

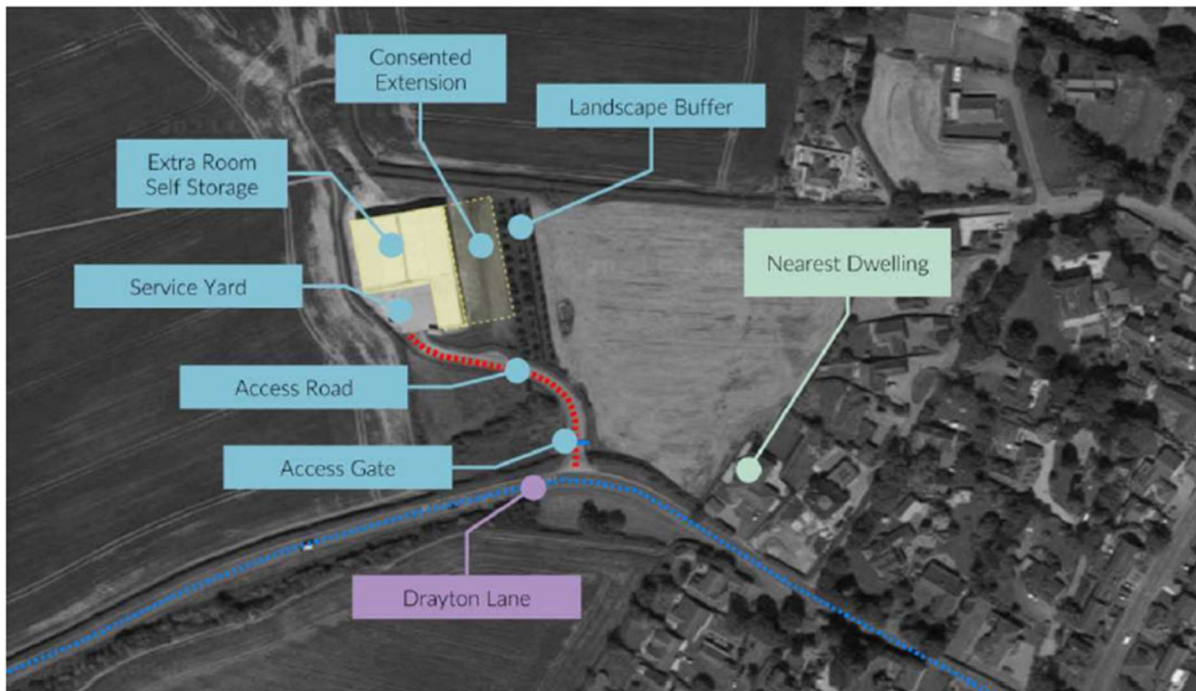
Supporting Statement

Application for the removal of condition 3 attached to planning permission reference 23/00239/FUL for which authorized the proposed extension to self storage unit (B8 Use: Storage and Distribution) at Drayton Grange Farm, Drayton Lane, Fenny Drayton, Nuneaton

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1.0 Introduction



- 1.1 This statement supports the submission of a corresponding planning application made pursuant to section 73 of the Town and Country Planning Act 1990 (the “**Act**”) for the removal of Condition 3 attached to planning permission reference 23/00239/FUL which authorised the proposed extension to self storage unit (B8 Use: Storage and Distribution).

Condition 3 states:

The operating hours of the storage facility shall be limited to 05:00 to 23:00 Monday to Sunday with the reception hours being Monday to Friday 08.30 to 18.00 & Saturday 09.00 to 15.00 only.

Reason: To ensure there are no adverse impacts on the amenity of the occupiers of neighbouring properties and to ensure the visual amenity of the countryside to accord with Policies DM4 and DM10 of the Site Allocations and Development Management Policies DPD.

2.0 Planning History (with time restrictions noted):

- 2.1 Relevant planning history for the Drayton Barns site at Drayton Grange Farm is summarised below:

23/00239/FUL

Proposed extension to self storage unit (B8 Use: Storage and Distribution) at Drayton Grange Farm, Drayton Lane, Fenny Drayton, Nuneaton.

Time restrictions included: The operating hours of the storage facility shall be limited to 05:00 to 23:00 Monday to Sunday with the reception hours being Monday to Friday 08.30 to 18.00 & Saturday 09.00 to 15.00 only.

