

**Planning Committee 17 September 2019**  
**Report of the Planning Manager**

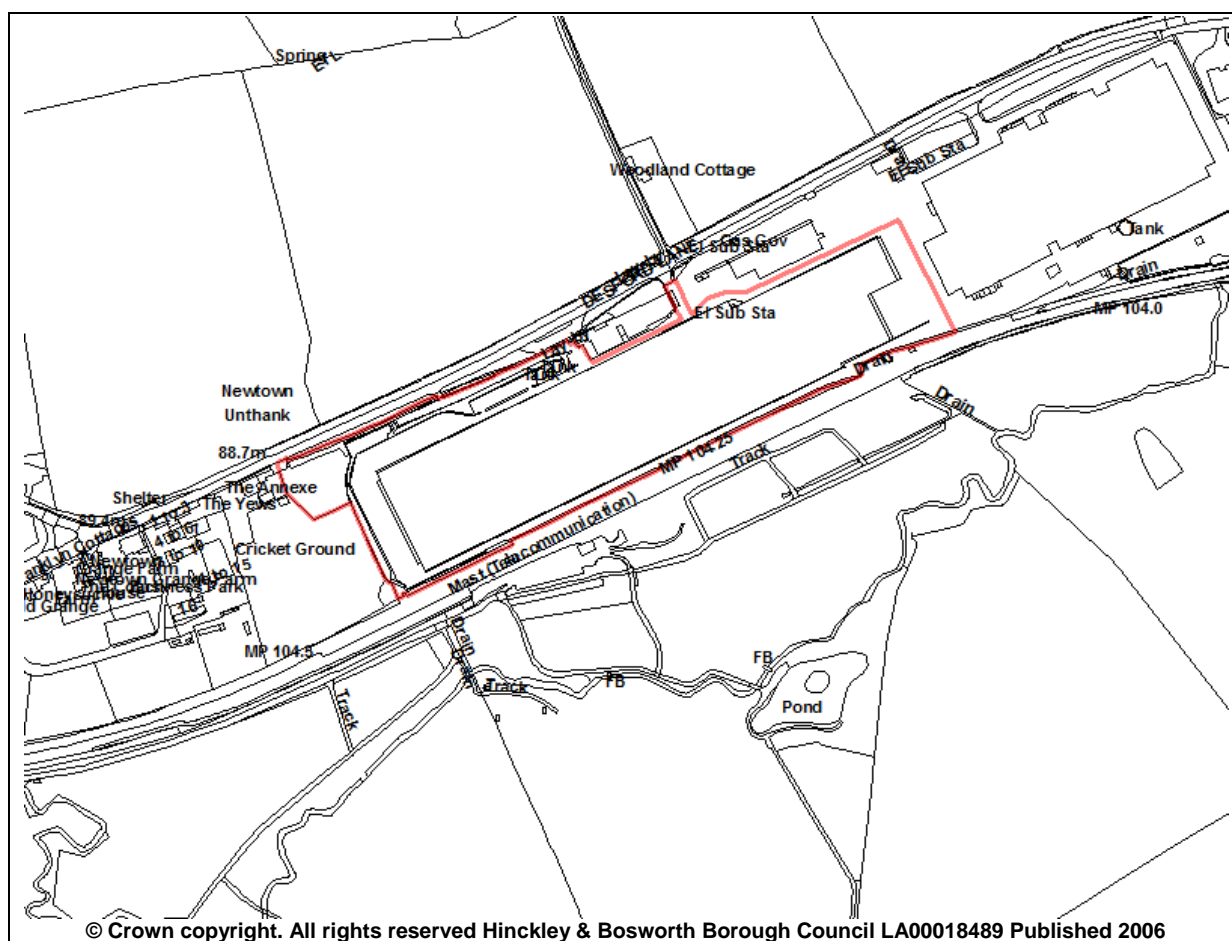
**Planning Ref:** 19/00253/CONDIT  
**Applicant:** Mr Gerry Loughran  
**Ward:** Newbold Verdon With Desford & Peckleton



Hinckley & Bosworth  
Borough Council

**Site:** Crown Crest PLC Desford Lane Kirby Muxloe

**Proposal:** Variation of Condition 11 of planning permission 10/00332/FUL and planning permission 12/00313/CONDIT to extend the permitted days and hours during which deliveries can be taken at, or dispatched from, the site to: Mondays to Fridays (including Bank Holidays) 06.00 to 23.00; Saturdays 08.00 to 18.00 and Sundays 09.00 to 13.00.



