



**REPORT of
DIRECTOR OF SERVICE DELIVERY**

to
**SOUTH EASTERN AREA PLANNING COMMITTEE
8 DECEMBER 2021**

Application Number	21/00745/VAR
Location	Land Rear Of Red Lyons Farm, Burnham Road, Latchingdon, Essex
Proposal	Variation of condition 2 on approved application 14/00418/FUL (Change of use of unit 10 from a restricted B8 use (Household Storage) to B1) Change the permitted working to 6:00 until 20:00 Monday to Saturday.
Applicant	Mr J Sinclair
Agent	Miss Catrin Davies - Warner Planning
Target Decision Date	02.11.2021 (EoT agreed: 10.12.2021)
Case Officer	Anna Tastsoglou
Parish	LATCHINGDON
Reason for Referral to the Committee / Council	Member Call In Councillor R G Boyce has called in the application for the following policy reason: LDP policy E4 (Agricultural and rural diversification)

1. **RECOMMENDATION**

APPROVE subject to the conditions (as detailed in Section 8 of this report).

2. **SITE MAP**

Please see below.

South Eastern Area Committee
21/00745/VAR



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Maldon District Council 100018588 2014



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Scale:	1:1,000
Organisation:	Maldon District Council
Department:	Department
Comments:	Not Set
Date:	26/11/2021
MSA Number:	100018588

3. SUMMARY

3.1 **Proposal / brief overview, including any relevant background information**

- 3.1.1 The application site is located on the south side of Burnham Road, Latchingdon, outside the settlement boundary of Latchingdon. Red Lyons Farm comprises a mixed-use business park which is an undesignated employment site. Application 14/00418/FUL relates to unit 10, which is located centrally and to the west of the business park. This is a pitched roofed, two storey rectangular building, of a typical utilitarian character, finished painted brickwork and coated steel cladding. This building benefits from permission for it to be used for purposes falling within previous use class B1 (b) and (c), current E(g) use class (ii) and (iii) (research and development/light industry).
- 3.1.2 The existing business centre is occupied by a number of buildings of commercial/industrial nature, predominantly of single storey height, with associated large areas of hard standing, typical to the use of the site. Most of the units are of a small footprint and vary in terms of external appearance and finishing materials.
- 3.1.3 There are residential properties adjacent to the industrial estate, along Burnham Road. To the west is a substantial detached property known as Red Lyons Farm, whilst to the east is a further residential dwelling known as Red Lyons Lodge. The area beyond the subject site and adjoining houses is predominantly farmland, with the settlement of Latchingdon being located to the north-west of the subject site.

Description of Proposal

- 3.1.4 Planning permission is sought for the variation of condition 2 on approved application 14/00418/FUL (Change of use of unit 10 from a restricted B8 use (Household Storage) to B1) to alter the permitted working to 6:00 until 20:00 Monday to Saturday.
- 3.1.5 Planning permission was granted on 8 October 2014 for a retrospective planning application to change the use of unit 10 from B8 to B1 (current E(g) use class). Condition 2 imposed to this permission requires the following:

The use hereby permitted shall only be undertaken between 08:00 hours and 18:00 hours on weekdays and between 09:00 hours and 13:00 hours on Saturdays and not at any time on Sundays and Public Holidays.

REASON: In order to ensure the appropriate use of the site in accordance with policy BE1 of the adopted Maldon District Replacement Local Plan and policy D1 of the Maldon District Submission Local Development Plan.

- 3.1.6 The current application seeks to vary this condition to extend the permitted working hours to 6:00 until 20:00 Monday to Saturday. Similar applications have also been submitted for the other units within the business park (see relevant planning history below). It has been advised that the purpose of this alteration in the working hours is to allow users access the site, undertake office work and allow collection and deliveries beyond the currently permitted working hours. It is stated that *'the tenant of unit 10 would like to expand the operational hours to ensure the business works more efficiently and effectively. The extended hours would allow the business to operate on Saturdays and increase its revenue'*.

