

Addendum to the report to the Strategic Planning Committee for 13 December 2021

Application Number: WND/2021/0172

Location: Overstone Leys, Overstone Lane, Overstone

Development: Reserved matters application (access, appearance, landscaping, layout and scale) for 350 dwellings (Zone 10) pursuant to outline approval DA/2013/0850 and approval of Condition 26 (noise) and Condition 37 (travel plan)

Applicant: Vistry Group

Agent: McBains

Case Officer: Rebecca Grant

Ward: Moulton

Reason for Referral: Relates to Overstone Leys Sustainable Urban Extension

Committee Date: 09/04/2022

EXECUTIVE SUMMARY OF PROPOSALS AND RECOMMENDATION

RECOMMENDATION: REFUSE PLANNING PERMISSION

Purpose of this report

This application was reported to the 13 December Strategic Planning Committee and has a resolution to grant planning permission subject to resolving the outstanding noise issue.

Negotiations have been progressing since December with regards to noise and various meetings have taken place and updated noise reports have been undertaken and reviewed.

Due to outstanding noise issues, Officers are not in a position to recommend the discharge of Condition 26 of the outline planning permission (DA/2013/0850) and therefore unable to recommend approval of the application.

As there has been a formal resolution from the Council, it is not the purpose of the report to return the application to the committee to reconsider the matters on which the Council has already passed a resolution, but to only consider the outstanding noise matter. The issues previously discussed at Strategic Committee remain as set out and agreed in the previous report. The update is only in relation to noise.

Conclusion

The additional matter of noise has been assessed against the relevant policies in the NPPF, the adopted Local Plan and other relevant guidance listed in the report.

The key issues addressed in this report are:

- The previous report
- The purpose of this report
- How matters have moved forwards
- Appraisal
- Planning balance and conclusion.

The report concludes that the Council is not in a position to discharge Condition 26 of the outline planning approval in relation to noise and as such is unable to recommend approval of the application. The application is therefore recommended for refusal.

Members are advised that the above is a summary of the proposals and key issues contained in the main report below which provides full details of all consultation responses, planning policies, the Officer's assessment and recommendations, and Members are advised that this summary should be read in conjunction with the detailed report.

MAIN REPORT

1. PREVIOUS REPORT

1.1 The previous report to the planning committee is appended to this report and covers:

1. Application Site and Locality
2. Constraints
3. Description of Proposed Development
4. Relevant Planning History
5. Pre application Discussions
6. Response to Publicity
7. Response to Consultation
8. Relevant Planning Policy and Guidance
9. Appraisal
10. Community Infrastructure Levy
11. Planning Balance and Conclusion

2. PURPOSE OF THIS REPORT

2.1. This application was reported to the 13 December Strategic Planning Committee and has a resolution to grant planning permission subject to resolving the outstanding noise issue. As there has been a formal resolution from the Council, it is not the purpose of the report to return the application to the committee to reconsider the matters on which the Council has already passed a resolution.

2.2. It is the purpose of the report to consider the outstanding noise matter.

3. HOW MATTERS HAVE MOVED FORWARD

3.1. The application for Zone 10 of Overstone Leys SUE was presented to the West Northamptonshire Strategic Planning Committee on 13 December 2021 where there was a resolution to approve the application, subject to noise being satisfactorily addressed and the imposition of appropriate conditions.

- 3.2. Various meetings have taken place with the applicant and their noise consultant and the case officer and Environmental Health Officers. Reports have been updated and reviewed and points have been clarified.
- 3.3. As stated above, it is the purpose of this report to consider the additional information and assess it against Government guidance and policy and which needs to be read in conjunction with the report of the Planning Committee of 13th December 2021, which is appended. It is not the purpose of this report to reopen or reconsider other planning matters upon which the Council has already passed a resolution when the application was considered by Members of the WNC Strategic Planning Committee on 13th December 2021.

4. APPRAISAL

- 4.1. The proposed design of the residential scheme and the resulting internal and external noise levels from the nearby industrial estate are in exceedance of British Standards and national planning policies. The exceedance indicates that some residents will be faced with significant adverse impact from the industrial noise, and some an adverse impact. In addition, there is a real risk that the noise levels will be determined to be a statutory nuisance if complaints are received from the occupiers of the properties in the future, and subsequently enforcement action by the Council or private civil nuisance action by residents may be taken against the businesses on the industrial estate.
- 4.2. Whilst it is accepted that the site has outline planning permission for residential development, the main issue is whether the proposed mitigation measures provide a suitable degree of protection in accordance with Policy 187 of the National Planning Policy Framework concerning new developments being integrated effectively with existing businesses and community facilities and Condition 26 of the outline consent.
- 4.3. Condition 26 on the outline consent states;

