

PLANNING AND REGULATORY COMMITTEE

Date: 19 June 2019

Schedule of Committee Updates/Additional Representations

Note: The following schedule represents a summary of the additional representations received following the publication of the agenda and received up to midday on the day before the Committee meeting where they raise new and relevant material planning considerations.

(NB: The published update has been amended to include a late comment received from Ledbury Town Council that was read to the meeting.)

SCHEDULE OF COMMITTEE UPDATES

182628 – APPLICATION FOR APPROVAL OF 1ST PHASE RESERVED MATTERS FOR THE ERECTION OF 275 DWELLINGS WITH APPEARANCE, LANDSCAPING, LAYOUT AND SCALE TO BE CONSIDERED ONLY AT LAND TO THE SOUTH OF LEADON WAY, LEDBURY, HEREFORDSHIRE

For: Mr Elliot per Mr Mark Elliot, 60 Whitehall Road, Halesowen, B63 3JS

ADDITIONAL REPRESENTATIONS

Ornua have made additional representation following the publication of the Committee Report. Their further objection is as follows –

We write again on behalf of Ornua Ingredients (UK) Limited in respect of the application referred to above. We had intended to submit this objection in respect of the planning condition discharge application ref: 190874 as well, but we understand that this application is not being pursued by the Applicant. The comments in this objection are pertinent to both applications but given that ref: 182628 is being considered by the Council on 19 June then this objection should stand against that application.

Layout

We maintain that the Council needs to be satisfied that the current proposed layout of the properties will not lead to complaints from future residents of the properties because of noise emitted from our client's cheese factory, located opposite the development site. Ornua considers that the proposal in its current form is contrary to the NPPF (paragraphs 170(e) and 180) and the development plan (policies SD1 and SS6)

Notwithstanding the removal of the Phase 2 properties from the reserved matters application, it is clear from the information provided by the Applicant that the properties closest to the factory will experience unacceptable noise levels likely to lead to complaints even with the proposed mitigation measures in place. The proposed layout (and suggested future mitigation measures) do not adequately safeguard our clients ongoing operations from complaints i.e. from both private and statutory nuisance. We are, unfortunately, in the exact same position as we were in 2017 when the Council authorised the quashed reserved matters application ref: 164078. The layout will prejudice the effective and successful delivery of any future noise mitigation scheme.

Both the Applicant and the Council's Environmental Health Officers (EHO) acknowledge that the proposed layout of the development, with the outlined mitigation measures in place, could result in complaints from future residents. It is unreasonable for the Council's EHO to state that "we cannot say for certain therefore whether complaints from future occupants may or may not arise in the future". If the Council considers that there are properties which form part of this application which might be adversely affected by noise they should refuse this application and ask the Applicant to revise the

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proposed layout so that the new layout, with mitigation in place, will safeguard the amenity of future residents.

Proposed Mitigation

The Applicant has submitted outline details of proposed noise mitigation. It has also submitted a noise assessment report. Ornuva has not been consulted on either of these documents directly.

Whilst the noise mitigation measures proposed by the Applicant are not being secured at this stage, they are clearly the Applicant's best attempt to demonstrate that noise levels will be acceptable at all of the properties proposed in Phase 1. As such, it is likely that the mitigation measures outlined will form part of a future noise discharge application if the layout is approved, as these mitigation measures have been considered by the Council to work with the proposed layout.

We do not consider that the proposed mitigation measures are adequate and, as such, the Council should not approve the current proposed layout for Phase 1 due to the borderline significant impacts that will be experienced by future residents at a number of the properties even with the proposed mitigation in place.

We consider that it is unreasonable for the EHO to conclude that desirable bedroom daytime noises can be achieved at the majority of the properties with their windows closed but that "there are a handful of dwellings with facades facing east and west where this cannot be achieved. Although this is not ideal, our department does not object to this proposal as noise mitigation is possible in the majority of the impacted dwellings and satisfactory daytime internal noise levels at ground floor level can be achieved due to the fencing mitigation."

The threshold for acceptability is not "the majority of the properties". If there are properties that will be adversely affected by noise under the proposed development, as the EHO clearly acknowledges, the layout of the scheme needs to be amended to remove the affected properties. Clearly, therefore, sufficient noise mitigation measures have not been proposed by the Applicant and the Council will be authorising the development of properties where residents are likely to complain of noise nuisance.

It is equally unreasonable for the EHO to conclude that noise impacts at night time internally will be acceptable, where these properties will experience greater than 55dB against a recommended standard of 30dB. No conclusion is given by the EHO in this respect but it is clear that this position could lead to complaints.

WA's report states that the properties located closest to our client's factory would be subject to noise above the Lowest Observed Effect Level (as set out in NPPF/Noise Policy Statement for England) and borderline Significant Observed Effect Level. In other words, the noise will be "noticeable and intrusive". The Council's EHO considers that the dwellings closest to the factory "would be categorised by the classification of the noise having an Observed Adverse Effect Level which could lead to small changes in behaviours or attitude and having to keep close windows for some time because of noise." This is the Council's conclusion with the proposed mitigation in place. The impact on amenity to future residents is clear and having to rely on residents keeping their windows closed in order to reduce noise is not a reasonable form of mitigation.

As such, this clearly demonstrates that the requirement that "all reasonable steps should be taken to mitigate and minimise adverse effects on health and quality of life while also taking into account the guiding principle of sustainable development" has not been undertaken, as required by the NPSE, because even with the mitigation measures in place there will be properties in the proposed phase that will experience borderline significant impacts from noise.

