



APPENDIX 6
Letter to Councillors 25 June 2024



Our Ref: LF/23060_Comm

25 June 2024

Planning Committee Members
Uttlesford District Council
Council Offices
London Road
Saffron Walden
CB11 4ER

By Email Only: all planning committee members

Dear Councillor

Planning Committee 26 June 2024
Agenda Item No. 6
Land West of Thaxted Road, Saffron Road.

I am writing on behalf of the Applicant, Chase New Homes. As you will be aware the application was before you on the 29 May 2024 but was deferred as a result of a late representation from Environmental Health some 6 months after the application was submitted.

It is important to understand that these acoustic matters have already been assessed and approved, they therefore do not form part of this reserved matters application.

The EHO's response sought to go back to the approved outline application and re-assess information submitted and approved as part of that process, rather than deal with the application as submitted.

Whilst this EHO raises concerns about the noise assessment submitted with the outline application, the previous EHO raised no objection (previous response attached).

Fundamentally noise is not a reserved matter. It was considered and approved at outline application stage.

The EHO refers to historic noise complaints but fails to acknowledge that these were as far back as 2007 when the skate park was first installed and there is no indication as to whether these complaints were associated with the skate park itself or its construction. The attached FOI response advises that historic records are not available following the change in the recording system in 2012. It can therefore not be concluded that any noise issues arose from the skate park itself but moreover it can be concluded that no noise complaints have been received since



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2007, some 17 years ago. As a result of a lack of historic records, this assertion is all hearsay and nothing more.

The assertion that the skate park may have a significant impact is completely unfounded based on both the information submitted at the outline application stage and the complete lack of complaints for the last 17 years.

It is considered that the noise assessment, carried out using the BS 4142 guidance, has likely overestimated the impact of noise. The assessment period was completely appropriate. The skate park was in use by 10 youths on a sunny day, even if the number of users was increased, the maximum noise levels would be unlikely to change and would remain acceptable.

The nature of this skate park, depressed bowls finished in smooth concrete, will result in significantly lower levels of impact noise, with the sunken bowls meaning the noise is screened. This is very different to above ground timber box style skate park structures, which do not exist in this location.

The habitable rooms of the proposed dwellings nearest to the skate park have purposely already been designed to be acoustically upgraded as required by the original noise assessment.

We have undertaken noise recordings over the weekend and whilst we do not agree with the methodology sought by the EHO, we have applied the guidance on clay pigeon shooting. The attached report demonstrates, as the original submission did, that there is no noise issue. In fact, it was difficult to discern the skate park noise over the bird song and Thaxted Road!

This application has been further delayed as a result of an EHO seeking to revisit matters that go beyond the approved outline planning permission.

In respect of assertions that noise matters relate to layout, the nature of the outline planning permission must be considered. The outline permission is governed by a series of parameter plans that set out where the approved access alignment is, open space and development parcels.

The layout submitted as part of this application is in general accordance with those approved parameters and in fact has resulted in all habitable room windows being at least 1.5m further away from the skate park than originally set out in the outline application. Whilst garden areas remain protected by built form, again to help with any acoustic concerns.

The scale of the built form propose also accords with the parameter plans which provide guidance on the scale of the built form permissible within the development parcels.

In respect of landscaping, the outline planning permission has secured the retention of tree/hedge belt along the boundary with the skate park and the approved landscape masterplan which forms part of the approval of condition 20 seeks to bolster that landscape boundary treatment.

It has been proven that any further acoustic measures are unnecessary and the lack of any complaints in over 17 years proves this fact.

If there was an identified noise issue at the outline application stage it would have been picked up then and the parameter plans amended to ensure there was no noise issue arising. Noise has been assessed and outline planning permission approved with no requirement for any further noise assessment.

This position is supported by advice from Counsel, which I attach for your review.

Whilst the EHO may consider the condition relating to noise to be poorly worded, this cannot be re-visited as part of a reserved matters application and follows the request by the Council's own EHO.

It is not standard practice for reserved matters applications to be submitted with reviewed Noise Impact Assessments, unless it is a requirement of the outline permission. It is not a requirement in this case.

It is acknowledged that the latest comments from the EHO references a High Court judgement, however, it fails to appreciate the nuances of that case, which is integral to understanding whether the cases are similar. It is disappointing that the Case Officer has not sought to address this in the Committee Report.

In the Ornuia Ingredients Ltd case, the noise report submitted at the outline application stage was not deemed appropriate, as it did not address all the noise generators in the environment, accordingly, the Inspector, in dealing with the outline application imposed a planning condition on the decision requiring a new noise assessment to be submitted. It did not appear to require the submission alongside the reserved matters application.

In that case the EHO advised that the noise assessment should be submitted alongside the reserved matters application as it was not possible to determine whether the noise matters had been addressed in that layout.

This is not the case here, the Inspector and the Council's EHO were satisfied with the noise information submitted and effectively conditioned compliance with the findings. There is no requirement for a new noise assessment.

It is in fact *Thirkell v Secretary of State [1978] JPL 844* that is more relevant, this case advised that reserved matters approval could not be withheld on a ground



that had already been decided, as it would only serve to frustrate the outline permission granted.

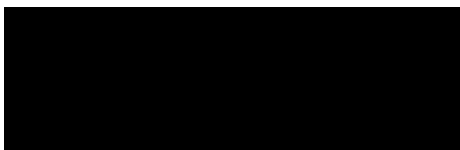
It is disappointing that some 7 months on from the submission of this application, including months of inactivity by the Local Planning Authority, that we find ourselves dealing with a point of law and that contrary to sound legal advice, Officers have chosen to recommend refusal, ignoring this legal advice and strong technical rebuttal information. The stance taken by officers is illogical.

Given the Council's current position on housing delivery and as a designated Authority, it was our opinion that a proactive stance on this matter, having regard to legal advice, would be taken.

We hope that you as the determining body will see sense and seek to approve these reserved matters in accordance with established planning principles and allow the development to come forward in a timely manner.

Should the application proceed to a determination and be refused, we will proceed to the Planning Inspectorate and seek to recover the costs from the Council.

Yours faithfully



Liz Fitzgerald
Managing Director

Environmental Health Consultee Comments for Planning

Application Number: S62A/2022/0014 - Land West of Thaxted Road, Saffron Walden

Lead Consultee

Name: Ross Jarvis

Title: Environmental Health Officer (Agency Support)

For further contact and correspondence:

Name: Nayna Daudia

Tel: [REDACTED]

Email: [REDACTED]

Date: 28th December 2022

Proposal: Outline application for the erection of up to 170 dwellings with access from Thaxted Road with all other matters reserved.

Comments

Thank you for consulting me on this application. Further to my investigations I have the following comments to make:

Contaminated Land

The Phase I investigation completed by Rolton Engineering, reference 220222-RGL-ZZ-XX-RP-G-0001, 17th October 2022 has identified the potential for unrecorded chalk pit workings beneath the site. This has the potential to have introduced contaminated land to the site. It is the developer's responsibility to ensure the site is suitable for the proposed end use or can be made so via remediation.

