

**TITLE OF REPORT:** Decisions made in application to modify conditions relating to construction operational hours.

**REPORT OF:** Anneliese Hutchinson, Service Director, Development, Transport and Public Protection

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## **1.0 Purpose of the Report**

1.1 To update Planning and Development Committee about decisions made under new provisions introduced by the Business and Planning Act 2020.

## **2.0 Background**

2.1 On 22nd July 2020, the Business and Planning Act 2020 was given royal assent and enacted in law in England and Wales. Section 16 of the Act (modification of conditions relating to construction working hours) introduces additional sections to the Town and Country Planning Act 1990 (Sections 74B-D). These new sections of the Town and Country Act provide a new temporary mechanism that allows applicants to apply to modify conditions attached to planning permissions that control construction working hours.

2.2 The aim of this is to allow those working on construction sites greater flexibility to support safe working in line with social distancing guidance on construction and other outdoor work in the face of the ongoing COVID19 pandemic.

2.3 The new legislation gives Local Planning Authorities 14 days in which to decide applications to modify conditions on construction working hours or they automatically gain deemed consent. As these provisions are new, they are not specifically dealt with in the Council's constitution. The result is that they may be dealt with under the general delegation to the Service Director, Development, Transport and Public Protection to determine applications, but subject to the usual triggers requiring determination by the Planning and Development Committee. Given that Planning and Development Committee only meets on a three-weekly basis, this gives rise to the possibility that an application for relaxation of construction working hours might benefit from deemed consent before it can be brought to the Committee for a decision.

2.4 The application detailed at Appendix 2 would have benefited from deemed consent before it could be determined by the Committee. The decision on this application has therefore been made under the emergency powers set out in the General Delegations to Managers at Part 3, Annex 1A of the Council's Constitution which allows:

- Where it is impracticable to obtain authorisation from the body exercising the function and subject to the action being reported (for information) to the next convenient meeting of that body, take necessary urgent action, within legal powers, in respect of matters otherwise reserved to the Council, or any other body of the Council.

2.5 The use of these emergency powers may be necessary for any future decisions on any applications made under these regulations until the Constitution has been amended.

2.6 This report is for information only and sets out the planning considerations for the decision that was made to grant the temporary modification of the conditions on 2 October 2020 for this case. A copy of the report for this case is attached at Appendix 2.

### **3.0 Recommendation**

3.1 It is recommended that the Committee note this report for information.

**1. FINANCIAL IMPLICATIONS**

Nil.

**2. RISK MANAGEMENT IMPLICATIONS**

Nil.

**3. HUMAN RESOURCES IMPLICATIONS**

Nil

**4. EQUALITY AND DIVERSITY IMPLICATIONS**

Nil

**5. CRIME AND DISORDER IMPLICATIONS**

Nil

**6. SUSTAINABILITY IMPLICATIONS**

Nil.

**7. HUMAN RIGHTS IMPLICATIONS**

Nil.

**8. WARD IMPLICATIONS**

Monitoring : Various wards.

**9. BACKGROUND INFORMATION**

Application reference DC/18/00574/S74B

**APPENDIX 2 Officers Report**

**DELEGATED REPORT for DC/18/00574/S74B**

## DESCRIPTION OF PROPOSAL

Request to extend construction working hours previously approved under condition 23 of planning approval DC/18/00574/FUL for phase 3 plot B of the development to 07:00 to 21:00 Mondays to Fridays, 08:00 to 14:00 Saturdays, no construction to take place on Sundays, Bank or Public Holidays.

## SITE LOCATION

Follingsby Park South  
Follingsby Lane  
Gateshead  
NE10 8YA

## RELEVANT PLANNING PERMISSION:

DC/18/00584/FUL – Variation of condition 1 (approved drawings) of planning permission DC/18/00237/OUT to incorporate the adjacent South Follingsby Farm site into the wider Follingsby International Enterprise Park development area by extending the green infrastructure and built development zones further west and removing access 1 and repositioning accesses 2 -5 and the associated bus stops and crossing along Follingsby Lane (Submitted with a Supplementary Environmental Statement).

