

PLANNING APPLICATION REPORT

REF NO: FG/35/19/PL

LOCATION: Quercus Nursery
Littlehampton Road
Ferring
BN12 6PH

PROPOSAL: Variation of condition 2 following a grant of planning permission FG/52/18/PL - permit deliveries to be made to the site by HGVs. No more than 5 times per week between the hours of 05.00 & 06.00 & in addition to deliveries made during the hours of 06.00 to 19.00.

SITE AND SURROUNDINGS

DESCRIPTION OF APPLICATION This proposal seeks to amend condition 2 of FG/52/18/PL which states: 'There shall be no deliveries undertaken between 1900 hours and 0600 hours.'

Reason: In the interests of amenity in accordance with Arun Local Plan policies QE SP1 and QE DM1.

This condition was attached at the request of Development Control Committee (DCC) on 12 December 2018. The committee considered that 6am was a reasonable time to commence deliveries. The recommendation to DCC was that some deliveries could take place between 05.00 - 06.00 hours.

The application seeks approval to undertake deliveries one hour earlier a day, from 5am, up to 5 times per week. This was proposed as part of FG/52/18/PL but the decision of DCC in December 2018 was to allow deliveries from 06.00 hours only.

The application is supported by a Noise Impact Assessment.

SITE AREA 1.4 hectares.

TOPOGRAPHY Predominantly flat.

TREES None affected by the proposed development.

BOUNDARY TREATMENT Fencing/hedging to approx. 1-2m height.

SITE CHARACTERISTICS Established nursery site used for tree growing with single storey poly tunnels and outbuildings within the site.

CHARACTER OF LOCALITY Predominantly rural. Equestrian Centre to north, Vineyard to east and nursery to west.

RELEVANT SITE HISTORY

FG/52/18/PL	Amendments to design approved under FG/95/16/PL, polytunnels, outdoor growing beds, tree nursery, storage & welfare facilities for a horticultural enterprise.	ApproveConditionally 13-12-18
FG/95/16/PL	Polytunnels, outdoor growing beds, tree nursery, storage & welfare facilities for a horticultural enterprise	ApproveConditionally 10-08-16

REPRESENTATIONS

REPRESENTATIONS RECEIVED:

Ferring Parish Council

Objection:

- Conditions were applied to the delivery times on this site as a direct consequence of the site owners failing to respect neighbouring residents by the ongoing practice of overnight deliveries with the associated noise and disturbance previously identified in the many objections. While the conditions were welcomed to give some degree of overnight relief from such disturbances to the nearby residents, the conditions did not adequately restrict the delivery times when taking account of the location.
- Totally opposed to any relaxation of the conditions in recognition of the impact of these frequent disturbances on the sleep patterns, general health and stress to which the residents are subjected.
- Deliveries have continued despite the conditions being imposed with a complete disregard for the planning process and the local community.
- There are no requirements for these deliveries to be received at unsocial hours other than for the convenience of the transport companies.
- Continuing to contravene the planning conditions cannot be justified and should not be tolerated with appropriate compliance measures being enforced without further delay.

6 Objections:

- 6.00 am deliveries are bad enough but 5.00am is ridiculous.
- This company doesn't consider neighbours and does not stick to even 6.00 am. We are constantly being woken between 1.30 and 5.00 am by intolerable noise levels.
- The site is also being used as an illegal lorry park at night and during the day.
- All the noise tests and reports are worthless. The only test that counts is that they disturb the local residents as can be seen from the numerous complaints.
- This site operates in breach of the existing planning conditions with night deliveries from articulated trucks from Europe making noise at all hours of the night.
- The agents are incorrect. Once drivers arrive they have to park on site. There is no where else unless they block the A 259.
- The lorries arrive completely unsupervised, drive up to the gates they then enter a code to open the gates, park, unload, open the gates at the exit and drive off or unload and sleep on site in their cabs some times till 12 hours later, the lorry drivers can come and go with out any monitoring by the applicant.

COMMENTS ON REPRESENTATIONS RECEIVED:

The planning use of the site is authorised. The early hours use of the site has been monitored by planning enforcement and Environmental Health officers. The issues raised will be covered in greater detail in the Conclusions section of this report.

