

Name of Applicant	Proposal	Expiry Date	Plan Ref.
Adam Food Services Limited	Retrospective application for change of use from B1 (light industrial) use to B8 (storage and distribution) use, and erection of associated cold storage facilities to the rear of the premises 30 The Avenue, Rubery, Birmingham, Worcestershire, B45 9AL	10.06.2019	19/00328/FUL

RECOMMENDATION: That planning permission be Refused

Consultations

WRS - Noise Consulted 18.03.2019
OBJECTION

By the very nature of B8 use it is always anticipated that there will be an impact from a number of activities associated with this activity and any such application should consider carefully the proximity of residential properties and the likely impact on their amenity. Close proximity to residents for B8 (within 100 meters) is therefore not recommended without supporting information that demonstrates that the activity can be undertaken without unreasonably interfering with local residents use of their properties. I must also advise that the site is currently subject to ongoing investigations of noise nuisance by the Community Environmental Protection team as of writing.

This retrospective application has been submitted without consideration for noise and light management. With this in mind WRS recommends that a noise and light consultant should be engaged by the applicant to advise on the following :-

- Noise from vehicles accessing the facility
- Noise from commercial chillers on parked up delivery vehicles and transporters
- Noise from static equipment such as walk in chillers
- Noise from vehicle movements on site (e.g. HGV, LGV and forklift)
- Noise from employees moving goods and working
- Operational hours
- Light impact from night time operations

Notwithstanding the above we would also recommend that any advice sought from a consultant should also consider the viability of controlling the noise to an acceptable level and whether it would be feasible and acceptable in planning terms when one considers the close proximity of residents.

Based on the outstanding noise complaints and current level of detail provided by the applicant WRS cannot support the application's suitability and would recommend that council should consider the refusal of the application based on the current level of supporting information submitted and to protect the amenity of local residents from the impact of noise and light nuisance.

Cadent Gas Ltd

All developers are required to contact Cadent's Plant Protection Team for approval before carrying out any works on site and ensuring requirements are adhered to.

WCC Highways Consulted 18.03.2019

Under the SLA agreement I have no highway objections to this retrospective application for change of use from B1 (light industrial) use to B8 (storage and distribution) use, and erection of associated cold storage facilities to the rear of the premises.

The building is situated within a designated industrial development with off street car parking located to the front and a car park also located to the rear, there are no parking restrictions in force along The Avenue except for weight restrictions (7.5t) during certain times of the day; the car parking and turning of vehicles on site is not affected by this proposal - no highway implications.

Building Control Consulted 18.03.2019

No objection

Local Ward Member Cllr Peter McDonald

1. The noise generated by nature of the business.
2. Residents being disturbed at unsociable hours such as before six in the morning.
3. Residents view blighted by the extension and pallets and other materials used by the business.
4. Light pollution.
5. Large vehicles being driven to the rear of the business causing a noise and vibration to residents properties that abut the business.

Representations

21 representations raising objection have been received from the local community. These raise the following issues:

MASSING AND APPEARANCE

- The new store is not in keeping with the form and appearance of the existing unit or others in the vicinity
- It can be seen from adjacent streets through the gaps between the houses.

CONSTRAINED ACCESS AND CIRCULATION

- Delivery vehicles used are too large for the access located right at the end of the road which makes manoeuvring difficult
- There is only one way in and out via a gated access adjacent to residential properties with only room for one vehicle at a time.
- No contingencies for an emergency
- The premises have inadequate circulation space for the type of vehicles using it.
- Increased HGV traffic constituting a threat to pedestrian safety in the vicinity.

