

AMENDMENT SHEET

Planning Committee 6 February 2020

AMENDMENTS OF CONDITIONS AND REPRESENTATIONS RECEIVED

7.1 192904 – Former Severalls Hospital Site, Boxted Road, Colchester

A further representation has been received from a neighbour who had previously commented:

“I will be objecting to this based on the fact that our house is already overlooked by 550mm by the development behind us. Also the fact that no other clarification has been provided around what effect this might have on the older buildings surrounding the proposed changes (as I mentioned in my previous general comment). I am sure there is an alternative fix to the issue, albeit they may be more costly to the developer, I feel this is not a burden which should be passed down to the surrounding neighbours just so that the developer can save some pennies. There are also other issues outlined in the Thomas Wakely/Mill Rd consortium comment/letter which need addressing.

7.2 191467 – Fairfield Farm, Fordham Road, Wormingford

Application 191467 Application for removal or variation of condition following grant of planning permission, (172600)

Members of the Committee will be aware of a ‘Briefing Note’ and appendages that has been prepared by the applicant to application 191467 and circulated to members of the Planning Committee.

The following seeks to respond to the main points raised;

Accusation that there is Misrepresentation and a misunderstanding of the application by Colchester Borough Council

The officer report tries to provide a context for the proposal. It lists the relevant approvals with the conditions attached to them in some detail. The permission that seeks to be varied, (172600), is intrinsically linked to the approval that enabled longer working hours, (170266). Both were considered at the same planning committee and the condition attached to 170226, (*allowing the increase in the operation of machinery from Monday to Friday 07.00 to 18.00 and Saturdays 08.00 – 13.00 to Monday to allow 24 hr operation other than from Saturday at 22.00 to Monday at 6.00*), was subject to the extraction system as approved under planning permission 172600 and detailed on the drawings referred to in that application, being completed in its entirety. The linking of the permission is considered to be important background information, relevant to the consideration of the application. If the system approved under 172600 is not completed satisfactorily, or a variation of the condition agreed, then the ‘fall back’ position would be 121150 and the conditions attached to that.

(the officer report does however contain a typographical error and the references to the permission number in condition 1 of 170226, should read 172600 at both a) and b).

Background to the business

This is already included in the officer report under the heading, 'Principle of development'

Summary of application 191467

As stated above, under application 170226 permission was granted for production between 06:00 Monday to 22:00 Saturday. However, this permission was granted on the condition that Fairfields installed the air handling system described. An air handling unit (AHU) has been installed at Fairfields, which although not the same as in the granted permission, does comprise a condenser unit, a form of filtration and a high-level discharge. However, the frying area has not been separated from the rest of the factory as originally described. The condensing unit is also a constant water loss system which is expensive to operate. This deviance from the agreed planning condition and the continuing complaints has meant that Environmental Protection (EP) have not signed-off this condition.

The current AHU has been in operation since February 2019 and has therefore provided the opportunity to assess its effectiveness rather than rely on theoretical modelling. The report from Land Air Consulting (LAC) in support of the current system has been peer reviewed by an independent expert and it has shown considerable divergence between the modelled odour levels and the actual odour experienced by EP officers. This shows that either the air handling unit currently installed is not adequately abating the frying odour, the odour is coming from elsewhere in the building, or a combination of the two.

The applicant asserts that the changes proposed are to amend the floor plan and to make minor amendments to the visual appearance and pipework as approved of the as installed control unit. Although this is presented in a way that suggests the changes to the AHU are purely cosmetic, it is evident that this is a different system to that previously approved. The change to the layout is also significant in not providing the internal wall that would contain the operation in a smaller enclosed space.

Key facts relating to the application

With regard to Environmental Protection Officer, (EPO), email in respect of the air handling unit being '*in the spirit of what is required*', this is a 'turn of phrase' that although an AHU has been installed it is not the same, but is similar, to what was agreed. However, the frying area has not been separated. Unlike the condenser agreed in the original planning application, a constant water loss system has been installed making it very expensive to operate. The condenser relies on a lot of water passing through it to condense the steam. Fairfields have advised that they use about 10 litres an hour, which appears to be rather low. Fairfields previously advised the EPO that this system is expensive and on one occasion it was found to be turned off when complaints were received.