1. **Recommendations**
  - 1.1. **Refuse planning permission** for the reasons at the end of this report.
2. **Planning Application Description**
  - 2.1. Planning permission was granted on the application site in 2010 for the erection of a storage and distribution warehouse (use Class B8) with a gross internal floor area of almost 44,000 square metres. This replaced a former steel manufacturing building (Use Class B2). The site is currently occupied by Poundstretcher Limited as a storage and distribution centre for goods to service their retail outlets throughout the country.

- 2.2. Condition 11 of the planning permission (reference 10/00332/FUL) restricts the hours of operation for deliveries to and dispatches from the site as follows:

*'No deliveries shall be taken at or dispatched from the site outside the hours of 6.00am to 7.00pm Mondays to Fridays and 8.00am to 3pm on Saturdays nor at any time on Sundays, Bank or Statutory Public Holidays.'*

- 2.3. The reason for the imposition of the condition was to define the planning permission as then applied for and to provide control, via the requirement for a further planning application in respect of any future extension of the permitted hours for further impact assessment, in order to protect the amenity of adjacent and nearby residential properties from noise and disturbance from activities within the site. The 2010 application did not however restrict the number of HGV movements to or from the site or restrict the movement of vehicles along the approved HGV routes to and from the site, only the times for deliveries to and dispatches from the site itself.
- 2.4. This application seeks to vary the condition to provide more operational flexibility and extend the hours of operation for deliveries to and dispatches from the site to:
- Mondays to Fridays (including Bank Holidays) 06.00 to 23.00 hours
  - Saturdays 08.00 to 18.00 hours
  - Sundays 09.00 to 13.00 hours
- 2.5. The information submitted to support the application states that Poundstretcher Limited has undertaken a relocation of their head office and operations from its Huddersfield site to the Desford site, consolidating into a single UK head office. The consolidation of the two sites at Desford has resulted in a need for more flexibility in terms of the times that deliveries can be made to and dispatched from the site. This consolidation has already occurred and did not need planning permission.
- 2.6. A Planning Statement, Noise Impact Assessment and supplementary note, Highway Impact Statement and supplementary Highway Impact Technical Note have been submitted to support the application.

### **3. Description of the Site and Surrounding Area**

- 3.1. The application site covers an area of approximately 6.8 hectares and is located within an allocated employment site to the south of Desford Lane in the countryside between Desford and Kirby Muxloe (site reference DES31). The majority of the site is occupied by the warehouse building along with office buildings, ancillary infrastructure and associated internal access and parking areas. The site is protected by a perimeter security fence and also by CCTV coverage. There is mature planting to the frontage of the site with Desford Lane that provides screening although there are views into the site at various points.
- 3.2. There is an associated warehouse building to the east and other commercial/employment uses including a waste paper and cardboard merchants beyond. To the west there is a recreation ground within the applicant's ownership and an unrelated neighbouring dwelling, with a small business park (predominantly offices) beyond. To the north there is an isolated dwelling with open fields in agricultural use. To the south lie the former Desford Railway Junction and a watercourse beyond.

#### **4. Relevant Planning History**

08/00187/COU	Change of use of existing factory and warehouse to warehouse and distribution	Permitted	07.05.2008
10/00332/FUL	Erection of warehouse (class B8 use)	Permitted	01.09.2010
12/00313/CONDIT	Variation of condition 16 of planning application 10/00332/FUL for the erection of warehouse (class b8 use)	Permitted	22.08.2012
12/00444/CONDIT	Variation of condition 12 of planning permission 08/00187/COU for change of use of existing factory and warehouse to warehouse and distribution	Permitted	21.08.2012

