

Report to Planning Applications Committee
Date 6 November 2014
Report of Head of Planning Services
Subject 14/01234/F 41A Ipswich Road Norwich NR2 2LN

Item
4B

SUMMARY

Description:	Regularisation of existing grounds maintenance site layout and operations.
Reason for consideration at Committee:	Objection
Recommendation:	Approve
Ward:	Town Close
Contact Officer:	Mr James Bonner Planner 01603 212542
Valid Date:	22 August 2014
Applicant:	Norse Commercial Services
Agent:	Mr Jonathon Green

INTRODUCTION

The Site

Location and Context

1. The site is a grounds maintenance depot on the east side of Ipswich Road, 100m north of the junction with the A140/A146. The depot is around 70m from Ipswich Road and is accessed from an entrance adjacent to the Harford Manor School, which is directly south of the site. To the east of the depot are the Hewett School playing fields.
2. There are various containers and cabins on site serving different purposes in the yard's role as a grounds maintenance depot. These include garage/workshops, an office, storage buildings and tool/trailer containers. The site's current layout is shown on the attached plan at the end of the report.

Constraints

3. Directly to the north of the site are residential properties in Harford Manor Close. There are also properties to the west along Ipswich Road.

Topography

4. The site is fairly flat.

Planning History

5. None.

Equality and Diversity Issues

There are no significant equality or diversity issues.

The Proposal

6. This applicant seeks to regularise the use of the land in its continued operation as a grounds maintenance depot. The application follows a number of concerns raised by neighbouring residents about alleged intensification of use which then led to a planning enforcement investigation and the agreement of Norse to submit a formal application.
7. Included in the proposal are a small number of accompanied changes, including the erection of an acoustic fence along the northern boundary and the rearrangement of containers.

Representations Received

8. Adjacent and neighbouring properties have been notified in writing. Four letters of representation have been received citing the issues as summarised in the table below.
- 9.

Issues Raised	Response
<p>Start times, activity level, noise levels and general inappropriateness of the site's use are unacceptable for a residential area. When used just by Hewett School for grounds maintenance it was ok but not now – it should be moved or limited. Hedges and trees have been removed without permission.</p>	<p>The principle of the use is accepted. Matter of intensification addressed in paragraphs 11 – 18.</p> <p>Noise and disturbance – see paragraphs 19 – 27.</p> <p>Trees/hedges – see paragraphs 31 – 33.</p>
<ul style="list-style-type: none"> • Not a gradual intensification but a dramatic change starting with removal of hedge/trees etc. • Went from 5 to 20 containers on site. • Noise (and its nature) so early is disturbing. • B1 industrial use not suitable in residential area. • Tractors parked within 6ft of sun lounge. • Intensification has devalued house. • Statutory noise nuisance tests were 	<ul style="list-style-type: none"> • The principle of the use is accepted. Matter of intensification addressed in paragraphs 11 – 18. • Devaluation is not a material consideration. • Statutory noise nuisance test is a separate matter to planning and covered by different legislation. See paragraph 27. • Trees/hedges – see

<p>done in winter – they should be done in summer when noise is worse.</p> <ul style="list-style-type: none"> • Requests for reinstatement of hedge and for 8am start time. • Deaf resident at No.10. 	<p>paragraphs 31 – 33.</p> <ul style="list-style-type: none"> • Start time – see paragraph 26. • Noise and disturbance – see paragraphs 19 – 27.
<p>Concerned with:</p> <ul style="list-style-type: none"> • lack of consultation • increased noise and disturbance • proposed mitigation measures inadequate – trees could be removed • potential for extending future use in terms of layout and hours. 	<ul style="list-style-type: none"> • Neighbours within 10m of the site are sent letters as per procedure. • Noise and disturbance – see paragraphs 19 – 27. • Trees – see paragraphs 31 – 33. • Approving application would allow for greater control over layout and enforcement is currently unlikely to be an option.

Consultation Responses

Environmental Health – Recommended to condition: restricted hours of use, restricted delivery and collection hours; hours of use of the metal storage containers; restriction on hours of use of plant or machinery in the metal storage containers; external lighting; the site layout; handles on the metal storage containers must be supplied with rubber sleeves to reduce noise; a site operational management plan; boundary treatment of the site.

10. **Tree officer** – fine as long as done in accordance with AIA.