CONSULTATIONS

Environmental Health

CONSULTATION RESPONSES RECEIVED:

Environmental Health - No Objection.

It would be unreasonable to prevent Quercus operating between 5am and 6am. Previous advice in relation to application number FG/52/18/PL is repeated which recommended delivery including unloading between 5:00 and 6:00am.

Request a condition, that the number of such lorries arriving at any one time should be no more than 2 so that lorries can enter the site without need for manoeuvring.

COMMENTS ON CONSULTATION RESPONSES:

Noted. It is considered that the site is not physically capable of accommodating more than one lorry at a time.

POLICY CONTEXT

Designation applicable to site:
Outside Built Up Area Boundary
Gaps between Settlements

DEVELOPMENT PLAN POLICES

[Arun Local Plan 2011 - 2031:](#)

CSP1	C SP1 Countryside
QEDM1	QE DM1 Noise Pollution
QESP1	QE SP1 Quality of the Environment
TSP1	T SP1 Transport and Development

[Ferring Neighbourhood Plan 2014 Policy 1A](#)

A Spatial Plan for the Parish

Ferring Neighbourhood Plan 2014 Policy 7

Land north of Littlehampton Road, encouraging of existing rural businesses

PLANNING POLICY GUIDANCE:

NPPF	National Planning Policy Framework
NPPG	National Planning Practice Guidance

POLICY COMMENTARY

The Development Plan consists of the Arun Local Plan 2011 - 2031, West Sussex County Council's Waste and Minerals Plans and Made Neighbourhood Development Plans.

The policies are published under Regulations 19 and 35 of the Town and Country Planning (Local Planning) (England) Regulations 2012.

The Neighbourhood Development Plan

Where applicable, Neighbourhood Development Plan's (more commonly known as a neighbourhood plan or NDP), once made by Arun District Council, will form part of the statutory local development plan for the relevant designated neighbourhood area and policies within them will be considered in determining planning applications. Made NDP policies will be considered alongside other development plan documents including Arun District Council's Local Plan.

Made Plans in Arun District Council's Local Planning Authority Area are: Aldingbourne; Angmering; Arundel; Barnham & Eastergate; Bersted; Bognor Regis; Clymping; East Preston; Felpham; Ferring; Kingston; Littlehampton; Rustington; Walberton; Yapton.

The relevant Ferring Neighbourhood Plan policies have been taken account of in considering this application.

DEVELOPMENT PLAN AND/OR LEGISLATIVE BACKGROUND

Section 38(6) of the Planning and Compulsory Purchase Act 2004 states:-

"If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise."

The proposal is considered to comply with relevant Development Plan policies in that it would not have a significant impact upon the residential amenity of adjoining properties sufficient to justify a refusal of planning permission.

OTHER MATERIAL CONSIDERATIONS

It is considered that there are no other material considerations to warrant a decision otherwise than in accordance with the Development Plan and/or legislative background.

CONCLUSIONS

PRINCIPLE

The site lies outside the built up area boundary where development which meets the operational needs of agriculture/horticulture is considered acceptable in principle as per policy C SP1 of the Arun Local Plan. Policy 1A of the Ferring Neighbourhood Plan supports the encouragement of existing rural business in this location. The site is located between an established nursery and an established vineyard.

Furthermore, paragraph 83 of the NPPF states that local planning authorities should support the sustainable growth and expansion of all types of business and enterprise in rural areas, both through conversion of existing buildings and well-designed new buildings and promote the development and diversification of agricultural and other land-based rural businesses.

BACKGROUND AND JUSTIFICATION FOR THE PROPOSAL

Planning permission was granted for the use of the site as a nursery under FG/95/16/PL and the original permission was amended by FG/52/18/PL which increased the size of 2 of the approved poly tunnels, altered their orientation and provided an additional poly tunnel. The application also included a pergola to facilitate loading and unloading of stock and materials. When taking this application to Development

Control Committee Members, in approving the application, imposed the condition that there should be no deliveries before 6 a.m.

