Expiry Date - 02/11/2020

Development Control – Delegated Officer Report

Application Number: AWDM/1721/20 **Recommendation – Approve**

Site: **Free Wharf, Brighton Road, Shoreham-By-Sea, West Sussex**

Proposal: **Application to vary hours of work approved under condition 33 of planning permission reference AWDM/1497/17 (under Section 74B of the Town and Country Planning Act 1990) up until 28 February 2021 to allow construction work to be undertaken between the hours of 08:00hrs and 19:00 hrs Monday to Friday, and 09.00 hours to 18.00 hours on Saturday. There will be no works on Sundays or Bank Holidays.**

Date of site visit: N/A

Neighbours checked: N/A

Additional neighbour notifications: N/A

Site and Surroundings

The site is located within an area known as the Western Harbour Arm, to the south of Brighton Road, Shoreham-by-Sea. The site, which measures 2.95 hectares, is broadly rectangular. The site fronts onto and is bound to the south by Shoreham Harbour which is created by the River Adur meeting the English Channel. Brighton Road/ A259 forms part of the sites northern border, which runs east-west connecting Brighton and Worthing respectively. The sites northern border, along Brighton Road, is interrupted to exclude Kwik Fit, The Whale Car Wash and the Ham Business Centre.

The strip of land between Brighton Road and Shoreham Harbour to the east is in industrial use. To the west between Humphreys Gap and Surry Hard the land is in use as car dealerships and business premises. Beyond this is an old Parcel Force depot (under residential redevelopment), Sussex Yacht Club and associated boat yard/ moorings.

Beyond the yacht club, Brighton Road becomes the High Street for the commercial centre of Shoreham-by-Sea. At the western end of the High Street it becomes Brighton Road again and bridges the River Adur providing access to Brighton City Airport. The land to the north of the site and immediately north of Brighton Road provides ‘big box’ retail uses, for B&Q and Halfords. There is also a McDonald’s Restaurant. Further to the north the land is predominantly in residential use – typically two storey houses. The South Downs National Park is found further to the north beyond the boundary of Shoreham-by-Sea.

To the south of the site is the River Adur. Beyond this is spur of land known as Shoreham Beach that is predominantly in residential use. Buildings of up to six storeys front onto the southern side of the Western Harbour.

To the east of the site, the land is predominantly in business/ industrial use either side of Brighton Road and is characterised by large sheds.

In terms of the access to the road network, the site is adjacent to Brighton Road, which provides an east west access corridor along the south coast. Access to the north is provided by the A283 which is located on the northern edge of Shoreham-by-Sea.

Redevelopment of the site

The application is currently undergoing redevelopment under planning permission reference AWDM/1497/17 dated 09.08.2018 to provide ten buildings, containing 540 new homes (of which two will be studios, 179 x one bed, 323 x two bed and 38 x three bed), 2,707sqm of commercial floor space at ground floor level within use classes, A1 (retail), A3 (cafes and restaurants), B1 (business) and D1 (non-residential institutions). The development also includes 512 parking spaces, of which 438 will be for residents and 74 will be for the commercial space/visitors, reconstruction of the river wall, construction of mooring pontoons and observation platform at the end of Humphrey's Gap, provision of a riverside pedestrian/cycle route, areas of semi-private and publicly accessible open space, internal access roads, 596 cycle parking spaces and associated ancillary areas.

It is noted that the application for redevelopment for the site was supported by Environmental Statement (ES).

Proposal

The request has been received under section 74B of the Town and Country Planning Act to enable urgent changes to construction working in line with the government's latest social distancing guidance on construction and other outdoor work.

It is important to note on receipt of a valid application, the Local Planning Authority has only 14 calendar days to determine, which in this case is by the 2nd November 2020. If the local planning authority does not determine the application within 14 days (excluding public holidays), the revised working hours are deemed to have been consented to and construction can take place in accordance with these new hours.

This proposal seeks to vary hours of work approved under condition 33 of planning permission reference AWDM/1497/17 (under Section 74B of the Town and Country Planning Act 1990) up until 28 February 2021 to allow construction work to be undertaken between the hours of 08:00hrs and 19:00 hrs Monday to Friday, and 09.00 hours to 18.00 hours on Saturday. There will be no works on Sundays or Bank Holidays.