#### **5. Publicity**

- 5.1. The application has been publicised by sending out letters to local residents. A site notice was also posted within the vicinity of the site and a notice was displayed in the local press.
- 5.2. Responses from 331 separate addresses have been received as a result of public consultation from residents of both Hinckley and Bosworth borough and residents of a neighbouring borough through which a designated HGV route to the site passes.
- 5.3. One letter of support has been received subject to the number of deliveries being restricted and traffic calming measures being implemented to control traffic speed.
- 5.4. The responses received raise objections to the proposal on the following grounds:
  - 1) Adverse impacts from a significant increase in HGV traffic
  - 2) Adverse impacts on quality of life or residents along the HGV routes
  - 3) Adverse impacts on highway and pedestrian safety
  - 4) Road and junctions on route are not suitable for HGV traffic particularly an operation of the type concerned (not wide enough and narrow pavements)
  - 5) HGV's mounting pavement and opposite side of road with subsequent damage to highway infrastructure
  - 6) Inadequate pedestrian crossings on the HGV routes
  - 7) Additional traffic congestion
  - 8) Highway Impact Assessment is flawed and should not be relied upon
  - 9) Traffic survey is out of date – changes on A50
  - 10) Additional traffic from proposed major residential scheme in Kirby Muxloe not taken into account
  - 11) Increase in noise pollution, vibration and disturbance to residents amenity along the routes, particularly outside normal working hours
  - 12) Increase in air pollution – increased risk to health
  - 13) Detrimental impact on character of rural village
  - 14) Detrimental to leisure activities in the surrounding area that use the rural roads including cyclists, walkers and horse riders etc.
  - 15) Detrimental to farming practices – movement of animals
  - 16) Applicant should contribute to improvements in highways infrastructure/road widening etc.
  - 17) Applicant should relocate to a more suitable site with adequate highway infrastructure
  - 18) Economic benefits do not outweigh adverse impacts on residents

- 19) Damage to Church and other buildings from vibrations
- 20) Breach of Human Rights Act.

5.5. Borough Councillor Lay (Markfield, Stanton & Field Head) objects to the application on the following grounds:

- 1) The proposal will significantly increase activity at this rural site that is inappropriate for large scale warehousing HQ operation as other sites are available close to major road networks
- 2) The consequent HGV traffic movements and extended window for deliveries/dispatch will significantly impact on the quality of life of residents living at Markfield and Field Head due to noise, vibration and pollution, including late evening and early morning hours
- 3) Alternative traffic management plans should be investigated including use of the A46/M1 junction off Ratby Lane as the shortest route to the main UK highway network
- 4) More HGV movements on Field head A50 roundabout will create longer wait times, more noise and pollution to neighbouring properties
- 5) Pollution levels are already problematic due to close proximity of main roads and increased traffic movements
- 6) The additional traffic proposed is likely to have an unacceptable impact on the surrounding highway network interfering with road safety, particularly for school children
- 7) Lack of positive economic or sustainable grounds for the application.

Should the application be recommended for approval, conditions for mitigation measures should be imposed and include:

- 1) Revision of operational hours to 8am to 6pm Monday to Friday only with no weekend operations
- 2) Send all HGV traffic towards the M1/A46 junction along Ratby Lane
- 3) Limit the number of HGV traffic movements.

5.6. Blaby District Council (Development Services and Environmental Services) object to the proposal raising the following issues and concerns:

- 1) The proposal will result in an increase in HGV movements on predominantly rural roads in the District over and above those already permitted
- 2) The increase in HGV movements will be predominantly outside of normal working hours and at weekends and Bank Holidays when residents would normally expect their residential amenity to be protected
- 3) Blaby District Council would not object to an increase in the hours and days as proposed on the strict proviso that the applicant company revert back to the originally approved and more suitable for purpose HGV route via Botcheston and Markfield to the A50 which would alleviate the impact on residents of Blaby District on the grounds of residential amenity, air quality concerns and the unsuitable nature of the roads to take additional HGV movements.

5.7. Desford Parish Council supports the application but requests financial contributions from the applicant company towards improvement of the junction of Botcheston Road and Desford Lane.

5.8. Kirby Muxloe Parish Council object to the application on the following grounds:

- 1) Kirby Muxloe has already experienced a dramatic increase in the number of HGV lorries using the route through the village

- 2) The road is not designed nor suitable for this amount of HGV movements let alone an increase that the proposed variation would bring about and traffic congestion occurs at the mini-roundabout
- 3) The volume and weight of HGV traffic has already caused drains to collapse along Desford Road in Kirby Muxloe
- 4) The increase in the hours of operation for deliveries will bring chaos and further danger to Desford Road, there have already been several 'near misses' involving delivery vehicles, pedestrians and cars
- 5) The HGV's generate noise and air pollution and vibration due to the weight, volume and speed of these vehicles and to extend the hours outside normal working hours would have a detrimental effect to the quality of life of local residents
- 6) Kirby Muxloe Parish Council ask that the applicant revert back to the route originally approved via Botcheston and Markfield which is a more suitable HGV route involving fewer residences and would alleviate the impact on residents of Kirby Muxloe in terms of residential amenity, air quality concerns and the unsuitable nature of Desford Road for HGV movements.