NOISE and AIR Pollution

- Constant droning noise from refrigeration unit fans cooling the unauthorised cold store causing nuisance and disturbance to sleep of local residents
- Noise from the refrigeration units on the lorries when stationary in the service yard.
- Noise from pallets being moved and dropped
- The use of fork lift trucks emitting a continuous bleeping noise when in reverse.
- Noise from diesel truck engines running adjacent to residential properties with resultant loss of residential amenity and impeding use of gardens in summer
- Noise from delivery vehicles at various times of the evening when they return.
- Intensification of use of the rear yard by vehicles loading and unloading
- Employees and delivery/distribution drivers shouting to one another in yard.
- Noise compounded by proximity to gardens and dwellings and invasive it makes you feel you are in the industrial estate not your back garden.
- Lorries park in The Avenue in the hammerhead adjacent to residential gardens and usually have their diesel engines running while delivering adding to noise and air pollution
- The sentiment that neighbouring residents should have the right to enjoy their gardens any time during the week, not just on a Sunday - and not be constantly subjected to the level of noise that is currently coming from the site is a frequent theme of responses.
- A chimney on the premises has been emitting smoke.

WORKING HOURS

- Deliveries as early as 05:00am in the morning and as late 07:00 pm on Saturday nights. On a number of occasions there has been late evening activity between the hours of 10:30pm and midnight. This is contrary to the stated hours of working for which permission is sought.
- Working at unsociable hours gives no confidence to local residents that any conditions limiting hours of working/deliveries would be adhered to.
- The proposed hours of working from 07:00am to 06:00pm Mon to Friday and 07:00am to 01.00pm Sat are not informed by the proximity to neighbouring residential properties but only predicated on the needs of the business.
- Staff are present on site to take the deliveries that arrive before 07:00am and after 07:00pm suggesting they are residing on the premises over night.
- Lorries have been parking in the Avenue with their refrigeration units turning on and off throughout the night until they can deliver in the morning.

LIGHT Pollution

- The lights are left on in the building all night.

WASTE PALLET STORAGE

- The storage of pallets above the heights of adjacent boundaries is not only unsightly but also dangerous, an increased fire hazard and compromises security as it provides a means to scale fences of otherwise secure gardens.
- The service yard is poorly organised and maintained, with rubbish / plastic bags blowing around and getting stuck in the trees.

SUBMISSION ERRORS

- The drawings. There are no details of front or side elevations or foundation details, is this normal?
- The planning application form. Section 5 states that the work started and was completed in August 2018 followed by trading, this is not as claimed. An officer of WRS visited in early November and the business was up and running.
- Section 10. A pre application enquiry by previous owners in 2012-13 stated that an arboricultural survey was essential, none has been submitted with this application, and that the building is in an area subject to flooding.
- Section 18. There are at least 5 employees working there at the moment.
- Section 19 Their premises are manned virtually 24/7/365 , on occasion delivery vans were loaded and left about 08:00pm, contrary to stated working hours.

UNSUITABLE ROAD INFRASTRUCTURE

- The Avenue, Callowbrook Lane and surrounding streets are not designed for large articulated lorries which have great difficulty (trying to) turn left out of The Avenue onto Callowbrook Lane. The safety barrier of the A38 dual carriageway has been damaged on numerous occasions.
- There have been a number of parked vehicles and some gates damaged by trucks delivering/dispatching from this business.

INTENSIFICATION

- The proposal represents an inappropriate intensification of a premises on an estate intended for light industry rather than storage and distribution.
- Former business uses did not generate the level of activity and associated noise which characterises this business type.

INTRUSION

- The relative height of lorry cabs and tailgates of HGVs afford overlooking into private gardens when deliveries are taking place resulting in intrusion and loss of privacy

TREE SURVEY

- No tree survey has been submitted to demonstrate the impact upon the trees within the gardens of properties on Richmond Road and Barrington Road bounding the site.

OTHER ISSUES

- Negative impact upon property values
- Loss of View
- Lorries allegedly damaging residents parked cars and driving off.
- Lorries routing past 2 children's schools and prejudicing pedestrian safety.
- Lorries allegedly damaging signage and barriers between the bypass and Callowbrook Lane as they cannot easily turn into The Avenue.
- 12 wheel 40 ton European trucks have been entering the Avenue at any time flouting the waiting restrictions in force, despite intervention by the Council.