For this reason, I would recommend that the following condition is attached to any planning consent granted for the outline application as proposed:

1. Land Contamination

The following works shall be conducted by competent persons and in accordance with the Essex Contaminated Land Consortium's 'Land Affected by Contamination: Technical Guidance for Applicants and Developers' and DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11' and other current guidance deemed authoritative for the

purposes. The development hereby permitted shall not commence until the measures set out in the approved report have been implemented.

A. Site Characterisation

Notwithstanding the details submitted with this application, no development shall commence other than that required to carry out additional necessary investigation which in this case includes demolition, site clearance, removal of underground tanks and old structures until an investigation and risk assessment has been submitted to and approved in writing by the local planning authority. The risk assessment shall assess the nature and extent of any contamination on the site, whether or not it originates on the site. The investigation and risk assessment must be undertaken by competent persons and a written report of the findings must be produced. The report of the findings must include:

- (i) a survey of extent, scale and nature of contamination.
- (ii) an assessment of the potential risks to:
 - Human health,
 - Properly (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes,
 - Adjoining land,
 - Groundwaters and surface waters,
 - Ecological systems
 - Archaeological sites and ancient monuments.
- (iii) an appraisal of remedial options, and proposal of the preferred option(s).

B. Site Remediation Scheme

The development hereby permitted shall not commence until a detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment has been submitted to and approved in writing by the local planning authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

C. Remediation Implementation and Verification

The development hereby permitted shall not commence other than that required to carry out the agreed remediation until the measures set out in the approved Remediation scheme have been implemented, unless otherwise agreed in writing by the Local Planning Authority. The Local Planning

Authority must be given two weeks written notification of commencement of the remediation scheme works.

Following completion of measures identified in the approved remediation scheme, a verification report that demonstrates the effectiveness of the remediation carried out must be produced, and is subject to the approval in writing of the Local Planning Authority.

D. Reporting of Unexpected Contamination

In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken, and where remediation is necessary a remediation scheme must be prepared submitted for the approval in writing of the Local Planning Authority.

Following completion of measures identified in the approved remediation scheme a verification report must be prepared, which is subject to the approval in writing of the Local Planning Authority.

Environmental Noise

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.

Noise Mitigation Scheme

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, 4th November 2022, reference 90582/PNA/Rev2].

REASON: In order to protect the amenity of future occupants of the proposed development

Construction/Demolition

This development has the potential to cause noise and dust impacts on the existing surrounding residential properties. In view of the scale of the development as proposed, it is recommended that the following condition requiring a Construction Environmental Management Plan is attached to any consent granted to ensure that construction impacts on adjacent residential occupiers are suitably controlled and mitigated:

Prior to the commencement of the development, a detailed Construction Environmental Management Plan (CEMP) shall be submitted to and approved in writing by the Local Planning Authority, and the plan shall include the following:

- a) The construction programme and phasing
- b) Hours of operation, delivery and storage of materials
- c) Details of any highway works necessary to enable construction to take place
- d) Parking and loading arrangements
- e) Details of hoarding
- f) Management of traffic to reduce congestion
- g) Control of dust and dirt on the public highway
- h) Details of consultation and complaint management with local businesses and neighbours
- i) Waste management proposals
- j) Mechanisms to deal with environmental impacts such as noise and vibration, air quality and dust, light and odour.
- k) Details of any proposed piling operations, including justification for the proposed piling strategy, a vibration impact assessment and proposed control and mitigation measures.

All works shall be carried out in accordance with the approved CEMP thereafter.

REASON: In the interests of highway safety and the control of environmental impacts

Air source Heat pumps

There is no mention of the method which the proposed development will be heated. If it is decided to use air source heat pumps please note that the cumulative impact of these are a potential source of noise that could impact on the noise environment of the site unless suitably designed, enclosed, or otherwise attenuated to ensure that the noise resulting from their operation does not exceed the existing background noise level.

In this eventuality I would recommend the following condition to ensure this is achieved:

The air source heat pumps to be installed at the development shall be specified and designed, enclosed, or otherwise attenuated to ensure that noise resulting from their operation shall not exceed the existing background noise level as measured at the

nearest noise sensitive receptor inclusive of any penalty for tonal, impulsive or other distinctive acoustic characteristics when measured or calculated according to the provisions of BS4142:2014

External Lighting

It is essential to ensure that any external lighting is properly designed and installed to avoid any adverse impacts on residential neighbours from obtrusive or spillover light, or glare. The following condition is therefore recommended to secure this:

Details of any external lighting to be installed on the site, including the design of the lighting unit, any supporting structure and the extent of the area to be illuminated, shall be submitted to and approved in writing by the Local Planning Authority prior to the development commencing. Only the details thereby approved shall be implemented.

REASON: To protect the amenities of the occupiers of adjoining properties in accordance with ULP Policies ENV11, GEN2 and GEN4 of the Uttlesford Local Plan (adopted 2005).

Air Quality

Due to the scale of the development there is the potential for an impact on air quality in the area, both during the development and operational phase. The developers must undertake an Air Quality Assessment prior to commencement. The assessment shall be in accordance with current guidance - Land Use Planning and Development Control: Planning for Air Quality (Institute of Air Quality Management) or an acceptable equivalent and must be approved by Regulatory Services.

Suggested Informative

Energy saving and renewable technologies should be considered for this development in addition to the electric vehicle charge points, such as solar panels, ground source heat pumps etc in the interests of carbon saving and energy efficiency.

Chad Neaves
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Ref: LR01-24294-R0

Date: 25 June 2024

Dear Mr Neaves,

RE: THAXTED ROAD, SAFFRON WALDEN – SKATEPARK NOISE ASSESSMENT

As instructed, we have carried out a peer review and assessment of noise from the One Minet Skatepark affecting the new residential development at Thaxted Road, Saffron Walden (UTT/23/2962/DFO). We have also carried out a further noise survey at the site to gather additional noise data for the skatepark to inform the assessment.

Background

Noise from the skatepark was originally assessed as part of the Noise Impact Assessment (Noise Solutions Ltd (NSL) report 90582/PNA/Rev5 dated 24 February 2023) submitted with the outline planning application (UTT/22/3258/PINS).

The outline application was approved with a planning condition relating to noise as follows:

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]

The reserved matter application (UTT/23/2962/DFO) was submitted with a layout very similar to that shown in the Noise Impact Assessment referred to in Planning Condition 9. However, the Environmental Health (EH) Consultee raised new concerns regarding the layout design in relation to noise from the nearby One Minet Skatepark, and the assessment approach that had been adopted in the original noise assessment (refer initial EH comments dated 24 May 2024, included in Appendix 1).

NSL subsequently issued a Technical Note in response to the initial comments (report 90582/TN02 dated 7 June 2024, included in Appendix 2) defending the assessment approach in the original report.

