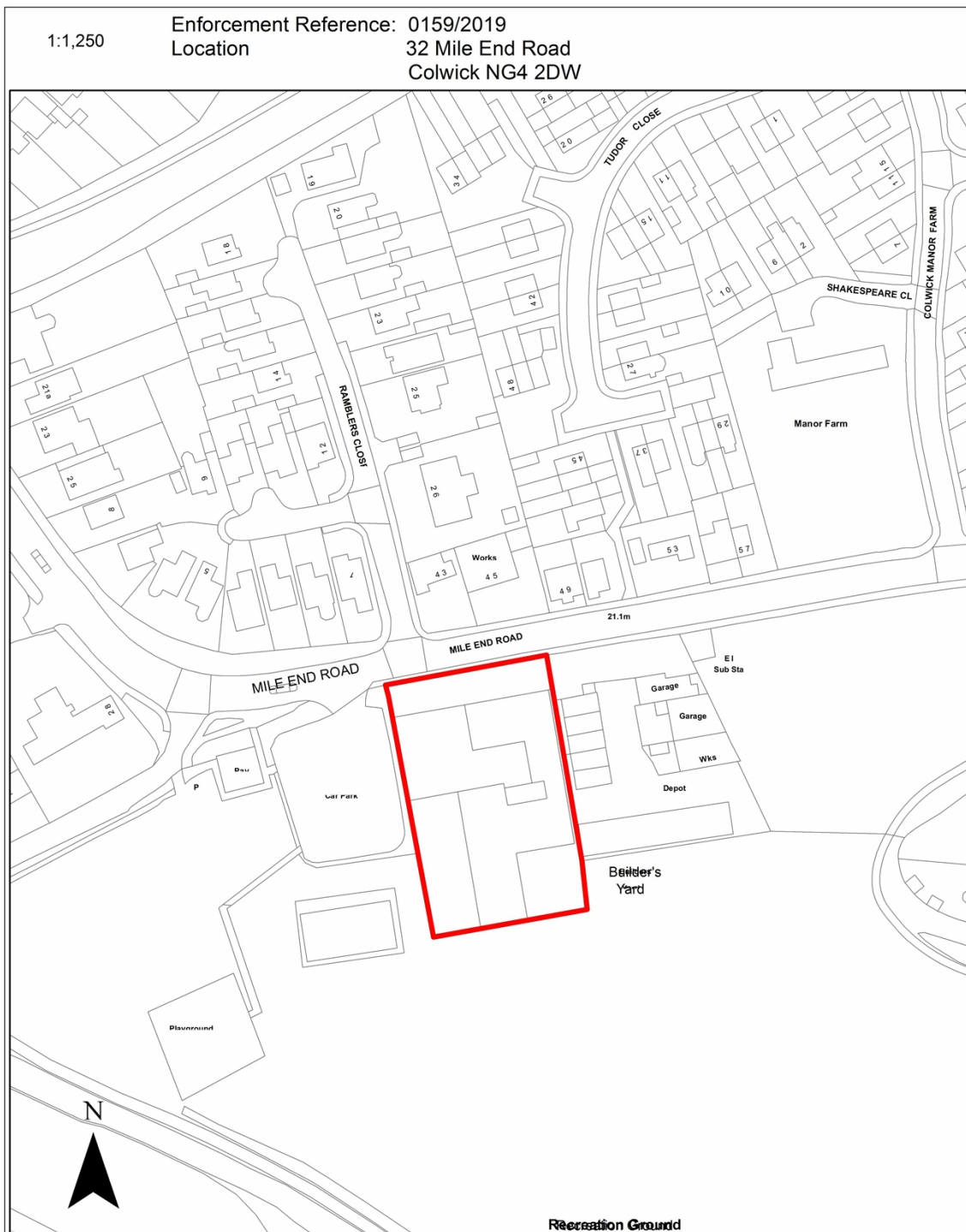


Planning Enforcement Report for 0159/2019



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Report to Planning Committee