Relevant Policies

Bromsgrove District Plan (BDP)

BDP1 Sustainable Development Principles
BDP14 Designated Employment
BDP16 Sustainable Transport
BDP19 High Quality Design

Bromsgrove District Council High Quality Design SPD Adopted June 2019 (BDC HQD SPD)

The Supplementary Planning Document (SPD) supplements the Districts' adopted Development Plan and therefore reflects the Council's policies. As such it is a material consideration in the determination of planning applications and will be given substantial weight in the decision making process.

Others

NPPF National Planning Policy Framework (2019)

Relevant Planning History

B/486/61	Proposed Warehouse and Offices	Granted	12.10.1964
BU/317/65/O*	Extension to factory and site for car parking / and or recreational purposes	Granted	15.07.1965
B12245	Change of Use from Warehousing to Light Industrial Use	Granted	13.08.1984
B19006	Parking Area to frontage	Granted	12.03.1990
18/01538/FUL	Retrospective application for erection of cold storage facility to rear of premises	Withdrawn	11.03.2019

Note: * Part of the land relating to No.28 The Avenue was acquired and incorporated into the ownership of No.30 in 2018 , hence the relevancy of BU/317/65/O.

Assessment of Proposal

Site Location

The application site is situated in Rubery to the north of the A38 Birmingham Road. The application relates to No.30 The Avenue, a business premises situated at the far end of a small industrial estate accessed via residential streets. The industrial estate is flanked on 3 sides by established residential development. No.30 The Avenue is a single storey industrial unit with offices to the front, a service road to the south, which abuts the rear gardens of properties fronting Richmond Road and a service yard which abuts the rear gardens of properties on Richmond Road and Barrington Road. The application site also comprises land to the rear of the premises, formerly part of No.28, an adjacent industrial unit, which was acquired by the applicant in 2018.

Background and Proposal

The application before members followed an investigation by the Council's Planning Enforcement Officers concerning the erection of a cold store to the rear of the premises.

The cold store measures 25m long, by 9.5m wide by approximately 6 metres tall and has a flat roof and is composed of white panels with a smooth finish.

A retrospective application was submitted for the cold store having determined that it fell outside the permitted development parameters for outbuildings within the curtilage of business premises in terms of both its floor area and height.

Following receipt of that application, it became apparent that the change of use from B1 (light industrial) use to B8 (storage and distribution) use also required planning permission because the resultant floor area of the whole building exceeded the 500sqm floor area threshold for 'permitted' changes of use from B1 use to B8 use without requiring permission. Accordingly a fresh application was submitted which sought retrospective permission for both the use and associated cold store development.

The application proposes hours of working and deliveries from 07:00am - 06:00pm Monday to Friday and 07:00am – 01:00pm on Saturdays.

The business is a distribution centre catering for restaurant and food outlets. Part of the business involves distribution of frozen foods and therefore required cold storage facilities.

Main Issues

The main issues to consider in this case are:

- Principle of Development
- Residential Amenity
- Highway Safety

Principle of Development

The site lies within an established industrial estate, and designated employment area, having a range of business uses. The industrial estate was first developed in the early 1960's for B1 light industrial uses.

B1 uses are defined in the Town and Country Planning (Use Classes) Order 1987 (as amended) as *"being a use which can be carried out in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit."* Uses within this category can generally co-exist with residential uses without harm to residential amenity.

In terms of the adopted development plan, BDP14.2 states that *"Proposals for the expansion, consolidation or extension to existing commercial and industrial uses in non Green Belt will need to **ensure the scale and nature of the activity is appropriate for the area in which it is located.**"* (my emphasis)

Whilst situated within a designated employment area, the acceptability of any proposal in planning terms must assess the impact of the proposed use in relation to its particular context and relationship to adjacent land uses.