5.9. Markfield Parish Council object to the proposal raising the following issues and concerns:

- 1) Applicant's traffic survey is out of date since it predates A50 traffic calming measures which have increased traffic along Ratby Lane. An up-to-date traffic survey and highway impact report should be provided before a decision can be made
- 2) Applicant's traffic survey does not accord with actual levels of HGV traffic or take into account leisure uses of the route
- 3) Site has always been inappropriate for large scale warehousing and other sites are available and more suitable adjacent to major road networks
- 4) As the applicant has decided to consolidate their operation on site regardless of the outcome of the application this indicates that they can and are prepared to function with existing access hours restrictions
- 5) Current HGV movements already significantly impact on the living conditions of residents by way of noise, disturbance, pollution and highway safety
- 6) The route to the site is along residential and rural roads that are narrow, have inadequate pedestrian footways and are unsuitable for concentrated HGV use
- 7) Access hours should be more restricted in the early morning rather than relaxed.

5.10. Ratby Parish Council object to the proposal raising the following issues and concerns:

- 1) HGV's still access the site through Ratby despite the 7.5 tonne weight restriction
- 2) Sunday and Bank Holiday operations would encroach on residents traffic free weekend
- 3) The application site and nearby waste site both accommodate HGV's and cause regular traffic congestion
- 4) Disturbance to residents along the routes to the site already causes problems and to increase operations is totally unacceptable.

5.11. County Councillor Bedford (Markfield, Desford & Thornton) objects to the proposal as it goes against the spirit of the original planning permission and would be detrimental to the amenity of local residents. The original restrictive conditions should be honoured and the relaxation in hours for delivery and despatch from the site refused.

- 5.12. County Councillor Breckon (Glenfields, Kirby Muxloe & Leicester Forests) objects to the proposal as HGV's are causing major pollution issues, congestion issues and dangerous road situations as the roads used were not designed for HGV's. To extend what already exists without major contributions to road improvements to mitigate any impacts is unjust, unfair and un-proportional.
- 5.13. Edward Argar, Member of Parliament for Charnwood has written to support and echo the objections of his constituents in Kirby Muxloe to the significant adverse impacts on the amenity of residents from the proposed increases in HGV movements through the village and from the resulting increase in noise, congestion and pollution and adverse impacts on highway and pedestrian safety from the use of unsuitable roads. The support for businesses, jobs and the local economy has to be balanced against protecting the quality of life of residents. The current arrangement strikes a fairer and more appropriate balance than what is proposed and the application should be rejected.
- 5.14. Kirby Muxloe HGV Action Group and other third parties have submitted detailed monitoring logs of vehicles going into and out of the application site for a number of specific dates, including video clips and photographs of the application site entrance. The submitted logs do not suggest any significant breaches of the hours restrictions but do suggest that the number of vehicles entering and leaving the site far exceed the figures quoted within the submitted Highway Impact Assessment and suggest that a greater proportion of vehicles use the Kirby Muxloe route rather than the Markfield route and therefore the split of traffic movements between the two approved routes to and from the site is not 50:50 as claimed in the application.

## **6. Consultation**

- 6.1. Leicestershire County Council (Highways) has assessed the submitted information and advises that it cannot be demonstrated that the proposed variation of condition would have a severe impact on the highway or be detrimental to highway safety. In respect of the monitoring logs submitted, on the basis that existing HGV movements to and from the site are not restricted by planning condition either in terms of the number or designated HGV route choice, the information submitted is not considered to be applicable to the current planning application.
- 6.2. The Borough Council's Highways Consultant has assessed the submitted information and advises that it demonstrates that there is no significant impact on the highway network during peak hours in terms of capacity as the extended hours of operation are outside of the morning and evening peak traffic periods. The highway network has sufficient capacity to accommodate the increased HGV activity during the extended hours. The analysis of accident data along the two main traffic routes around the site has concluded that there are no specific highway safety concerns, which is also the view of the Local Highway Authority. There would be no significant impacts on the highway network as a result of the proposed extension of operating hours.
- 6.3. No objection subject to a condition for a Noise Management Plan has been received from Environmental Health (Pollution).
- 6.4. Leicestershire Police advise that they have received complaints from residents in Desford, Kirby Muxloe, Markfield and Ratby concerning highway safety due to the parking of HGV's at the road side, the number of HGV movements, the breach of weight limit restrictions and concerning quality of life and therefore raise awareness of the potential impact of the increase in business hours on the community.
- 6.5. No responses have been received at the time of writing this report from Network Rail.

