

Section '4' - Applications recommended for REFUSAL or DISAPPROVAL OF DETAILS

**Application No :** 12/00259/VAR

**Ward:**  
Penge And Cator

**Address :** Site Formerly Burnham Signs Ltd  
Burnham Way Lower Sydenham  
London SE26 5AG

**OS Grid Ref:** E: 536682 N: 171283

**Applicant :** Sydenham Scrap Metal LTD

**Objections :** YES

**Description of Development:**

Variation of Condition 23 of permission ref. 10/00289 granted for reception, sorting and transfer of scrap metal to increase noise limit for activities at the site from 60 to 65 db Laeq (60 min)

Key designations:

Biggin Hill Safeguarding Birds  
Biggin Hill Safeguarding Area  
London City Airport Safeguarding  
London City Airport Safeguarding Birds

**Proposal**

See report for 11/00482 which also relates to this site

Planning permission was granted on October 26th 2010 for the change of use from sign manufacturers premises including stove enamelling (use classes B2 and B6) to use of the site for the reception sorting and transfer of scrap metals, including depollution of motor vehicles by means of draining of fluids and removal of tyres together with the erection of two acoustic screens, installation of weigh bridge and boundary wall RETROSPECTIVE APPLICATION' (ref 10/00482).

This permission was granted subject to numerous conditions relating to the operational management of the site, including Condition 23 which states that 'Noise levels resulting from activities on the site shall not exceed 60dB Laeq(60 minutes) at any time when measured one metre from the facade at cill height of the first floor windows in the eastern elevation of Unit 2, Burnham Way'

The current application seeks to vary this condition to increase the noise limit for activities from 60dB to 65 db Laeq(60 minutes).

In support of the application the applicant has submitted a noise survey which is summarised as follows:

- it is accepted that noise is valid under the requirements of Circular 11/95 Use of Conditions in Planning Permission
- the condition is unreasonable in terms of this circular.
- it is unclear how the Council arrived at 60 dB for condition 23
- the measurement of noise over 1 hr does not comply with the requirements of guidance to test levels of 16 hours in PPS24: Noise, making the condition too stringent
- the noise level for a showroom (which is the sensitive room in Unit 2, Burnham Way ) is 50-55 dB Laeq according to BS:8233.
- the showroom is air conditioned so not likely to have windows open. This provides an acoustic barrier and gives 25dB extra protection. If the window is open the extra protection is likely to be 15 dB.
- if the noise limit at the window is 60dB (according to the condition) the noise limit inside the room is 35-45dB which is lower than the BS:8233 target.
- therefore the 60db condition is unreasonable and can be increased to 65dB without breaching the British Standard target for a showroom. Even if the room was used for an office, with windows closed, the 'reasonable' noise limit target would not be breached.

## **Location**

The site is 0.24 ha in size and is located close to the northern boundary of the Borough with the London Borough of Lewisham. It is situated within the Lower Sydenham (Kangley Bridge Road) Industrial Estate and is close to the northern boundary of the estate.

To the north of the application site, separated by an access road, are a ready mix cement operator, a scaffolding yard and a building divided into small business units, known as The Bronze Works.

To the west are 2 light industrial units operating respectively, as janitorial and plumbing distribution use, with trade counters. To the east are 3 light industrial units, two of which are distribution uses with one unit vacant. To the immediate south is a small office/storage unit and further south is the Orchard Business Centre comprising 11 small business uses.

## **Comments from Local Residents**

Nearby properties were notified and representations were received which can be summarised as follows

- loud bangs and crashes are heard daily and interrupt work in our office.
- vibrations can make the whole building shake
- current noise level is unacceptable so an increase will make the situation more detrimental to running a business
- the applicant has never adhered to the original condition

- consistent complaints have been made to the Council and the Environment Agency (EA), who have witnessed and recorded the impact of noise on the premises (Unit 2, Burnham Way)
- Over 300 instances of excessive noise and vibration have been sent to the Environment Agency by one neighbouring business and over 100 have been sent by a second neighbouring business between June 2011 to date.

### **Comments from Consultees**

The Council's Environmental Health Officer raises objections to the application. He advises that the applicants Noise Consultant assured the Planning Inspector that the business could operate within the lower noise limit. It is considered that the use could operate within the terms of the condition with better management of the site and the use of appropriate machinery.

Further comments are provided relating to the acoustic report from the applicant and these are summarised in the Conclusions section of this report.

The Environment Agency states that 'Environmental Agency monitoring of the site leads us to consider that the noise from the operations was excessive such as to create a nuisance. We have received many complaints from receptors on both sides of the site. Environment Agency officers have attended these receptors on numerous occasions and witnessed noise issues emanating from the site. We have commissioned a noise report to monitor noise levels that is in draft format at the moment, which can be provided once it has been signed off.'