Reason: To ensure there are no adverse impacts on the amenity of the occupiers of neighbouring properties and to ensure the visual amenity of the countryside to accord with Policies DM4 and DM10 of the Site Allocations and Development Management Policies DPD.

15/0871/FUL – No time restrictions

Extension of a storage unit

14/01087/FUL – No time restrictions

Link extension to storage unit

11/00331/COU – No time restrictions

Change of use of redundant agricultural buildings to self-storage accommodation including alterations to the exterior of the buildings.

2.2 The self-storage business was established on a site under the same ownership approximately 300m to the west at Drayton Grange Farm. The use was established through planning permission ref: 05/00288/COU and then 05/00757/COU. The nearest residential property to the self-storage buildings at Drayton Grange Farm is approximately 70m away (compared to 125 metres for this application) but all planning permissions at this site operate with no time restrictions.

2.3 There is also a self-storage site under the same ownership at the former Countrywide Store, Watling Street, Nuneaton, CV10 0RY. This is approximately 1,400m by road to the south. The site operates under planning permissions 19/00447/FUL and 23/00826/FUL. The site is adjacent to a residential property, Redgate House. Again, there are no time restrictions associated with the two planning permissions at this site.

3.0 Hours of Operation

3.1 To date, the store at Drayton Barns has operated under voluntary access hours of 7am to 8pm, 7 days a week.

3.2 The self-storage industry in the UK is however maturing and becoming more competitive. With this, being able to offer 24/7 access is an important marketing tool as it gives storage customers peace of mind that they can access their things on rare occasions that they really need to.

3.3 24/7 access also appeals to some businesses that use the storage for example, DJs, event organisers, mobile mechanics, some retailers etc.

3.4 24/7 access not only therefore represents an important marketing tool, it also increases the size of the potential customer base the store will appeal to. Importantly, offering 24/7 access, also means that the store can maintain or improve its profitability and

therefore business viability. Stores unable to offer 24/7 access would need to compete by lowering the price of storage units.

- 3.5 Evidence of the importance of 24/7 access is shown in Appendix A which demonstrates that most of Extra Room Self Storage's local competitors are already offering 24/7 access.
- 3.6 The applicant would like to offer 24/7 access and is able to under the terms of the planning permissions for the existing buildings at Drayton Barns. It will be very difficult to manage the new extension under different guidelines.
- 3.7 The applicant cannot therefore justify the business case for the extension under planning permission 23/00239/FUL since it will reduce the competitiveness and profitability of the business.

4.0 Acoustic Report

- 4.1 Extra Room Self Storage appointed Hoare Lea Acoustics to conduct an acoustic survey at Drayton Barns to assess the impact of the site on the countryside and neighbouring residential amenity.
- 4.2 The report has reviewed the NPPF and current British Standards. The calculations presented within the report indicate that all activities associated with the site would achieve the requirements of BS 8233 at the nearest dwelling as well as BS 4142 condition of 'low impact' at all times of the day and night without the requirement for any additional mitigation. This assessment is based upon 24/7 access to the site.

5.0 Lighting Report

- 5.1 A lighting report has been undertaken to address any concerns over 24/7 access, in particular whether vehicle headlights at night could cause nuisance to residents as this was raised as a concern by locals.
- 5.2 The lighting report highlights how the dwellings on Church Lane are more than 100m away from the access road into the site. It also highlights how the access road is screened by a growing landscape buffer strip of evergreen trees which are to be maintained into perpetuity under Condition 4 of 23/00239/FUL.
- 5.3 There is no specific guidance or limits on the amount of light from vehicle headlights entering the windows of a domestic dwelling though. Notwithstanding this the report concluded that;

'Although it is likely that some stray light from some vehicle headlights using the proposed development access road may go onto the rear windows of dwellings along Church Road, its' duration and frequency is unknown, but will be very low, and there is no code, standard or guidance which seeks to qualify or limit the amount of this light. It is therefore my professional judgement that this issue cannot be given as a reason, as

implied in Condition 3, for limiting the hours of use of the access road into the proposed development.’ (Extract from Hoare Lea letter dated 5th February 2024)

6.0 Statutory Context

6.1 The main powers relating to local planning authority use of conditions are set out in sections 70, 72, 73, 73A, and Schedule 5 of the Act. Section 70(1)(a) of the Act enables the LPA in granting planning permission to impose “such conditions as they think fit”. This power must be interpreted in light of material factors such as the National Planning Policy Framework, this supporting guidance on the use of conditions, and relevant case law.

