



**APPENDIX 3**  
**Legal Advice**



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ADVICE

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1. I am asked to advise Chase New Homes in relation to the scope for Uttlesford District Council (“UDC”) to require further work and changes to a scheme at reserved matters stage to deal with belated concerns about noise.

**BACKGROUND**

2. On 25 November 2022 an application was made for outline planning permission for up to 170 dwellings at Land West of Thaxted Road, Saffron Walden (“the Site”). The application was in outline with all matters other than access reserved.
3. The Site comprises three agricultural fields adjoining Saffron Walden. To the north of the site is an area of public open space known as the Green Mile and a community skate park.
4. The application was made directly to the Secretary of State pursuant to section 62A of the Town and Country Planning Act 1990 because UDC was designated for major applications. Thus UDC was a consultee on the planning application rather than the deciding authority.

5. The applicant provided a planning noise assessment with the application. That considered the potential for a series of sources of noise (including the skate park) to impact on residential amenity of future occupiers of the development. The survey was carried out an assessment in accordance with BS4142:2014 and concluded that despite the use of robust rating penalties and the survey considering the worst-affected residential windows the rating level does not exceed background sound level. As noted in the survey “this is an indication of the specified sound source having a low impact, depending on the context”.
  
6. As part of their consultation response on the application UDC consulted an environmental health officer on the noise implications of the proposal. Their consultation response provided:

*The site is located next to the busy Thaxted Road, a recycling centre and a state park which all have the potential to impact on future occupiers of the proposed development. Whilst this is not considered a barrier to development, it is important to ensure that a suitable noise mitigation scheme is incorporated into the design and construction of the new dwellings. The noise assessment submitted shows that the recommended standard for internal noise can be met, if the recommendations from the assessment are incorporated into the design. It is recommended that a condition be attached to consent to ensure that the glazing (and ventilation) recommendations of the noise assessment will be followed, or that alternative but equally or more effective glazing and ventilation will be used. See recommended condition below.*

7. The planning inspector appointed to assess the scheme (Jo Dowling) did not identify any concerns about noise. She granted permission subject to a number of conditions of which the most relevant are:

*1 Approval of the details of layout, scale, landscaping, and appearance (hereafter called "the Reserved Matters") must be obtained from the Local Planning Authority in writing before development commences and the development must be carried out as approved.*

*Reason In accordance with Article 5 of the Town and Country Planning (Development Management Procedure)(England) Order 2015 (as amended) and Section 92 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.*

*4 The development shall be carried out in accordance with the following approved plan:*

- Site Location Plan;*
- Dwg Ref: 1000 PR C;*
- Site Access Arrangement Plans 22078/006D and 22078/007B. Unless otherwise agreed in writing by the Local Planning Authority.*

*Reason To ensure the development reflects and maintains the character of the surrounding locality and the streetscene in accordance with Policies S7, GEN1 and GEN2 of the adopted Local Plan and the National Planning Policy Framework*

*5 The location of the built development shall be carried out in general accordance with the:*

- Land Use Parameter Plan Dwg Ref: 1201 PL C;*
- Access Strategy Parameter Plan Dwg Ref: 1202 PL D;*
- Building Heights Parameter Plan Dwg Ref: 1203 PL D;*
- Density Parameter Plan Dwg Ref: 1204 PL C; and*
- Green Infrastructure Parameter Plan Dwg Ref: 1205 PL D.*

*Unless otherwise agreed in writing by the Local Planning Authority.*

*Reason To ensure the development reflects and maintains the character of the surrounding locality and the streetscene in accordance with Policies S7, GEN1 and GEN2 of the adopted Local Plan and the National Planning Policy Framework.*

*6 The development hereby approved shall be constructed in accordance with the details as set out within the 'Design Code' Rev A (February 2023) prepared by Keir unless otherwise agreed in writing by the Local Planning Authority.*

*Reason To ensure a high-quality development and place making is achieved when applications for reserved matters are submitted in accordance with Policy GEN2 of the adopted Local Plan and the National Planning Policy Framework.*

*9 The glazing, ventilation and any other mitigation specified shall be installed in accordance with the specifications recommended within the Noise Assessment submitted with the application [Noise Solutions Ltd, 24th February 2023, reference 90582 Revision 5].*

*Reason To ensure future occupiers enjoy a good acoustic environment in accordance with Policy ENV10 of the adopted Local Plan.*