However, the Technical Note produced by NSL did not change the opinion of EH whose final comments echoed those in the initial response (refer EH comments dated 14 June 2024, included in Appendix 3).

We have reviewed the various documents listed above and set out in this letter is our assessment of the likely impact of noise from the skatepark affecting the proposed development. This includes analysis of the results

of a further noise survey at the site to measure longer-term skatepark noise levels at the positions of the closest proposed dwellings in the development.

Assessment approach

There is currently no definitive guidance on the assessment of skatepark noise levels affecting new residential developments. The approach adopted by NSL for the assessment of noise from the skatepark was based on BS4142:2014, which is designed primarily for the assessment of commercial or industrial noise.

In my view it would be more appropriate to follow the guidance given by Sports England for the design of artificial grass pitches (refer *Sports England Artificial Grass Pitch (AGP) Acoustics - Planning Implications*, 2015). The Sports England guidance states that an appropriate upper limit for acceptable noise levels at the positions of the nearby residential properties is 50 dB LAeq,1hr. This level is taken from the World Health Organisation's "*Guidelines for Community Noise*" for an upper noise limit to avoid moderate annoyance during the daytime and evenings. This criterion is also in line with recommended levels from BS8233 (which are derived from the WHO guidelines).

An important point to make regarding noise from public skateparks is that they are free to use community facilities that are there for the benefit of all residents, similar to sports pitches, parks and playgrounds etc. It should be accepted that these facilities will create noise at times and noise criteria should be set with the aim of balancing, on the one hand; the need for residents to have access to high quality open spaces and opportunities for sport and physical activity, and on the other; the need to protect the amenity of surrounding residents. In our view the Sports England guidance and criterion achieves this balance (as it was designed to do).

The EH response suggests that the assessment methodology in The Chartered Institute of Environmental Health (CIEH) guidance document '*Clay Target Shooting: Guidance on the Control of Noise*' (2003) may be appropriate in this case. The guidance contains a method for assessing gunshots, which are short, high-level impulsive sounds. The EH response points out that this guidance has been used to assess noise from skateparks previously.

In our view the impact of noise from gunshots from a privately run clay pigeon shooting facility (we are not aware of any public clay pigeon shooting facilities) in a residential area would be very different to the impact of noise from a public skatepark. We therefore believe that the guidance would also likely overestimate the impact. However, at the request of EH, it has been used in this case to assess the impact of the skatepark based on the results of the further site noise survey.

Skatepark noise levels

The NSL report included the results of measurements taken at 20m from the skatepark. Measurements were taken on a sunny Saturday afternoon in April when the skatepark was in use by 10 “youths” over the course of ~1 hour. The measured noise levels during skatepark events were then corrected for distance, impulsivity and intermittency. The resultant rated level was then compared with the background noise levels in accordance with BS4142. The BS4142 assessment concluded the skatepark noise would be ‘low impact’.

The EH comments on the NSL assessment approach included concerns over the amount of noise data collected, and the subsequent calculation of the average corrected skatepark noise levels at the nearest residential properties.

To address these concerns, a further noise survey was carried out by Cass Allen at the site from Friday 21 June to Monday 24 June 2024.

A noise logger was set up at the position of the nearest proposed residential property to the skatepark and was configured to continuously measure noise levels over the weekend period, along with continuous audio recording for the purposes of noise source identification. The results of the survey are summarised in Appendix 4.

Weather conditions were good (warm weather, no rain) over the measurement period and therefore the conditions were ideal for measuring representative use of the skatepark.

Sample audio recordings were listened to from the monitoring period to identify noise sources and periods when the skatepark was in use. In carrying out this analysis, it was found that noise levels (including background, average and maximum levels) were dictated by noise from road traffic, birdsong, children playing in the adjacent green and occasional aircraft overflights. Skatepark noise levels were audible at times, but only faintly, and didn't dictate maximum noise levels over longer periods.

It is important to note that the One Minet skatepark is formed from concrete and this is beneficial from an acoustics perspective. Most skateparks are built with wooden or metal box ramps above ground level, which can be very noisy as the ramps essentially act like loudspeaker enclosures when in use, amplifying the noise of wheels and impacts on the ramps. In this case, all of the ramps and bowls are smooth concrete, which produce significantly lower levels of impact noise. The bowls are also sunken below ground level, meaning users of these will be partially screened at times.

One of the EH criticisms of the noise data in the NSL report was that only 92 seconds of skatepark noise was measured. Based on our survey results, we are not surprised that only a small sample of noise data could be collected because the skatepark noise was inaudible most of the time and only faintly audible for very short periods when impulsive events occur (e.g. skateboards hitting concrete, skateboard axles hitting metal bars etc).

However, it was possible to isolate skatepark noise events for the purpose of the assessment. A period between 1pm and 1:30pm on Sunday 23 June was assessed in detail as maximum noise levels from other sources (particularly birdsong, which caused many of the periods of higher maximum noise levels) were lower and skatepark noise events were audible.

The measured noise levels and audio recordings over this period were analysed in detail as per the Clay Pigeon guidance (which requires that a 30 minute representative period is assessed) to identify and quantify the instantaneous maximum noise levels (LA_{max}, measured in 100ms intervals) during audible skate park noise events.

The results of this analysis are given in Appendix 4. In accordance with the Clay Pigeon guidance, the noise levels from the 25 highest skatepark noise events were logarithmically averaged to produce what the Clay Pigeon guidance refers to as the Shot Noise Level (SNL). The SNL for the skatepark in this case was calculated to be 51 dBA SNL.

The Clay Pigeon guidance states that

“Annoyance is less likely to occur at a mean shooting noise level (mean SNL) below 55 dB(A), and highly likely to occur at a mean shooting noise level (mean SNL) above 65dB(A). The likelihood of annoyance at levels within this range will depend upon local circumstances...”

The measured SNL of the skatepark noise (51 dBA SNL) was therefore below the threshold level of 55 dBA given in the Clay Pigeon guidance. This is a positive indication that the skatepark noise levels will be acceptable to future residents.

In terms of average noise levels (LA_{eq}), it was not possible to measure average skatepark noise levels at the nearest dwelling directly as at no point during the survey did the skatepark dictate the average noise levels. Throughout the survey the average noise levels were generally dictated by road traffic.

However, given that the highest maximum noise levels were around 51 dBA, as shown by the analysis above, it is reasonable to conclude that the average noise levels are significantly lower and likely in line with those predicted in the NSL report (rating level of 33 dB LA_{rTr}). This level is well below the Sports England, BS8233 and WHO Guidance recommended levels (50 dB LA_{eq}, 1hr).

I therefore concur with the findings of the NSL report that the skatepark noise will not adversely impact the nearest proposed dwellings in the development.

Development design

I have also reviewed the layout and design of the development in relation to the skatepark noise.

The closest new dwellings are around 50m away, which is a reasonable distance in our view (particularly given the results of the noise survey above).

