

Committee: **PLANNING**

Date of Meeting: **09 February 2011**

Title of Report: **S/2010/1673**
Mortons Dairy Kenyons Lane, Lydiate
(Park Ward)

Proposal: Retention of existing hardstanding and provision of landscape planting

Applicant: Mr Norman Harrison Mortons Dairies Limited

Executive Summary

This application seeks to retain the hardstanding and a strip of adjacent land which are subject of an Enforcement Notice confirmed on appeal in January 2010. The applicant argues very special circumstances in respect of the needs of the business whilst proposing landscaping to minimise visual impact and wildflower planting to the paddock. The issues relate to the principle of expansion of this industrial curtilage into the Green Belt.

Recommendation(s) Approval

Justification

The proposal is justified by very special circumstances in terms of the operational needs of the existing business, the improved planting to the site, the biodiversity gain to the 'paddock' area and the lack of suitability for agriculture

Conditions

1. The areas for vehicle parking, turning and manoeuvring shall be laid out, demarcated, and drained in accordance with the approved plan and these areas shall be retained thereafter for that specific use.
2. Notwithstanding the details shown on the submitted drawing the hardstanding and extended site area hereby approved shall be used for short term vehicle parking and manoeuvring and shall not be used for storage or long term parking of delivery/other vehicles or trailers.
3. Notwithstanding the details shown on the submitted plan, that part of the hardstanding shown as 'delivery vehicle storage' shall only be used for this purpose for a period of 12 months from the date of this permission and all such vehicles shall be removed and storage shall cease in this area of the site at the end of this period.
4. a) The hard and soft landscaping scheme hereby approved shall be carried out within the first planting season following this approval .

- b) Any trees or plants that within a period of five years after planting, are removed, die or become, in the opinion of the Local Planning Authority, seriously damaged or defective shall be replaced with others of a species, size and number as originally approved in the first available planting season unless the Local Planning Authority gives its written consent to any variation.
5. Within the first planting season following this approval the paddock area shall be seeded with wildflower seed. A specification for the seed and method of seeding shall be agreed in writing before the planting is undertaken.
 6. a) A landscape management plan, including long term design objectives, management responsibilities and maintenance schedules for all landscape areas including the wildflower meadow, shall be submitted to and approved by the Local Planning Authority prior to the occupation of the development. This shall include future management of the wildflower meadow.
b) The landscape management plan shall be carried out as approved under (a) above.
 7. L-3 No felling
 8. The proposed post and wire fence shall be erected within 3 months of the date of this permission
 9. The existing ditch along the east side of the site shall not be culverted except with the express permission of the Local Planning Authority.

Reasons

1. RH-6
2. In order to protect the visual amenity and openness of Green Belt in accordance with UDPPolicy GBC2
3. In the interests of visual amenity and to comply with policy DQ1 and GBC2 of the Sefton Unitary Development Plan.
4. RL-4
5. In the interests of visual amenity and conservation and to comply with policy DQ1and NC3 of the Sefton Unitary Development Plan.
6. RL-5
7. RL-3
8. To contain the industrial curtlage in the context of UDP Policy GBC2
9. In order to comply with UDP Policy EP8.

Drawing Numbers

to be advised

Financial Implications

CAPITAL EXPENDITURE	2006/ 2007 £	2007/ 2008 £	2008/ 2009 £	2009/ 2010 £
Gross Increase in Capital Expenditure				
Funded by:				
Sefton Capital Resources				
Specific Capital Resources				
REVENUE IMPLICATIONS				
Gross Increase in Revenue Expenditure				
Funded by:				
Sefton funded Resources				
Funded from External Resources				
Does the External Funding have an expiry date? Y/N	When?			
How will the service be funded post expiry?				

List of Background Papers relied upon in the preparation of this report

History referred to
Policy referred to



Sefton Council
Planning & Economic
Regeneration Department
 Andy Wallis - Director
Planning & Economic Regeneration is part of the
 Regeneration & Environmental Services Directorate

S/2010/1673
 Morton's Dairy
 Kenyons Lane
 Lydiate
 L31 0BP
 OSGR: 338055, 403615 Sheets: 214A Area: 1243 sqm

Standard Site Plan
 Scale: 1:1250
 Date: 25/1/2011
 Drawn By: BERRTON
 Ward(s): Park
 Postcode Sector(s): L31 0
 Polling District(s): B5
 Parish(es): Lydiate Cp

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The Site

This application concerns a piece of land adjacent to the north boundary of the Morton's Dairy operational curtilage.

Proposal

Retention of existing hardstanding and provision of landscape planting.

History

Enforcement Appeals dismissed 20/01/2010.