This proposal seeks to amend Condition 2 of FG/52/18/PL to allow deliveries to take place from 5 a.m. no more than 5 times per week.

IMPACT ON VISUAL AMENITY AND THE CHARACTER OF THE AREA

The proposed changes to delivery times will not have a significantly greater impact on the character of the area to that already approved under FG/52/18/PL and would not materially increase the use of the approved development.

This proposal does not increase the built form within the site. Buildings have already been approved.

IMPACT ON HIGHWAY SAFETY

The access onto the A259 is existing and used by the nursery to the west and the equestrian centre to the north. There are no changes proposed to the access and the additional 5 deliveries per week would not significantly increase the volume of traffic using this access. All lorries are loaded and unloaded within the nursery yard and not on the highway. Lorry drivers give the applicant an estimated time of arrival and they ensure the gate is unlocked.

County Highways previously had no objection to the proposal in terms of highway safety. The proposal is therefore considered compliant with policy TSP1 of the Arun Local Plan.

RESIDENTIAL AMENITY

Quercus Nurseries grow the majority of their own plants on site, however there is a need to 'import' specialist plants from other nurseries. The imported plants had previously been delivered in wheeled trollies/cages on lorries from 04:00 hours in the morning (the early delivery was received between 04:00 - 06:00 hours). Following the arrival of deliveries before 5am the applicant liaised with the delivery company over the timing of deliveries and informed the delivery company that the site cannot be accessed before 6am and the gate will be locked to ensure this. However, complaints received advise that delivery drivers are accessing the site before staff are present by using a keypad on the gate.

A Noise Impact Assessment Report which measures delivery/unloading noise levels and the impact on the nearest noise sensitive receivers in accordance with relevant national standards has been submitted with the application.

The agents have advised that the opening hours of the business are 07.00 to 18.00 and the majority of the deliveries are received in this time. Some early morning deliveries are made before the business opens and these amount to 5 deliveries per week (Tuesday to Saturday). Deliveries from the applicant's European supplier are limited on times for arrival to between 5am - 6am to accord with shipping timetables and UK restrictions on HGV driving hours, (which requires mandatory breaks in driving periods).

Any delay in the early morning delivery beyond 6am would result in the HGV driver not having sufficient time to reach the nearest truck stop at Arundel before the end of their daily driving allowance, after which they are required to take an extended sleep break to achieve the 11 hours rest every day required by European Union and AETR (European Agreement Concerning the Work of Crews of Vehicles Engaged in International Road Transport) rules. The 5am delivery driver (having driven overnight from Holland) only has 15 minutes left on their clock when they leave the nursery to get to Arundel.

At the time of the last application the Environmental Health Officer (EHO) considered the previously submitted acoustic report and undertook independent noise testing and was satisfied that with the imposition of appropriate conditions the noise generated could be controlled to an acceptable level and that it could operate without causing a statutory nuisance to neighbouring properties on the other side of the A259.

An out of hours Environmental Health Officer attended a nearby residence during 4 separate nights (Friday, Saturday, Monday and Tuesday), during which two deliveries were observed (Friday and Tuesday) between 5am and 6am and the EHO was satisfied that the noise generated by these deliveries was not audible over the background noise so as to disturb a resident while asleep.

The visits established that:

- Low background noise levels between the hours of 03:00 to 04:00 mean that any part of the delivery operation occurring at this time would constitute a statutory nuisance and should not be permitted.
- Road noise increases after 04.45 hours so that deliveries occurring at or after this time, are unlikely to be detrimental to local residential amenity and should be permitted.
- Between 03:00 and 04:45 hours it is considered that delivery noise would be to the detriment of sensitive receptors on the south side of the A259, but that this could be satisfactorily dealt with if vehicles immediately turned off their engines having arrived on site, with no unloading/loading to occur until 04.45 hours.

When commenting on FG/52/18/PL it was recommended by the EHO that early morning deliveries should not occur before 04:00 hours and should be conditioned accordingly. The delivery operation to be limited to arrival of lorries on site and parking up alone, with engines turned off immediately, between the hours of 04:00 and 04.45. The remaining period 04.45 to 06:00 hours shall be suitable for delivery operations to occur.