The closest properties are orientated so that their gardens are behind the dwellings, meaning the gardens will be well acoustically screened from the skatepark. Noise levels in these gardens will therefore be significantly lower than those set out above.

The nearest properties are 3-bed houses ('The Beech' house-type). The rooms facing the skatepark are a kitchen at ground floor level and two bedrooms at first floor level. The hours of use of the skatepark are 8am until 10pm, and therefore noise from the skatepark should not affect residents in bedrooms during the night-

time (see comments on anti-social behaviour below). The living rooms are facing into the rear gardens and therefore will also be well acoustically screened from the skatepark.

It is my view therefore that the design of the development is good in relation to noise from the skatepark.

It is also worth noting that the habitable rooms of these closest properties facing the skatepark are to be acoustically upgraded due to road traffic noise, as described in the NSL report and controlled by Planning Condition 9. This will provide enhanced protection to the residents in habitable rooms from the skate park when the windows are closed.

Risk of complaints

The EH comments raise a concern over the risk of future nuisance complaints and suggests that there have been complaints due to the skatepark noise from existing residents previously.

We understand that further research has shown that there are no recorded complaints due to the One Minet skatepark and, if there were complaints, these must have been more than 12 years ago (prior to 2012) before all complaints were fully recorded. The lack of complaints suggests that the skatepark is an accepted and established noise source in the area.

Given the low measured noise levels, the distance from the skatepark, and the layout and design etc, I believe the risk of complaints from future residents is low. But below are some important points to consider in relation to the risk of complaints in this case:

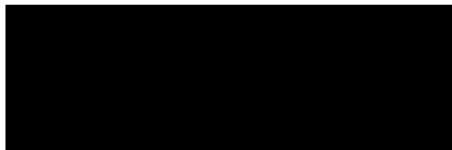
- In my experience, anti-social behaviour is often a trigger for complaints relating to parks and sports pitches, and this would apply to the skatepark too. It is possible that the use of the skatepark could be anti-social at times (e.g. “youths” using it outside permitted hours, playing loud music or shouting etc) however this can happen in any park, sports pitch, skatepark etc and therefore, whilst not acceptable behaviour, is not a good reason to prevent these spaces being located in residential areas.
- In my experience, complaints are much more likely from existing residents near to a new noise source (such as a skatepark, sports pitch etc) than they would be from new residents moving in next to an existing noise source. This is due to the expectations of the residents. New residents moving into the development will be aware of the skatepark and therefore I would expect them to be more tolerant of low-level skatepark noise than existing residents located next to a new skatepark. The expectations of residents is a significant factor in the likelihood of complaints and in this case the context of the new residents being aware of the proximity of the skatepark will reduce the likelihood of any complaints.
- It is generally school age children that use skateparks and therefore use of the skatepark is likely to be minimal during school hours. Skate parks are also not heavily used in wetter and colder months. Therefore, there will be long periods of the year when the skatepark generates little or no noise.

My view therefore is that responsible and typical use of the skatepark would not result in complaints from the new residents.

Conclusion

In summary of the above, I believe the design and layout of the development is acceptable with regards to noise from the skatepark and therefore planning permission may be granted.

Yours sincerely,



Chris McNeillie MSc CEng MIOA
Director

Email:

Office:



Quality Assurance

CHECKED BY

Sam Bryant, MPhys CEng MIOA,
Director

Appendix 1 **EH Initial Comments**

Environmental Health Consultee Comments for Planning

Application Number: **UTT/23/2962/DFO**

Consultee

Name: Sadie Stowell
Title: Environmental Protection Officer
Tel: x
Email: [REDACTED]

Date: 24 May 2024

Comments

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.

I have reviewed the noise impact assessment by Noise Solutions LTD dated 24th February 2023 and raise the following concerns:

The report assesses noise from the skatepark using BS 4142 Method for Rating Industrial Noise. The standard is not intended to be applied to the rating and assessment of sound from recreational activities or entertainment as such this alone is not adequate to assess noise from the skatepark on the proposed dwellings. I understand no specific standards are currently in place that explicitly detail the methodology and approach to be undertaken when considering the potential and magnitude of noise impact from skate parks. Therefore, the skatepark must be assessed using the most appropriate approximations for suitable standards. I have reviewed the following noise assessments that have previously assessed noise from skateparks including:

Skatepark at Memorial Playing Fields, Steyning Noise Assessment, reference: 2011/Sept/07 dated 13th September 2011,

ETTINGTON COMMUNITY SKATE PARK Noise Impact Assessment, reference: RP 200206, 6th February 2020,

Hathersage Skate Park Noise Assessment, reference: AM20140414_HSP, 14th April 2014

Between these assessments the following guidance has been considered/applied in the past:

- BS 4142:2014+A1:2019 'Methods for rating and assessing industrial and commercial sound'
- BS 8233:2014 'Guidance on sound insulation and noise reduction for buildings',
- The Chartered Institute of Environmental Health (CIEH) guidance document 'Clay Target Shooting: Guidance on the Control of Noise' (2003), which contains a method for assessing short high level impulsive sounds, which could apply to some of the noise characteristics experienced in a skate park.
- World Health Organisation - Guidelines for Community Noise 1999 (WHO)

Section 8.1 of the submitted NIA states 'The assessment has assumed the worst-case scenario in terms of the levels of noise produced.' I do not agree.

There are a number of different noise sources which can be associated with a skate park:

- Skateboards. This can be broken down into two types of noise.
 - 'Rolling noise', from the interaction of the wheels along the concrete surface. The rougher the surface of the concrete, the noisier the 'rolling'.
 - 'Impact noise', a short impulsive noise from the impact of the skateboard against the floor/ramp when the skateboarder jumps and fails to land/falls off (a successful landing is not as loud as a failed landing).
- People. Skateboarders and observers around the perimeter of the skating area, usually chatting in small groups for the majority of the time, but occasionally shouting to a friend or cheering, and very occasionally playing music at a low level.
- Roller blades and scooters. A similar level of rolling noise to skateboards, though the number of skaters is likely to be relatively few compared to skateboarders.
- BMX bikes. Usually, the quietest activity as the rolling noise is minimal due to tyres being made from rubber and the air absorbing impact when landing.

As you can see the noise from skateparks consists heavily of impact noise and this has not been appropriately assessed.

The assessment does not assess how the noise from the skatepark will impact external amenity areas.

Skatepark at Memorial Playing Fields, Steyning Noise Assessment, reference: 2011/Sept/07 dated 13th September 2011 states 'WHO guidelines state that for outdoor areas during a daytime period few people are highly annoyed at LAeq levels of below 55dB(A), and few people are moderately annoyed at LAeq levels of below 50dB(A). The guidelines also state that evening and night-time noise levels should be 5-10dB lower respectively. Daytime period is typically taken to be from 07:00 – 23:00 and night-time period as 23:00 –

07:00. Although not defined with the WHO guidelines evening period is typically taken to be 18:00 – 23:00.