## **7. Policy**

### **7.1. Core Strategy (2009)**

- Policy 7: Key Rural Centres
- Policy 8: Key Rural Centres Relating to Leicester
- Policy 14: Rural Areas: Transport

### **7.2. Site Allocations and Development Management Policies (SADMP) DPD (2016)**

- Policy DM1: Presumption in Favour of Sustainable Development
- Policy DM4: Safeguarding the Countryside and Settlement Separation
- Policy DM7: Preventing Pollution and Flooding
- Policy DM10: Development and Design
- Policy DM17: Highways and Transportation
- Policy DM18: Vehicle Parking Standards
- Policy DM19: Existing Employment Sites

### **7.3. National Planning Policies and Guidance**

- National Planning Policy Framework (NPPF) (2019)
- Planning Practice Guidance (PPG)

### **7.4. Other relevant guidance**

- Employment Land and Premises Review (2013)

## **8. Appraisal**

### **8.1. Key Issues**

- Assessment against strategic planning policies
- Highway network and highway safety impacts
- Amenity/Environmental impacts
- Conditions

#### Assessment against strategic planning policies

8.2. Paragraph 2 of the National Planning Policy Framework (NPPF) (2019) states that planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise and that the NPPF is a material consideration in determining applications.

8.3. The relevant development plan documents in this instance consist of the adopted Core Strategy (2009) and the adopted Site Allocations and Development Management Policies Development Plan Document (2016) (SADMP).

8.4. The principle of development of the site for Class B8 uses (Storage and Distribution) has already been established through the implementation of previous planning permissions, including the size and scale of the existing warehouse and ancillary buildings within the site. The site is identified as a designated employment site (reference DES31) within the adopted SADMP. The latest Employment Land and Premises Review (2013) identifies the site as a fit for purpose category 'B' site and recommends that the site be retained for 100% employment use.

8.5. Policies 7 and 8 of the adopted Core Strategy support employment provision in settlements identified as 'Key Rural Centres'. In this case, this designated employment site is located outside the settlement boundary where Policy DM4 of the adopted SADMP applies. However, no changes are proposed to the building or ancillary structures and therefore the proposal would not conflict with Policy DM4.

8.6. Policy 19 of the adopted SADMP seeks to retain designated suitable employment sites. Section 6 of the NPPF (2019) seeks to build a strong, competitive economy

and states that decisions should help create conditions in which businesses can invest, expand and adapt and that significant weight should be placed on the need to support economic growth and productivity, including rural areas.

- 8.7. The information submitted to support the application states that consolidation of the two sites at Desford has resulted in a need for more flexibility in terms of the times that deliveries can be made to and dispatched from the site. The original application had no limit to the number of HGV movements and therefore additional HGV movements could occur due to the consolidation of the sites without planning permission. However, they would be condensed within the hours restriction currently in place.
- 8.8. In policy terms the extension to the hours between which deliveries to and dispatches from the site could occur would be acceptable in principle subject to all other planning matters and material considerations being satisfactorily addressed.

Highway network and highway safety impacts

- 8.9. Policy DM17 of the adopted SADMP supports development proposals where, amongst other matters they demonstrate that there is not a significant adverse impact upon highway safety and, in the case of development that generates significant movement, where it can be demonstrated that the residual cumulative impacts of development on the transport network are not severe.
- 8.10. Paragraph 109 of the NPPF (2019) states that development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.
- 8.11. A Highways Impact Assessment and Supplementary Technical Note have been submitted to support the application and define the scope of the proposal. For clarity, the application seeks to extend the hours between which deliveries can be made to and dispatched from the application site itself. It does not seek permission for the consolidation of the Huddersfield site at the Desford site as this can, and has, been carried out under the existing planning permission. There are no planning restrictions on the number of HGV movements to or from the site or the movement of vehicles along either of the approved HGV routes to and from the site, only the times for deliveries to and dispatches from the site itself.
- 8.12. Objections to the application have been received on the grounds that the roads and junctions on route to the site from the strategic highway network are not suitable for additional HGV traffic, particularly a distribution operation of the type concerned.
- 8.13. However, there are currently two County Council designated routes which allow HGV delivery vehicles to access the site (and many other commercial operations in the wider area) from the designated strategic highway network. These are:
- Route One – west from the site along Desford Lane/ north along Thornton Lane / northwest along A50 / M1 north (total route length 9.4 kilometres).
  - Route Two – east from the site along Desford Lane / southeast along Ratby Lane / north along Ratby Lane / A46 / M1 south (total route length 5.5 kilometres).
- 8.14. Objections have been received on the grounds that the proposal will result in increases in traffic movements, particularly HGV's, that will cause additional traffic congestion at junctions and would also result in adverse impacts on highway and pedestrian safety, by virtue of the nature and width of both routes to and from the application site and inadequate/narrow pavements and inadequate pedestrian crossings.



