

# KEVIN WISE TOWN PLANNING

The Old Estate Office, Ewell Lane, West Farleigh, Kent ME15 ONG

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Development Control Section  
Sevenoaks District Council  
Council Offices  
Argyle Road  
Sevenoaks  
Kent  
TN13 1HG

17<sup>th</sup> September 2021

Dear Sir/Madam,

**RE: Application For The Removal Or Variation Of Planning Condition No. 2 of planning permission 20/03461/FUL At Darent Wax Company Ltd, Horton Kirby Trading Estate, Station Road, South Darenth, KENT DA4 9BD.**

On behalf of my client, Darent Wax Company Ltd., please find enclosed an application seeking to vary the terms and requirements of condition no. 2 of planning permission 20/03461/FUL. The requisite application fee of £234-00 and completed application forms are enclosed.

## **Supporting Information & Comments:**

Condition No. 2 of planning permission 20/03461/FUL requires that the chiller and air intake unit permitted by the planning consent is not to be used outside of certain hours. The planning condition states:

***“2) The proposed chiller and ventilation duct units will not be in operation other than the hours of 08:00-18:00 (Monday to Friday) and 08:00 to 13:00 (Saturday) and at no time on Sundays and Public Holidays.***

***Reason: In the interests of residential amenity as supported by Policy EN2 and EN7 of the Sevenoaks District Allocations and Development Management Plan.”***

These restricted hours of operation that have been imposed by planning condition No. 2 of 20/03461/FUL are different to those that universally apply to the working hours of the building/ industrial unit in question and the wider industrial estate. These existing working hours for the building and wider industrial estate are set by boundary noise condition No. 8 of planning consent reference SE/78/1152. This condition states:

***“Noise from operations conducted on the premises shall not exceed 60 dB(A) Leq during “daytime” and 45 dB(A) Leq during “night time”, at the boundaries of the site. “Daytime” is defined as 0700-1900 hours and “night time” is defined as 1900-0700 hours. Notwithstanding the above, the maximum noise level at the boundaries to the site shall not exceed 70 dB(A) during “daytime” and 55 dB(A) during “night time”.***

It is the applicant's view that the terms of condition No. 2 of 20/03461/FUL are unreasonable, unnecessary and 'ultra vires'. This is because of the following facts:

1. The council's own expert acoustic and aural amenity professionals, the Sevenoaks District Council Environmental Health department, did not recommend or request that

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these more onerous hours of operation be imposed. In fact, the Environmental Health Officer raised no objections to the proposals. The Environmental Health Officer's comment on planning 20/03461/FUL stated:

***"I have reviewed the revised noise assessment and am satisfied the report provides a very good evaluation of the equipment and attenuation proposed. Providing all of the attenuation measures proposed are implemented I have no objection to the proposal."***

2. The noise levels achieved with the acoustic screening in place ensure that the chiller unit and air intake meet all suitable regulations and standards and do not give rise to unacceptable levels of noise disturbance and, significantly, the attenuation ensures that the equipment meets the terms of planning condition No. 8 of SE/78/1152 which governs the unit and the wider industrial site. The evidence supporting this fact was set out in detail within the acoustic report by Peter Moore & Associates, which was submitted with planning application 20/03461/FUL. To summarise, the measured noise levels from the chiller and air intake units required attenuation to improve them by a level of 14DB to satisfy the provisions of the **existing condition** that was in place governing the site – i.e., condition No. 8 of SE/78/1152. The acoustic report concluded as follows:

***"It is concluded that the noise levels from the combination of the chiller and the ventilation intake duct will need to be reduced by 14 dB(A) to achieve a situation that is predicted to have a low impact according to BS 4142, and to comply with condition 8 of planning consent SE/78/1152 for unrestricted daytime use (07:00 to 19:00 hours) with up to about 3 hours of use at a 25% fan duty cycle during the evening / night."***

3. The council has therefore imposed without suitable justification more onerous terms of use/ hours than apply for the other parts of the business and out of step with the terms of planning condition No. 8. Introducing such a discrepancy in working hours for different elements and sections of the business represents a lack of consistency and unreasonable behaviour since, either the operation of the chiller unit and air intake plant is unacceptable in noise terms with the attenuation in place or it is not. If the chiller unit and intake units comply with the terms of the noise condition already in place for the premises, then why has the council moved the goalposts. Indeed, the comments of the EHO on planning application 20/03461/FUL indicated that the noise levels with the proposed attenuation would be acceptable, and that judgement/conclusion was made in the full knowledge of the existing operating hours that are imposed across the other buildings used by the business. Effectively, the more onerous condition now introduced on the plant has limited the business' operating hours as the equipment's operation is a key part of production.

So, effectively, without proper reasoned justification or instruction from the council's own acoustics expert consultees, the case officer unilaterally attached a condition imposing more onerous conditions on working hours than the general operating hours for the site despite the new installations achieving noise levels attenuated to a degree that were not only acceptable to the expert Environmental Health section and demonstrated by a professional acoustic survey.

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The applicant believes that if Condition No. 2 of planning permission 20/03461/FUL is not removed or amended to be in line with the same terms of condition 8 of SE/78/1152, that the council will be placed a significant risk of an award of costs against it on any subsequent appeal since the terms of condition No. 2 imposed by the council do not appear to meet the requisite tests of planning conditions set out under national guidance and planning case law because it considered to be without suitable and sufficient justification, unnecessary and unreasonable. The condition goes against the rules of natural justice.

The applicant requests that condition No. 2 is therefore either removed in its entirety or amended in such a manner as to be in line with the existing terms of operation of the rest of the business.

I trust that the submitted details provide sufficient information for the application to be validated but any further information is needed then please would you let me know as soon as possible to avoid any unnecessary delays in determination.

Yours sincerely



Kevin Wise BA(Hons) BTP MRTPI