“Prior to the commencement of the development of each phase hereby approved, a scheme to demonstrate that the internal noise levels within the residential units of that phase will conform to the guideline values for indoor ambient noise levels under background ventilation rates as identified within BS 8233 2014 - Guidance on Sound Insulation and Noise Reduction for Buildings, shall be submitted to and approved in writing by the Local Planning Authority. External living area (gardens) noise levels shall conform to World Health Organisation (W.H.O):1999 guidelines – 50-55dB LAeq,16hr. The work specified in the approved scheme shall then be carried out in accordance with the approved details prior to occupation and be retained thereafter.

Reason - In the interests of the amenity of occupiers of the proposed development”

- 4.4. BS8233 does mention the need to use BS4142 to assess the impact of industrial noise. Paragraph 6.5.2 of BS8233 states;

“Assessment of Industrial Noise - Where industrial noise affects residential areas, the method for rating the noise in BS4142 should be applied. The noise level outside the dwelling should be established, and penalties should be added to this level if the spectrum has subjectively annoying characteristics. For example, if acoustic features such as hums, tones, impulses or banging, are present, a single 5dB correction should be added. The complaint assessment procedure compares this corrected level (called the rating level with the

background level. If this difference is around 10dB or more, complaints are to be expected. A difference of around 5dB is of marginal significance. The rating method thus gives an indication of when further noise control measures may be needed.”

- 4.5. In addition, the guidance in Pro PG Planning and Noise is that the BS 8233 should not be used in circumstances where the BS4142 assessment of industrial noise indicated an “Adverse Impact” (see paragraphs 2.40 to 2.44, and 2.53 to 2.54 of Pro PG Planning and Noise). Several properties within the proposed development are in this category of adverse impact which is a +5dB rating level above the background level of noise. Several properties are in the “Significant adverse impact” category which is +10dB rating level.
- 4.6. BS8233 also makes it clear that whilst it may be used to assess sound from mechanical services or continuously running plant, this is in relation to noise sources of a steady nature, without any specific character or context; such as a distinguishable discrete and continuous tone, or is irregular enough to attract attention, or has a strong low frequency content; previously termed “anonymous” such as road traffic and/or services/plant that have no discernible character. The industrial noise in this case is not “anonymous” so it is believed that BS8233 should not be used to assess industrial noise, only BS4142.

Internal Noise Levels

- 4.7. Whilst internal ambient noise criteria from BS8233, or other appropriate criteria as in this case suggested to be a further 10dB reduction to what BS8233 requires, may be used in circumstances where industrial and/or commercial sound forms a component of the acoustic environment, then this would only be in cases where it was “anonymous” noise as outlined above.
- 4.8. Account needs to be taken of any particularly noticeable characteristics (i.e. tonality, impulsivity, intermittency or other acoustic characteristic which makes the sound more distinctive against the residual acoustic environment). BS4142 stresses the importance of “context” being taken into consideration and provides some guidance on how the methodology should be applied and where consideration of other internal ambient noise criteria might be appropriate as detailed in Examples 6, 7 and 8 in Appendix Annex A of BS 4142.
- 4.9. The issue of context is important and whilst there has been mention of the sensitivity of the receptors and the masking effects of the road traffic noise over the industrial, in Clause 11 of the standard it states that consideration needs to be given to comparisons between the character and levels of residual sound and the industrial noise(s) (i.e. in terms of frequency spectrums, temporal variations for example).
- 4.10. There has been no given explanation in this respect and bearing in mind that the assessments indicates that the most significant adverse impact typically occur at the early morning period of the industrial activities, which is at a time when the typical diurnal pattern of noise traffic movements are at their lowest. It is therefore reasonable to expect that the industrial noise will be more prominent during these times despite closed windows and open trickle vents, and cause an adverse or significantly adverse impact depending on the plot in question.
- 4.11. WNC Environmental Health Officer has requested a contour maps to show the rated noise level at each plot rather than the grouping plan already provided. This would help determine more accurately the number of plots affected rather than the blanket approach

applied in the groups. The applicants have requested that the application be determined on the basis of the submitted information so officers do not have this information.