- 8.15. As previously identified, both routes are County Council designated HGV routes deemed to be suitable for such use by HGV's. There are currently no restrictions for drivers to use either Route One or Route Two, although the applicant suggested that there is an approximate 50/50 split of HGV's utilising each route for those travelling either north or south. The data evidence within the Highways Impact Assessment suggests that additional traffic movements to and from the site (in particular HGV's) will not be significant when assessed against existing traffic movements along these two designated HGV routes. The additional hours for delivery to and dispatch from the site sought through this application relate to hours that are outside the peak network periods and therefore no route or junction capacity issues are identified.
- 8.16. The Highways Impact Assessment includes an assessment of the most recently available 5-year period (1 May 2013 to 30 April 2018) Personal Injury Accident (PIA) records for the local area obtained from Leicestershire County Council, to determine whether there are any existing highway safety issues that could potentially be exacerbated by any increase in traffic movements associated with the proposals. The PIA data analysis identified no particular road safety issues along either of the designated HGV routes which could be exacerbated by the proposals. The assessment therefore concludes that no mitigation measures would be required in respect of highway or pedestrian safety.
- 8.17. In objection to the application, Kirby Muxloe HGV Action Group and other third parties have submitted detailed monitoring logs of vehicles going into and out of the application site for a number of specific dates, including video clips and photographs of the application site entrance. The submitted logs do not suggest any significant breaches of the existing hours restrictions but do suggest that the number of vehicles entering and leaving the site far exceed the figures quoted within the submitted Highway Impact Assessment and suggest that a greater proportion of vehicles use the Kirby Muxloe route rather than the Markfield route and therefore the split of traffic movements between the two approved routes to and from the site is not 50:50 as claimed in the application.
- 8.18. The Local Highway Authority (LHA), Leicestershire County Council, has assessed the submitted highways related information, including an informal assessment by Lennon Transport Planning submitted on behalf of residents of Kirby Muxloe and the detailed monitoring logs, video clips and photographs which, along with other objectors, raised a number of concerns regarding the robustness of the information/data within the submitted Highways Impact Assessment. The Personal Injury Collision (PIC) data for the last 5 years has also been reviewed by the Local Highway Authority.
- 8.19. Based on a review of the transport evidence submitted, the advice of the Local Highway Authority is that it cannot be demonstrated that the proposed variation of condition would have a severe impact on the highway network, or be detrimental to highway safety. On the basis that existing HGV movements to and from the site are not restricted by planning condition either in terms of the number or designated HGV route choice, the information submitted is not considered to be applicable to the current planning application. Therefore no additional control measures are required. This view is supported by the Borough Council's Highway Consultant.
- 8.20. By virtue of the submitted information and advice from the Local Highway Authority, the proposed extension of hours for deliveries to and dispatches from the site are not considered to result in any significant or severe adverse impacts on the highway network or highway or pedestrian safety and the proposal would therefore be in accordance with Policy DM17 of the adopted SADMP and paragraph 109 of the NPPF (2019).