The proposal would involve an increase in working hours of 1hr (from 18:00 to 19:00) Monday to Friday and an increase of 3.5hrs (from 14.30 to 18.00) on Saturdays. All other working hours would be as previously approved. This would be a temporary increase in working hours, up until the 28 February 2021.

The applicant has provided the following supporting information:

'We require the hours to be extended due to the Covid 19 pandemic that has resulted in Wates having to review the working practices / method statements to ensure social distancing is maintained at all times. This has resulted in construction activities taking longer to complete.

Construction activities will include concrete works, excavation and ground movement. We will continue to work in line with the approved Construction Management Plan (Sept18) and the S61 Notice dated 31st May 2019. Construction works that are particularly noisy or cause vibration such as driving piles and concrete crushing will only be completed during standard working hours (08:00 to 18:00hrs Monday to Friday and 09:00 to 14:30 hrs on Saturdays), as approved.

We will continue to engage the neighbours and local businesses and look mitigate the effects of working the additional hours wherever possible and shall work positively and collaboratively with the local community; following good working practice at all times. Contact details of the Project and Site Manager are provided at the site entrance should anyone wish to make contact or if they have any questions or problems with the site activities.

In respect of the environmental impact the amended hours would not lead to any significant environmental impacts (including any impacts on habitats) that have not been previously assessed as part of the Environmental Statement for the development of the site under application AWDM/1497/17.'

Relevant Planning History:

AWDM/1497/17 - Redevelopment of the site to provide ten buildings, containing 540 new homes (of which two will be studios, 179 x one bed, 323 x two bed and 38 x three bed), 2,707sqm of commercial floorspace at ground floor level within use classes, A1 (retail), A3 (cafes and restaurants), B1 (business) and D1 (non-residential institutions). The development also includes 512 parking spaces, of which 438 will be for residents and 74 will be for the commercial space/visitors, reconstruction of the river wall, construction of mooring pontoons and observation platform at the end of Humphrey's Gap, provision of a riverside pedestrian/cycle route, areas of semi-private and publicly accessible open space, internal access roads, 596 cycle parking spaces and associated ancillary areas.

Approved - 09.08.2018

Discharge of conditions relating to details of construction management plan approved on 15 November 2020

Expiry Date - 02/11/2020

Consultations:

Environmental Health (Public Health): No objection

Representations:

It is important to note whilst the LPA has sought to undertake public consultation on the proposed changes to the temporary construction working hours under this application, due to the restrictions set out in the legislation, as set out above, the LPA only has 14 calendar days to determine the application.

At the time of writing this report, one letter of objection received from the occupier of St Nicholas Place, Emerald Quay raising the following concerns:

'8pm is too late for a noisy construction site to operate. Work should stop no later than 6pm & not at weekends.'

Relevant Planning Policies

Adur Local Plan Policies (2017):
8 - Shoreham Harbour Regeneration Area
15 - Quality of the Built Environment and Public Realm
34 – Pollution and Contamination

Shoreham Joint Area Action Plan Policies (2019):
SH4 - Housing and community
Policy SH7 - Natural environment, biodiversity and green infrastructure
Policy SH9 - Place making and design quality

Material considerations

Guidance: modification of planning conditions relating to construction working hours (HCLG 22 July 2020)
Ministerial Written Statement on Extending Construction Site Working Hours 13 May 2020 providing guidance on the situations in which a local planning authority (LPA) should allow a construction site to extend its site opening hours
National Planning Policy Framework (HCLG 2019)
National Planning Practice Guidance

Planning Assessment

The request is submitted under 74B of the Town and Country Planning Act to enable urgent changes to construction working in line with the government's latest social distancing guidance on construction and other outdoor work.

Modification of planning conditions relating to construction working hours (HCLG 22 July 2020)

On the 22nd July the Government provided guidance following legislation laid before parliament on the 24th June relating to the Business and Planning Act 2020 to allow for the modification of planning conditions relating to construction work to enable urgent changes to construction working hours to support safe construction working in line with the government's latest social distancing guidance on construction and other outdoor work.

Section 3 indicates Local planning authorities should not refuse applications to extend working hours until 9pm, Monday to Saturday without very compelling reasons. However, the authority may wish to propose minor changes to the proposed hours. Any such changes will need to have been agreed in writing by the applicant.