APPROVED on 5 April 2019.

## PLANNING ASSESSMENT

On 22nd July 2020, the Business and Planning Act 2020 was given royal ascent and enacted in law in England and Wales. Section 16 of the Act (modification of conditions relating to construction working hours) comprises additional sections to the Town and Country Planning Act 1990 (Sections 74B-D). This section of the act provides a new temporary mechanism that allows applicants to modify conditions attached to planning permissions that control construction working hours. The aim of this is to allow those working on construction sites greater flexibility to support safe working in line with social distancing guidance on construction and other outdoor work in the face of the ongoing COVID19 pandemic.

The applicant has requested under this part of the Act to temporarily modify the construction working hours for phase 3 (plot B) of the development, that are imposed on the development site under application DC/18/00854/FUL (condition 23). Two warehouse buildings are currently being constructed on the development site. Phase 2 (plot A) of the development relates to the warehouse building on the western side of the site. Phase 3 (plot B) of the development relates to the warehouse building on the eastern side of the site.

Condition 23 of planning permission DC/18/00574/FUL states :

*All external works in connection with the construction of the development, including deliveries to the site, shall be carried out only between*

*0700 hours and 1830 hours on Mondays to Fridays,  
0800 hours and 1400 hours on Saturdays and  
at no time on Sundays, Bank Holidays or Public Holidays.*

*The operational noise levels from the site at free field locations representing nearby sensitive properties shall not exceed absolute levels of LAeq (1 hour) 45 dB during the*

*daytime hours of 0700 - 2300 and LAeq ( 5 minute) 40 dB or LAFmax of 55dB (15 minute period) during the night time hours of 2300-0700.*

*Reason*

*To safeguard the amenities of nearby residents in accordance with the NPPF, saved policies DC1(h) and DC2 of the Unitary Development Plan and policy CS14 of the Core Strategy and Urban Core Plan for Gateshead and Newcastle upon Tyne.*

The submitted statement proposes to temporarily modify the hours of construction for phase 3 (plot B) of the development to :

*07:00 to 21:00 Mondays to Fridays  
0800 hours and 1400 hours on Saturdays and  
at no time on Sundays, Bank Holidays or Public Holidays.*

The proposed extension of construction hours would only apply between Mondays and Fridays. No change is proposed to the existing approved construction hours as set out in condition 23 for Saturdays and Sundays, Bank Holidays and Public Holidays.

It is proposed that the temporary extended construction hours would be in effect for the entire duration of the construction programme for phase 3 (plot B) of the development, until Friday 8<sup>th</sup> January 2021 (excluding a two week Christmas break between 18 December 2020 and 3 January 2021).

The submitted statement explains that during the construction of plot B, the daily number of site operatives will reach around 200 at its peak. Given the current Covid-19 pandemic, government guidelines have been updated to reflect the need to maintain a safe distance between operatives whilst on site, which limits the efficiency in which routine programme tasks can be completed. In addition, the construction team will be required to adhere to the following time-consuming control measures :

- Covid 19 questionnaire and temperature check on entry
- Extended inductions due to density restrictions
- Extended task durations due to working area density restrictions
- Staggered breaks due to density restrictions within welfare facilities
- Limited welfare due to deep cleaning routine
- Social distancing toolbox talks
- Material suppliers requiring later time slots due to skeleton staffing.

The statement explains that the above measures risks delays to the overall programme, and potential disturbance to residents for an extended period. By allowing an extension to the working hours set out by condition 23, the construction team will be able to maintain a full working day, whilst at the same time incorporating the above measures, importantly adhering to social distancing rules. Extending the working hours will help mitigate the risk of the overall programme extending.