#### Amenity/Environmental impacts

- 8.21. Policy DM10 of the adopted SADMP requires that development would not have a significant adverse effect on the amenity of nearby residents and occupiers of adjacent buildings, including matters of noise, vibration and air quality. Policy DM7 of the adopted SADMP seeks to ensure that development would not cause noise or vibrations of a level which would disturb areas that are valued for their tranquillity in terms of recreation or amenity and will not contribute to poor air quality.
- 8.22. Paragraph 180 of the NPPF (2019) states that planning decisions should ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution and health, living conditions and the natural environment as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development. In doing so decisions should mitigate and reduce to a minimum potential adverse impacts resulting from noise from new development and avoid noise giving rise to significant adverse impacts on health and the quality of life.
- 8.23. Objections to the application have been received on the grounds that the proposal will result in adverse impacts on the quality of life of residents along both the designated HGV routes and near the site through an increase in HGV traffic movements and resulting increase in noise pollution, vibration and disturbance to residents amenity outside normal working hours and at weekends and Bank Holidays when the rural environment is generally more tranquil. Objections are raised in respect of adverse impacts on health from air pollution from additional HGV traffic movements. Objections are also raised on the grounds that additional HGV traffic movements would be detrimental to leisure and farming activities in the surrounding area that use the rural roads including cyclists, walkers and horse riders etc.
- 8.24. This application seeks to vary condition 11 of planning permission 10/00332/FUL to extend the time period between which deliveries to and dispatches from the site can be undertaken. Condition 11 currently restricts these activities as follows:
- 'No deliveries shall be taken at or dispatched from the site outside the hours of 6.00am to 7.00pm Mondays to Fridays and 8.00am to 3pm on Saturdays nor at any time on Sundays, Bank or Statutory Public Holidays.'*
- Reason: To protect the amenities of neighbouring properties and to ensure that the permitted use does not become a source of annoyance to nearby residents to accord with Policy BE1 of the adopted Hinckley and Bosworth Local Plan.*
- 8.25. Policy BE1 of the Hinckley and Bosworth Local Plan (2001) has since been replaced by Policy DM10 of the adopted SADMP.
- 8.26. Condition 11 of application 10/00332/FUL was imposed in order to define the permission and to provide control over any proposed future changes to these hours. The condition was imposed in order to protect the amenity of the occupiers of adjoining or nearby properties from noise or disturbance associated with the arrival, manoeuvring and parking of vehicles within the application site and loading and unloading activities within the site rather than the movement of vehicles along the designated HGV routes to the application site.
- 8.27. A Noise Impact Assessment and Supplementary Note have been submitted to support the application. The assessment relates to potential noise impacts on properties either adjacent to or close to the site from the extension of activities associated with delivery to and dispatch from the site over the extended hours applied for rather than impacts from traffic movements on distant properties along the HGV routes.

- 8.28. The Assessment concludes that during the proposed hours for deliveries to and dispatches from the application site, the predicted levels at the closest noise sensitive receptors are below the Lowest Observable Adverse Effect Level Criteria and in accordance with the requirements of the NPPF, the development is not expected to have an adverse impact on health or quality of life.
- 8.29. The Noise Impact Assessment and Supplementary note have been assessed by the Environmental Health (Pollution) team. The conclusions of the submitted Noise Impact Assessment are based on a number of assumptions regarding site operations (e.g. frequency of loading/unloading to each bay and the turning off of engines once docked). It is acknowledged that it is possible that nearby residential premises will be able to hear operations during hours when operations have not to date been heard, although these will be at noise levels within current guidelines if the assumptions within the assessment are a true reflection of how the site currently operates and will continue to operate. Environmental Health (Pollution) therefore raise no objection to the proposal to vary the hours condition on the original planning permission subject to the imposition of a condition requiring the submission of a Noise Management Plan to ensure that the site operates and will continue to operate in the future in accordance with the assumptions made within the submitted assessment.
- 8.30. The Environmental Health (Pollution) team also advise that those residential premises on route to and from the site will be exposed to a greater number of HGV drive-bys during the increased hours which will change their noise environment, although these will be at noise levels within current guidelines. Environmental Health (Pollution) therefore raise no objections to the application on grounds of adverse impacts from noise or on air quality and therefore do not recommend any conditions by way of mitigation relating to the amenities of residential properties on the routes to and from the site.
- 8.31. The data submitted within the Highways Impact Assessment provides evidence that both County Council designated HGV routes to and from the application site are already used extensively by HGV traffic to access a number of other industrial/commercial sites within the surrounding area during the extended hours applied for through this application i.e.
- Mondays to Fridays      between 19.00 – 23.00 hours (additional 4 hours/day)
  - Saturdays                      between 15.00 – 18.00 hours (additional 3 hours/day)
  - Sundays                      between 09.00 – 13.00 hours (additional 4 hours/day)
- 8.32. The Highways Impact Assessment also provides evidence that the proposal would not result in a significant increase in traffic movements during the proposed extended hours over and above the current/existing situation.
- 8.33. There is no evidence to suggest that there is any significant air quality issue on either of the two designated HGV routes to and from the site.
- 8.34. There is no evidence to suggest that any damage to buildings along the route is as a result of vibrations from traffic movements associated with the application site.
- 8.35. Notwithstanding the evidence submitted regarding highway safety, noise and pollution, it is clear from the evidence submitted by local residents that the designated HGV route through Kirby Muxloe gives rise to significant adverse impacts on the amenity of residents through the coming and goings of large heavy goods vehicles on narrow roads which consequently bring the traffic movements and disturbance closer to residential properties. It is therefore considered that any extension to the current hours is likely to give rise to further adverse impacts for longer periods during the week and significantly increasing hours over the weekend