- 3.1.7 The agent notes that planning permission was granted for a currently unbuilt extension to the business park where operating hours would be limited to 7:30 and 18:00 Monday and Friday (planning reference 18/01387/OUT, overturned at South Eastern Area Planning Committee in April 2019) and that users of the extended area would need to drive through the existing business park from Burnham Road. That outline planning permission was for the 'Erection of buildings to be used as mixed B1 (business) and B8 (storage or distribution) use, demolition of existing units 1 and 2 and relocation of existing access' and was granted in April 2019.
- 3.1.8 In support of the proposal, the applicant's agent also points out that permitted development rights for new buildings within an industrial site allow businesses to operate between 6:30- 19:00 (Schedule 2, Part 7, Class H of the General Permitted development order 2015 as amended). Class H relates to the '*erection, extension or alteration of an industrial building or a warehouse*'. One of the conditions of the development permitted by this Class is that no building as erected, extended or altered is used to provide employee facilities between 7.00pm and 6.30am, for employees other than those present at the premises of the undertaking for the purpose of their employment. "Employee facilities" means social, care or recreational facilities provided for employees of the undertaking, including crèche facilities provided for the children of such employees.
- 3.1.9 In addition, the applicant's agent also states that the change will allow many of the small businesses to trade internationally with the ability to have office videocalls, etc. at different times and that several of the businesses are unable to fully undertake their administration or catch up with work on a weekend which this change will allow.
- 3.1.10 A letter of support from the current tenant of the application site has been provided. This building is occupied by a tyre centre. It is stated that the extended working hours would assist the business financially and would support local employment.
- 3.1.11 The application is accompanied by an '*Assessment of potential noise impact from proposed additional operating hours*' (July 2021).

3.2 Conclusion

- 3.2.1 Having taken all material planning considerations into account, it is not considered that the proposed extension to the operating hours would cause harm to the amenity of any existing residents. This has been supported by the Council's Environmental Health Team. No concerns in relation to highway safety, access and parking are raised. As a result, it is recommended that the operating hours are amended as proposed.

4. MAIN RELEVANT POLICIES

Members' attention is drawn to the list of background papers attached to the agenda.

4.1 National Planning Policy Framework 2021 including paragraphs:

- 7 Sustainable development
- 8 Three objectives of sustainable development
- 10-12 Presumption in favour of sustainable development
- 38 Decision-making
- 47-50 Determining applications
- 81-85 Building a strong, competitive economy
- 92-103 Promoting healthy and safe communities

- 104-109 Promoting sustainable transport
- 119-123 Making effective use of land

4.2 Maldon District Local Development Plan (2014 – 2029) approved by the Secretary of State:

- S1 Sustainable Development
- S8 Settlement Boundaries and the Countryside
- D1 Design Quality and Built Environment
- D2 Climate Change & Environmental Impact of New Development
- E1 Employment
- T2 Accessibility

4.3 Relevant Planning Guidance / Documents:

- National Planning Policy Framework (NPPF)
- Maldon District Design Guide SPD (MDDG) (2017)
- Maldon District Vehicle Parking Standards SPD (VPS)

5. MAIN CONSIDERATIONS

5.1 The main issue which requires consideration as part of the assessment of the proposal is the impact of the proposed extended operating hours on the amenity of the nearby residents. The matter of highway safety/access/parking is also considered below. There were other material planning considerations which were relevant to the assessment of the original proposal but, due to the nature of the current application, they do not require re-assessment.

5.2 Impact on Residential Amenity

- 5.2.1** The basis of policy D1 of the approved Local Development Plan (LDP) seeks to ensure that development will protect the amenity of its surrounding areas taking into account privacy, overlooking, outlook, noise, smell, light, visual impact, pollution, daylight and sunlight. This is also supported by section C07 of the MDDG (2017).
- 5.2.2** Policy D2 requires that all development must minimise its impact on the environment including minimising all forms of possible pollution including air, land, water, odour, noise and light. Any detrimental impacts and potential risks to the human and natural environment will need to be adequately addressed by appropriate avoidance, alleviation and mitigation measures.
- 5.2.3** There are existing residential dwellings to the northeast and northwest of the site, known as Red Lyons Farm and Red Lyons Lodge.
- 5.2.4** The proposal would extend the operating hours of unit 10 for an additional two hours in the morning Monday to Friday and two additional hours in the evenings. An additional total of ten hours (three in the morning and seven in the afternoon/evening) are proposed on Saturdays.
- 5.2.5** It is worth noting that the use of the land is also subject to the following restrictive condition:

CONDITION 1: The premises shall only be used for industrial purposes which are defined within Classes B1 (b) and (c) of the Schedule to the Town & Country

Planning Use Classes (Amendment) Order 2005 (or in any provision equivalent to that Class in any statutory instrument revoking or re-enacting that Order) and for no other purpose.