- S/2009/0215 Application for lawful development Certificate for the use of land in connection with a dairy business involving the parking and manoeuvring of cars and commercial vehicles, storage of plant and equipment , storage of out of service milk floats and storage of other dairy related items. Refused 5/5/09 appeal dismissed 20/01/2010.
- S/2008/0981 Retrospective application for the retention of existing hardstandings, revisions to layout of external storage, vehicle circulation and parking, erection of a single storey extension to the existing storage building and culverting to ditch withdrawn.
- S/2000/0790 Extension to existing roof to cover tanks -Approved 29/11/00.
- 98/0715/S Single storey extension to house milk float garage and first floor extension to garage -Approved 16/04/99.
- 98/0714/S Erection of storage building (alternative to 97/0176/S dismissed on appeal) -Approved 22/04/99.
- 97/0176/S Erect storage shed - Refused 26/6/97, appeal dismissed 15/06/98.
- 95/0366/S 2 storey building to provide garage and office - Approved 10/08/95.
- 94/0550/S Overground storage tank and screen wall - Approved 01/09/94.
- 94/0461/S Advertisement - Approved 03/08/94.
- 94/0290/S Erection of a garage with offices above and erection of extension to existing loading bay - Approved 30/06/94.
- S/8653 Extensions to existing dairy by inclusion of additional land - Approved 28/06/1978.

Consultations

Environmental Protection –no objections

Highways Development Control – no objections

MEAS-We would encourage the creation of a species rich wildflower grassland as this would contribute to objectives within our Ecological Framework. However, we need to understand the existing ground condition on the site (Area C1) including the physical and chemical condition. Any proposals coming forward for Area C1 should demonstrate that the wildflower seed mix chosen is suitable for the site. The applicant may consider planting seedling rather than seeding if ground conditions are not optimum. There will also be a need for ongoing management. Proposals for ongoing management should be provided.

In relation to the drainage ditch, we need to understand the drainage implications for the site and whether the ditch is linked to the wider drainage network. There is also the potential for the ditch to be used by watervoles particularly if it retains water for prolonged periods and therefore this needs to be checked by a qualified individual. It is unclear whether the ditch will be culverted or in-filled. In any case the Environment Agency is likely to have a view.

Environment Agency - According to our maps there is a small brook/drain adjacent to the hardstanding. Encroachments of such developments to such waterbodies is considered bad practice and we would generally recommend that a buffer between development and the top of bank of the drain is provided for ecological reasons.

It is unclear if the development encroaches to the drain. In this instance we would recommend that a 3m undisturbed/undeveloped buffer between the hardstanding and top of the bank. We would also recommend that all landscaping should be with native species.

Neighbour Representations

Letters of objection received from 170 Liverpool Road and Kilmarnock, Kenyons Lane objecting on the following grounds

- the works were carried out without permission; the appeal has been dismissed and the notice should be complied with
- uncertain which parts of the Notice should already have been complied with and if they have been.

Policy

The application site is situated in an area allocated as Green Belt on the Council's Adopted Unitary Development Plan.

CS2 Restraint on development and protection of environmental assets.

GBC1 The Green Belt.
GBC2 Development in the Green Belt.
GBC7 Agricultural Land Quality.

Comments

This application follows the appeals which were dismissed last year in respect of unauthorised development at Morton's Dairy. The applicant seeks permission to retain the unauthorised hardstanding. The issues concern compliance with Green Belt Policy, impact in the Green Belt and loss of agricultural land.

Background

Mortons Dairy has a long standing presence in Kenyons Lane. However, the ownership of land in the area by the applicant exceeds the operational curtilage of the dairy. Developments had taken place over the years (with permission and without) and this had resulted in encroachment of the dairy onto adjoining land. The appeals in 2009 sought to establish the precise limits of the lawful curtilage and this was determined in the Council's favour. The appellant did not seek permission to retain unauthorised works – preferring instead to rely on arguments of lawful use and permitted development which were unsuccessful. The appeals were based on whether planning permission was *required*; they did not address the issues of whether it should be granted. Prior to the appeals a planning application (S/2008/0891) had sought to find a negotiated solution to the problem, but negotiations had broken broke down on the details.

The enforcement appeal decision in January 2010 confirmed the enforcement notices to require that the area to the west of the operational curtilage be cleared of all dairy related materials and activities within 14 days of the appeal decision. This has been done with the exception of the 5m strip adjoining the northern boundary which is included in the present application. The second part of the enforcement requirements were that the hardstanding be removed and land restored by 20/01/2011.

The present application seeks permission to retain the development which was required to be removed as part of the second stage of enforcement requirements. This is the same element which had been previously been subject of the negotiations in 2008. Moreover the Inspector in dismissing the appeals indicated that he considered this part of the development to be important for the business. He stated in his decision letter

'I am convinced from the evidence at the inquiry and from what I saw on site that the area of hardstanding which is the subject of appeal B , is vital for the long term future of the business. Without the area in question, I find it hard to see how the business, as it has expanded in recent years, can provide parking and manoeuvring space for its staff, its own fleet of vehicles and for delivery vehicles. Therefore I accept that the loss of the hardstanding could contribute to the closure of the business, as indicated by the applicant.'