Reference Number: 0159/2019

Location: 32 Mile End Road Colwick

Breach of Planning Control: Breach of Planning Conditions 3, 4 and 5 attached to planning reference 2018/0916

1 Background

- 1.1 Planning permission was granted in 1987, reference 86/1730 for the change of use of the premises at 32 Mile End Road, to general industrial, warehousing and storage. A number of conditions were attached to the permission including condition no. 3 which restricted the hours of operation on the site to between the hours of 8.00am – 6pm Monday to Friday and 8am – 1pm on Saturdays and at no time on Sundays or Bank Holidays excluding Good Friday and May Day”.
- 1.2 A complaint was received regarding the hours of operation of the premises, alleging that the premises were operating outside of their hours permitted by the 1986 permission, (reference 86/1730). This matter was investigated by the Council’s Enforcement Officer. The business admitted the breach and the applicant was advised to either submit an application to vary the hours of operation of the site or operate the site in accordance with the agreed hours of operation.
- 1.3 In 2018 a Section 73 planning application, reference 2018/0916 was submitted by the company to vary the hours of operation (condition 3 of 86/1730). Permission was granted subject to the following conditions;
- 1.4 **Condition 3** – “ The site shall only be used for the purposes hereby permitted between the hours of 7.00am - 7.30pm Monday to Friday and 8.00am - 1.00pm on Saturdays and at no time on Sundays or Bank Holidays excluding Good Friday and May Day.
- 1.5 **Condition 4** – “No goods or materials shall be stored on the open areas of the site”.
- 1.6 **Condition 5** – “There shall be no working on the open areas of the site”.
- 1.7 However, in March 2019, the Council again received complaints about the hours the business was operating. A letter was once again sent to the business to advise them to adhere to condition 3 of their planning permission and ensure no business took place outside of the stated hours.

- 1.8 Recently an email has been received from a group of local residents stating-
“Throughout the last 2-3 months they have continued to breach the hours allowed by planning most recently this morning when they were “throwing” boxes into a van from 6.10. In addition I have noted below some of the additional times when this has occurred:-
- 19/6 8.45pm
 - 21/6 6.10am
 - 22/6 until 6.00pm this was a Saturday
 - 5/7 6.40am
 - 15/7 8.50pm
 - 16/7 5.55am
 - 24/7 6.40am
 - 26/7 6.25am
 - 29/7 6.30am
 - 7/8 6.10am
 - 8/8 6.20am
 - 20/8 6.30am
 - 23/8 6.45am
 - 25/8 6.45am
 - 28/8 6.20am
 - 29/8 5.30am

- 1.9 The complainants have gone on to say that at times there is equipment and material stored in the open areas of the site with people working in the open areas.

2 **ASSESSMENT**

- 2.1 The premises are surrounded by other industrial and commercial units with varying heights and design to the east, residential properties to the north and parks and open space to the west and south. There are associated car parking spaces within the site together with a storage yard.
- 2.2 Local residents are complaining they are disturbed by the business operating outside of their permitted hours and by employees working in the open areas of the site.
- 2.3 The power to impose conditions on planning permissions is an extremely important part of the development management process in order to safeguard matters of planning importance, mitigate the impact caused by the development and ensure the development is acceptable all planning aspects.
- 2.4 Conditions have to be necessary; relevant to planning and the development to be permitted; reasonable; precise; and enforceable. Unless conditions fulfil all these criteria (known as the “six tests”) they are likely to fail if challenged at appeal.
- 2.5 In this case, Condition 3 was imposed to ‘ensure that the operating hours of the site are acceptable and result in no undue impact on neighbouring properties, in accordance with the aims of policy LPD32 of the Local Planning Document 2018’.