Reason: In order to ensure the appropriate use of the building in accordance with the details submitted and ensure the protection of neighbouring amenity in accordance with policy BE1 of the adopted Maldon District Local Plan and policy D1 of the Maldon District Submission Local Development Plan.

CONDITION 3: All machinery and equipment used in association with the development hereby approved shall only be used or operated within the building.

Reason: In the interest of maintaining the character and appearance and amenities of the area

CONDITION 4: Goods, materials, plant, machinery, skips, containers, packaging or other similar items shall only be stored or kept within the building at all times.

Reason: In order to ensure the appropriate use of the site and protection of the amenity of the area in accordance with policy BE1 of the adopted Maldon District Local Plan and policy D1 of the Maldon District Submission Local Development Plan.

CONDITION 5: No extraction or ventilation equipment, vents, air conditioning units or similar plant equipment shall be installed and fitted to any external part of the building or operated unless and until a scheme has been submitted to and approved in writing by the local planning authority. The scheme as approved shall be installed and utilised in accordance with the approved details and retained as such thereafter.

Reason: In order to ensure the appropriate use of the site and protection of the amenity of the area in accordance with policy BE1 of the adopted Maldon District Local Plan and policy D1 of the Maldon District Submission Local Development Plan.

CONDITION 6: No means of external illumination of the site shall be installed unless details are first submitted to and approved in writing by the local planning authority. Details shall include the luminance and spread of light and the design and specification of the light fittings. The external illumination shall be fitted at the site in accordance with the approved details and retained as such thereafter. There shall be no other lighting of the external areas of the site unless otherwise agreed in writing by the local planning authority.

Reason: In order to ensure appropriate lighting is provided at the site and in order to prevent any undue disturbance being caused to nearby residential occupiers or to the amenity of the locality in accordance with policy BE1 of the adopted Maldon District Local Plan and policy D1 of the Maldon District Submission Local Development Plan.

5.2.6 Condition 1 restricts the use of building to industrial purposes falling within Classes B1 (b) and (c), current use classes E(g)(ii) and E(g)(iii). This is to protect residential amenity. This condition is still considered relevant and necessary to be imposed. Conditions 3 and 4, which restrict the position of equipment, machinery and materials solely within the building are also considered necessary to secure residential amenity and therefore, are imposed to this permission. Conditions 5 and 6 restrict the installation of extraction equipment and external illumination. Whilst an extraction system would be unlikely to be necessary to be installed on the unit, due to the nature of the use, it is considered reasonable these conditions be imposed to this permission to minimise potential additional impact on residential amenity caused by noise and vibration.

5.2.7 The Environmental Health Specialist was consulted and raised no objections to the proposal, taking into account the Noise Assessment by Sharps Acoustics, dated 21.07.2021, submitted with the application. It has been advised that the proposed changes to the operating hours will not result in a significant intensification of use,

more vehicle movements/ deliveries or increased number of units in the same way as the proposal the subject of application reference 18/01387/OUT. It has been stated that the acoustic measurements essentially demonstrate that noise from the operation of the business park does not have an impact on the measured noise level at the closest noise sensitive receptor, as the noise environment is dominated by road traffic on Burnham Road. It does however show that the arrival of vehicles at, and the opening of the gate (between 6.00am and 6.15am) is likely to have an adverse impact. Therefore, mitigation has been recommended in the form of an electric gate which, provided it is suitably specified, should reduce the overall noise level from vehicles arriving at the site to an acceptable level. This will be secured by the imposition of an appropriately worded condition. The Specialist has also confirmed that there has been no complaints of noise from operational activities on the site since 2013 and that the one complaint relating to recreational quad bike use received in February 2021 was dealt with informally through the new owners of the site.