ASSESSMENT OF PLANNING CONSIDERATIONS

Relevant Planning Policies

National Planning Policy Framework:

Statement 1 – Building a strong, competitive economy

Statement 8 – Promoting healthy communities

Relevant policies of the adopted Joint Core Strategy for Broadland, Norwich and South Norfolk 2014

Policy 1 – Addressing climate change and protecting environmental assets

Policy 2 – Promoting good design

Policy 5 – The economy

Policy 12 – The remainder of the Norwich urban area

Relevant saved policies of the adopted City of Norwich Replacement Local Plan 2004

NE3 – Tree protection control of cutting, lopping etc.

HBE12 – High quality of design, with special attention to height, scale, massing and form of development

EP22 – High standard of amenity for residential occupiers
EMP1 – Small Scale Business Development

Other Material Considerations

Development Management Policies Development Plan Document – Pre-submission policies (April 2013) (As modified by the Inspector’s Main Modifications):

DM1 – Achieving and delivering sustainable development
DM2 – Ensuring satisfactory living and working conditions
DM3 – Delivering high quality design
DM7 – Trees and development
DM16 – Employment and business development

Emerging DM Policies:

The Joint Core Strategy and Replacement Local Plan (RLP) have been adopted since the introduction of the Planning and Compulsory Purchase Act in 2004. With regard to paragraphs 211 and 215-216 of the National Planning Policy Framework (NPPF), both sets of policies have been subjected to a test of compliance with the NPPF. Both the JCS and RLP policies above are considered to be compliant with the NPPF.

The Council submitted the Development Plan Policies local plan and Site Allocations and Site Specific Policies local plan for examination in April 2013. The examination process is now complete with the publication of the Inspector’s report for each plan, dated 13 October, 2014 (available at <http://www.norwich.gov.uk/Planning/Pages/DMAAndSAPoliciesPlans.aspx>). Significant weight must now be given to all the following policies, as proposed to be modified by the Inspector’s reports, pending formal adoption.

Principle of development and relevant case law on intensification

11. The use of the land as a grounds maintenance depot is a historic one and there is no doubt that in planning terms this is effectively an unrestricted use as there is no relevant planning history. What has been questioned in recent times is whether the use of the land has intensified, a claim made by a number of residents due to the disruption it has caused. This has been investigated by planning enforcement and the planning (inner area) team leader who with reference to current case law [summarised below], have concluded that the case for intensification is doubtful at best.
12. The allegation is based on an increase in numbers of containers on the site which has coincided with a reconfiguration of the site. The aerial images at the end of the report aerial photos from 2005 and 2010 on the left and right respectively. The most up-to-date image on Google Maps (dated 2014) is not attached but it does show the same layout as 2010. The area to the right of the site is covered in vegetation – this is actually where green waste has been stored in the open for years. Recently this waste has been cleared and the site rearranged to position tool and machinery storage containers along this eastern boundary. The containers have been moved from the western side of the site (top left corner of the aerial photo) and as the site

visit photographs on the presentation will show, this westernmost area now houses no containers, just tools and two skips – one for green waste and one for general waste.

13. This eastern area now sites eight containers. Due to the trees it is unclear how many containers were previously on the western side but it looks to be three or four, meaning a probable increase of four or five in the total number of containers. The use of the site remains the same prior to the reconfiguration and the question for enforcement was whether the alleged intensification has led to a material change in the definable use of the land and whether there are different planning consequences as a result of the increased activity beyond the normal fluctuations of the business. This ‘test’ takes reference from this case law mentioned above [*Hertfordshire CC v SoS for Communities and Local Government and Metal and Waste Recycling Ltd (decision of Ouseley J delivered on 01/02/2012)*], which relates to a legal challenge to a Planning Inspector’s decision to correct an enforcement notice. The Inspector had judged that the increase in intensification of a scrap yard did not lead to a breach in planning control. For context (and to gain an understanding of the environmental impacts that this case law is based on), the description of the alleged breach of condition was as follows:

The breach of planning control as alleged in the notice is without planning permission the material change of use of the land from a scrap-metal yard with an average yearly material throughput of 74,500 tonnes, to a scrap yard, (including as part of this use an end of life vehicle recycling facility), with an average yearly material throughput of 181,000 tonnes, the totality of the new use having a different nature and character from the former use.

