

Report to: PLANNING COMMITTEE **Date of Meeting:** 27th July 2022

Subject: [DC/2022/00412](#)
[Dairy 21 Stamford Road Birkdale Southport PR8 4ES](#)

Proposal: Removal of condition 4 (hours of use of new bottling room) pursuant to planning permission DC/2021/00118 approved 07/09/2021.

Applicant: Mr. Stevan Bates **Agent:** Mr. David Bailey
Bates Farms & Dairy Ltd NJSR Chartered Architects LLP

Ward: Birkdale Ward **Type:** Removal of condition

Reason for Committee Determination: Chief Planning Officer's discretion

Summary

The application seeks the removal of a restrictive operating hours condition (limited to 07:00 - 13:00 - Monday to Saturday) that was attached to the existing planning approval for an additional bottling plant to the dairy. To support this removal an updated noise assessment has been provided that demonstrates that the operation of the additional bottling plant outside of these hours wouldn't cause significant impacts over and above that already occurring at the dairy. In view of the updated noise assessment and having regard to the absence of evidence to counter this, it is recommended that the condition is removed.

Recommendation: Approve with Conditions

Case Officer Neil Mackie

Email planning.department@sefton.gov.uk

Telephone 0345 140 0845

Application documents and plans are available at:

<http://pa.sefton.gov.uk/online-applications/applicationDetails.do?activeTab=summary&keyVal=R881H3NWH5C00>

Site Location Plan



Sefton Council



Reference: Map reference

Date: 19/07/2022

Scale: Scale 1:1250

Created by: Initials

The Site

The existing commercial dairy site accessed from Stamford Road lies within a primarily residential area of Birkdale. The building subject to this proposal is positioned to the eastern edge of the site abutting Broome Close.

History

Planning permission was granted in September 2021 for the erection of a detached building to be used as a Dairy building, following the partial demolition of the existing building (App.ref: DC/2021/00118).

Consultations

Environmental Health Manager

Based on the information provided the noise assessment demonstrates that the new plant could operate outside of the hours 07:00 to 15:00 Monday to Sunday. The report shows that the calculated sound levels would be below the existing background L90 for the corresponding hours.

The Environmental Health Manager commented on the original application (DC/2021/00118) and made the following comments:

'I am unsure as to whether the existing bottle plant is to remain operational or if it is to be replaced by this development. The applicant should clarify this point.

'The after 05:00 levels appear to be highly influenced by this existing noise therefore, any changes to the operational aspects of the site could significantly alter the overall level of impact.

'If the intention is to remove the existing plant, the Environmental health team would recommend that the noise assessment should omit the existing bottle plant contribution.

'If the intention is for the exiting plant to remain operational, I agree with the aim of the report to ensure that noise breakout from the new development does not exceed the background L90 at the sensitive receptors'.

He has added these comments for this application:

It should be noted that the updated noise assessment does not clarify the above. It is stated that the current plant operates between the hours of 04:00 to 18:00 daily and the noise from the existing plant room is subjectively audible after 05:00 hours. The applicant should clarify the above points as this may require a further noise assessment. Please note: The Environmental Health team are aware of noise concerns from some residents in that area relating to the existing use. Currently those concerns are not being investigated under the Environmental Protection Act 1990.

If the existing plant is to remain operational at the current rate and extent of use, then I would recommend the following condition.

- a) A suitable scheme of noise control that ensures that the plant noise levels do not exceed the existing background L90 at the residential dwellings must be agreed in writing with the Local Planning Authority. The approved scheme must be installed before the plant becomes operational.
- b) Within 2 months of (A) becoming operational a noise verification report must be submitted to the Local Planning Authority. The verification report must demonstrate that the noise level requirement under (A) has been achieved or make further recommendations for enhanced noise control and sound insulation were satisfactory compliance has not been achieved.
- c) Further noise mitigation recommendations made in (B) must be installed within 3 months of approval including the submission of noise a verification report to demonstrate that the additional scheme of noise control achieves the noise level stated in (A) etc.
- d) Noise control measures must be retained thereafter.

Operating hours:

The new bottle plant must not be operational outside of the hours 05:00 to 18:00

Neighbour Representations

A representation has been received from Number 32 Stamford Road. The representation makes reference to the long history of the site and the growth and expansion of the dairy since the early 1970s, highlighting ever increasing vehicle trips and an increase in the size of vehicles accessing the site. This growth has caused harm through noise, annoyance, traffic movement and general disruption to neighbours. The expansion of the dairy and the resultant increase in movements to and from the site has made it impossible for residents to park vehicles on Stamford Road and has also resulted in damage to vehicles.

The neighbour highlights the existing restrictive hours condition on the new bottling plant being necessary due to "the amount of noise emanating from the premises in the early hours of the morning, which exceeds the World Health Organisation's criteria recommendation as acceptable." They consider that this application should not be approved as it contradicts all the advice associated with the original application, with the removal of the condition permitting the new bottling plant to operate 24 hours per day.

On the request of this neighbour, Councillor Brough asked for this application to be called-in and be determined by planning committee if the recommendation was to approve. Under the scheme of delegation within the constitution this type of application, i.e. the proposed removal of a condition, can only be determined by planning committee by way of the chief planning officer's discretion, which has been exercised here.