The EP team were also initially unaware of the high-level extraction fans which apparently were operating for approximately 50% of the operational hours and LAC have recommended the reduction of these to 25% which is reduce untreated odours to the atmosphere.

The LAC odour report concludes that the AHU is working effectively and there is no impact on residential amenity. The applicants claim that residents' complaints are exaggerated. Since the current air handling unit was installed in February 2019 the EP team has received 194 complaints from 10 households spread over a wide area, including Wormingford village, Packards Lane and Main Road. Many of the complainants live a significant distance from Fairfields

Farm, with the furthest resident living over 1000 metres away. The prevailing wind is from the south-west, which means that the wind is blowing towards residential areas the majority of the time.

On the majority of occasions when EP officers have visited the area in response to complaints the frying odour directly attributed to Fairfields Farm has been noticed at varying intensity from very faint to, on one occasion, very noticeable. It is often noticed in the road directly in front of the farm and then at increased distance downwind and is a distinctive odour. The most recent visit in response to a complaint was on the afternoon of Monday 03.02.20 and the odour was clearly noticeable approximately 1100 metres away. If the LAC conclusions are correct and the system is functioning correctly the odour should not be noticeable at that distance.

Summary

The EP team have tried to be co-operative in this matter, but with the high level of complaints being received and odours witnessed by the EP team the onus is on the applicant to determine the cause of the odours and take the required action to ensure there is no detrimental impact on the residential amenity. The peer review of the LAC report was commissioned by the council to help formulate their comments. It is now available on the Council web site and appended to this response.

The odour has not been found to be of sufficient intensity, duration or frequency at residential properties to constitute a **statutory** nuisance. However, the high number of complaints received and the 'on the ground' experience of the EP officers, frequently experiencing odour directly attributable to Fairfields over a wide area, shows that the current operation is having a detrimental impact on residential amenity in planning terms.

Letter from Birketts LLP

The letter refers to the 'fallback position' if the application is refused. It is acknowledged that both applications 170226 and 172600 are extant, however this is subject to the compliance with **all** the conditions attached to those permissions, particularly compliance with the approved plans including the internal arrangement and AHU being installed and acceptable.

The relevance of odour complaints.

The impact on the amenity of residents in the locality is a material consideration. Although the nuisance has not yet been deemed to be a statutory nuisance, it is nevertheless recognised as having an adverse impact in planning terms. For these to be dismissed as being hugely exaggerated, and unimportant is to demonstrate a lack of willingness to address these concerns. The changes to the AHU are a key part of the consideration, not simply the aesthetics as the applicant implies as being the key consideration, but the effectiveness of it in controlling odour emissions.

The report seeks to bring to the attention of the committee the relevant material considerations. It is for the decision maker to determine the weight to be attributed to these.

The letter refers to 19 out of 54 visits by EP officers recording the odour as zero. It should be noted that earlier in the year there was a concerted effort for EP officers to routinely monitor the area every working day during March and intermittently at other times, when complaints were not received, to get an overall sense of the situation. On many of these occasions the wind was blowing away from the monitoring points so no odour was noted. On other occasions the frying process may not have been taking place.

The odour intensity scale used by officers is a generic means to help describe the intensity in their own subjective opinion and has not been used following the definitions in document VD13940. When noted, even if very faint or faint, the odour has always been directly attributed to the Fairfields frying process. Given the level of complaints and experiences of officers visiting the area it is the EP opinion that the odour is having a detrimental impact on residential amenity.

Letter from LAC

There is a considerable divergence between the modelled odour predictions and the odour experienced by officers. It is the belief of the EP team that, even when modelled for the 98th percentile, the odour currently being experienced by officers and complained about is considerably stronger than that modelled and is having a detrimental impact on amenity, which, as previously discussed, is a less stringent standard than that used to substantiate a statutory nuisance.

There was a decrease in complaints received in December following the new cleaning regime, but we find that complaints typically decrease in the run-up to Christmas, when complainants are busy, and the weather is often poor. Complaints increased to 18 in January and we have already received several complaints in February, which indicate that the cleaning has had no impact on residents.

The use of modelling to predict the emissions from the process can be useful, especially where the equipment is proposed. However, in this instance, the AHU is in situ and such that it is not considered unreasonable to have expected the report to have addressed the complaints that continue to be received.

A comprehensive response to the application and the LAC report is included within the officer report.