs outside of legitimate experiments to test noise in relation to an ongoing planning application under discussion, then that that should be the subject of more stringent consideration with a view to a prosecution.

The applicant's contend that the situation as described by the objectors above is exaggerated and that they did not actually notice when 24-hour working was taking place. They argue that the

company has to compete in a market that demands the provision of fresh produce on an all day every day basis. If the Company has to operate within the tight confines of the current hours of operation condition, then it is competing with one hand tied behind its back. The future operation of the site would be threatened. The applicants concern is that the history of complaints against the company when operated under different management is having undue influence on the consideration of the application.

The Environmental Health Manager requested the submission of the Noise Impact Assessment Having carefully considered the evidence presented by the applicants and their agents/consultants, the Environmental Health Manager remains concerned that there are elements of noise that are not capable of control by condition. Thus, the 24-hour operation of the premises would have an adverse impact on the amenities of the occupiers of the adjacent dwelling and the recommendation of the Environmental Health Manager is that permission should be refused for that element of the application. This impact needs to be recognised as incontrovertable but there are two contrary factors, that have been the subject of recent discussions with the applicants:

- The permission for 24 hour working is key to future proposals for expansion of the premises to meet the requirements of the market for this kind of product. Recent acquisitions by the company of other related plants elsewhere are part of an overall strategy to meet major supermarket supply standards and quantities. This means that the current production buildings will require to be replaced with newer, larger, purpose built production facilities closer to Woodyard Lane. These would facilitate the reduction of fixed noise from the plant, reducing the noise emissions experienced by the neighbours and moving non-fixed noises that are the principal cause for concern further from them.
- The provision of an undertaking, backed by operating rules that would govern vehicle and personnel movements at night, particularly at the 3 a.m. shift change would help to ameliorate likely noise nuisance. Significant breaches would be prosecutable under a S106 agreement negotiated as part of any permission..

Access Issues

Hay Lane has taken large vehicles over a number of years and this has been the subject of complaint in the past. Residents (with one exception would experience an improved environment. Equally there are dwellings on Woodyard Lane that would be affected by the increase in use of the access. The access is currently used by haulage operators and has been for a number of years. It is difficult to see that the increase in the use of that access would lead to a material detrimental affect on the occupants of those dwellings, particularly if a night time delivery ban were in place (as discussed).

The applicants would be reluctant to contribute to the provision of verge improvements to Woodyard Lane unless the application is approved as a package rather than individual elements of it.

The objector has made reference to an hours of limitation condition affecting the existing haulage depot site off Woodyard Lane. There is such a condition but not on that part of the site across which the access would run.

Conclusion

The application has to be considered as a whole and part permission of the road element without changing operating hours would almost certainly not facilitate a satisfactory future for the

company on this site. Its demise or removal elsewhere would leave the site with an existing use capable of generating as many problems to neighbours as now exist.

On the extended hours of operation, the view is that the conclusion of the Environmental Health Manager is material and the extended hours of operation would adversely affect the amenities of the occupiers of the adjacent property. It is a finely balanced judgement between this nuisance (albeit potentially ameliorated by a Section 106 Agreement) and the potential disbenefits to the local economy if the factory is no longer viable.

On the basis that the latter considerations outweigh the former but with the acknowledgement that the issues are very finely balanced, a grant of permission is recommended. Nevertheless, as advised by the Environmental Health Manager, a refusal could be defended on the basis of noise nuisance even to one residential property. The recommendation belows reflects a desire to give a full examination of terms in the light of the needs of the applicants for an early indication of a way forward and to secure openness of decision making on this difficult issue.

None of the other matters raised through the publicity and consultation process amount to material considerations outweighing the assessment of the main issues set out above.

Recommendation

That:

- A resolution in principle be taken to **GRANT** permission subject to the conclusion of an agreement under S106 and subject to planning conditions to meet Highway and Environmental Health requirements, materials for the gate house, shielding of lights, closure of the Hay Lane Entrance and such other relevant matters as may arise
- The terms of the agreement cover operating practices consequent on 24 hour operations, any provisions for abnormal circumstances such as delayed arrival of HGVs or abnormal seasonal demands on production, provisions for any future changes to operating practices only to be agreed as variations to the S106 and for a contribution to be made to the improvement of Woodyard Lane
- The terms of the agreement be subject to consultation with the Parish Councils and neighbours who have commented
- A final resolution of this matter be taken by the Committee in the light of a further report on these issues.
- No action be taken in respect of the experimental operations out of permitted hours referred to above.