The modification to the condition would result in an additional two and a half hours of construction per day during the week Mondays to Fridays, for 3 months.

For Local Planning Authorities as the decision makers, Section 74C of the Act states:

(1) If a person makes an application in accordance with section 74B to a local planning authority, the authority may by notice in writing to the person—

- (a) modify the condition or approved document in accordance with the application,
- (b) refuse to modify the condition or approved document, or
- (c) make a determination about any of the matters specified in subsection (2)

(2) Those matters are—

- (a) the modifications to be made to the condition or approved document, so far as it relates to the times during which construction activities are permitted to be carried out,
- (b) the date from which the modifications to the condition or approved document are to take effect, and
- (c) the date at the end of which the modifications to the condition or approved document are to cease to have effect.

### **Consultation responses**

Ward councillors have been consulted on this application. All 3 ward councillors have objected to the proposed extension of the construction hours, particularly before 8am, as they have been inundated with complaints about the loud banging from the pile drivers on site.

The current approved working hours specified under condition 23 allows construction works to start on site from 7am on Mondays to Fridays. The request to temporarily extend the construction works therefore does not include working before 8am, as this is already allowed Mondays to Fridays.

Council officers have contacted the developer regarding the recent noise complaints about the construction works taking place on site. It is likely that the complaints recently received relate to the piling activity on Plot B, which was taking place for two weeks (Tuesday 15 September – Friday 25 September 2020).

The piling activity has now been completed, so the worst of the noise disruption from the construction works is over. The next stage within the build programme on Plot B is to erect the steelwork for a period of 3 weeks starting on Monday 28 September 2020. No noise complaints were made for the steel work on plot A (the warehouse building on the western side of the site). It is therefore unlikely that the steelwork for plot B will cause any noise disruption.

The developer has also provided contact details for the construction managers of the two building sites, should Councillors or local residents have any questions or further complaints about the construction works.

### **Consideration of the amendments.**

The applicant's statement specifies in section 4, that in order to mitigate any impacts, the following control measures will be implemented by the construction team :

- Acoustic panels will be erected around slab pours to contain the activity
- Daily routine acoustic monitoring will be rolled over into the additional construction hours
- No reversing beacons or alarms after 18:30
- No vibratory rollers after 18:30
- No piling activities after 18:30
- No power tools after 18:30 (e.g steel erectors will use spanners)

The nearest residential properties to this development are a considerable distance away. The nearest house is at the Washington Riding Centre, to the south of the site, which is just over 400 metres away in Sunderland. There are a group of dwellings to the east of the site, which are over 600 metres away in South Tyneside. The nearest houses in Gateshead are situated to the west of the site, along Leam Lane, at a distance of over 1.1 km's away.

The original planning application was EIA development and was submitted with an Environmental Statement (ES). The developer's project EIA consultant has reviewed the proposed temporary extension of construction hours and it is not considered to alter the previous EIA assessments. Council officers agree with this statement.

The proposed temporary extension of construction hours has also been reviewed from an ecological perspective and is not considered to have any impact on the completed phase 1 habitats and ecology on the wider development site.

It is therefore considered that this temporary amendment to condition 23 for phase 3 (plot B) of the development, would enable the developer to carry out internal and external building works whilst complying with the increased measures in line with social distancing guidance on construction and other outdoor work in the face of the ongoing COVID19 pandemic, whilst ensuring that the amenities of the nearby occupants are protected.

As such, no objection is raised to the temporary modification of condition 23 attached to planning application DC/18/00574/FUL for phase 3 (plot B) of the development, until 8 January 2021, subject to the adherence of the noise mitigation measures specified in section 4 of the application statement dated 22 September 2020.

**Recommendation:                    Approve the Modification as submitted**

INFORMATIVE

This consent applies only to condition 23 of planning permission DC/18/00574/FUL for phase 3 (plot B) of the development until 8<sup>th</sup> January 2021. All other conditions relating to this application are retained and still apply.