

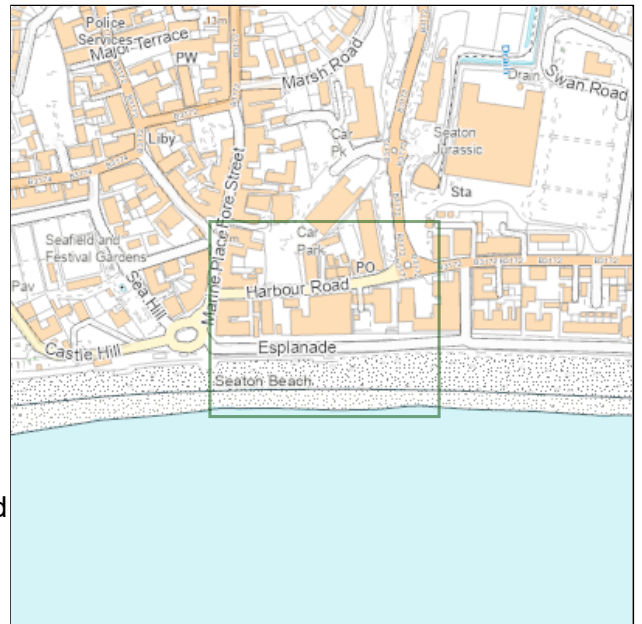
Ward Seaton

Reference 23/1442/VAR

Applicant Mr Erwin Davis

Location Fosse Way Court Seaton EX12 2LP

Proposal Variation of condition 4 b) (working hours) of application 14/0187/MFUL (Refurbishment and extension of existing apartment blocks (inc. additional levels) and construction of new link apartment block to provide an additional 30 no residential apartments and additional parking provision) to read: no construction or demolition works shall be carried out, or deliveries received outside of the following hours: 7:30 am to 5:30 pm Monday to Friday and 8 am to 1 pm on Saturdays and not on Sundays and public holidays.



RECOMMENDATION: Refusal



		Committee Date: 24.10.2023
Seaton (Seaton)	23/1442/VAR	Target Date: 16.10.2023
Applicant:	Mr Erwin Davis	
Location:	Fosse Way Court Seaton	
Proposal:	Variation of condition 4 b) (working hours) of application 14/0187/MFUL (Refurbishment and extension of existing apartment blocks (inc. additional levels) and construction of new link apartment block to provide an additional 30 no residential apartments and additional parking provision) to read: no construction or demolition works shall be carried out, or deliveries received outside of the following hours: 7:30 am to 5:30 pm Monday to Friday and 8 am to 1 pm on Saturdays and not on Sundays and public holidays.	

RECOMMENDATION: Refuse

EXECUTIVE SUMMARY

The application is before committee because the officer recommendation differs from that of the Town Council and where, as a variation to a Major application, the variation application itself is also treated as such.

The application seeks to vary the construction working hours relating to planning permission granted under application 14/0187/MFUL and controlled by condition 4 on that application. Members are advised that development has been commenced and work is ongoing.

The application site occupies a prominent location to the north side of the Esplanade on Seaton seafront. The permission granted under application 14/0187/MFUL allowed for the extension and alteration of existing residential apartment blocks and the construction of a link block to provide an additional 30 no. residential apartments. The site is surrounded by existing residential development to its east and west sides and on the opposite side of Harbour road to the north.

The current construction working hours are controlled by condition 4 on the original application to: 8am to 6pm Monday to Friday and 8am to 1pm on Saturdays, with no working on Sundays or Bank Holidays.

The variation sought seeks to bring forward construction to start at 7.30 am and finish at 5.30pm Monday to Friday.

Whilst the requested change, on the face of it, could be considered to be relatively minor in its extent, it would allow construction to take place earlier in the morning with the potential to disturb sleep and/or affect amenity at a time when there is a reasonable expectation that noisy activity would not be taking place.

The applicant has provided little in the way of justification/need for the proposed change but where objections and complaints have been received relating to the proposal and where work outside the permitted hours has already occurred. The Environmental Health Officer has, in their response, referenced such complaints and the proximity of sensitive receptors who may be impacted from noise during the construction process. As such, they have recommended that the current construction working hour's restrictions are maintained and on this basis it is recommended that this application to allow a variation to those hours is refused and that the construction working hours imposed by condition 4 are enforced.