8. The consented access plans show that a northern access to the site has to be close to the northern boundary (next to the skate park). It then passes in a south-westerly direction. The conditions also require the proposal to be in general accordance with (inter alia) a land use parameter plan which shows a block of residential use to the southwest of the northerly access road. The same plan shows that the area immediately by the skate park will be green infrastructure.
9. Chase New Homes have subsequently put together an application for reserved matters approval and to discharge two of the conditions.
10. The site layout plan provided as part of that application shows that the area closest to the skate park contains green infrastructure and a substation. Then moving south there is the access road and an infiltration basin. To the south-west of the skate park there are some parking spaces. The nearest plots to the skatepark are a terrace of four houses (plots 1 to 4, house style beech) which face the skate park and have their gardens facing away. They would have their kitchen and two bedrooms each facing the

skate park. To the south-west again a further terrace of four dwellings backs on to plots 1-4 (being plots 4-8).

11. This application was due to be reported to committee with a recommendation for approval. On 24 May 2024 a different environmental health officer commented on the application. Her comments start:

*Following a review of the application in full including (UTT/22/3258/PINS) this department has some concerns regarding noise from the skatepark affecting the proposed dwellings. We are aware that this should have been picked up at an earlier stage and do apologise, however we felt it is prudent to raise the issues now to ensure the proposed development does not face significant adverse impacts as a result of the skatepark noise and that the continued use of the skatepark is not affected by the proposed dwellings.*

12. She goes on to make various criticism of the 2023 acoustic report then states:

*Based on the findings of other surveys of skateparks, it is likely that screening would be required, and effective screening would require that lines of sight to be broken between source and receiver locations. Due to the fact the bowls are sunken into the ground, bunds might be appropriate or a solid fence. Site layout changes may be required to allow sufficient space to construct adequate barriers.*

*The proposed layout for plots 1-4 shows that sensitive rooms particularly two of three bedrooms will be facing towards the skate park and the external amenity from plots 4-8<sup>1</sup> also faces the skate park. This does not demonstrate good acoustic design.*

13. She recommended that a further noise assessment be conducted prior to determination of the application.

14. Those instructing have argued that since there was no condition attached to the outline application requiring further noise assessment then UDC are now too late to require any such work. UDC argue that they can require the further assessment (and any subsequent changes to the scheme) because they relate to the reserved matter of layout.

#### **LEGAL BACKGROUND**

15. Section 92 of the Town and Country Planning Act 1990 defines 'outline planning permission' as follows:

*(1) In this section and section 91 "outline planning permission" means planning permission granted, in accordance with the provisions of a development order, with the reservation for subsequent approval by the local planning authority, the Welsh*

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<sup>1</sup> This seems to me to be incorrect, and that it is plots 5-8 where the rear gardens point towards the skate park.



*Ministers or the Secretary of State of matters not particularised in the application (“reserved matters”).*

16. The matters which may be reserved for subsequent consideration are defined in the Town and Country Planning (Development Management Procedure) (England) Order 2015. In respect of an application for reserved matters the order provides:

*An application for approval of reserved matters—*

*....*

*(b) must include such particulars, and be accompanied by such plans and drawings, as are necessary to deal with the matters reserved in the outline planning permission*

17. The reserved matters in the current development management procedure order are defined in Article 2 as follows (as relevant):

*“access” , in relation to reserved matters, means the accessibility to and within the site, for vehicles, cycles and pedestrians in terms of the positioning and treatment of access and circulation routes and how these fit into the surrounding access network; where “site” means the site or part of the site in respect of which outline planning permission is granted or, as the case may be, in respect of which an application for such a permission has been made;*

*“appearance” means the aspects of a building or place within the development which determines the visual impression the building or place makes, including the external*

*built form of the development, its architecture, materials, decoration, lighting, colour and texture;*

*“landscaping” , in relation to a site or any part of a site for which outline planning permission has been granted or, as the case may be, in respect of which an application for such permission has been made, means the treatment of land (other than buildings) for the purpose of enhancing or protecting the amenities of the site and the area in which it is situated and includes—*

*(a) screening by fences, walls or other means;*

*(b) the planting of trees, hedges, shrubs or grass;*

*(c) the formation of banks, terraces or other earthworks;*

*(d) the laying out or provision of gardens, courts, squares, water features, sculpture or public art; and*