7.0 National Planning Policy Framework (“NPPF”)

7.1 The starting point would be paragraphs 55 and 56 which state that:

‘55. Local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. Planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition.

56. Planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. Agreeing conditions early is beneficial to all parties involved in the process and can speed up decision-making. Conditions that are required to be discharged before development commences should be avoided, unless there is a clear justification.’

1. Necessary: Will it be appropriate to refuse planning permission without the requirements imposed by the condition?

A condition must not be imposed unless there is a definite planning reason for it, i.e. it is needed to make the development acceptable in planning terms. Policy DM4 of the SADMP seeks to ensure development does not have a significant adverse effect on the intrinsic value, beauty, open character and landscape character of the countryside. Policy DM10 of the SADMP seeks to ensure that new development should complement or enhance the character of the surrounding area with regard to scale, layout, density, mass, design, materials and architectural features.

The extension building subject to this application is situated adjoining existing buildings and adjacent to substantial landscaping measures. It is considered that negligible night-time usage as per the wider site would not have a detrimental impact on the countryside.

The acoustic report indicates that all activities associated at the site would achieve the requirements of BS 8233 at the nearest dwellings and achieve a BS 4142 condition of

'low impact' at all times of the day and night without the requirement for any additional mitigation. This assessment is based upon 24/7 access to the site.

The impact from stray lights from vehicles is not subject to any governance and as such cannot be used as reasoning for the condition.

If a condition is wider in scope than is necessary to achieve the desired objective it will fail the test of necessity.

Policy DM10 of the SADMP also deals with the impact upon neighbouring residential amenity and seeks to ensure that development proposals do not harm the amenity of neighbouring residential properties. Increase in usage at the site has to be assessed against the existing level of the usage of the site with only a modest increase of a further 9 vehicles per day (Appendix B).

It is likely that the majority of these trips will be during normal working hours during daylight hours. Usage outside these hours would be negligible but required on the odd occasion. Any increase, outside of normal working hours is considered so negligible that it would cause no harm to neighbouring property.

Evidence of this observation is that during the 12 years of operation, the facility has not received one complaint (formal or otherwise), from members of the public.

The formal response from the Environmental Health department during the consultation provides further evidence of no harm to neighbouring properties. This development is therefore compliant with Policy DM10 of the SADMP.

We would also draw attention to the planning permission 11/00331/COU, in which the delegated officers report dated 16 Jun 2011 concluded that:

The nearest residential properties are those on the edge of Fenny Drayton, to the east of the site. However as these properties are in excess of 180m away, there are considered to be no adverse impacts on their amenity in terms of noise or disturbance from the proposed use. Hours of operation have been proposed by the applicant however as the adjacent farm has an unrestricted use and due to the distance of the proposal from surrounding residential properties, it is considered unreasonable in this instance to impose an hours restriction. Accordingly, in terms of residential amenity the proposal is considered acceptable.

It is considered that an access restriction is wholly unnecessary, which falls out of in line with existing consents and usage at the site and would directly fail the test of necessity.

2. Relevant to planning: Does the condition relate to planning objectives and is it within the scope of the permission to which it is to be attached?

- A condition must not be used to control matters that are subject to specific control elsewhere in planning legislation (for example, advertisement control, listed building consents, or tree preservation).
- Specific controls outside planning legislation may provide an alternative means of managing certain matters (for example, works on public highways often require highways' consent).

3. To the development to be permitted: Does the condition fairly and reasonably relate to the development to be permitted?

- It is not sufficient that a condition is related to planning objectives: it must also be justified by the nature or impact of the development permitted.
- A condition cannot be imposed in order to remedy a pre-existing problem or issue not created by the proposed development.

Based on the findings of the acoustic and lighting report, it is considered that there would be no issue created by 23/00239/FUL. The increase of 9 vehicular trips per day is considered negligible and even more so when these will be predominantly in working hours. The impact of the development created by any nighttime access would be very negligible. In any event, there are sufficient statutory powers available to the Council under various Environmental Protection legislation, which in context makes this condition irrelevant.