14. With regards to the application before committee, planning enforcement have assessed the alleged intensification in a similar manner to that outlined in the above judgement: on the environmental impacts of the increase in throughput. When judging whether this increase in scale of activities has caused a material change of use, those activities which did or could have occurred in absence of the increase cannot be attributed to any intensification.
15. The bottom line from that judgement is that although a material change of use could arise in theory, it has proved elusive in practice and has to include a material change of use in the land by bringing about a definable change in its character. In this particular grounds maintenance depot case the investigation has determined that there has been neither and a material change of use would be difficult if not impossible to prove. The judge was careful to add a note of caution about Planning Authorities relying on a claim of change of use by intensification as a substitute for imposing proper planning conditions.
16. Aside from the reconfiguration of containers, also of importance to the assessment of intensification are the site’s other changes, particularly the tidying up which has made the area much more efficient in its recent use. Combined with the loss of the trees, boundary treatments and general foliage (addressed further in paragraph 31) this has made the site and its use much more visible, especially compared to its much more rustic appearance previously.
17. With regards to the effects of the alleged increase in throughput, this would in this

case be primarily noise and to a lesser degree visual amenity. Environmental Health have investigated the operation of the site from the perspective of it being a statutory nuisance and it was judged to not be a nuisance. It is however understandable how it could be considered an annoyance with potential amenity implications which should be judged as the principal matter in this planning application.

18. It should be made clear that given the questionable case for intensification, the applicant could have applied for a lawful development certificate to establish the lawful use of the land. They have helpfully applied for full planning permission which allows for conditions to be attached, offering a degree of control over the site and its operations. This is particularly pertinent for the scenario where a different operator could come in and use the site as an unrestricted grounds maintenance depot with much less accountability than Norse currently has. The imposition of conditions allows for some control over the site which currently does not exist.

Impact on Living Conditions

Site operations and noise/disturbance

19. Clearly the use has its largest impact on amenity through noise and any attempt to regularise it must have a clear assessment of its effect. The bulk of the disturbance comes from workers arriving on site in the morning, opening the metal containers and moving about the site on foot and in vehicles (typically vans with trailers). Following complaints from neighbours, these main site operations now begin on-site at 7.30am, with workers arriving and parking vehicles from 7.15am to 7.20am. Prior to this works often began at 6.45am. Besides emergency works and on-call work that require earlier starts, this is the agreement that the site currently operates to.
20. Working practices generally involve employees in teams, each team paired with a couple of metal containers which are opened when work starts. One has tools such as strimmers and mowers which are loaded onto a trailer while in the container; the other stores a trailer holding a ride-on mower. Both trailers are then connected to a van and then driven out of the containers. The exception to this is one narrower, older container which cannot fit a trailer – ride-on mowers must be started inside the container and driven out, which causes additional noise of a lower, more noticeable frequency than the vans. This is compounded by the container opening out towards 8 and 9a Harford Manor Close, directing noise towards the residents.
21. Maintenance teams then tend to leave the site around 7.45am to 8am and return from 4pm Monday to Thursday and 3pm Friday. Trailers are reversed into containers (or ride-on mowers where applicable), tools unloaded and vans parked in front of their respective containers. Between these times there is relatively little activity, most of which is maintenance teams arriving to tip green waste off the back of the van. This is dumped into the storage space adjacent to the skip on the west side of the site, just north of the garage / workshop. Every day a tractor is used to deposit the green waste into the skip.
22. One significant source of noise identified by neighbours and the submitted Noise Impact Assessment is when this green waste skip gets emptied, which in summer

is typically once a month but in pruning season (between October and March) can be three times a week. A general waste skip is emptied fortnightly. The Noise Impact Assessment (NIA) identified this noise from the placing and lifting of the skips as fairly insignificant compared to the lorry's engine noise, but it can be understood to be significant enough of an annoyance to warrant a condition restricting this from happening before 9am. More significant is the manner in which this skip is emptied. In the past, but not when the NIA was being carried out, the procedure involved dragging the skip across the yard so that the new skip could be put in its place. This created a very high level of noise which caused noticeable and undeniable disturbance to residents. Following complaints the procedure has been revised to set the replacement skip down next to the full skip, which itself then is lifted onto the wagon. Any approval would need to be accompanied by a condition requiring further details of a site operations management plan outlining this preferred procedure. Compliance with this management plan can then be adhered to and enforced against if necessary. Options have been explored including creating a noise barrier, but this is not feasible given first floor windows are affected. Also pondered was reconfiguring the layout to move the skip, but the spatial constraints of the site means that there needs to be enough room for the wagon and vans with trailers to safely manoeuvre.