Section 4 indicates that the applicants will need to provide details of:

- the planning permission to which the application relates
- the existing agreed construction working hours
- details to identify the condition or approved document such as construction management plan which details the working hours
- the proposed revised construction working hours
- the date the revised construction working hours should take effect
- the date on which the application is sent
- the date on which the revised construction working hours should cease to have effect (no later than 1st April 2021)

To aid swift decision making, applicants should also provide:

- a short justification on why extended hours are necessary to enable safe working practices on site
- a list of the primary construction activities, expected to take place during the extended working hours, including plant and equipment to be used
- a proportionate assessment (where relevant) of the likely impact of noise upon sensitive uses near to the site (e.g. dwellings, hospitals and, care homes)
- details of their mitigation plan

Applicants are encouraged to provide details of mitigation plans setting out how they propose to liaise with neighbours and manage and mitigate any effects on local residents or businesses from working additional hours. Such plans should be proportionate to the nature of the site and the number of people potentially adversely affected. The plans may include limiting noisy works to within usual working hours or agreeing to undertake quieter activities

in the morning and evening or agreeing alternative parking provisions. They may also include limiting noisy works to part of the site further from the most sensitive neighbouring properties. There may also be a need to consider additional noise barriers or local screening of noisy items of plant given the potential greater sensitivity of receptors during evenings. In densely populated areas, where proposals for extended hours may have an impact on residential and other noise sensitive uses, such plans may be important for local planning authorities, who may want to be satisfied that there will not be significant adverse impacts on communities.

The Government guidance indicates at point 6 what LPA need to consider when assessing any application for temporary extended working hours:

Local Planning Authorities must have regard to this guidance when determining an application under this new route. Reasonable and proportionate changes to construction hours should be accepted where they support safe construction working in line with social distancing guidance and enable construction sites to operate, unless there are other compelling reasons against the change. In deciding this, local planning authorities should consider:

- any justification provided which sets out the need for proposed extended working hours as a result of social distancing;
- any mitigating measures to be put in place to avoid significant impacts on businesses and the health and quality of life of those people in the near vicinity;
- the original reasons for any existing limits on construction working hours, including whether limitations were relied upon as either mitigation measures or as the basis of assessment for either an Environmental Impact Assessment (EIA, including screening) or a Habitats Regulation Assessment;
- the extent of additional working, compared to current permitted hours, and degree to which this variation is expected to result in local impacts that cannot be mitigated.

Point 5 of the guidance seeks to ensure developers take appropriate steps to engage with the community to manage and mitigate any effects on local residents or businesses from working additional hours

Point 7 indicates in what circumstances a LPA might consider refusing an application for temporary extended working hours. It indicates that:

While a degree of additional disturbance may be considered reasonable for many sites, certain sites may be particularly sensitive due to their location or proximity to other uses which will be sensitive to additional noise and disruption. Careful consideration will need to be given to applications which are:

- made in relation to sites in proximity to businesses or community uses which are particularly sensitive to noise, dust and vibration – and particularly so where such uses are seeking to recover from the impacts of coronavirus, and extended working hours could have a negative impact. Examples include hospitals, hospices, care homes, places of worship, broadcasting or recording studios, theatres and cinemas
- made in relation to sites in close proximity to residential areas where the request for changing hours is likely to have a significant impact on health, taking into account the Noise Policy Statement for England, the requirements of section 79 of Environmental Protection Act 1990 and the duty on local authorities to protect persons in the locality from the effects of noise under section 60(4)(d) Control of Pollution Act 1974
- made in relation to EIA development or development which was subject to EIA screening, and where limitations were put in place to restrict the hours of construction to reduce significant impacts on health to a level which was acceptable, or to reduce impacts on quality of life, or where these restrictions formed the parameters of development against which harm was previously assessed
- made in relation to development which was subject to a Habitats Regulations Assessment and either screened out as not likely to have a significant effect on a habitats site, or subject to appropriate assessment and mitigation measures were put in in order to ensure that the development would not have an adverse effect on the integrity of a habitats site.
- for development adjacent to Sites of Special Scientific Interest, conservation interest and other environmental interest where extended hours are likely to have a significant environmental effect and where mitigation measures were put in place to restrict the hours of construction.

