

From: [Claire Westwood](#)
To: [Pigott, Matthew \(Avison Young - UK\)](#)
Cc: [Charles, Aisosa](#); [Maple Cross Residents Environment Group](#); [TRDC Appeals](#); [Clarke, Freddie \(Avison Young - UK\)](#)
Subject: APP/P1940/W/21/3289305 - Draft Conditions 20 and 37
Date: 12 April 2022 13:32:55

CAUTION: External Sender

Dear Matthew,

Maple Lodge appeal: APP/P1940/W/21/3289305
Draft Conditions 20 (Noise Assessment) and 37 (House of Use/Operation) (CD5.23)

Thank you for your email of April 5th in which you point out that the Council's 'Representations' to the inquiry (CD6.3.1) along with the updated Statement of Common Ground (CD5.24) confirm that the only matters in dispute between the Council and the Appellant are draft conditions 20 (Noise Assessment) and 37 (Hours of Use /Operation) (CD5.23). It is acknowledged that the key issue in relation to each of these conditions is noise.

In accordance with paragraph 27 of the Inspector's Post Conference Note (02/03/2022) (CD5.22) it is the Council's intention to address issues arising in respect of draft conditions (CD5.23) in the proposed inquiry RTS on planning obligations and conditions.

You indicate, however, that the Appellant is currently unclear as to what the evidential basis is for the Council's position with respect to both conditions. In this connection you point out that condition 20 as currently drafted and condition 37 in its entirety, did not form part of the officer's original recommendation to committee (CD3.1). It is also the fact that noise was not identified by the Council as a putative ground of refusal.

In response to your request, the Council recognises that it would be of assistance if it clarified its position with respect to noise and the two draft conditions. In addition, the Council has since the Case Management Conference, had the opportunity of taking account of the RSK Acoustics Proof of Evidence (Noise) Report 19/0333/P.o.E1.2 ('RSK proof') (CD6.1.10), in particular, section 7 'Updated Noise Modelling' and the Cass Allen Proof Of Evidence RP01-21247-RO (CD6.2.5). Accordingly, in relation to the issue of noise arising in connection with draft planning conditions 20 and 37 the Council sets out below its up-to-date position to be put forward in the noise RTS as follows:

- With appropriate mitigation secured by planning condition, the Committee Report (CD3: para. 7.7.23) confirmed that the appeal application complies with the NPPF 2021 and Policy DM9 (CD4.27). This remains the Council's position.
- The PPG on Noise (CD4.48) states that: *'The overall objective is to avoid or minimise significant adverse impacts; some degree of impact is acceptable and it is not necessary to achieve no impact at all.'*
- *'Adverse noise impacts arise when noise levels exceed the LOAEL (Lowest Observed Adverse Effect Level).'*
- *'Noise levels above the LOAEL need not be avoided, although they should be mitigated and minimised as far as reasonably practical where they occur...'*
- BS 4142 advises that a difference of around +5dB between the rating level at the receptor and the baseline background level is likely to be an indication of an adverse impact depending on the context (CD1.3.3: A4.2.18 / TA3)
- The noise assessment methodology adopted by RSK in the RSK proof (CD6.1.10)

presents a noise worst case (see Cole Jarman: 'Planning Noise Assessment' (CD 1.3.3: paragraphs 3.5.2/3, 3.5.6, 3.6.2, 3.7.1, 3.8.3, A4.2.7, A4.2.9-11) and RSK Proof of Evidence (Noise) (CD61.10: 7.1.1, 9.8).