*(e) the provision of other amenity features;*

*“layout” means the way in which buildings, routes and open spaces within the development are provided, situated and orientated in relation to each other and to buildings and spaces outside the development;*

*“scale” except in the term ‘identified scale’ , means the height, width and length of each building proposed within the development in relation to its surroundings;*

18. In **R (Fulford Parish Council) v City of York Council** [2019] EWCA Civ 1359 Lewison LJ said:

*Although the local planning authority has the power to give conditional approval to reserved matters, its power to do so is limited by the scope of what has been reserved*

*for subsequent approval. It is not open to an authority to impose additional conditions falling outside the scope of what has been reserved.*

19. Although the Court of Appeal were there discussing the power to impose conditions in a reserved matters decision falling outside the scope of what has been reserved, the same principle would apply to the question of whether a Local Planning Authority can refuse reserved matters applications. They can only do so where the matter on which they are refusing lies within the scope of what has been reserved, unless there is a condition on the outline permission requiring provision of further details about the matter concerned. This principle is well established.

20. In **Medina Borough Council v Proberun Ltd** (1991) 61 P. & C.R. 77 outline permission had been granted which required approval of details of means of access to the buildings. The question was whether the planning authority could refuse proposals for access which were the best achievable in the site on the grounds that they were not good enough. Glidewell LJ recognised that the case raised the question of principle, where details are submitted pursuant to a reserved matters application “What then are the limits placed by the outline planning permission on the planning authority's power to approve or disapprove details that are submitted” (pg 85). In response to that question he cited a passage from Lord Morris of Borth-y-Gest in **Kingsway Investments Ltd v Kent County Council** saying:

*So if permission is granted after an outline application the applicant clearly knows that that permission is conditional and that it will not be of use to him until he is able to*

*submit details as to siting and design and the like which are acceptable. It must, of course, be assumed that the authority will act in good faith. They must not misuse their functions so as indirectly and without paying compensation to achieve what would amount to a revocation or modification of a permission already given. Any refusal by them to give approval of details submitted to them can be the subject of an appeal to the Minister. The Minister may overrule the authority.*

21. Glidewell LJ continued:

*In my opinion if a planning authority, perhaps because it regrets that outline planning permission has been granted, refuses to approve detailed proposals for access within the boundaries of the site, and makes it clear that only a scheme for access which involves the developer acquiring rights outside the land currently under its control will be approved, it is, to adopt Lord Morris's wording, misusing its function so as to achieve, without compensation, what would amount to a revocation or modification of a permission already given. Such a misuse of power patently is unlawful.*

22. In **R (Village Concerns) v Wealden District Council** [2022] EWHC 2039, Dove J considered the scope of a local planning authority to refuse an application for reserved matters where the outline permission specified permission was granted for 'up to' a certain number of houses. Having surveyed the authorities the judge said:

*43. It will be apparent that none of these authorities directly address the question of the proper approach to a planning permission granted in outline for "up to" a given*

*number of dwellings. However, taking the contrasting situations presented by the case of Newbury and that of the case of Saunders, the powers of the local planning authority in relation to reserved matters applications pursuant to an outline permission appear to be governed by the proper interpretation of the outline planning permission and, in particular, whether it specifies a given quantum of development which is subsequently to be articulated through the reserved matters application.*

*44. It needs to be borne in mind that, of course, reserved matters pursuant to an outline planning application are defined within article 2 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 , as part and parcel of the provisions under articles 5 and 6 of the 2015 Order which regulate applications for outline planning permission and applications for approval of reserved matters. The principle which obviously flows from these legal provisions is that a reserved matters application must be within the scope of the outline planning permission which was granted, and must provide for reserved matters details consistent with the grant of outline planning permission. These provisions help explain the case of Proberun and support the proposition that the outline permission sets the perimeters or framework for the consent which is being granted and following which reserved matters are then submitted.*

*45. The logic of this position is that in granting outline permission for "up to" a given number of dwellings it has been accepted by the local planning authority that the number of dwellings specified in this formula is an acceptable quantum of development. As a matter of interpretation of such an outline planning permission firstly, any application for the specified number of dwellings would be within the scope of the outline but, secondly, it is open to the applicant for reserved matters to provide*