With this comment in mind, the applicant has applied to retain the hardstanding with additional landscaping. He is also considering the longer term future of the site and how the business can continue to operate.

The submitted drawings propose retention of the whole of the hardstanding to provide 29 parking spaces together with an area which is described as 'delivery vehicle storage'. The proposals also seek to include a small area of land between the adjacent lawful hardstanding and the north site boundary.(see attached plan). The drawings imply that the existing ditch would remain to the east side of the site(and this can be ensured by condition) and a line of trees would be planted on the other side of that ditch. Tree planting would also be provided to the northern boundary of the site. A new post and wire fence and hedge is shown demarcating the curtilage. The application proposals do not affect the use of the cleared paddock area to the west of the site subject of the first stage of enforcement proceedings and now complied with. This would however be seeded as a wildflower meadow.

Green Belt policy

The site is located in the Green Belt where the creation of a hardstanding for an industrial use is considered to be inappropriate development and can only be justified if there are 'very special circumstances' which outweigh the harm to Green Belt. In this case the special circumstances are argued by the applicant as follows

- 1 the additional area is required for the proper functioning of an established business on adjacent land. Part of the hardstanding is needed to facilitate manoeuvring of large vehicles on the site and that the rest is required for parking especially for employees who drive the milk floats and have to drive to the site as there is no public transport at that early hour.
- 2 the piece of land is small and not suitable for agricultural use and is in practice landlocked. The site would be well landscaped with new hedgerow tree planting which will ensure that its impact on the openness and visual amenity of Green Belt is minimised.
- 3 the inclusion of a 5m wide strip adjacent to the northern boundary is proposed because this area serves no other practical purpose. In order to compensate for the inclusion of this strip of land, the paddock would be seeded with a wildflower mix to improve the biodiversity of the area.

The Director recognises that these arguments have some merit. The dairy is a well established business which provides employment for 50 employees. The retention of this business is therefore important to the local economy. The applicant argues that additional space is required for proper manoeuvring of large vehicles and for car parking and the Inspector supported this. The level of parking requirement is in accordance with the SPD standard (should not exceed 53 - the proposals only provide 39 in total including existing)There is therefore a case for retaining the hardstanding in principle. The loss of agricultural land is not significant given the awkward shape and limited size of the site. This is particularly the case for the small

strip of additional land which serves no other useful purpose. This view is backed up by the NFU.

On the other hand the use of land as a car park with additional screening would not have a significantly adverse visual impact on the Green Belt as it would not be visually prominent and impact on openness could be limited by conditions in terms of the use of the extended area. In this respect there are some concerns. The submitted drawings show an area of the site for 'delivery vehicle storage' In practice this is the storage of redundant milk floats removed from the 'paddock' area as part of the first stage of enforcement. The type of milk float used by the applicant is no longer produced and these scrap floats are used by the applicant to reconstruct replacement milk floats. The location currently being used and shown on the drawings is visually intrusive and the applicant has been asked to relocate this element. He states that he is considering a longer term solution to his storage problems which might enable these milk floats to be dealt with in a different way possibly by an extension/new building within the agreed curtilage. He has provided a sketch indication of how this might be done. Although the details of this are not acceptable at present there may be scope for additional storage building on the site. In these circumstances a condition to prevent use for storage of unused milk floats in the position proposed is recommended.

Conditions are also recommended to restrict the use of the hardstanding to ensure that it is only used for the stated purposes (ie car park and manoeuvring) and not for long term parking / storage of large vehicles or other storage purposes. Of particular concern is the continued presence of a large trailer body used for storage close to the northern boundary of the site on the 5m wide strip of land which the applicant seeks to incorporate into the site. A condition requiring the removal of this from the extended part of the site is suggested.

Residential Amenity

That part of the site which is subject of the present proposals is not adjacent to residential property and there are no implications in respect of residential amenity.

Landscaping

UDP Policy DQ3 requires 1 tree to be planted for each new parking space. 29 trees are therefore required 43 are proposed. Existing trees would be retained.

Response to objections

The letters of objection refer to the enforcement history of the site and the applicant's flagrant breaches of planning control. They consider that the enforcement action should be fully followed through.

Whilst the manner in which the hardstanding was created, without permission, is in no way condoned, the Director is aware of the needs of the business and it is clear that the Inspector also took this view. The appeals were about what is lawful on the site not about what should be permitted.

Departure Application

The proposal is a Departure from the Development Plan as it involves use of Green Belt land. However its impact is local and the application does not need to be referred to the Regional Office.

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