Residential Amenity

Policy BDP1 part 1.4 criterion 'e' states that in considering all proposals for development in Bromsgrove District regard will be had to the "Compatibility with adjoining uses and the impact on residential amenity;"

Noise

Policy BDP19 criterion 't' states that

"Development proposals should maximise the distance between noise sources (for example motorways) and noise sensitive uses (such as residential), whilst also taking into account the implications of the existing night time use of the locality;"

Policy BDP19 criterion 'q' states that *"The Council will deliver high quality people focused space through: Ensuring development incorporates sufficient, appropriate soft landscaping and measures to reduce the potential impact of pollution (air, noise, vibration, light, water) to occupants, wildlife and the environment;"*

Paragraph 6.2.14 of the BDC HQD SPD states that

"The scale, nature and frequency of vehicles that service industrial businesses can be a major source of conflict with neighbouring activities, including other industrial uses. The design objective is to manage noise, disturbance and potential danger from deliveries, servicing and storage in order to reduce the impact on neighbours, the natural environment and the general appearance of the area. The best place for this to occur is behind frontage buildings, or to the rear of the main building."

Paragraph 6.2.16 goes onto qualify that "The location of the servicing areas, routes in and out of the site and location of mitigation measures combined should reduce the impact of noise or any detrimental effect on air quality."

The application proposal utilises an existing building whose lawful use falls within Class B1 (light industrial use). The configuration of the building which occupies almost all of the plot width, has a rear yard accessed via a narrow 3 metre wide access abutting the rear gardens of residential properties (no.s 54-68 evens) fronting Richmond Road. The rear elevations of those dwellings are situated approximately 20 metres from the boundary. There is no alternative access option, so delivery vehicles pass in close proximity to the rear garden boundaries.

The acquisition by the applicant of further land to the rear (formerly a car park for the adjacent premises at No.28) has compounded the impact of the use of this area and consequence disturbance to neighbouring properties.

The hours of operation commencing work at 07:00am when some neighbouring residents are still in bed does not adequately reflect the predominately residential context of the site. Similarly, the proposal makes no attempt to mitigate the impact of noise from activity in the yard with loading and unloading which inevitably generates noise from staff, lorry engines, refrigeration units and fork lift truck reversing alarms.

Air Pollution

Policy BDP1 part 1.4 criterion 'b' states that in considering all proposals for development in Bromsgrove District regard will be had to -

"Any implications for air quality in the District and proposed mitigation measures;"

Similarly Policy BDP19 criterion 's' states that -

"In relation to air quality all new developments with a floor space greater than 1000sqm or 0.5 hectare or residential developments of 10 or more units should not increase nitrogen dioxide (NO₂), particulate matter (PM₁₀) and carbon dioxide (CO₂) emissions from transport and should be accompanied by an assessment of their likely impact of the development on local air quality and comply with current best practice guidance"

The application is not accompanied by any assessment of the impact upon air quality despite the fact that the resultant floor area of the premises is 2100 sqm.

Privacy

The cold store contains no windows and the external arrangement of the principal building has not changed. Some respondents have suggested that the relative height of lorries has afforded overlooking from cabs and tailgates over the height of rear boundary fences.

Massing

Permitted Development Rights allow extensions to industrial buildings or warehouses up to 200sqm in floor area and 5 metres high where within 10 metres of any boundary (without the need for planning permission) These limits are not hard limits, so it does not follow that any building which exceeds those limits is automatically unacceptable. The limits apply only to what can be undertaken without planning permission, but demonstrate that a building of similar, albeit smaller scale could be erected in the same position without requiring planning permission.

Whilst the building can be seen from the rear of residential properties on Richmond Road and Barrington Road, it sits more than 15 metres away from the common boundary and some further 20 metres away from the principal windows of those properties and is seen against the backdrop of the host building which is higher. The cold store has no unacceptably adverse impact upon amenity in terms of its height, impact upon sunlight or its visual appearance to the extent that would warrant refusal on those grounds.

A number of respondents have made reference to pallet storage to the rear which had been stacked above the heights of boundary fencing and presented a fire and security risk. This is an issue which could be controlled via condition.

Mitigation

In considering whether the impact upon residential amenity could be mitigated, I have had regard to whether the addition of boundary treatment might overcome these objections. Whilst an acoustic fence might mitigate some noise and overlooking; in order to be effective such a feature would need to exceed the height of a conventional garden fence to the extent that it could form a dominant and overbearing feature. The industrial estate and units were not designed for modern B8 storage and distribution requirements and the context of the unit situated next to residential dwellings means such a use is incompatible.