including a Sunday where currently no deliveries are allowed. It is considered that the increase in operating hours would significantly impact on the living conditions of residents living along the route and would be detrimental to their residential amenity and therefore would be contrary to Policy DM10 of the adopted SADMP.

#### Conditions

- 8.36. The original planning permission 10/00332/FUL was subject to 19 conditions. As this variation of condition application would result in a new planning permission for the site in the event that the application is permitted, it is necessary to consider the previously imposed planning conditions and whether or not they are still necessary, or need amendment, or whether any additional/new conditions are necessary to ensure satisfactory development.
- 8.37. Condition 1 (time for commencement) is no longer necessary as the development has been implemented. Condition 16 (routeing) is no longer relevant, as it was removed by planning permission 12/00313/CONDIT.
- 8.38. Condition 4 (drainage), conditions 5 and 6 (ground contamination), condition 7 (oil/petrol separators), condition 9 (levels), condition 10 (external materials), condition 12 (landscaping) and condition 13 (landscaping implementation and maintenance), condition 17 (access gates/barriers) and condition 19 (employment) have been discharged and were pre-commencement/prior to occupation conditions and can be omitted.
- 8.39. Conditions 2 (approved plans), condition 3 (use restriction), condition 14 (cycle parking facility retention), condition 15 (lighting scheme) and condition 18 (external storage) remain necessary to define the permission and ensure satisfactory development.
- 8.40. Condition 11 (delivery/dispatch restriction) would need to be amended in the event that this application is approved to refer to the extended hours.
- 8.41. Condition 8 (noise management and mitigation) would need to be amended to require the submission of the additional details outlined in this report.

#### **9. Equality Implications**

- 9.1. Section 149 of the Equality Act 2010 created the public sector equality duty. Section 149 states:-
  - (1) A public authority must, in the exercise of its functions, have due regard to the need to:
    - (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
    - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
    - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- 9.2. Officers have taken this into account and given due regard to this statutory duty in the consideration of this application. The Committee must also ensure the same when determining this planning application.
- 9.3. There are no known equality implications arising directly from this development.
- 9.4. The decision has been taken having regard to all relevant planning legislation, regulations, guidance, circulars and Council policies, including General Data Protection Regulations (2018) and The Human Rights Act (1998) (HRA 1998) which makes it unlawful for the Council to act incompatibly with Convention rights,

specifically Article 6 (right to a fair hearing); Article 8 (right to respect for private and family life); Article 1 of the First Protocol (protection of property) and Article 14 (prohibition of discrimination).

## **10. Conclusion**

- 10.1. The application relates to an existing and established distribution warehouse on a designated employment site. The application seeks to vary condition 11 of planning permission 10/00332/FUL to extend the hours between which deliveries to and dispatches from the site can be undertaken.
- 10.2. For the reasons outlined within this report, the proposal is not considered to result in any significant or severe adverse impacts on the highway network, highway or pedestrian safety, it would however give rise to further adverse impacts to nearby residents which would be detrimental to their residential amenity and the application is therefore contrary to Policy DM10 of the adopted SADMP.

## **11. Recommendation**

- 11.1. **Refuse planning permission** for the following reason:

- 1. The application seeks to extend the hours of operation for deliveries along a route which already has significant impacts on the living conditions of residents. The increase in hours would give rise to further significant impacts for longer periods during the day and significant periods over the weekend which would be detrimental to the residential amenity currently experienced by residents along the defined route and is therefore contrary to Policy DM10 of the adopted Site Allocations and Development Management Policies DPD 2016.