CONSULTATIONS

Local Consultations

Parish/Town Council

Seaton Town Council have no objections to this application.

Technical Consultations

County Highway Authority

Observations:

The County Highway Authority (CHA) has reviewed this planning application and visited the site.

We are content that the changes in operating hours will not greatly impact the local highway network and free-flow of traffic.

Therefore the CHA has no objections to raise.

Recommendation:

THE HEAD OF PLANNING, TRANSPORTATION AND ENVIRONMENT, ON BEHALF OF DEVON COUNTY COUNCIL, AS LOCAL HIGHWAY AUTHORITY, HAS NO OBJECTION TO THE PROPOSED DEVELOPMENT

Officer authorised to sign on behalf of the County Council

Environmental Health

I have considered the variation of condition 4 and I note the applicant's comments. However, looking at the site history a number of noise complaints have been made to Environmental Health. These noise complaints all detail a breach of the CEMP with

work starting as early as 06:30am on one occasion. This site is close to a high number of sensitive receptors on three fronts who may be impacted from noise during the construction process. Taking the close proximity of these sensitive receptors into consideration together with the historical noise complaints, I recommend that the construction working hours remains the same being - 8am to 6pm Monday to Friday and 8am to 1pm on Saturdays, with no working on Sundays or Bank Holidays.

Other Representations

3 no. representations have been received raising objections to the application. Not all of the objections raised are relevant to the current application but all are summarised below:

- The change in working hours will mean being woken earlier by construction noise and where the impact of 9 hours of construction noise is already having an impact;
- Impact of construction, that has already been going on since January 2022, is causing noise, dirt, upheaval and parking issues;
- Any variation to construction working hours will affect health particularly with no knowledge of when completion can be expected;
- The porta cabins on site are close to bedroom windows and the noise from workers clocking in disturbing sleep;
- Construction workers on the forecourt of Fosse Way Court restrict access to the buildings by mobility scooters etc.
- Construction work has occurred on Sundays which is outside the condition restrictions and on occasions there has been work on site without any site management/foreman present;

PLANNING HISTORY

Reference	Description	Decision	Date
14/0187/MFUL	Refurbishment and extension of existing apartment blocks (inc additional levels) and construction of new link apartment block to provide an additional 30 no residential apartments and additional parking provision	Approval with conditions	18.12.2014

POLICIES

Adopted East Devon Local Plan 2013-2031 Policies
Strategy 6 (Development within Built-up Area Boundaries)

D1 (Design and Local Distinctiveness)

EN14 (Control of Pollution)

Strategy 25 (Development at Seaton)

Government Planning Documents

NPPF (National Planning Policy Framework 2021)

National Planning Practice Guidance

Site Location and Description

Fosse Way Court is a prominent building on Seaton seafront which fronts the Esplanade to the south. To the rear of the site, the building is bound by Harbour Road and a number of commercial units.

The existing building is made up of three distinct elements, these being a seven storey block consisting of a shop and stores on the ground floor and six levels of apartments above. The middle element is a covered parking area behind the Moridunum. The third element is a four storey block comprising part car parking and stores on the ground floor and three levels of apartments above.

The site including the car parking is generally accessed off Harbour Road, with limited pedestrian access off the footway (the Moridunum) adjacent the Esplanade. The main access to the commercial and residential areas is via the western elevation.

The site is within a flood zone 2 and 3 and is within a ground water vulnerable zone. The Seaton Conservation Area boundary runs immediately adjacent the western boundary and the designated Town Centre Shopping Area forms part of the rear boundary along Harbour Road as far as Kings Court.

The site is currently being developed to provide additional apartments in accordance with the permission that this application seeks to vary.

Background

Planning permission was granted in December 2014 for the refurbishment and extension of the existing apartment block (including additional level) and construction of a new link apartment block together with associated additional parking provision (14/0187/MFUL refer). In total the development sought to provide an additional 30 no. apartments.

The application form for the current application states that work commenced on the development on 1st December 2017. However it is understood that only limited works were undertaken at the time in order to commence the development and only more recently has larger scale construction work been undertaken.