Imposition of more restrictive hours of working and deliveries condition is unlikely to be effective when the applicant has confirmed that there is a presence on site overnight to “check that the refrigerators plant and other equipment are in working order and no deliveries or distribution are undertaken out of the hours”

Highway Safety

Policy BDP16 part 1 states *“Development should comply with the Worcestershire County Council’s Transport policies, design guide and car parking standards, incorporate safe and convenient access and be well related to the wider transport network.”*

There is no objection from the Highway Authority in relation to highway safety. Some respondents have made comments about damage to property and vehicles being allegedly attributed to vehicles associated with the site. This is however anecdotal.

Visual Impact

Policy BDP1 part 1.4 criterion ‘f’ states that “In considering all proposals for development in Bromsgrove District regard will be had to the following: The impact on visual amenity; Policy BDP19 criterion ‘e’ states that -“The Council will deliver high quality people focused space through: Ensuring development enhances the character and distinctiveness of the local area;”

The cold store is approximately 6 metres high but is situated over 15 metres from the respective rear boundaries of properties on both Richmond Road and Barrington Road. Albeit the building might be glimpsed briefly between residential properties on Richmond Road and Barrington Road, it is not generally apparent from those public vantage point to the degree it results in visual intrusion or impacts upon the character and distinctiveness of the local area.

Other issues

A number of the respondents have made reference to vehicles breaching the no waiting restriction for vehicles exceeding 7.5 tonnes between the hours of Midnight and 7am and 8pm to midnight and no waiting on Saturday or Sunday at any time. A no waiting sign generally allows a driver to briefly stop to allow a passenger to exit or enter the vehicle, but any longer periods may be deemed as waiting. The effect of the sign is limited to vehicles waiting / parking on the ‘public highway’ (including the carriageway, pavement, highway verge) rather than serving as an access restriction, so does not preclude access via that road to the premises during those hours, where a vehicle can pull off the highway and enter private land. Responsibility for enforcement of those restrictions does not rest

with the Local Planning Authority but rather the Parking Services Unit as a civil-enforcement matter through fixed penalty notices. In so far as such breaches may be attributable to the vehicles associated with the business for which retrospective permission is sought.

Some respondents have referenced the absence of a tree survey having noted comments made in respect of an earlier pre-application enquiry which related to the site (for a different development proposal) which is not analogous to the application before members. The cold store is set off the boundary and outside the root protection area of trees situated within the private gardens of surrounding properties. The use and development for which permission is sought therefore has no impact upon trees to the extent that the preparation of such a survey would be reasonable or of utility when considering the impacts of the development proposed.

Conclusion

The application proposes a business use on an industrial estate, but one which was not designed or intended for intensive storage and distribution purposes, being flanked on 3 sides by residential development. The fact that this site is flanked on two sides by residential development and the access to its rear yard abuts the gardens of residential properties, compounds the harm to amenity arising as a consequence of activity associated with a storage and distribution use. I conclude that the use is not compatible with adjacent residential uses and planning conditions would not provide adequate mitigation to the negative impacts of the use.

RECOMMENDATION: That planning permission be Refused

Reasons for Refusal

1. The application fails to assess and propose any measures which seek to mitigate adverse impacts in terms of noise, fume and light pollution arising as a consequence of the B8 use, and demonstrate that such mitigation measures would not themselves have an adverse impact upon the residential amenity enjoyed by the occupiers of neighbouring properties. The proposal is therefore contrary to Policies BDP1, BDP14 and BDP19 of the Bromsgrove District Plan.
2. Notwithstanding Reason 1, the proposed B8 use would; by reason of its operational parameters, the proximity of its service yard, cold store, and associated access, to neighbouring dwellings and their associated private gardens in Richmond Road and Barrington Road; constitute an incompatible use and have a demonstrably adverse impact upon the residential amenity enjoyed by the occupiers of those properties in terms of external noise and fumes arising from vehicles and refrigeration units, and associated disturbance from loading and unloading contrary to Policies BDP1, BDP14 and BDP19 of the Bromsgrove District Plan.

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