The outcome to FG/52/18/PL was that the officer recommendation to impose a condition stating that deliveries should not take place between 1900 hours and 0500 hours was replaced by Members to one that in their opinion was more reasonable and stated that deliveries should not take place before 06.00. Members also decided to delete a condition recommending that no more than 5 deliveries per week (Tuesday to Saturday inclusive) shall be taken between the hours of 0500 and 0600 hours.

As a result of discussions with the Environmental Health team the business has changed its operations so that empty trolleys are no longer loaded onto lorries during the early morning deliveries and these are loaded onto a later regular delivery lorry in the afternoon. The applicant's would be happy with a condition stipulating that no more than 5 deliveries per week (Tuesday - Saturday only) take place between 5 a.m. and 6 a.m. and that no empty trolleys are loaded into vehicles during this time.

There are no residential properties immediately adjoining the site. The closest properties on the north side of the A259 are Lansdowne Nursery to the west (70m away), Eastlands to the south (165m away), Highdown Vineyard to the east (160m away). The residential properties to the south, on the opposite side of the A259 Littlehampton Road, are a separation distance of 70m to the site frontage.

As a result of 4 neighbour complaints the Local Planning Authority has received neighbour reports of 12 incidents when deliveries to the site have taken place between 1.20 am and 5.35am since the approval of FG/52/18/PL in December last year. The noise and disturbance to nearby properties to the south and east has been evidenced by the Council's Environmental Health team and investigated by the planning enforcement team.

The Environmental Health Officer has visited the site and monitored noise with the out of hours officer on

7 occasions between 16th April and 3rd May 2019. These visits took place between the hours of 4:00 and 6:30am. The observation point was on the south side of the A259, immediately opposite the business. Delivery was only recorded on one day, 26th April consisting the largest 'Van Vliet' lorry. Although the vehicle arrived at 4.51am, unloading did not commence until 6.12am and this was not a cause of noise disturbance.

The Environmental Health Officer noted the volume of traffic flowing along the A259 varied during the above periods of observation. They have confirmed that even if a large lorry pulls up to site, opens the gate, enters the site and switches the engine and lights off immediately, this would only be reasonable after 05.00 hours. Unloading could occur at this time, before increased traffic on the A259. This would apply consistently at all times of the year.

Policy HOR DM1 (i) states that Noise levels resulting from machinery usage, vehicle movement or other activity on the site, when measured against the existing ambient noise levels in the locality should not unacceptably disturb occupants of nearby residential properties. Given the comments of the Environmental Health officer such disturbance is not being caused.

CONCLUSION

The additional delivery hour requested in this application, at the start of the day, would not generate a level of noise considered to result in significant harm to residential amenity and the proposal would accord with policies CSP1, DDM1, QE SP1 and QE DM1 of Arun Local Plan, policy 7 of the Ferring Neighbourhood Plan and paragraph 83 of the NPPF. It is therefore recommended that condition number 2 of FG/52/18/PL be amended to require the following.

HUMAN RIGHTS ACT

The Council in making a decision should be aware of and take into account any implications that may arise from the Human Rights Act 1998. Under the Act, it is unlawful for a public authority such as Arun District Council to act in a manner, which is incompatible with the European Convention on Human Rights.

Consideration has been specifically given to Article 8 (right to respect private and family life) and Article 1 of the First Protocol (protection of property). It is not considered that the recommendation for approval of the permission in this case interferes unreasonably with any local residents' right to respect for their private and family life and home, except insofar as it is necessary to protect the rights and freedoms of others (in this case, the rights of the applicant). The Council is also permitted to control the use of property in accordance with the general interest and the recommendation for approval is considered to be a proportionate response to the submitted application based on the considerations set out in this report.

DUTY UNDER THE EQUALITIES ACT 2010

Duty under the Equalities Act 2010

In assessing this proposal the following impacts have been identified upon those people with the following protected characteristics (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex or sexual orientation).

The proposal would have a neutral impact on the protected characteristics.