### **Planning Considerations**

With regard to this application the relevant local policies are contained within the London Plan 2011 and these are:

BE1 Design of New Development

The relevant London Plan 2011 policies are:  
Policy 7.15 – Reducing Noise and enhancing soundscapes

Mayor's Ambient Noise Strategy

In national terms National Planning Policy Framework policies apply, including paragraphs 17, 57, 109 and 123

### **Planning History**

The site has been the subject of numerous previous relevant applications

1. Permission was refused for the use of site for reception/ sorting/ transfer of scrap metals including vehicle breaking on May 6th 2009 and a subsequent appeal dismissed (ref 08/03542).

2. Planning permission was granted for Change of use from sign manufacturers premises including stove enamelling (use classes B2 and B6) to use of the site for the reception sorting and transfer of scrap metals, including depollution of motor vehicles by means of draining of fluids and removal of tyres together with the erection of two acoustic screens, installation of weigh bridge and boundary wall RETROSPECTIVE APPLICATION on October 26th 2010. (ref 10/00289).
3. Planning permission is currently sought for detached building to house Vehicle Depollution Unit and new 5m walls within the site, adjacent to revised iron storage area. Variation of conditions 10 and 20 of permission ref. 10/00289 granted for reception, sorting and transfer of scrap metal, for alterations to the Working Operational Statement to permit the provision of a scrap metal compaction press/baler and amend operational site layout. Details pursuant to Condition 11 relating to permission 10/00289 for the vehicle depollution unit (ref 11/00482). This application is pending decision and appears elsewhere on this agenda.

## **Conclusions**

The main issues are whether the increase in the noise limit level from 60 to 65 dB Laeq is acceptable in terms of the impact on the amenities of the occupants of nearby properties.

The applicant has submitted an acoustic report to support the application. The report queries the justification for the original 60dB limit contained in Condition 23 and sets out reasons why this limit should be adjusted which have been summarised above.

The Council's Environmental Health Officer has assessed the acoustic report submitted with the application and has the following comments:

- The designation of the display/design office as a 'department store' for the purposes of calculating the acceptable noise levels is unacceptable given the current and potential uses to which this room can be put.
- The Council considers designation as a 'staff room' represents a closer description of the current and proposed uses, a designation that has previously been agreed with the Acoustic Consultant. Taking into account that the window may be open this provides a reasonable target noise level of 60 dB.
- The use of a longer time limit for measuring noise that is then averaged out is flawed as it does not fully reflect the impact of intervals of intense activity with quieter periods in between. This pattern of activity is reflected in the complaint reports that are sent to the Environment Agency (EA) by neighbouring properties.

For information it should be noted that the Council has instigated proceedings against the failure of the applicant to comply with a breach of condition notice relating to:

- 1) Condition 14: The open storage of any materials and skips on the site shall not exceed 5 metres in height from ground level at any time.”
- 2) Condition 21: The containers used for storage of materials recycled on site shall not be moved around the site by means of dragging at any time”
- 3) Condition 22: The mobile ‘grab’ machine shown on the approved plan shall not be used for compressing material on the site at any time in a way that exceeds the noise limits set in Condition 23 below”
- 4) Condition 23: Noise levels resulting from activities on the site shall not exceed 60dB Laeq (60 min) at any time when measured one metre from the façade at sill height of the first floor windows in the eastern elevation of Unit 2 Burnham Way”

In addition formal action has been instigated under environmental health legislation for statutory nuisance. Actions are held in abeyance pending the outcome of this application and application 11/00482 which appears elsewhere on this agenda

In summary:

- Policy BE1 states that ‘ the development should respect the amenity of occupiers of neighbouring buildings and those of future occupants and ensure their environments are not harmed by noise...’. It is considered that the working environment of the neighbouring businesses is sensitive in that they have numerous offices as well as a trade counters and showrooms on these premises.
- For the reasons given above it is considered that the noise level specified in Condition 23 meets the test for conditions as set out in Circular 11/95.
- The noise limit set in the condition was applied with effect from the granting of planning permission for the current use in order to protect the amenities of the neighbouring businesses. From records made by the Council, the EA and the applicant it appears that the use has not been operated at the approved level.
- Complaints about the operation of the current use on the site have been frequent and consistent. The complaints relate to noise and vibration. Operations generating high levels of noise and vibration have also been witnessed by the Council’s Environmental Health Officers and officers from the Environment Agency during monitoring operations.
- Therefore it is considered that planning permission should be refused for this application.

Background papers referred to during the production of this report comprise all correspondence on file ref. 12/00259, excluding exempt information.

## **RECOMMENDATION: PERMISSION BE REFUSED**

The reasons for refusal are:

- 1 The proposed increase in the threshold for Condition 23 is unacceptable, by reason of the unacceptable impact that this would have on the amenities of the occupants of nearby properties, contrary to Policy BE1 of the Council's Unitary Development Plan and Policy 7.15 of the London Plan 2011.

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