External Noise Levels

- 4.12. Condition 26 of the outline consent refers to external garden noise levels meeting the WHO standards. The WHO standards give “specific recommendations on guideline exposure levels and/or interventions to reduce exposure and/or improve health for individual sources of noise: road traffic, railway, aircraft, wind turbines and leisure noise.” There is no recommended noise levels for industrial noise in these guidelines. The assessment of industrial noise is carried out using BS4142 as indicated above. The rating levels assessed in accordance with BS4142 in the gardens of some plots indicate an adverse and significantly adverse impact so cannot be accepted.
- 4.13. The applicant’s noise consultant’s view is that the EHO is asking for additional mitigation to be considered beyond the requirements of Condition 26. Planning Practice Guidance on Noise states that mitigation measures can include;
- 1 Avoiding noise locations in the first place;
 - 2 Designing the development to reduce the impact of noise from adjoining activities or the local environment;
 - 3 Incorporating noise barrier;
 - 4 Optimising the sound insulation provided by the building envelope;
 - 5 It may also be possible to work with the owners/operators of existing businesses or other activities in the vicinity, to explore whether potential adverse effects could be mitigated at source.
- 4.14. In relation to the above points;
- 1 The development has already been granted outline approval for residential development based on the results of an Environmental Impact Assessment. Noise is only one of the factors weighed in the balance of planning decisions. It must be considered that the decision to approve, with noise related planning condition, took these balances into account, at the appropriate time.
 - 2 As outlined above, the industrial noise was not identified as a significant issue at the time of the EIA. The subsequent reports do however identify it as a significant issue so it cannot be overlooked. The planning condition imposed does account for industrial noise in its requirements of meeting BS8233, which in turn requires compliance with BS4142 as outlined above for industrial noise.
 - 3 In considering design and noise mitigation, the setback distance incorporated is a minimum of 60m. A further set back distance could be incorporated and the noise report has not explored a greater distance as an option.
 - 4 Whilst it is appreciated that substantial 3m high screening is proposed around the most noise exposed gardens and the first row of housing facing the industrial estate, due to the topography screening is not the most ideal mitigation measure. An increased set back distance would be more effective.
 - 5 Whilst internal ambient noise criteria from BS8233, or other appropriate criteria as in this case suggested to be a further 10dB reduction to what BS8233 requires, may be used in circumstances where industrial and/or commercial sound forms a component of the acoustic environment, this would only be in cases where it was

“anonymous” noise as outlined above. The source of noise in this case is not anonymous so the enhanced criteria suggested is not appropriate mitigation.

- 4.15. WNC EHO recommended that the developers liaise with the various businesses operating within Round Spinney Industrial Estate to assess whether noise control mitigation could be applied at source. The developers do not believe that this is within their control. Whilst the businesses are under no obligation to engage with or commit to such proposal, bearing in mind that the presence of the development nearby could impact on their future business if it was deemed to be causing a statutory nuisance, or a private civil nuisance action was taken against them by residents, there is certainly an opportunity for a dialogue about mitigations measures to be started in this respect. The applicant’s noise consultant may be able to identify with the support of the businesses the most dominant noise source affecting the development and agree mitigation, with the developer’s part or fully paying for this mitigation to be undertaken. This then may allow the development to be acceptable in terms of its noise levels. The developers have advised that they wish the application to be determined on the basis of the information submitted and are not at this moment in time taking on board the advice of the EHO.
- 4.16. The original outline application and EIA did not identify industrial noise as a significant issue that would prevent development. There was at this stage no detailed scheme or layout approved as this was subject to planning conditions. Recent reports have highlighted that noise is a significant adverse impact to some plots and an adverse impact to other. This cannot be overlooked.
- 4.17. The application of BS8233 for internal and external noise levels is not appropriate for industrial noise in this case, with BS4142 being the required assessment methodology. Officers consider that the methodology should be applied appropriately and the necessary mitigation designed into the scheme. There is scope to mitigate noise through an increased separation distance and agreement with adjacent businesses on mitigation. This has not yet been investigated and therefore the recommendation is based on the information that has been submitted.

Summary of compliance with Condition 26

- 4.18. Taking the above into account, it is not considered that Condition 26 can be discharged as its requirements have not been yet and as such the layout is not acceptable. This advice is based on the information submitted with the application.

5. RECOMMENDATION

5.1. REFUSE PLANNING PERMISSION FOR THE FOLLOWING REASON:

- 1. The proposal is contrary to Policy BN9 of the West Northamptonshire Joint Core Strategy which requires new developments which are likely to result in exposure to sources of pollution to demonstrate they provide opportunities to minimise and where possible reduce pollution issues that are a barrier to achieving sustainable development and healthy communities. In this case the proposed design of the residential scheme would result in unacceptable internal and external noise levels within the development, as a result of noise from the nearby industrial estate.**