These guidelines are typically adopted and applied to skate park noise with the criteria that noise levels at nearby noise sensitive receivers during the daytime (07:00 – 18:00) should not exceed 55dB(A), and during evening (18:00 – 23:00) should not exceed 50dB(A).'

The Skate Park Noise Survey was carried out between 13:31 to 14:33 2nd April 2022 and I do not believe this survey demonstrates a 'Worst Case Scenario' approach. The report does give a general overview of what was occurring at the skatepark during the survey, however it is unclear whether activities involving tricks and subsequently trick failures were occurring which typically generate significant noise and would be considered typical for an environment such as a skate park. With the above in mind, it may be considered a better approach to use appropriate source data.

The report also states assessment was carried out for 2 hours however Appendix C implies the survey was carried out for 1 hour and 2 minutes. It is also noted that as part of the BS4142 assessment in the report the skatepark noise level was corrected for an "on-time" of 92 seconds in a 1 hour period

The layout of the proposed development shows plot 1 as being the closest proposed NSR to the skate park approximately 51m away. This department has received complaints regarding the skate park in the past with the current closest NSR located approximately 100m away. Whilst a statutory nuisance has not been witnessed at this time, the proposed development is significantly closer to the skate park. I would also like to note whilst a nuisance has not been witnessed, it should be recognised the benchmark for land use planning is automatically below that of 'nuisance' and this proposed development is nearer and so subject to more noise. Whilst the presence of a nuisance would automatically trigger noise to constitute 'significant observed adverse effects' the opposite relationship should not be given weight.

The only mitigation proposed in the Noise Impact Assessment is for traffic noise and consists of double glazing and a mix of high performance and standard performance trickle vents depending on the location. I have concerns that this will not be suitable to mitigate noise from the skate park. Even if fixed shut windows, or expecting residents to close windows, were acceptable, closing windows has the effect of producing an artificially quiet internal acoustic environment limiting interaction with the outside world. The effect will also reduce other background and residual masking sounds but noise from the Skate Park could still be perceptible within the dwelling.

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 also faces the skate park. This does not demonstrate good acoustic design.

It is understood that the skatepark is open from 8 am to 10 pm daily and has flood lighting. We are concerned that there may be a significant impact on future residents from its use. Future occupiers of the proposed dwellings may make complaints about skate park noise which the council has a statutory duty to investigate under The Environmental Protection Act 1990. This could result in restrictions being placed on the skatepark and/or requirements for noise mitigation works at the skate park as a direct result of the proposed development.

The National Planning Policy Framework section 93 states:

“193. Planning policies and decisions should ensure that new development can be integrated effectively with existing businesses and community facilities (such as places of worship, pubs, music venues and sports clubs). Existing businesses and facilities should not have unreasonable restrictions placed on them as a result of development permitted after they were established. Where the operation of an existing business or community facility could have a significant adverse effect on new development (including changes of use) in its vicinity, the applicant (or ‘agent of change’) should be required to provide suitable mitigation before the development has been completed.”

Based on the above, I do not feel that noise from the skatepark has been assessed appropriately and in my opinion it is likely to have a significant impact upon the future users of the proposed development without the appropriate mitigation.

I would recommend that a further noise assessment is carried out prior to determining the application:

A noise impact assessment shall be conducted, and a scheme shall be submitted for approval in writing to demonstrate how noise from the skatepark shall be mitigated to protect the proposed nearby residential properties. This shall be prepared by an acoustically competent person using appropriate guidance’s and include mitigation of noise impacts from but not limited to:

- Skateboards.
 - Rolling noise
 - Impact noise
- Voices from users
- Roller blades and scooters
- BMX bikes

Note:

The noise impact assessment shall have regard to the following guidance ;

- a) The Chartered Institute of Environmental Health (CIEH) guidance document 'Clay Target Shooting: Guidance on the Control of Noise' (2003)
- b) World Health Organisation - Guidelines for Community Noise 1999 (WHO)

The noise assessment is required prior to determining the application because based on the submitted information it is not clear if noise mitigation measures such as barriers would be sufficient to achieve acceptable levels in amenity areas and within dwellings with the proposed layout and design.

If the Planning Committee is minded to approve the application without a robust assessment of the skatepark noise impacts a skate park noise assessment and mitigation scheme condition should be attached to any permission granted.

Appendix 2

Noise Solutions Ltd Technical Note

Technical Note

Project: Thaxted Road, Saffron Walden

To: Chad Neaves, Chase New Homes

Subject: Response to EHO's Comments

From: Nigel Chandler

Date: 7th June 2024

cc:

Ref: 90582/TN02

Dear Chad,

We understand that you have submitted an application for addressing the Reserved Matters relating to the above site and have been sent comments regarding the previous assessment of potential noise from the existing adjacent skate park to the new homes. In their internal report¹ the environmental health department has suggested the following:

A noise impact assessment shall be conducted, and a scheme shall be submitted for approval in writing to demonstrate how noise from the skatepark shall be mitigated to protect the proposed nearby residential properties. This shall be prepared by an acoustically competent person using appropriate guidance's and include mitigation of noise impacts from but not limited to:

- *Skateboards.*
 - *Rolling noise*
 - *Impact noise*
- *Voices from users*
- *Roller blades and scooters*
- *BMX bikes*

Note:

The noise impact assessment shall have regard to the following guidance ;

- a) The Chartered Institute of Environmental Health (CIEH) guidance document 'Clay Target Shooting: Guidance on the Control of Noise' (2003)*
- b) World Health Organisation - Guidelines for Community Noise 1999 (WHO)*

It should be noted that there are no specific noise criteria or assessment methods intended for skate parks and the EHO's assertion that the Clay Target Shooting guidance is appropriate is an opinion and is not supported by any explicit policy. We do not believe that it is an appropriate methodology, for the following reasons:

1. The Clay Target Shooting guidance deals with noise emissions from a single source of events with very high noise levels (i.e. gunshots) and does not consider any other noise sources.
2. While there will be some variation in noise levels at any given receptor during a shooting session, due to the relative locations of firing points, the topography of intermediate ground etc, the source noise level of individual shots will be very similar (i.e. there is a high degree of repeatability of measurement and assessment for a given shooting range).

¹ reference UTT/23/2962/DFO, dated 24 May 2024

3. Noise levels due to shots, close to the shotgun(s), will be significantly above the ambient sound level from other sources, with the excess above ambient sound levels decreasing with increasing distance from the source. For range safety reasons the receptors are typically a long distance from the source.
4. Noise resulting from the skate park will be variable. The EHO has identified five source activities, but in practice noise levels from each of the activities would be highly variable and there would therefore be a low degree of repeatability of measurement and assessment.
5. Noise resulting from the skate park will be at a significantly lower source sound level than gunshots and will be significantly less impulsive in nature.

We therefore consider the BS4142:2014² method used in our assessment, while also not specifically intended for noise from skate parks, is more suitable than the Clay Target Shooting assessment method due to the relatively lower sound levels and the variability of the level and character of the noise source. We understand that no comments on the suitability of the method used were raised during the determination of the outline planning application.