4. Enforceable: Would it be practicably possible to enforce the condition?

- Unenforceable conditions include those for which it would, in practice, be impossible to detect a contravention or remedy any breach of the condition, or those concerned with matters over which the applicant has no control.

The adjacent buildings which are in the same ownership and share the same primary access do not have time restrictions imposed through a planning condition and therefore users of the business may access the building 24 hours a day and seven days a week. A user of storage building granted consent under 11/00331/COU, 14/01087/FUL and 15/0871/FUL could also be a user of the building granted under 23/00239/FUL. Given the siting of the all the buildings along a private driveway and set well back from the road, it would be hard to distinguish between users of the different buildings and therefore enforcing the imposed condition would be problematic.

Furthermore, access will still occur at the storage buildings for security monitoring and to attend to false fire and security alarm calls for example. Access to the adjacent farmland, also in the same ownership, also has an unrestricted use.

The difficulty of pursuing any enforcement is not made out given the practical difficulties outlined above, would in all probability fail the test of expediency to pursue enforcement action.

5. Precise: Is the condition written in a way that makes it clear to the applicant and others what must be done to comply with it?

- Poorly worded conditions are those that do not clearly state what is required and when must not be used.

The condition proposes to limit reception hours to Monday to Friday 08.30 to 18.00 & Saturday 09.00 to 15.00 only.

This condition is unclear as the site is unmanned and does not have a reception. Even if there was a reception it is unclear why this might create additional nuisance and why it would be necessary to limit its opening hours.

6. Reasonable in all other respects: Is the condition reasonable?

- Conditions which place unjustifiable and disproportionate burdens on an applicant will fail the test of reasonableness.
- Unreasonable conditions cannot be used to make development that is unacceptable in planning terms acceptable

The acoustic report indicates that all activities associated at the site would achieve the requirements of BS 8233 at the nearest dwellings and achieve a BS 4142 condition of 'low impact' at all times of the day and night without the requirement for any additional mitigation. This assessment is based upon 24/7 access to the site.

The lighting report highlights that there is no specific guidance or limits for stray lights from vehicles at night, and in any event the amount would be very low.

There have been no complaints associated with the operation of the existing self storage buildings for which there is no limitation on opening hours.

It has been shown therefore, that the development would not have an adverse impact on neighbouring residential properties if operating 24 hours a day and 7 days a week. A condition to limit opening hours is therefore unreasonable.

7.2 Planning Practice Guidance ("PPG") runs alongside the NPPF and sets out expectations on use of conditions on planning decisions. The Local Planning Authority's role is to ensure that the 6 tests in paragraph 56 of the NPPF have been met.

Whether it is appropriate for the Local Planning Authority to impose a condition on a grant of planning permission will depend on the specifics of the case. Conditions should help to deliver development plan policy and accord with the requirements of the NPPF, including satisfying the 6 tests for conditions.

The 6 tests **must all be** (our emphasis) satisfied each time a decision to grant planning permission subject to conditions is made.

We have shown the 6 tests have not been met for the various reasons we have set out above.

- 7.3 Assessment against Employment Policies - A key theme of National Planning Policy Framework is promoting the rural economy Paragraph 88 states: Planning policies should support economic growth in rural areas in order to create jobs and prosperity by taking a positive approach to sustainable new development. To promote a strong rural economy, local and neighbourhood plans 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;

Promote the development and diversification of agricultural and other land-based rural businesses;

24/7 access not only represents an important marketing tool, it also increases the size of the potential customer base the store will appeal to. Importantly, offering 24/7 access, also means that the store can maintain or improve its profitability and therefore business viability. Stores unable to offer 24/7 access would need to compete by lowering the price of storage units.

In restricting access hours at the extension to Drayton Barns, the storage business is negatively affected as it is limited in its ability to compete with wider facilities offering 24/7 access. Appendix A demonstrates that most of Extra Room Self Storage's existing local competitors offer 24/7 access.

Condition 3 of planning permission 23/00239/FUL therefore creates an anti-competitive situation, which breaches the NPPF.

8.0 Consistency in the Planning Process

- 8.1 It is well established case law that previous planning decisions are capable of being material considerations, meaning that they may need to be taken into account by those determining subsequent applications for permission.