Proposed Development

The condition to which the application relates reads:

“The following shall be adhered to at all times:

- a. There shall be no burning of any kind on site during construction, demolition or site preparation works.*
- b. No construction or demolition works shall be carried out, or deliveries received, outside of the following hours: 8am to 6pm Monday to Friday and 8am to 1pm on Saturdays, and not at all on Sundays or Public Holidays.*
- c. Dust suppression measures shall be employed as required during construction in order to prevent off-site dust nuisance.*
- d. No high frequency audible reversing alarms shall be permitted to be used on any vehicle working on the site.*

Reason: To protect the amenity of local residents from smoke, noise and dust in accordance with Policy D1 (Design and Local Distinctiveness) and Policy EN15 (Control of Pollution) of the East Devon Local Plan.)”

The application seeks to vary part b) of the condition so as to vary the construction working hours, the requested revision would read as follows, with the remainder of the condition (apart from part b) unchanged):

“The following shall be adhered to at all times:

- a. There shall be no burning of any kind on site during construction, demolition or site preparation works.*
- b. No construction or demolition works shall be carried out, or deliveries received, outside of the following hours: 7.30am to 5.30pm Monday to Friday and 8am to 1pm on Saturdays, and not at all on Sundays or Public Holidays.*
- c. Dust suppression measures shall be employed as required during construction in order to prevent off-site dust nuisance.*
- d. No high frequency audible reversing alarms shall be permitted to be used on any vehicle working on the site.*

Reason: To protect the amenity of local residents from smoke, noise and dust in accordance with Policy D1 (Design and Local Distinctiveness) and Policy EN15 (Control of Pollution) of the East Devon Local Plan.)”

It should be noted that condition 5 on the original application (14/0187/MFUL) required submission and approval of a Construction and Environmental Management Plan (CEMP) and that the approved details for this indicated construction working hours to be 8 am to 5 pm. This being the case and in the event that the variation to the condition were to be agree a revised CEMP would also need to be submitted to reflect this change.

It is further advised that, in the event that members are minded to approve the proposed change, that any approval would represent a fresh grant of planning permission. As the original application was subject to a s.106 legal agreement a deed of variation to that agreement would be required to reference any new permission.

ANALYSIS

As set out above, the reason for the condition was, amongst other things, to protect the amenity of local residents. The condition was suggested by the Council's Environmental Health Team at the time with the construction working hours reflecting those set out in the Council's adopted 'Construction Sites Code of Practice'. These hours in turn reflect standard construction working hours which are designed to protect the amenity of nearby residents from, amongst other things, the impact of construction noise.

The application seeks to extend these hours by half an hour in the morning and correspondingly reduce working hours by half an hour in the evening. The applicant has provided the following in response to a request for information on the reason for the proposed change:

"We currently operate from 8.00am to 6.00pm, Monday through Friday. However, considering the interests of local residents and businesses, we propose to adjust our operating hours. We believe a change to the hours would cause less disruption, making it more aligned with typical construction industry schedules. Our proposition is to shift the working hours from the current 6.00pm end time to an earlier closure at 5.30pm. We anticipate that this change, especially during the holiday period, will be beneficial for the surrounding community. Additionally, we propose to start our working day earlier, at 7.30am, to give our workforce ample time to prepare for their daily tasks. We believe these modifications will result in a more efficient construction phase for the development."

They have also subsequently suggested that the change in construction working hours would give rise to the following benefits:

- During winter months the extra half-hour would allow the most to be made of available daylight, ensuring that the project stays on schedule
- The additional half-hour would allow deliveries to be made to the site before the full workday begins leading to fewer disruptions during the core working hours, allowing for a more efficient use of time and resources.
- During summer months extending the working hours slightly would enable the project to be completed more quickly, thereby reducing the overall duration of construction noise and disruption.

The applicant has also suggested that the extra half-hour would be used responsibly, focusing on less noisy activities and deliveries to reduce the impact on sensitive receptors.

The issue for consideration in relation to this application is the potential amenity impact arising from the proposed application, primarily on the living conditions of local residents. The highways authority has confirmed it has no objection to the proposed variation and in this regard it is not considered that varying the construction working hours would adversely impact on highway safety.

The applicant's comments and reasons for requesting the variation are noted and it is acknowledged that some additional daylight construction time may be gained during winter months. However any limited benefits in this regard would need to be balanced against any harm arising from the earlier start. The willingness to look to restrict activity

(during the extra half hour in the morning) to 'less noisy activities and deliveries' is acknowledged, however, it is considered that restricting work to certain activities during this period would be difficult to enforce and that deliveries themselves could give rise to harmful noise impacts. It is unclear how the proposed shift in the working day, bringing it forward by half an hour, would benefit the local community and the proposal seeks to shift the work pattern rather than extend the work hours, as such it is unclear what benefit this would bring in efficiencies and time saving for the majority of the year.

