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Dear Councillor

PLANNING COMMITTEE - TUESDAY, 6TH JULY, 2021

I now enclose, for information the Schedule of Communication.

Yours sincerely

Catharine Saxton
Democratic Services Officer

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PLANNING COMMITTEE - 6 July 2021

Schedule of Communication Received after Printing of Agenda

Item	Correspondent	Date	Points Raised (Summary)	Officer's Response
5	Council/Agent	01.07.2021	Condition 11 – see attached update report (Appendix 1)	N/A
7	Newark Town Council	01.07.2021	Consultation response-no objections	N/A

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APPENDIX 1 - UPDATE REPORT

Application No:	21/00295/FULM (MAJOR)
Proposal:	Erection of commercial storage units and erection of new office with associated parking.
Location:	Staunton Industrial Estate, Alverton Road, Staunton In The Vale NG13 9QB
Applicant:	Pete Norris Ltd, Midland Feeds
Agent:	Grace Machin Planning & Property

Since the agenda has been published, legal colleagues have reviewed the report and recommendation and have raised concern regarding the proposed use of a personal condition (no. 11) for a number of reasons namely:

- as it would be with a limited company
- It is open to the applicant to appeal against the personal condition and in such circumstances control of the site will be out of the council's hands:
- In circumstances where a breach of planning condition occurs the remedy is usually limited to a prosecution for breach and subsequent fine.

This legal view is supported by paragraph 93 of Circular 11/95 which although revoked is still good advice in this respect. This states that 'a permission personal to a company is inappropriate because its shares can be transferred to other persons without affecting the legal personality of the company.' Accordingly Legal colleagues recommend that the use of a personal condition be abandoned as it would not be robust and the matter should instead be controlled via a section 106 planning obligation which is the only way to secure what we seek to achieve. This would need to control as follows:

- Provision that the site shall only be occupied by the company for the purposes of the planning permission
- To serve notice on the Council if the use ceases;
- To remove the buildings within a certain time frame after service of the notice;
- To pay the Council's complete costs of removal should the company default on its obligations [with the Council undertaking the work associated with removal];
- The site should not be disposed of without the consent of the Council, which would need to be registered as a charge on land. Consent only to be forthcoming if the terms of the Section 106 agreement have been met.

The applicant's agent has been asked if they would agree to this. They have responded (01.07.2021) to say that they haven't yet had the opportunity of discussing the matter with a planning lawyer though their initial reaction is that this is arguably onerous and not necessary.

I disagree; without such a control the unit that is recommended for approval could be occupied by any company that doesn't necessarily require such a rural location. Without such a control therefore I would suggest that the recommendation ought to be for refusal.

However notwithstanding their initial reaction to the request, they have confirmed that they would in principle be prepared to enter into the drafting and signing of a section 106 agreement to allow for the permission to be granted.

Revised Recommendation:

That planning permission be granted subject to:

- a) **the conditions shown in the main report save for condition 11 and;**
- b) **the applicant enters into a legal agreement to secure the development of and use of the building in line with the advice set out above and that this is completed within a timeframe of 4 months from the date of the Planning Committee, failure to do so would result in the refusal of the application without further reference to the Planning Committee for the following reason:**

In the opinion of the Local Planning Authority the proposed expansion of the existing business is only acceptable given that the applicant was able to demonstrate a need for a rural location to allow for the proper operation of their business. However in order to ensure that the site is operated as set out in the application and operated by the applicant (rather than be occupied by a new independent business) and one that requires a rural location, there is a need to limit the occupants of the business and this can only be robustly achieved through entering into a section 106 agreement, which the applicants have not entered into within a reasonable time period. As such the application must be considered as a new commercial building in the countryside that could be occupied by any business that does not need to be in the countryside undermining the objectives of the Development Plan which encourages development within the defined areas as set out within Core Policy 6 (Shaping our Employment Profile), and Spatial Policy 3 (Rural Areas) of the adopted Amended Core Strategy 2019 as well as Policy DM8 (Development in the Open Countryside) of the adopted Allocations and Development Management Plan (DPD) adopted 2013, which together make the relevant parts of the Development Plan. In addition the proposal is contrary to the National Planning Policy Framework which is a material consideration.