Yours sincerely,

Nigel Chandler
For and on behalf of Noise Solutions Ltd

² BS4142:2014+A1:2019 Methods for rating and assessing industrial and commercial sound

Appendix 3 **EH Formal Response**

Christopher Tyler

Subject: FW: [External] >> RE: UTT/23/2962/DFO - Land West of Thaxted Road
Attachments: Ornuu-Ingredients-Judgment-1.pdf

From: Jane Mann [REDACTED]
Sent: 14 June 2024 12:31
Subject: FW: [External] >> RE: UTT/23/2962/DFO - Land West of Thaxted Road

Hi Maria

I have the following comments on the Noise Solutions Ltd Technical Note dated 7th June 2024 (NSL) and the Cornerstone Barristers advice dated 10th June 2024.

The NSL suggests that the Chartered Institute of Environmental Health (CIEH) guidance document ‘Clay Target Shooting: Guidance on the Control of Noise’ (2003) is not an appropriate standard for assessing skatepark noise.

Skate park noise typically primarily consists of two types of noise; noise emanating from the interaction between the skateboards wheels and the skate park surface “rolling noise” this is typically experienced as a continuous rumbling type noise; and noise emanating from impacts of the skateboard wheels, or more commonly deck, against the skate park surface “impact noise” this is typically experienced as transient impulsive noises, and generally arises from the performance of tricks, whether successfully completed or failed. There may also be similar noise from scooters and BMX bike use. Other sources of noise emanating from skate parks typically include voices from the users of the facility and sometimes music or tannoy noise either from users or during events.

Currently, there are no UK standards or guidance dealing with noise arising from skateparks or similar activities. British Standard 4142:2014 ‘Methods for rating and assessing industrial and commercial sound’ is commonly used to assess the risk of adverse impact from noise on local residents. However, the Standard is intended for assessing industrial and/or commercial sounds and explicitly states its scope does not extend to recreational activities, such as a skatepark. Some aspects of BS 4142 might be relevant to the assessment, such as establishing a background sound level, impulsive penalties and contextual appraisals; however, a direct application of the Standard as the sole method of determining noise impacts on future residents is not appropriate. For example, the short duration high level impact noises from the performance of tricks is hugely underestimated using a BS4142 assessment because the measured noise from the skatepark has been corrected for an “on -time” of 92 seconds in the two hour monitoring period and this has reduced the noise level used to assess impacts at residential from a measured short term level (Sound Exposure Level) of 70.7 dB to 34.9 dBA Leq over a 1 hour period. Unfortunately the future residents will hear the short duration high level impact noises from the skatepark users performing tricks rather than the calculated average noise level in 1 hour from the combination of the skatepark noise and the gaps between skatepark activities.

In the absence of authoritative skatepark noise guidance, it is considered appropriate to base the assessment methodology against the guide values set out in the following guidance/standards:

- The World Health Organisation’s Guidelines for Community Noise (1999) and Environmental Noise Guidelines for the European Region (2018) provide guidance levels for steady-state noise inside and outside a dwelling.
- BS 8233:2014 ‘Guidance on sound insulation and noise reduction for buildings’, which provides similar guidance based on the aforementioned WHO documents.
- The ‘Guidelines for Environmental Noise Impact Assessment’ (2014) document produced by the Institute of Environment Management & Assessment (IEMA), which considers the impact of an increase/change in average ambient sound levels from the existing baseline.

- The Chartered Institute of Environmental Health (CIEH) guidance document ‘Clay Target Shooting: Guidance on the Control of Noise’ (2003) contains a method for assessing short, high-level impulsive sounds associated with clay target shooting – a sound source with similar impulsive characteristics to skateboarding impacts.

A noise impact assessment methodology that incorporates a mixture of the aforementioned guidelines aligns with the approach followed by other Acoustic Consultants for noise impact assessment reports for a significant number of skateparks in the UK. Example of some of the Acoustic Assessments that used this approach were already given in the Environmental Health Comments.

Turning to the legal advice I have the following comments.

- 1) I note that outline permission was given for up to 170 dwellings and all matters other than access were reserved and point 17 gives the following definitions for reserved matters
 - *“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*

I believe that appearance, landscaping, layout and scale are all relevant to noise impacts on future residents of the proposed development. In the process of good acoustic design there is a hierarchy approach to noise mitigation. The following are acoustically critical issues and part of a good acoustic design process site layout, building heights, materials, landform contouring, detailed design and landscaping, boundary treatments, amenity spaces. The professional practice guide on planning and noise 2017 states that planning applications must:

- .Check the feasibility of relocating, or reducing noise levels from relevant sources.
- Consider options for planning the site or building layout.
- Consider the orientation of proposed building(s).
- Select construction types and methods for meeting building performance requirements.
- Examine the effects of noise control measures on ventilation, fire regulation, health and safety, cost, CDM (construction, design and management) etc.
- Assess the viability of alternative solutions.
- Assess external amenity area noise.

All of the above fall within the reserved matters details.

- 2) The advice states in point 29 that an acoustic bund or fence could not be provided under layout. Matters such as the orientation of dwellings in relation to the skatepark do fall within layout. However, fences and earthworks

(such as an acoustic bund) fall under the reserved matter of landscaping. The layout of dwellings and the scale and appearance may need to be revised as part of good acoustic design to minimise skatepark noise impacts on future residents and protect the existing skatepark community facility. There are many options to mitigate noise through building layout and design including orientating windows of habitable rooms away from the noise source. Placing amenity areas on the shielded sides, the use of garages as a noise barrier etc

- 3) With reference to point 31. I agree that the access point is fixed but there is a landscape buffer in the framework masterplan and design code along the entirety of the site boundary with the skatepark located between the site access road and the skatepark itself and therefore a landscaped bund is likely to be practicable. A noise barrier should either be close to the noise source or the receiver to be effective so there may be also options for barriers close to dwellings.
- 4) The layout has changed from the indicative layout at outline on which the noise impact assessment was based and there will be a requirement for a new assessment to demonstrate that noise standards can be met for road traffic noise even having regard to the (poorly worded) existing condition to inform the choice of glazing and ventilation to meet internal noise standards . It is noted that the original noise impact assessment submitted at outline has already been revised each time the layout changed. Usually revised NIA are submitted to support the Reserved Matters application.
- 5) The National Planning Policy Framework section 93 states:
“193. Planning policies and decisions should ensure that new development can be integrated effectively with existing businesses and community facilities (such as places of worship, pubs, music venues and sports clubs). Existing businesses and facilities should not have unreasonable restrictions placed on them as a result of development permitted after they were established. Where the operation of an existing business or community facility could have a significant adverse effect on new development (including changes of use) in its vicinity, the applicant (or ‘agent of change’) should be required to provide suitable mitigation before the development has been completed.”