23. To help mitigate against the noise from the opening and use of the older container, the NIA suggests swapping the position of this container with the one in the south east corner of the site and rotating it 180° so that it opens westwards, facing down the access road. Further suggestions include the manner in which the loading onto the trailer should occur to reduce unnecessary noise, for instance through removing the need to manoeuvre the mowers in the centre of the yard. These will be agreed in the site operations management plan.
24. The NIA highlights idling van noise when loading as a source of noise that could be addressed through clear signposting and enforcement of a requirement in the management plan to switch off engines when loading in the morning. While not a dominant noise on site, opening the containers does create short bursts of noise from metal-on-metal impact. The worst offender is the older container and its relocation should assist in this respect. Otherwise, a management plan could include measures which agree to make staff aware of the need to reduce noise when opening container doors so that metal handles are not dropped when released from the hatch. It is acknowledged that this will not have a significant effect on overall noise but cumulatively alongside the other issues this should help to reduce disturbance. The inclusion of rubber straps around posts will assist with this and will be conditioned.
25. Related to the loss of the hedge, another mitigation measure proposed is the erection of a 2m high acoustic fence along the north (adjacent to 8 and 9a Harford Manor Close) and west (adjacent to skip) boundary. This would not provide attenuation of the noise to the habitable rooms on the first floor of those affected dwellings but such a measure would not be viable given the height that would be required to break the line of sight between noise source and receiver. A 2m high fence would reduce noise levels to the garden by 5dB(A) and should be conditioned if approved.

26. The most important control over operations will be restrictive conditions on the times employees can arrive and start work on site. Recommended is a restriction of employees on-site before 7.15am with no works (including opening of containers) before 7.30am Monday to Friday with no work beyond 7pm. A later start than 7.30am would be at odds with the nature and requirements of the work and would be unreasonable, particularly considering that the use of the land is currently entirely unrestricted. Any condition would need to include allowance for a degree of flexibility for unscheduled emergency works that require earlier starts as this is an essential aspect of the client's operation. The condition restricting hours of operations will include this exception for emergency works and a definition of this will need to be formally agreed in the site operations management plan. Also needed will be a condition to restrict the collection of any waste before 9am.

27. The issue of the site creating a statutory nuisance is a matter separate to planning and if required, could be addressed at a later date. This could happen with or without the grounds maintenance depot having formal planning permission or not.

Other amenity issues

28. The proposed fence should reduce some of the amenity concerns and a condition requiring the specification, position, direction and cowl of any lights will be attached. There are no other significant amenity issues.

Visual Impact

29. Being set back considerably from Ipswich Road, the site's visual impact from the public sphere is limited and is of minimal concern given the historic use. The fence's visual impact is minimal but as it would be permitted development, this is inconsequential.

Transport and Access

30. Access remains the same as has been historically used and no assessment is required.

Trees and Landscaping

31. One major concern from one neighbour in particular is the removal of the hedge which forms the boundary between the site and 8 Harford Manor Close. While not having notable capacity as an acoustic barrier, it provided an important visual break between the neighbour and the site. In combination with the tidying and reconfiguration of the site this has made its presence and use more apparent to the neighbours most affected. From speaking to the applicant the removal of the hedge was done in error and has proved to be a regrettable error for both parties. While the fence offers some solutions to the issue of noise, it will provide an additional visual break also.

32. The removal and possible reinstatement of the hedge has not been covered as it is a civil matter between the two parties.

33. There are a number of trees on site which are not due to be removed according to

the submitted Arboricultural Impact Assessment. The location of the fence needs agreeing on site with an arborist to avoid damage to the tree roots and a condition will ensure this.