Section 8 provides guidance on specific considerations for application that were subject to Environmental Impact Assessment (EIA) or affects a habitats site. The local planning authority should pay particularly attention to whether applications would lead to developments having significant environmental impacts which have not been assessed or to developments which had been now wrongly screened out of needing an environmental statement

For development affecting a habitats site, local planning authorities should pay particular attention to whether applications would lead to developments having significant environmental impacts which have not been assessed or to developments which had been now wrongly screened out of needing further assessment.

Local planning authorities should satisfy themselves that:

- there is no doubt or real risk of significant effects on a habitats site (providing it is not directly connected with or necessary to the site's management) whether in combination with other plans or projects or alone, and without reliance on mitigation measures; or

- any appropriate assessment remains free of any gaps and contains complete, precise and definitive findings and conclusions capable of dispelling all reasonable scientific doubt as to the effects of the proposed works on protected habitats sites (including in relation to both the baseline for the development to be assessed, and the effectiveness of mitigation measures).

Ministerial Written Statement on Extending Construction Site Working Hours 13 May 2020

The statement provided guidance on the situations in which a local planning authority (LPA) should allow a construction site to extend its site opening hours. Under the written statement, commencing immediately:

- LPAs are expected to approve a request to extend construction working hours temporarily until 9.00 pm, Monday to Saturday, unless there are "very compelling reasons" against it. Reasons for refusing an application may include a significant impact on neighbouring businesses or uses that are particularly sensitive to noise, dust or vibration, which cannot be overcome through other mitigation, or where impacts on densely populated areas would be unreasonable.

- Modest changes to working hours can be agreed informally, with the LPA simply confirming that it will take no enforcement action. Longer-term or more significant changes require a written application to temporarily amend a condition or a construction management plan.

- LPAs are expected to include guidance on how to apply for extended working hours on their websites and to decide applications within ten working days.

- While the written statement suggests that requests to extend working hours should be proportionate and should not involve working on Sundays or bank holidays, it also recognises that there may be situations in which working hours can be extended beyond 9.00 pm, Monday to Saturday. For example, it raises the possibility of 24-hour working in areas without residential properties.

- It is important to note that the flexibility given to LPAs by the written statement covers only the planning system and extends only to 31 May 2021.

Adur Local Plan Polices 15 and 34 seeks to minimise adverse environmental impacts such as noise on residential amenity. The NPPF seeks to ensure a high standard of amenity for existing occupiers of development (para 127(f) and to prevent new development from contributing to noise pollution, amongst other considerations (para 170(e).

Expiry Date - 02/11/2020

Applicants Supporting Statement

The applicants supporting statements indicates as follows:

'We require the hours to be extended due to the Covid 19 pandemic that has resulted in Wates having to review the working practices / method statements to ensure social distancing is maintained at all times. This has resulted in construction activities taking longer to complete.

Construction activities will include concrete works, excavation and ground movement. We will continue to work in line with the approved Construction Management Plan (Sept18) and the S61 Notice dated 31st May 2019. Construction works that are particularly noisy or cause vibration such as driving piles and concrete crushing will only be completed during standard working hours (08:00 to 18:00hrs Monday to Friday and 09:00 to 14:30 hrs on Saturdays), as approved.

We will continue to engage the neighbours and local businesses and look mitigate the effects of working the additional hours wherever possible and shall work positively and collaboratively with the local community; following good working practice at all times. Contact details of the Project and Site Manager are provided at the site entrance should anyone wish to make contact or if they have any questions or problems with the site activities.

In respect of the environmental impact the amended hours would not lead to any significant environmental impacts (including any impacts on habitats) that have not been previously assessed as part of the Environmental Statement for the development of the site under application AWDM/1497/17.'

Section 6 of modification of planning conditions relating to construction working hour's guidance (HCLG 22 July 2020), referred to as 'the guidance' below, sets out criteria for assessing such proposals and these are considered as follows:

- *any justification provided which sets out the need for proposed extended working hours as a result of social distancing;*
- *any mitigating measures to be put in place to avoid significant impacts on businesses and the health and quality of life of those people in the near vicinity;*
- *the original reasons for any existing limits on construction working hours, including whether limitations were relied upon as either mitigation measures or as the basis of assessment for either an Environmental Impact Assessment or a Habitats Regulation Assessment;*
- *the extent of additional working, compared to current permitted hours, and degree to which this variation is expected to result in local impacts that cannot be mitigated*

Assessment

It is considered that the proposed changes to the construction hours are considered reasonable and proportionate to support safe construction working in line with social distancing guidance and to enable construction sites to operate. It is common ground construction activities taking longer to complete with covid related restrictions.