The current proposals do not include any noise mitigation for skatepark noise and are likely to result in future residents making complaints about skatepark noise which we have a statutory duty to investigate under The Environmental Protection Act 1990. This may result in unreasonable restrictions being placed on the skatepark as a direct result of this development.

- 6) The advice refers to a number of cases. I have attached a high court judgement which might also be of relevance where Ornuia Ingredients Ltd, the owner of a cheese factory adjacent to a site with outline planning permission for 321 houses, has successfully argued that Herefordshire Council was wrong to issue an approval of reserved matters without considering Ornuia’s representations and acoustic report as to the effects of noise from the factory on the living conditions of the future residents. That information casted doubt on a conclusion previously reached by the Council that it would in principle be possible to produce an acceptable scheme for mitigation of noise emitted by the factory within the parameters of the proposed layout.

Finally I think it would be a serious mistake to not reconsider skatepark noise impacts as part of the reserved matters application and maintain the position that it must be properly considered before reserved matters permission is granted. There is insufficient information on the potential impacts of skatepark noise on future residents and the proposed appearance, landscaping, layout and scale of the development may need to be revised to mitigate noise impacts.

If you have any queries please contact me on the number below.

Jane Mann
Senior Environmental Health Officer

Appendix 4 Noise Survey Results

Survey Summary:

The survey comprised longer-term unattended noise monitoring at the site. Noise levels at the site were generally dictated by road traffic, birdsong, children playing and occasional aircraft overflights. Noise from the skatepark was faintly audible at times.

Survey Period:

21/06/2024 to 24/06/2024

Survey Objectives:

- To identify noise sources that contribute to ambient noise levels at the site;
- To measure skatepark noise levels over typical day time periods.

Equipment Used:

Type	Manufacturer	Model	Serial Number
Calibrator	Bruel & Kjaer	4231	2115551
Sound level meter ¹	Rion	NL-52	00320635

Note 1: All sound level meters were calibrated before and after measurement periods and no significant drift in calibration was found to have occurred. The results of the measurements are therefore considered to be representative.

Weather Conditions:

The observed weather conditions were acceptable for acoustic measurement throughout the attended survey periods (low-medium wind speeds and no rain). Weather records for the area confirmed that weather conditions were also generally acceptable for acoustic measurement during the unattended monitoring.

Measurement Positions:

Position (refer plan below)	Description
L1	Unattended noise logging position. 3m above ground level. Free-field. Direct line of sight to skatepark. Noise was generally dictated by road traffic, birds and children playing on the adjacent green. Noise from the skatepark was faintly audible at times

Site Plan showing Measurement Position:



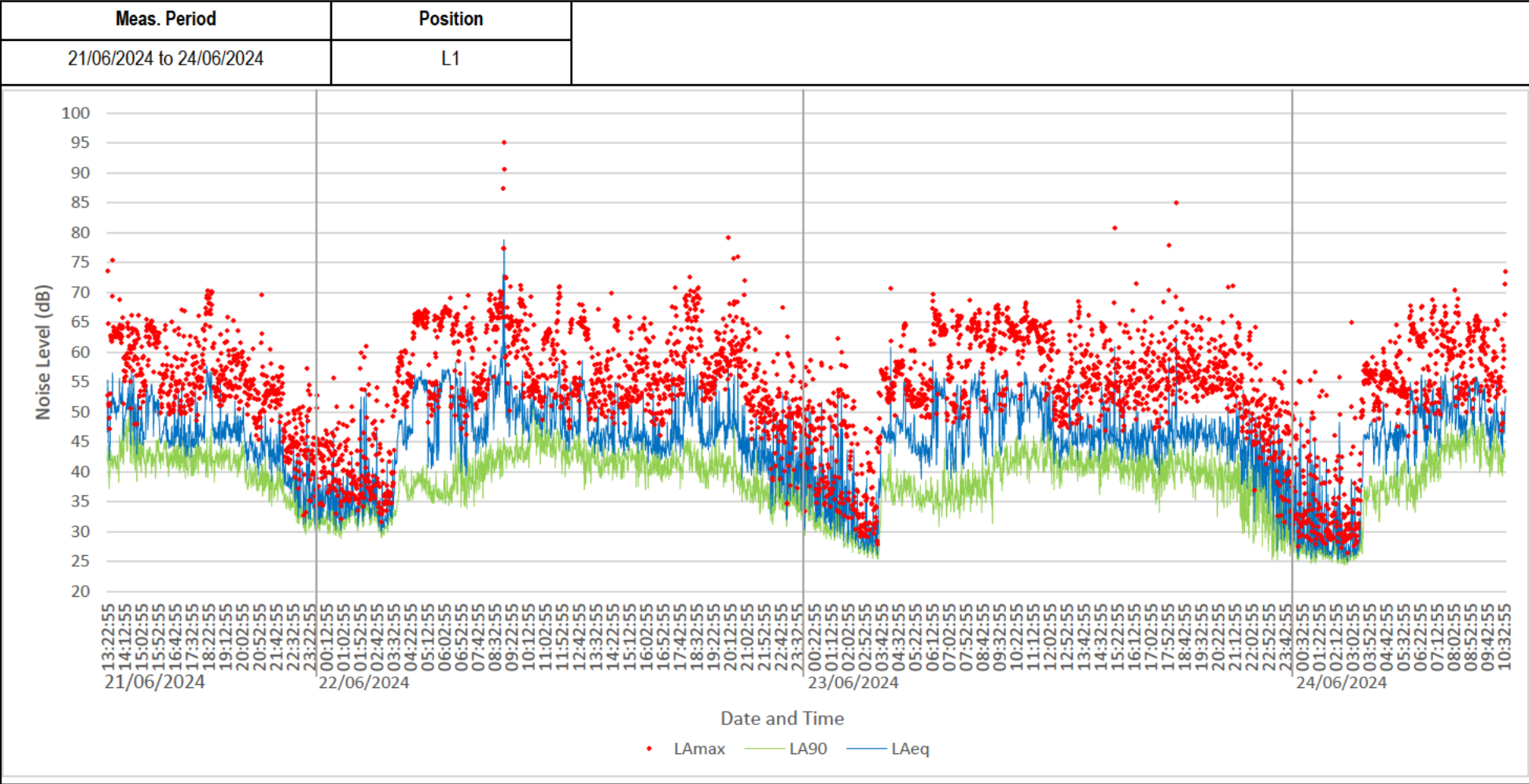
Unattended Noise Monitoring Results:

Measurement Period: 23/06/2024; 13:00-13:30		
Meas. Time	L _{Amax} , dB	Event
13:01:09	51	Clatter sound (e.g., skateboard impact noise from moving down a small staircase or landing on the ground and bouncing)
13:01:12	48	Dull impact sound (e.g., skateboard impact noise from landing on all four wheels)
13:01:14	45	Clatter sounds (e.g., skateboard impact noise from moving down a small staircase or landing on the ground and bouncing)
13:01:30	56	Drop sounds (e.g., skateboard impact of wood against concrete, without the clatter sound)
13:01:42	52	
13:01:52	51	
13:02:09	50	
13:03:02	52	
13:03:33	51	Clatter sounds (e.g., skateboard impact noise from moving down a small staircase or landing on the ground and bouncing)
13:03:40	49	
13:05:49	53	
13:10:15	44	Dull impact sounds (e.g., skateboard impact noise from landing on all four wheels)
13:10:29	43	