- 2.6 Condition 4 was imposed to 'ensure that the site is visually acceptable, in accordance with the aims of policy LPD32 of the Local Planning Document 2018' and condition 5 was imposed to ensure that there is no adverse impact on neighbouring properties, in accordance with the aims of policy LPD32 of the Local Planning Document 2018.
- 2.7 As the owners/managers of the business have failed to enter into any dialogue with the Council, there are two main options available to the local authority when a condition is being breached;
- i) to issue a Breach of Condition Notice (BCN) for which there is no appeal and a maximum fine of £2,500 if the Notice is not complied with or
 - ii) to issue a Breach of Condition Enforcement Notice. However, this may be appealed to the Secretary of State which would suspend the notice until the appeal decision has been reached but it does attract a maximum fine of £20,000 if it is not adhered to once it has come into effect.
- 2.8 As this is a straightforward breach of condition it is considered the simpler Breach of Condition Notice is the most appropriate action to take in this instance.
- 2.9 Time limits for taking action
- 2.10 S171B(3) provides that generally no enforcement action can be taken against a breach of a planning condition after the end of the period of ten years from the date on which the breach first occurred. It is considered the Council is within this time limit to take action in this case.
- 2.11 Human Rights
- 2.12 Under the Human Rights Act, it is necessary for the Authority to have regard to the rights of the owner and occupier of a site under Article 1 of the First Protocol to peaceful enjoyment of possessions and the protection of property and under Article 8 of the convention to respect for his private and family life, his home and his correspondence'.
- 2.13 In considering whether to take any enforcement action, the Council has to consider the proportionality of its actions. In other words whether the proposed action would be proportionate to the objective being pursued – here the enforcement of planning control in support of National and Local Planning Policies. It is recognised that issuing a breach of condition notice or taking court proceedings in the Magistrates Court if the notice is not complied with, will result in interference with the recipients' rights. However, it is considered that issuing a notice in the first instance would be a proportionate response to rectifying the breach of planning control taking place.
- 2.14 Equalities
- 2.15 The Enforcement section operates in accordance with Planning Enforcement Policy and is largely dictated by legislation which reduces the risk of

discrimination in this service. The Council is accountable to the public, including its stakeholders, for its decisions both to take enforcement action and not to utilise its enforcement powers. There is a legitimate expectation of the public and stakeholders that the Council will take action to address breaches of planning by such means as are appropriate and which are in accordance with the Council's policy and government legislation.

2.16 The Council strives for a consistent approach in targeting its enforcement action. This means that the Council will take a similar, but not the same, approach to compliance and enforcement decisions within and across sectors. It will strive to treat people in a consistent way where circumstances are similar. Each case however will be evaluated on the basis of its own facts and circumstances but will ensure that decisions or actions taken in any particular case are consistent with the law and with the Council's published policies. It should be noted that decisions on specific enforcement actions may rely on professional judgment. The Council will usually only take formal enforcement action where attempts to encourage compliance have failed as in this case.

2.17 Crime and disorder

2.18 The Crime and Disorder Act 1998 places a duty on the local planning authority to do all that it reasonably can to prevent crime and disorder in its area. The potential impact on the integrity of the planning system and the setting of a precedent if action is not taken is therefore a material consideration in the authorisation of enforcement proceedings.

3 **CONCLUSION**

3.1 The owner of the business has been made aware of the planning conditions attached to the planning permission; in particular they have been made aware of the hours they are permitted to operate.

3.2 The business has not responded to the Council's letter of March this year and there is evidence from local residents that conditions 3, 4 and 5 of the planning permission are being breached regularly to the detriment of the occupiers of the neighbouring properties.

3.3 In order to remedy the breach of planning control the Council is left with little option but to take formal action and it is considered the issuing of a Breach of Condition Notice is the most appropriate action in this instance.

4 **RECOMMENDATION**

4.1 **That the Service Manager, Development Services, be authorised to take all enforcement action including the service of any necessary enforcement notices/breach of condition notices and in conjunction with the Director of Organisational Development & Democratic Services take proceedings through the courts if required to ensure the business complies with conditions 3, 4 and 5 of the planning permission 2018/0916, ensuring the hours of operation are adhered to and there is no storage of goods or working in the open areas of the site.**