5.2.8 It is noted that planning applications have also been submitted to similarly vary the operating hours of other units within the business park, which have already been determined and approved (refer to relevant planning history above). These are applications references 21/00746/VAR, 21/00747/VAR, 21/00748/VAR and 21/00799/VAR which relate to units 1, 2, 6 and 15 and these decisions are a material consideration in the determination of this application. Furthermore, it should be noted that the Environmental Health Specialist has not raised an objection to the extended operating hours proposed as part of application references 21/00745/VAR, 21/00746/VAR, 21/00747/VAR, 21/00748/VAR and 21/00799/VAR and has clearly taken into account the potentially cumulative impact of the extended operating hours for all units relevant to these applications.

5.2.9 As noted above, this permission relates to unit 10 and for the reasons explained above and subject to conditions, it is not considered that allowing the extended operating hours would result in an unacceptable impact on the residential amenity of the nearby residents.

5.3 Access, Parking and Highway Safety

5.3.1 Policy T2 aims to create and maintain an accessible environment, requiring development proposal, inter alia, to sufficient parking facilities having regard to the Council's adopted parking standards. Similarly, policy D1 of the approved LDP seeks to include safe and secure vehicle and cycle parking having regard to the Council's adopted parking standards and maximise connectivity within the development and to the surrounding areas including the provision of high quality and safe pedestrian, cycle and, where appropriate, horse riding routes.

5.3.2 The proposal would not alter the vehicular access to the site or the off-street parking provision and would not increase the number of vehicles accessing the site. Therefore, no objection is raised in relation to highway safety, access and parking.

6. ANY RELEVANT SITE HISTORY

6.1 The relevant planning history is set out below:

- **21/00799/VAR** - Variation of condition 4 on approved planning permission 02/01212/FUL (Continued use of land and buildings for business uses) to alter working hours to 06.00 hours - 20.00 hours Monday to Saturday. [Relates to Unit 2 only] – Approved

- **21/00747/VAR** - Variation of condition 1 on approved application 14/00417/FUL (Retrospective permission for the change of use of agricultural land to scaffolding storage area, and associated buildings) to alter working hours to 06.00 hours - 20.00 hours Monday to Saturday. [Unit 15] – Approved
- **21/00746/VAR** - Variation of condition 4 (operating hours) of approved application 07/00481/FUL (Change of use of unit 1 from B8 to B1(c)) [Unit 1] – Approved
- **21/00748/VAR** - Variation of condition 4 on approved application 06/01238/FUL (Proposed Workshops) to alter working hours to 06.00 hours - 20.00 hours Monday to Saturday [Unit 6] – Approved
- **18/01387/OUT** - Erection of buildings to be used as mixed B1 (business) and B8 (storage or distribution) use, demolition of existing units 1 and 2 and relocation of existing access. – Approved
- **14/00418/FUL** - Change of use of unit 10 from a restricted B8 use (Household Storage) to B1 – Approved

7. **CONSULTATIONS AND REPRESENTATIONS RECEIVED**

7.1 **Representations received from Parish / Town Councils**

Name of Parish / Town Council	Comment	Officer Response
Latchingdon Parish Council	No comment received at the time of writing the report	N/A

7.2 **Internal Consultees**

Name of Internal Consultee	Comment	Officer Response
Environmental Health Team	No objections. The Environmental Health Specialist is satisfied that there should be no adverse impacts from noise caused by the proposed changes in opening hours provided that the mitigation recommended is carried out.	Noted and addressed in section 5.2 of the report.

7.3 **Representations received from Interested Parties**

7.3.1 Representations received objecting to the application:

3 letters of objection have been received.