Policy Context

The application site lies within an area designated as Primarily Residential in the Sefton Local Plan which was adopted by the Council in April 2017.

Assessment of the Proposal

In granting permission for the erection of a building to the existing dairy to provide for a new additional bottling plant, a condition was attached that restricted the hours of use of this building. This was in line with the noise assessment that accompanied that application and was attached to protect the living conditions of local residents from unacceptable noise levels.

Condition 4 attached to approval DC/2021/00118 states:

"The bottling room hereby approved shall only be operated between 07:00 - 13:00 Monday to Saturday and at no other time, as stated within the approved Noise Assessment for Planning Purposes, AEC Report reference P4366/R1/MR, 14th May 2021 and as confirmed by email by the agent on the 29th July 2021.

Reason: In the interests of neighbouring living conditions."

This application seeks to remove that condition in full, noting that the existing bottling plant typically operates between 04:00 - 18:00 and is not subject to restrictions or limitations on the hours of use, and that the proposed additional bottling plant is to operate in a similar manner.

Recordings of background noise level, between the hours of 04:30 - 07:00, along with the details of the materials to be used in the construction of the new building to house the bottling plant have been considered within an updated noise assessment. The assessment has had regard to noise outbreak from this building on the nearest sensitive receptor, Number 7 Broome Close, and considers that any break out noise from the new bottling plant building "before 0500h will be no greater than the existing background noise level" and that the height of the new building "will provide screening to the nearest noise sensitive properties from other noise sources including HGV/vehicle movements and plant noise". As such the assessment concludes that "noise should not be considered a determining factor in relation to any planning permission being sought."

This conclusion is acknowledged by the Council's Environmental Health Manager (EHM) who states that based on the information provided, the "noise assessment demonstrates that the new plant could operate outside of the hours 07:00 - 15:00 Monday to Sunday. The report shows that the calculated sound levels would be below the existing background for the corresponding hours."

The EHM notes that the findings of the assessment are predicated on the continuing use of the existing bottling plant but if this is to change then the assessment would have to be updated, which could have a bearing upon this use. The agent was asked for clarification and confirmation

on this matter and stated that "the applicant has advised that the existing plant will remain, but the 2 elements will not be used at the same time."

Given that the existing bottling plant will remain in use with operating hours not controlled by condition it is considered that the findings of the submitted noise assessment are sufficient to warrant the removal of the condition.

However, the EHM has in their comments recommended a replacement hours restriction condition to 05:00 - 18:00 as well as a condition to secure a scheme of noise control for the building.

In respect of the hours, this is a narrower period than used by the existing bottling plant and as sought for the new bottling plant. Given what has been applied for and the findings of the noise assessment it is difficult to sustain an argument that an hours' condition is required, and that such a condition would pass the necessary tests for conditions as outlined in the National Planning Policy Framework.

It is noted that the base permission does not have a condition requiring a scheme of noise control. In having regard to the information for this application the noise assessment considers no further mitigation is necessary to protect neighbouring amenity and advances an argument, as set out above, that this new building may provide some screening of existing noise to No 7 Broome Close.

However, the noise assessment does make explicit reference to the construction of the building and within Appendix C it provides details of the roof and wall construction for the building to house the bottling plant. To ensure that the outcome of the noise assessment is correct and to lessen any potential impacts on neighbouring properties it is considered reasonable to attach a new condition to any approval to ensure that the construction of the roof and the walls for this building adhere to the cross sections and details set out in Appendix C of the noise assessment.

Therefore it is recommended that Condition 4 is removed in its entirety, subject to the additional condition requiring the building to be constructed in accordance with the noise insulation details specified in the noise assessment.

Recommendation - Approve with Conditions

Time Limit for Commencement

- 1) The development hereby permitted shall be commenced before the 7th September 2026.

Reason: In order that the development is commenced in a timely manner, as set out in Section 91 of the Town and Country Planning Act 1990 (as amended).

Approved Plans

- 2) The development shall be carried out in accordance with the following approved plans and documents:

A101 Rev 4 'Proposed Site and Location Plan'

A103 'Proposed Elevations'

P6447-01 Rev E 'Plan and Elevations'

Noise Assessment for Planning Purposes, AEC Report reference P4366/R1a/PJK, 21 February 2022

Reason: For the avoidance of doubt.

Before the Development is Commenced

- 3) a) No development shall commence, including any works of demolition, until a Construction Environmental Management Plan has been submitted to, and approved in writing by, the local planning authority that shall include controls for dust, noise and vibration referencing suitable guidance and standards and demonstrate how the Best Practicable Means standard (BPM) will be achieved throughout the construction phase.

b) The approved statement shall be adhered to throughout the demolition and construction periods.

Reason: To safeguard the living conditions of neighbouring/adjacent occupiers and land users during both the demolition and construction phase of the development.

During Construction

- 4) The roof and walls of the building hereby approved shall be constructed in accordance with the details shown within Appendix C of the approved Noise Assessment for Planning Purposes, AEC Report reference P4366/R1a/PJK, 21 February 2022.

Reason: To safeguard the living conditions of neighbouring occupiers.