Meas. Time	L _{Amax} , dB	Event
13:11:53	47	Drop sounds (e.g., skateboard impact of wood against concrete, without the clatter sound)
13:12:01	46	Clatter sound (e.g., skateboard impact noise from moving down a small staircase or landing on the ground and bouncing)
13:13:32	47	Drop sound (e.g., skateboard impact of wood against concrete, without the clatter sound)
13:14:43	48	Clatter sounds (e.g., skateboard impact noise from moving down a small staircase or landing on the ground and bouncing)
13:14:49	51	
13:14:55	49	Drop sound (e.g., skateboard impact of wood against concrete, without the clatter sound)
13:15:17	47	Dull impact sounds (e.g., skateboard impact noise from landing on all four wheels)
13:15:26	49	
13:15:27	47	
13:16:30	47	Clatter sound (e.g., skateboard impact noise from moving down a small staircase or landing on the ground and bouncing)
13:16:57	48	Dull impact sound
13:17:04	45	
13:20:29	56	Clatter sound (e.g., skateboard impact noise from moving down a small staircase or landing on the ground and bouncing)
13:21:15	45	Dull impact sounds (e.g., skateboard impact noise from landing on all four wheels)
13:21:52	49	
13:21:59	48	
13:22:02	46	
13:22:34	46	
13:24:14	47	Drop sounds (e.g., skateboard impact of wood against concrete, without the clatter sound)
13:24:17	45	
13:24:40	46	Dull impact sound (e.g., skateboard impact noise from landing on all four wheels)
13:25:51	49	Clatter sounds (e.g., skateboard impact noise from moving down a small staircase or landing on the ground and bouncing)
13:25:55	48	
13:27:01	42	
13:27:14	46	
13:27:18	42	Dull impact sound (e.g., skateboard impact noise from landing on all four wheels)
13:27:55	47	Clatter sound (e.g., skateboard impact noise from moving down a small staircase or landing on the ground and bouncing)
13:28:23	52	Dull impact sound (e.g., skateboard impact noise from landing on all four wheels)
13:29:04	57	Clatter sound (e.g., skateboard impact noise from moving down a small staircase or landing on the ground and bouncing)
13:31:09	48	Dull impact sound (e.g., skateboard impact noise from landing on all four wheels)

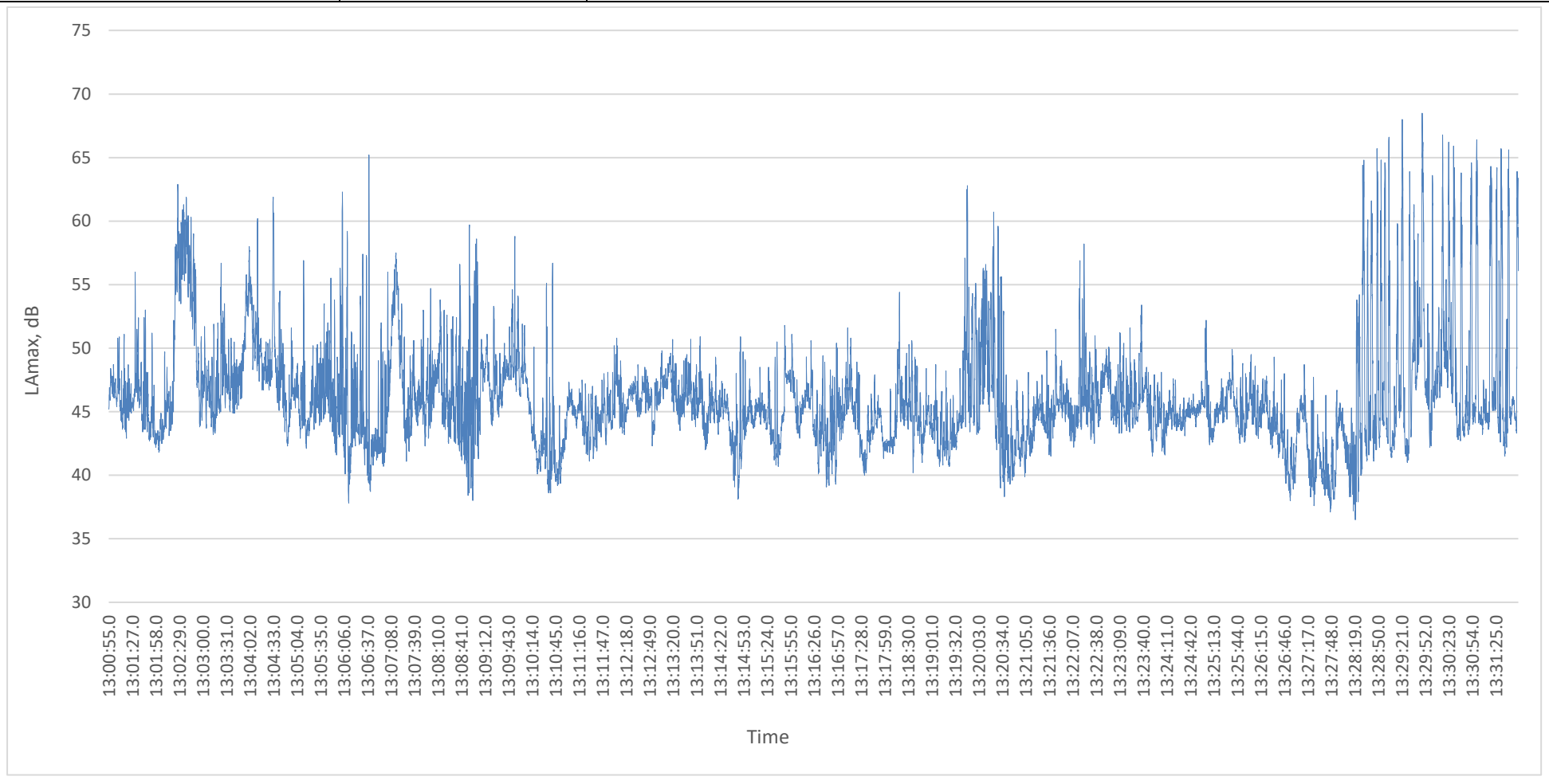
Note 1: Maximum measured 100 millisecond level during the 1-second interval.

Unattended Noise Monitoring Results:



Note 1: Graph based on data in 1-minute intervals.

Meas. Period	Position
23/06/2024; 13:00-13:30	L1



Note 1: Graph based on data in 100 millisecond intervals.

ADVICE

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 4-8¹ 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

¹ 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