The reasoning behind this was explained by Mann LJ in *North Wiltshire District Council v Secretary of State for the Environment* (1993) 65 P & CR 137:

- 8.2 *"One important reason why previous decisions are capable of being material is that like cases should be decided in a like manner so that there is consistency [...]. Consistency is self-evidently important to both developers and development control authorities. But it is also important for the purpose of securing public confidence in the operation of the development control system."*

- 8.3 Attention is also drawn to *Baroness Cumberlege v Secretary of State for Communities & Local Government* [2017] EWHC 2057:
- 8.4 Howell QC stated that: *“There is a public interest in securing reasonable consistency in the exercise of administrative discretions that may mean that it is unreasonable for a decisionmaker not to take into account other decisions that may bear in some respect on the decision to be made. There is no exhaustive list of the matters in respect of which a previous decision may be relevant. That must inevitably depend on the circumstances.”*
- 8.5 The referenced decisions in Section 2.0 (15/0871/FUL, 14/01087/FUL and 11/00331/COU) are for the same form of development, within the same area and as such would have been assessed against Policies DM4 and DM10. The inclusion of Condition 3 for the latest application therefore shows an inconsistency in the LPA’s assessment.

9.0 Conclusion

- 9.1 The acoustic survey concludes that noise from the proposed use of the site over a 24 hour period would not have a significant adverse noise impact and that the predicted levels would be below existing measured ambient levels.
- 9.2 The lighting report concludes that any stray light from vehicle headlights will be very low and that as there is no standard or guidance for this type of light, it cannot be given as a reason, as implied in Condition 3, for limiting the hours of use of the access road into the proposed development.
- 9.3 This report has clearly demonstrated that as well as Condition 3 being unenforceable, it is also not necessary or reasonable, as its removal will result in no adverse impacts on the amenity of the occupiers of neighbouring properties or the visual amenity of the countryside.

APPENDIX A

A.1 Local Self Storage Competitors with Unrestricted Access

Storage Company	Location	Distance from Extra Room Self Storage
Low Price Storage	Nuneaton	2 miles
Glenn Removals & Storage	Nuneaton	4 miles
Store The Lot	Nuneaton	6 miles
Hinckley Storage	Hinckley	6 miles
J&R Self Storage	Nuneaton	7 miles
Store The Lot	Hinckley	9 miles
Beyond Storage	Thornton	13 miles
Safestore Self Storage	Coventry	13 miles
Access Self Storage	Coventry	14 miles

A.2 Screenshot from Hinckley Storage website (Jun 24)

HINCKLEY STORAGE

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24hr Self Access Storage Rooms

Dry, secure 24 hour self access storage rooms at GREAT RATES

The sheer practicality of the 24hr Self Access Storage Room has made it a popular storage solution not only within the Hinckley and Nuneaton areas but also across much of the UK. At Hinckley Storage, we guarantee that our 24hr Self Access Storage Rooms will keep your items fully protected from unwanted visitors as well as being kept in an environment that will keep them safe from weather and temperature extremes. Choose Hinckley Storage for storage solutions in the Hinckley, Nuneaton, and surrounding areas.

APPENDIX B

Extra Room Self Storage

Summary of traffic data

- Assessed traffic for the period Monday, 16th January 2023 to Sunday, 29th January 2023
- 60% of users were in cars
- 8% of users were in small vans (e.g. VW Caddy)
- 33% of users were in transt vans (e.g. Ford transit)
- No HGVs
- Averaged 11.9 inbound vehicles per day into the existing 1,225sqm buildings
- Implies an additional 9.0 inbound vehicles per day into the proposed 925sqm extension

Extra Room Self Storage

Daily inbound vehicle movements

Date	Vehicles in
Monday-16-Jan-23	9
Tuesday-17-Jan-23	13
Wednesday-18-Jan-23	9
Thursday-19-Jan-23	10
Friday-20-Jan-23	11
Saturday-21-Jan-23	16
Sunday-22-Jan-23	10
Monday-23-Jan-23	12
Tuesday-24-Jan-23	14
Wednesday-25-Jan-23	8
Thursday-26-Jan-23	14
Friday-27-Jan-23	12
Saturday-28-Jan-23	13
Sunday-29-Jan-23	15
Total vehicles in	166

Inbound Vehicles Summary

Average Daily Vehicles In	11.9
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Trips for existing 1,225sqm building (inbound+outbound)

Average Daily Trips	23.7
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Implied Trips For New 926sqm building (inbound+outbound)

Average Daily Trips	17.9
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