Conclusions

34. While there has been an increase in the number of containers on the site, the degree of change does not constitute intensification that could be considered to cause a material change in the use or defined character of the land. Some of the changes, including tidying the site up and reconfiguring the layout have coincided with some unfortunate changes to boundary treatments that have made the site and its use more apparent to the neighbours most closely affected. Given the investigation and reference to recent case law it is not considered that there has been a breach of planning control which could be enforced due to the historic use of the site.
35. This planning application will allow the employment use to continue while introducing an element of control over its activities that did not previously exist. There are several conditions which will help reduce noise and the impact upon amenity. Although it is accepted that this will not fully eliminate the annoyance to the neighbours it should be seen in the context of the fact that the use could continue without any restriction. With this in mind the conditions are reasonable given the need to allow the operator to remain commercially competitive. The recommendation for approval is therefore considered a reasonable planning solution.
36. If the application is refused and planning enforcement are asked to investigate, the outcome of this will likely be that no enforcement action can be taken. This is because the conclusion from the previous investigation is that there has been no material change of use of the land as a result of the alleged intensification. There would be no 'breach of planning control' within the meaning of the 1990 Act. On the basis of discussions with the applicant it is however expected that if approved the applicant will implement the consent and conform with the conditions giving a degree of control over the site in the future.

RECOMMENDATIONS

To approve 14/01234/F 41A Ipswich Road and grant planning permission, subject to the following conditions:-

1. In accordance with the approved plans.
2. No employees on site before 07:15 or after 20:00 except in the case of an emergency (which itself shall be defined in the site operations management plan to be agreed through condition 8).
3. No operational use (including the opening of containers) of the premises which form the subject of this permission and outlined in red on the approved location plan ref.01-01-15-2-1035 (01) shall take place other than between the hours of 07:30 and 19:00 on any day except in the case of an emergency (which itself shall be defined in the site operations management plan to be agreed through condition 8).

4. No plant or machinery shall be operated on the premises outside the following hours:
 - before 07:30 hours and after 19:00 hours Mondays – Fridays;
 - before 07:30 hours and after 13:30 hours on Saturdays; and
 - not at all on Sundays or Public Holidays.
 - This shall apply except in the case of an emergency (which itself shall be defined in the site operations management plan to be agreed through condition 8).
5. No trade deliveries or collections (including the delivery or collection of green waste or general waste skips) shall take place before 9:00 hours and after 17:00 hours Monday to Friday.
6. The layout of the site shall be carried out in accordance with the approved plan ref.01-01-15-2-1035 (03) and retained as such unless otherwise agreed in writing with the local planning authority.
7. Within 3 months of the date of this decision the position of the old container shall be reconfigured in accordance with the details agreed in paragraph 4.1 of the approved Noise Impact Assessment [ref. 10980/1] and retained in this position unless otherwise agreed in writing with the LPA.
8. Within 3 months of the date of this decision details of site operations management plan to be agreed Operations on site shall be carried out in accordance with this plan unless otherwise agreed in writing with the LPA.
9. Within 3 months of the date of this decision details of the siting of the 2 metre high close boarded fence along the northern and western boundaries of the site are to be submitted and agreed by the LPA and maintained and retained in the approved position unless otherwise agreed in writing with the LPA.
10. Within 3 months of the date of this decision details of lighting (including specification, height, direction, cowling etc) to be agreed.
11. Within 3 months of the date of this decision the noise dampening measures as detailed in paragraph 4.6 of the approved Noise Impact Assessment [ref. 10980/1] shall be installed on all the containers within the site and maintained and retained in the approved form unless otherwise agreed in writing with the LPA.
12. In accordance with the approved AIA

Article 31(1)(cc) Statement

The local planning authority in making its decision has had due regard to paragraph 187 of the National Planning Policy Framework as well as the development plan, national planning policy and other material considerations and has approved the application subject to appropriate conditions and for the reasons outlined in the officer report.



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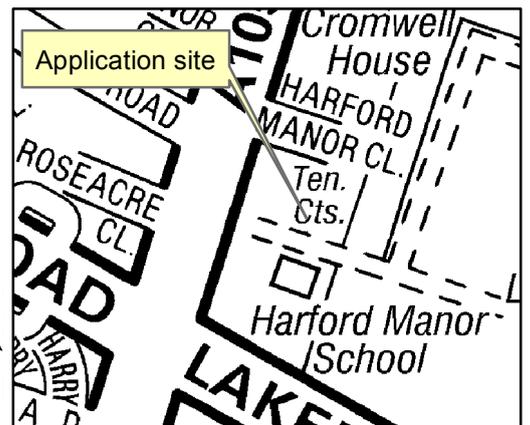
Planning Application No 14/01234/F
Site Address 41a Ipswich Road

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Drawing Title

Grounds Maintenance Depot Aerial 2005

Drawn: SB Scale: 1:938 Date: 27/10/2014

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Drawing Title

Grounds Maintenance Depot Aerial 2010

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