Objection comment	Officer response
Increased traffic and noise.	Noted – refer to sections 5.2 and 5.3 below
Unacceptable noise and	Noted – refer to section 5.2 below

disturbance.	
No neighbour notification.	It should be noted that the Council has fulfilled its statutory publicity duties by posting a site notice adjacent to the site allowing 21 days for interested parties to raise their comments.
Materials are sorted outside the unit.	This is secured by condition. Should materials are stored outside the building against the conditions imposed, this matter should be raised with the Council's Enforcement Team.
Unacceptable noise levels generated from the existing use and from other activities.	The building benefits from permission for a use class that is considered acceptable within residential areas. If the unit is operating outside the restrictive use class that is permitted on site, this should be raised with the Council's Enforcement Team. Any other concerns in relation to statutory nuisance generated from the use of the site should be raised with the Council's Environmental Health Team. Other activities, such as driving of bikes is not relevant to the purposes of the current application.
The unit is used as for vehicle repairs.	Should the use of the unit fall outside the permitted use classes (E(g)(ii) Research and development of products or processes or E(g)(iii) Industrial processes) then this is a matter to be raised within the Council's Enforcement Team.
Concerns are raised regarding the chance of use of the building.	It should be noted that this permission does not seek to vary the use of unit 10 but only the operating hours.
The tenants already breach the permitted working hours.	Noted – any breach of condition is a matter to be investigated and assessed by the Council's Enforcement Team and not the purpose of the current application.
The noise report does not relate to the use of the unit but the vehicle movements in relation to this unit.	It should be noted that the noise survey carried out on site was between 10.45 hours on 1 st July and 10.15 hours on 7 th July. Measurements were taken continuously over day and night periods using a microphone fitted within the site. This recorded noise levels generated within the site, including those from the existing businesses and vehicle movement.

8. **PROPOSED CONDITIONS**

- 1 Unit 10 shall only be used for purposes falling within use Classes E(g)(ii) and E(g)(iii) of Schedule 2 of the Use Classes Order 1987 (as amended) and the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or in any provision equivalent to that Class in any statutory instrument revoking or re-enacting these Orders) and for no other purpose.

- REASON: In order to ensure the appropriate use of the building in accordance with the details submitted and ensure the protection of neighbouring amenity in accordance with policies D1 and D2 of the approved Maldon District Local Development Plan.
- 2 The use hereby permitted shall only be undertaken between 06.00 hours and 20.00 hours Monday to Saturday and not at all on Sundays, Bank or Public Holidays.
- REASON: In order to ensure the appropriate use of the site in accordance with policies D1 and D2 of the approved Maldon District Local Development Plan.
- 3 All machinery and equipment used in association with the development hereby approved shall only be used or operated within the building.
- REASON: In order to ensure the protection of neighbouring amenity in accordance with policies D1 and D2 of the approved Maldon District Local Development Plan.
- 4 Goods, materials, plant, machinery, skips, containers, packaging or other similar items shall only be stored or kept within the building at all times.
- REASON: In order to ensure the appropriate use of the site and protection of the amenity of the area in accordance with policies D1 and D2 of the approved Maldon District Local Development Plan.
- 5 No extraction or ventilation equipment, vents, air conditioning units or similar plant equipment shall be installed and fitted to any external part of the building or operated unless and until a scheme has been submitted to and approved in writing by the local planning authority. The scheme as approved shall be installed and utilised in accordance with the approved details and retained as such thereafter.
- REASON: In order to ensure the protection of neighbouring amenity in accordance with policies D1 and D2 of the approved Maldon District Local Development Plan.
- 6 No means of external illumination of the site shall be installed unless details are first submitted to and approved in writing by the local planning authority. Details shall include the luminance and spread of light and the design and specification of the light fittings. The external illumination shall be fitted at the site in accordance with the approved details and retained as such thereafter. There shall be no other lighting of the external areas of the site unless otherwise agreed in writing by the local planning authority.
- REASON: In order to ensure appropriate lighting is provided at the site and in order to prevent any undue disturbance being caused to nearby residential occupiers or to the amenity of the locality in accordance with policies D1 and D2 of the approved Maldon District Local Development Plan.
- 7 Prior to the operation of the site during hours hereby approved, details of an automatic gate to be installed at the entrance of the business park that is activated remotely shall be submitted to and approved in writing by the local planning authority. The development shall be implemented in accordance with the approved details and be retained as such in perpetuity.
- REASON: To protect the amenity of the neighbouring properties and in order to ensure the appropriate use of the site in accordance with policies D1 and D2 of the approved Maldon District Local Development Plan.