RECOMMENDATION

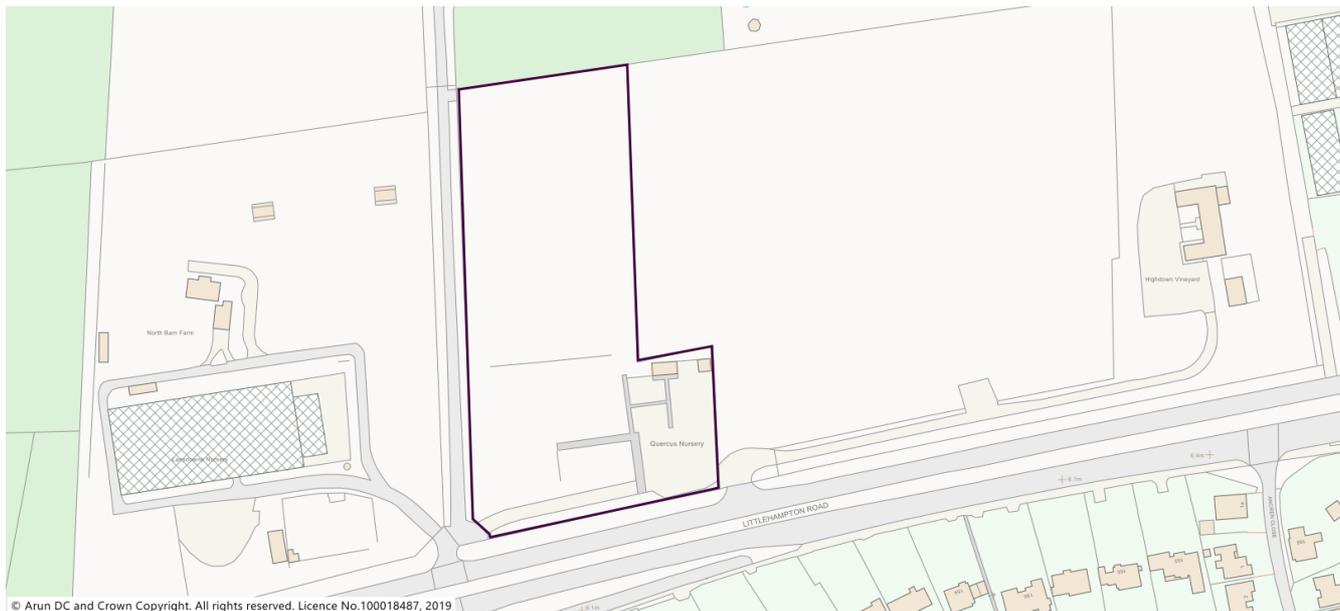
APPROVE CONDITIONALLY

- 1 There shall be no deliveries undertaken between 1900 hours and 0600 hours except for no more than 5 deliveries per week (Tuesday to Saturday inclusive) to be undertaken by one vehicle only between the hours of 05.00 and 06.00 hours on any one day.

Reason: In the interests of the amenity in accordance with Arun Local Plan policies QE SP1 and QE DM1.

- 2 **INFORMATIVE:** Statement pursuant to Article 35 of the Town and Country Planning (Development Management Procedure)(England) Order 2015. 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.
- 3 **INFORMATIVE:** This permission relates to the variation of condition 2 of planning permission FG/52/18/PL only. The applicant is advised and reminded that the planning conditions attached to the original planning permission number FG/52/18/PL remain in force and must be complied with. This decision only relates to the variation of Condition 2 of that planning permission.
- 4 **INFORMATIVE:** The granting of this planning permission does not in any way indemnify against statutory nuisance action being taken should substantiated complaints within the remit of the Environmental Protection Act 1990 be received.

FG/35/19/PL - Indicative Location Plan (Do not Scale or Copy)
(All plans face north unless otherwise indicated with a north point)



Based on the Ordnance Survey mapping with permission of the Controller of Her Majesty's Stationery Office © Crown Copyright.
Unauthorised reproduction infringes Crown Copyright and may lead to prosecution or civil proceedings. Arun District Council
100018487. 2015