- Both Unit 1 and Unit 2 provide screening from all vehicle loading docks and a number of parking bays resulting in notable inherent attenuation of the noise from operational activities at the units (CD1.3.3: 4.4.3)
- The resultant predicted noise emissions from the general operation of the scheme in terms of rating levels assessed at assessment positions AP1 and AP2 are shown in 19/0333/SCH3 (CD1.3.3: 4.2.1)
- The SCH3, operational Noise Rating Levels (dB LAeq,1 hour) (inclusive of a 3 dB BS4142:2014 penalty) shows the predicted noise levels are below the WHO criteria (at or below 45dB LAr, 1 hour, day and 40dB LAr, 15 minutes, night – LOAEL (CD 1.3.3: A4.2.3, A4.2.6/7)) and the BS 4142 Rating Levels thus requiring no specific mitigation measures (CD1.3.3, A4.2.12, 16 and TA2).
- The RSK Acoustics Proof of Evidence (Noise) Report 19/0333/P.o.E1.2 (CD6.1.10) section 7 'Updated Noise Modelling' includes results from the noise prediction program (Wolfel IMI version 2020). Applying a 6db acoustic penalty to loading and unloading activities at the site (to take account of banging sounds and reversing alarms) the model T2 Assessment Results show the LAr,T, dB rating results at AP1 and AP2 to be below the LOAEL thresholds.
- The CASS Allen 'Peer Review' (CD2.4.6 p.4) finding that the RSK (worst case) rating noise will exceed the typical background noise level by 4 dB is 'approaching' and not at or above the 'adverse impact' level presented in BS4142.
- The Cass Allen (CD2.4.6: p.5) worst case figure of 42dB (incorporating a 6dB penalty) is a result not necessarily excluded as unacceptable by PPG guidance.
- All other properties in the area deemed sensitive by the TRDC Local Plan are either more screened from the appeal site, further away or a combination of these which would result in lower noise levels than those shown in SCH3 in all other noise sensitive properties (CD:1.3.3: 3.4.3). The Council is accordingly not persuaded that noise level predictions for dwellings east of the site are required.
- It is common ground between the Appellant (CD1.3.3: 4.5), the Council (CD5.23: C20) and the Rule 6 Party (CD2.4.6: p.5) that planning permission, if granted, should be subject to a 'rating noise level from any fixed or mobile mechanical plant or commercial activity including all noise associated with deliveries and vehicle movements'^[1] and that such a condition would 'adequately protect all surrounding residents.'^[2]
- The wording of the rating noise level condition C20 is not agreed.

In summary and conclusion, having regard to the totality of the noise evidence before the inquiry, the Council has concluded that draft condition C37 Hours of Use/Operation (CD5.23) is neither necessary nor reasonable applying the tests in NPPF 2021: 56 (CD4.34).

Draft condition C20 refers to a noise assessment that shows the rating noise level "shall not exceed the background sound level representative of the period being assessed at noise sensitive receptors such as residential properties within Longmore Close (the noise sensitive receptors to have been previously agreed with the Council)..." As the side note on CD5.23 indicates, whilst not disputing the principle of the condition, the Appellant would apply the following test: "shall not exceed 5 dB above the background sound level representative of the period being assessed, or 45 dB(A) during the day / 40 dB(A) at night whichever is higher, at noise sensitive receptors...The noise assessment should be carried out in line with the methodology presented in BS4142:2014 + A1:2019 Methods for rating and assessing industrial and commercial sound..."

Having had the opportunity of considering the respective noise proofs of evidence on noise (RSK CD6.1.10 and Cass Allen CD6.2.5) the Council has concluded that the Appellant's requirement of not exceeding 5dB above the background or 45 dB(A) day / 40 dB(A) night whichever is the higher, meets the NPPF2021: tests. BS 4142 (section 11) (CD4.34) embraces the use of absolute noise levels (CD2.4.7: paragraphs 2.5-2.9) and the wording of the standard demonstrates "that a

rating level equal to the background does not constitute an adverse impact, simply low impact. It is a rating level 5 dB above background which is an indication of adverse impact and is therefore concurrent with the definition of a LOAEL" (CD2.4.7: 2.10 -12). The Council has concluded that draft condition C20 applying this test would accord with Policy DM9 and the guidance in the NPPF 2021 and the PPG.

The Council proposes, in consultation with the Appellants and the R6 party to redraft condition C20 accordingly.

This response has been copied to the Rule 6 Party and PINS.

Kind Regards

Claire Westwood

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[1] Cass Allen CD2.4.6: p.5

² Ibid p.6

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Subject: APP/P1940/W/21/3289305 - Draft Conditions 20 and 37

Good Afternoon Claire,

Following exchange of proofs on 29th March, we note that the Council has not provided a proof of evidence and has instead provided representations to the Inspector (CD6.3.1). These representations, along with the updated Statement of Common Ground (SoCG) (CD5.24), confirm that the only matters in dispute between the Council and the Appellant are draft conditions 20 (Noise Assessment) and 37 (Hours of Use/Operation). We welcome this updated position and the Council's engagement in the updated SoCG to clarify its position.

Notwithstanding this, the key issue in relation to each of these conditions is noise. As such, the Appellant is

currently unclear as to what the evidential basis is for the Council's position, and how the use of conditions as proposed by the Appellant (CD5.23) would otherwise lead to the refusal of the scheme as a whole on the basis that condition 20 as currently drafted (and not agreed) and condition 37 in its entirety did not form part of officers' original recommendation to committee (CD3.1) .

We therefore request that the Council clarifies its position at the soonest opportunity on what evidence it intends to rely and ask that the Council also confirm that the Environmental Health Officer is present at the round table discussion at the Inquiry.

Many thanks,

Matthew Pigott

Associate Director
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^[1] Cass Allen CD2.4.6: p.5

^[2] Ibid p.6

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