It is noted that the original reasons for limits on construction working hours were imposed to limit the impact on neighbouring residential amenity. In this case, the nearest properties are noted to comprise, 2 – 12 Dolphin Road, North Point (Shoreham Beach), St Nicholas Place (Shoreham Beach) and St Mary's Place (Shoreham Beach). The applicants supporting statement indicates construction activities would be undertaken in accordance with existing environmental controls for the site including amongst others, the previously approved construction management plan (condition 5 of application reference AWDM/1497/17) and details approved Under Section 61 of the Control of Pollution Act 1974 for prior consent to carry out construction or demolition works. In addition, construction works that are particularly noisy or cause vibration such as driving piles and concrete crushing will only be completed during standard working hours (08:00 to 18:00hrs Monday to Friday and 09:00 to 14:30 hrs on Saturdays), as previously approved.

It is also recognised that the increased hours of construction are limited to one additional hour Monday to Friday (increased from 18.00 to 19.00) and 3.5hrs on Saturday (increased from 14.30 to 18.00).

In terms of community engagement, the applicant has re-affirmed their commitment to engage with the community to manage and mitigate any effects on local residents or businesses from working additional hours as set out in their mitigation plan in accordance with section 5 of the guidance.

The Councils EHO officer has carefully considered the proposal and it is considered that the mitigation measures proposed are considered sufficient to mitigate any local impacts including on neighbouring residential amenity associated with the proposed extended hours of construction until 28 February 2021.

For these reasons, the proposal would have an acceptable impact on neighbouring amenity.

Environment Impact Assessment

It is noted that the application AWDM/1497/17 was subject to Environment Impact Assessment. In accordance with section 8 of the guidance, taking into account the relatively modest increase in hours of working and subject to the development being carried out in accordance with the existing environmental controls and the mitigation plan described above, the proposed extension to the hours of construction work would not lead to the development having any additional significant environmental impacts.

Other Matters

It is recognised that under the Environmental Protection Act 1990, local authorities are required to investigate complaints about impacts, including noise, vibration, odour, dust or light, which could constitute a statutory nuisance. These are separate from the controls under the planning regime. In considering the proposal, it is considered that the mitigation proposed would reasonably minimise the risk of statutory nuisance occurring associated with the extension in working hours proposed.

Conclusion

Having taken account of all the relevant planning policy considerations and other material considerations set out above, it is considered that the proposed development complies with the development plan when considered as a whole and is therefore recommended for approval.

Recommendation

Approval subject to the following planning condition:

1. 'Up until 28 February 2021, all demolition and construction works shall not take place outside the hours of 08.00 to 19.00 Mondays to Fridays and 09.00 to 18.00 hours on Saturdays. There shall be no construction works undertaken on Sundays or Bank Holidays. All works shall be carried out in accordance with the mitigation plan received by the Local Planning Authority on 30 October 2020.

After the 28 February 2021, all demolition and construction works shall not take place outside the hours of 08.00 to 18.00 Mondays to Fridays and 09.00 to 14.30 hours on Saturdays. There shall be no construction works undertaken on Sundays or Bank Holidays.

Reason: Having regard to the temporary nature of the extended hours of construction permitted and to safeguard the residential amenity of the area in accordance with the provisions of Policies 15 and 34 of the Adur Local Plan (2017), guidance contained with ‘Modification of Planning Conditions Relating to Construction Working Hours’ (HCLG July 2020), Ministerial Written Statement on Extending Construction Site Working Hours (13 May 2020) and The National Planning Policy Framework (2019) with associated practise guidance.

Informative

The Local Planning Authority has acted positively and proactively in determining this application by assessing the proposal against all material considerations, including planning policies and any representations that may have been received and subsequently determining to grant planning

permission in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.

Is recommendation contrary to letter(s) of representation? Yes

Case Officer:	Stephen Cantwell/Jay Singh	Date:	02.11.2020
Authorised by:	Gary Peck	Date:	02.11.2020