1. Employment Policy 1 of the adopted South Derbyshire Local Plan states that the expansion of businesses within or on land adjoining their curtilages will normally be permitted unless there are unacceptable traffic, environmental or noise consequences arising from the grant of the permission. The operation of this site 24 hours a day would have an adverse impact on the amenities of the occupiers of the adjacent dwelling to a point where the grant of permission could constitute a nuisance. The application is therefore contrary to the above policy for this reason.

17/09/2002

Item 2.1**Reg. No.** 9 2002 0410 F**Applicant:**

Alpha Construction LTD
 Alpha House, Uttoxeter Road
 Hilton
 Derby
 DE655GE

Agent:

Rogers Clarke Lander LTD
 Alpha House, Uttoxeter Road
 Hilton
 Derby
 DE655GE

Proposal: The erection of a single storey office building at Alpha
 Construction Alpha House Uttoxeter Road Hilton Derby

Ward: Hilton

Valid Date: 12/04/2002

Site Description

The site forms part of the grounds to the Company HQ originally built as part of the Hilton Gravel Company's operations in Hilton. The ground is relatively flat and down to grass and shrub beds. On the north boundary is a ditch that drains directly to the Hilton Brook some 150 metres to the east. Hedges surround the whole site and the trees on the north boundary would be retained.

Proposal

The proposal would involve the erection of a 222 square metre building constructed on individual plinths to raise the building above the local flood level. It would have a separate access to Uttoxeter road and car parking spaces to the front of the building. Other than the building being raised, all other works would be undertaken at existing ground level.

Applicants' supporting information

The applicants have submitted a draft unilateral undertaking under Section 106 of the Act stating that it would retain the areas beneath the building clear of obstructions to the flow of the floodwaters that may occur.

They have also stated that the company would move existing buildings with a ground coverage greater than the area covered by the plinths to allow for greater flood storage capacity within the site if the application were granted permission. The company has also submitted its Flood Warning and Evacuation procedure. This outlines the procedures to be followed in case of a flood warning being received both within and outside working hours.

A further letter of support has been received in the following terms:

As explained to the Area Planning Officer the company is seeking a positive response to its application to avoid the present site becoming incapable of development. This is necessary to secure the long-term expansion of the companies on this site.

The Company acknowledge that the Environment Agency has notified the Council of its objection to the scheme in writing on 21st May 2002. It also understands that the site falls outside the designated area of the Development Plan for Hilton.

From its many discussions with planning staff over the last 18 months, the Company has been very keen to address any concerns that either the Council or the Environment Agency may have about the scheme.

Should the application be unsuccessful, one of the Company's tenants has already indicated that they would terminate their lease, and most probably move out of South Derbyshire. This would impact upon the Company's income and leave part of the offices empty. The Company would, therefore, need to reconsider its position, and almost certainly lodge an appeal.

It requests that the following points be taken into consideration when reaching a decision: -

1. "We moved into the area in March 1996 when we purchased the site and offices from Blue Circle. The site has authority for use as offices or light industrial purposes (B 1), and has been used for offices since the late 1950s.
2. Our tenants and ourselves require additional office space to accommodate increasing staff levels. However, it is not currently envisaged the numbers on the site will exceed those previously employed by Blue Circle.
3. The appearance of the building has been drawn to meet the requirements of the Case Officer, and is of single storey construction to match the height of the existing buildings.
4. The ground floor has been raised clear of the floodwater level experienced in November 2000 by the use of stub columns. The total volume of structure within the flood plain is less than 2m³ (and with a restriction to flows of less than 4m³). We also propose removing part of the existing building in order to give a net reduction in the volume and area affecting floodwater flows.
5. We have already provided a draft unilateral undertaking under the provisions of Section 106 of the Town and Country Act 1990 to ensure that the passage of floodwaters beneath the new development remains unhindered. We have also intimated that any further development on the site would be carried out in a similar manner thus progressively reducing the effects of the buildings within the flood plain.
6. We have in place a Flood Evacuation Plan (linked to the EA Floodline) to protect our employees, and those of our tenants.
7. The letter from the Environment Agency dated 21st May 2002 contains incorrect data. It does not acknowledge the reduction in the volume of structures within the flood plain. It does not recognise the lowered risk to property damage or persons employed on the site. It proposes the use of an additional storey on the existing building.