*details for a smaller number of dwellings. What is not available to the local planning authority is to refuse an application for the specified number of dwellings on the basis that the site is not capable of accommodating that number in principle. By the same token it is open to the local planning authority to refuse a reserved matters application for the specified number of dwellings on the basis that it does not amount to the best means of achieving the delivery of the specified number of dwellings on the site of the outline planning permission.*

## **DISCUSSION**

23. In my view UDC face a number of difficulties in attempting to require further acoustic assessment or changes to the scheme at this stage.
24. Firstly there are no further such requirements expressly put on the outline permission. There is no requirement on the outline permission for any further acoustic assessment. Nor is there any requirement that the acoustic environment in any of the dwellings meets any specified standard. The only condition on the outline permission is condition 9 which requires any mitigation to be installed in accordance with certain standards.
25. Therefore on the face of it the permission is unlimited by any requirements in relation to noise (other than condition 9) and there is no justification for UDC seeking to reopen the noise issue at reserved matters stage. In my view seeking to do so detracts from the principle of the outline permission when read together with the conditions.

26. UDC argue that they are entitled to raise noise because it falls within the reserved matter of layout. In my view that argument is undermined by the following. Firstly (as set out above) there is nothing in the permission to require further noise assessment in any event.

27. Even if there were any further noise assessment given that the assessment provided at outline permission was produced by appropriate experts and accepted by UDC's environmental health officer, there is no reason to believe that a further noise assessment would give rise to any different requirements. The current EHO's response appears to accept that there is no single prescribed way of assessing noise from a skate park. That other assessments have used different methodologies does not mean that there is anything inappropriate about the approach taken by the initial noise assessment in this case.

28. However in order to assess UDC's approach I have considered what the position would be if (contrary to the above) some further noise assessment could be required and that noise assessment showed that some further mitigation is required.

29. Even if I am wrong and further noise assessment could be required I do not see how that would allow UDC to require the provision of an acoustic fence or bund as the new EHC appears to consider is necessary. The inclusion of an acoustic bund or fence was not provided for in the outline permission. I do not see how provision of it falls within the definition of the reserved matter of layout. It does not obviously concern the "way

*in which buildings, routes and open spaces within the development are provided, situated and orientated in relation to each other and to buildings and spaces outside the development”.*

30. Even if I am wrong about the above and contrary to the clear definition of what can be required under ‘layout’ that can somehow be used to require the provision of an acoustic barrier or fence, then there is a further difficulty for UDC in that the more recent EHO recognises there may need to be layout changes in order to provide an acoustics barrier or fence. However the layout at the north-east corner of the site is effectively fixed because that is where the access road is and access was not a reserved matter.

31. Even if some further acoustic assessment could be required and it suggested changes to the layout other than the provision of a noise barrier or fence then in my view there are very limited changes that UDC could properly require Chase New Homes to make to the layout in response to any acoustic assessment. That is because:

- a. The access point is fixed.
- b. Any proposed layout has to be in general accordance with the development parameters plan, there cannot be any substantial redeployment of residential development within the site.
- c. In my view UDC cannot require a reduction in the number of dwellings in order to pull development further away from the skate park because in granting



outline permission for up to 170 dwellings the acceptability of residential development of this quantum has already been established.

32. Therefore in my view the fact that layout is a reserved matter does not obviously assist UDC. It does not undermine my view that the noise consequences for the proposal were considered and fixed as part of the outline application and cannot now be revisited under reserved matters.

### **CONCLUSION**

33. In my view the grant of outline permission establishes the principle of development of up to 170 dwellings without any further requirement of assessment of or mitigation in relation to noise. I do not consider the fact that layout is a reserved matter allows UDC to introduce requirements in relation to noise because: (1) there is no requirement to carry out further noise assessment (2) I do not consider UDC could refuse details of layout for not including an acoustic fence or barrier because provision of such a fence or barrier does not fall within the definition of layout and it is questionable whether such a barrier or fence could be accommodated given access is fixed which fixes the layout in the north-east part of the site and (3) even if UDC could require changes to the layout to mitigate against noise (which I do not think they can for the reasons set out above) there are in practice very few changes that could be made to the layout given that the access point is fixed, the general pattern of deployment of residential development is fixed, and UDC cannot in my view require a reduction in quantum of development.

34. If I can be of any further assistance please do not hesitate to contact me.

CLARE PARRY

Cornerstone Barristers

10 June 2024