On the other hand, it is noted that a number of objections have been received from local residents to the application and that complaints were also received prior to the submission of the application and relating to the hours of construction. The Environmental Health officer has also referred to noise complaints relating to the construction working hours and recommends that the current restrictions remain.

Policy D1 (Design and Local Distinctiveness) of the Local Plan looks to ensure that development proposals do not '*adversely affect the amenity of adjoining residential properties*'. More specifically, Policy EN14 (Control of Pollution) of the Local Plan states that permission will not be granted for development that would result in unacceptable levels, of amongst other things, noise either to residents or the wider environment.

The aforementioned policies reflect guidance in the National Planning Policy Framework (at paras. 174 and 185) which similarly see to prevent existing development being adversely impacted from a range of environmental factors including noise pollution.

The National Planning Practice Guidance contains advice on noise and how this should be considered in relation to planning. In relation to the question of 'How can planning address the adverse effects of noise sources, including where the 'agent of change' needs to put mitigation in place?' it includes as one of the potential mitigation measures,

'... using planning conditions/obligations to restrict activities allowed on the site at certain times.' Paragraph: 010 Reference ID: 30-010-20190722

The use of conditions are therefore recognised as a valid means of seeking to protect amenity.

In this case, the issue is the timing of when such noise impacts could occur and where outside of the current restrictions i.e. before 08.00 hours local residents have a reasonable expectation not to be disturbed by construction work. As mentioned above, the current hours are standard construction working hours which have been established as providing a reasonable time period for construction work to take place within but also providing periods outside of these, early morning and evening, where local residents can expect not to be disturbed by such activity. In the case of the application site, this is surrounded by residential properties in close proximity on three sides and where representations received would indicate that residents have and are being disturbed by work outside the current working hour restrictions. Given the

evident and potential impact of the proposed change and where limited justification or benefit and no information on the length of the development phase has been provided, it is considered that there is no basis to support the proposed variation. On this basis, it is recommended that the application to vary the construction working hours is refused and the current restrictions are maintained.

RECOMMENDATION

REFUSE for the following reason:

1. The construction working hours imposed by condition 4 on application 14/0187/MFUL reflect standard construction working hours in residential areas and are designed to ensure the amenity of nearby occupiers are not adversely affected by activities associated with, or impacts from construction work. The proposal to change these hours and in particular the proposal to permit construction work from 07.30 hours Monday to Friday would give rise to potential impacts, particularly noise, on local residents at a time when this could disturb sleep and where there is a reasonable expectation that such activity will not be taking place. The proposal is therefore contrary to policies D1 (Design and Local Distinctiveness) and EN14 (Control of Pollution) of the East Devon Local Plan 2013-2031 which seek to protect the amenity of adjoin occupiers and prevent unacceptable levels of noise to local residents as well as guidance in the National Planning Policy Framework and associated Planning Practice Guidance.

NOTE FOR APPLICANT

Informative:

In accordance with the aims of Article 35 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 East Devon District Council seeks to work positively with applicants to try and ensure that all relevant listed building concerns have been appropriately resolved; however, in this case the development is considered to be fundamentally unacceptable such that the Council's concerns could not be overcome through negotiation.

Plans relating to this application:

None

List of Background Papers

Application file, consultations and policy documents referred to in the report.

Statement on Human Rights and Equalities Issues

Human Rights Act:

The development has been assessed against the provisions of the Human Rights Act, and in particular Article 1 of the First Protocol and Article 8 of the Act itself. This Act gives further effect to the rights included in the European Convention on Human Rights. In arriving at this recommendation, due regard has been given to the applicant's reasonable development rights and expectations which have been balanced and weighed against the wider community interests, as expressed through third party interests / the Development Plan and Central Government Guidance

Equalities Act - In arriving at this recommendation, due regard has been given to the provisions of the Equalities Act 2010, particularly the Public Sector Equality Duty and Section 149. The Equality Act 2010 requires public bodies to have due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations between different people when carrying out their activities. Protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race/ethnicity, religion or belief (or lack of), sex and sexual orientation