8. The flooding of the site in November 2000 (a 1 in 100 year event?) was exacerbated by the condition of the culvert under Uttoxeter Road and the drainage ditches downstream.
9. In the last two years, extensive permitted development has occurred adjacent to our offices (including the construction of new walls and fences), which will have a considerably greater impact on flooding than our proposed new office.
10. We currently rent land at Hilton depot to store site offices that we use in the course of our business. The loss of income should our tenant leave would prompt re-appraisal. Cabins would probably be brought to Alpha House to make better use of the site. The grounds currently landscaped would be stoned to provide storage areas.

We believe that we have addressed the genuine concerns of everyone involved, and have presented a solution that should satisfy all, including the local community.”

This information has been submitted in response to objections received from the Environment Agency.

Planning History

This is the first major application for the site since the original offices were built in the 1950's.

Responses to Consultations

Hilton Parish Council has no objection

The County Highways Authority has no objection subject to conditions.

The Environment Agency has objected because there should be wholly exceptional circumstances for allowing the construction of buildings in the floodplain. It is acknowledged that the building would be constructed on stilts but there are concerns that the underside of the building would become obstructed and thus obstruct the flow of flood waters. Notwithstanding the documentation submitted by the applicants to address these issues, the Agency maintains its objection to the development. Full support is offered to the Local Planning Authority if it refuses the application and the applicant's appeal.

The Agency states that its objection is well founded and that if the Local Planning Authority is minded to grant permission, then the Environment Agency should be re-notified with an explanation as to what material considerations outweigh the objection. This is to give the Environment Agency the opportunity to make further representations.

The Environmental Health Manager has no objection.

Structure/Local Plan Policies

The relevant policies are:

Joint Structure Plan:

Local Plan: Environment Policy 2, Employment Policy 1

Planning Considerations

The main issues central to the determination of this application are:

- The Development Plan policies
- The Environment Agency objection
- Material considerations that may influence a decision contrary to the objection from the Environment Agency.

Planning Assessment

Environment Policy 2 of the Local plan states that new development will not be permitted within the 1:100 floodplain of a watercourse unless the developer undertakes to protect the development from flooding and to compensate for any loss of flood storage and flood flow capacity.

Employment Policy 1 of the Local Plan states that the expansion of an existing business on or adjacent to its existing curtilage will be acceptable if it is not detrimental to the character of the locality or residential amenity and does not cause environmental or traffic problems.

The Environment Agency objection raises an important environmental consideration that would override the presumption in favour of the expansion of the firm. The Environment Agency is concerned that the building has the potential to introduce additional persons into the floodplain. This is directly contrary to the advice in Planning Policy Guidance Note 25. This advises that development in such areas should only be allowed in exception circumstances.

The Environment Agency's objection is a material consideration and, having looked at the methods of addressing the issue with the applicant and the Agency, the conclusion is that there are no material grounds for overriding the objection. The company could continue in its existing buildings but unless there is a change of heart by the Agency, there is no scope for further expansion within the curtilage or its environs.

None of the other matters raised through the publicity and consultation process amount to material considerations outweighing the assessment of the main issues set out above.

Recommendation

REFUSE permission for the following reason:

1. The site lies within functional floodplain and PPG 25 states that in such areas built development should only be permitted where there are wholly exceptional grounds for so doing. There are no exceptional reasons why this built development should be located in the functional floodplain, and so the proposal is contrary to Environmental Policy 2 of the adopted South Derbyshire Local Plan and the advice in Planning Policy Guidance Note 25 published in July 2001(paragraph 30).