Our client also has serious concerns about the conclusion of both the Applicant and the Council's EHOs in determining that the tonal quality of the noise being emitted from the factory has now disappeared. Ornuva disagrees with the Applicant and the Council that the noise emitted from the factory is not tonal. Operations at the factory have not changed since the 2014 noise assessment undertaken by the Applicant, which demonstrated a tonal quality to the noise being emitted from the site. Ornuva's own noise experts maintain that the noise from the factory is tonal. Tonal noise requires a penalty of 6dB to be applied to the results of the assessment. In other words, if the noise is tonal

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further mitigation should be secured. No explanation has been provided by the Council's EHO on why or how they consider the tonal quality of the noise has now disappeared nor has any technical detail been published by the Council supporting this assertion and change in situation. Neither the EHO in its response to the consultation or the Applicant have provided evidence justifying the conclusion that the noise emitted from our client's factory is not tonal.

Ornua and the Applicant had separately agreed that a predicted rating level of 37 dB LAeq would be acceptable on the development site because this noise level will be very unlikely to result in complaints over noise. Ornua is disappointed that the proposed mitigation will not achieve this level. Ornua considers that the Council should seek to secure mitigation which results in a rating level of 37 dB LAeq at the site. Whilst the Applicant carried out works to the cheese factory in January, in an attempt to reduce the noise being emitted from the factory, these works were not successful and predicted noise from the factory did not reduce following these works.

As previously mentioned, without a more robust approach to noise mitigation and a change in the proposed layout on the proposed development, Ornua considers that the Council will be promoting land-use competition contrary to the terms of planning law and the NPPF.

Further control on noise compliance

As noise is such an important part of the proposed development, Ornua would expect to see a scheme of mitigation and a layout that ensures that appropriate noise levels can be achieved at all properties proposed as part of this phase of the development. The Council needs to ensure that there are noise limits secured in any future approved noise mitigation scheme so that they are complied with and, where they are not, there is a penalty e.g. the development has to stop until the noise is attenuated to an appropriate level.

It is not clear which document submitted by the Applicant actually proposes the scheme of mitigation required by the outline consent given that the summary document is so brief. There is inconsistency in this document as the "Summary of the Noise Mitigation Measures", dated 22 February, details noise mitigation to be applied to properties (outlined in Figures 2 and 3) but these figures include properties which are not even a part of Phase 1. This document is unclear and does not relate to the same layout proposed in the application. As such, it cannot properly give the Council comfort that the proposed mitigation will work as it is factually inaccurate.

Neither the Summary document nor the "Noise Assessment Report", prepared by the Applicant and dated March 2019, detail when (i.e. give a timeframe) any proposed mitigation will be in place; how the development will be brought forward in terms of which units will be developed first; and how further/future remediation measures will be secured in the event that the proposed noise mitigation does not achieve what is predicated.

We appreciate that the discharge application is not being pursued but these reports were originally submitted in respect of the condition discharge application too and are wholly inadequate. In addition, there are no hard noise targets included in the report, as such, it is unclear how the Council considers at this stage that an estimated upper ended range of predicted noise levels is appropriate when there is no set limit proposed. Given the linkage between the layout and the proposed mitigation the Council needs to be satisfied at this stage that the mitigation will work with the proposed layout. The detail provided by the Applicant is inadequate and cannot reasonably be relied on to be certain that noise issues will not arise from all of the properties as set out in the proposal.

A final point to consider in respect of the noise mitigation measures to be secured is that the current planning condition on the outline consent (condition 19 of ref: 164107) provides: "All works which form part of the approved scheme shall be completed in accordance with the approved details [i.e. those works secured as part of the noise mitigation scheme] prior to first occupation of any dwelling in that phase and such measures shall be retained thereafter."

Ornua does not consider that this condition adequately secures the successful implementation any proposed mitigation works. It simply requires that the works approved under the proposed mitigation scheme need to be implemented; it specifies nothing about them having to succeed or requiring future remediation in the event that the works do not succeed. It is unclear why the planning inspector

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considered that this planning condition was adequate but the Council will have an opportunity to remedy this and secure more stringent (and appropriate) controls.

As such, Ornua would urge the Council on any future noise discharge application to not only seek more control (as outlined above) but to ensure that either any revised RMA approval or the discharge approval is conditioned to ensure that an approved noise mitigation scheme is adhered to for the duration of the development otherwise the Council will have no recourse to the Applicant in the event that the mitigation approved through the discharge application fails. Without any additional means of control in place (e.g. appropriately worded planning conditions on the reserved matters approval or a section 106 agreement) the Council is saying, at this stage, that it is confident that the proposed mitigation works, coupled with the layout, will be effective and there is no need for any future control over the development in respect of noise.

On the basis of the information provided above, the Council should take a precautionary approach given the clear uncertainty over the appropriateness and effectiveness of the proposed layout on noise and the mitigation proposed. Ornua considers that the Applicant should have proposed the phased delivery of the site from east to west i.e. the development should begin at the eastern boundary and move further west. In addition to this, the Council should secure means to undertake noise reporting on a periodic basis, as the houses are developed from east to west, to demonstrate that the mitigation works are working. The Council should also secure set noise levels through conditions or a s.106 so that in the event that the noise levels are exceeded development should cease until further remediation is secured to the satisfaction of the Council. Given that none of this detail has been proposed by the Applicant in its proposed mitigation measures, which have informed the proposed layout design, the Council would be acting unreasonably to accept the proposed measures and the layout in their current form.

Environmental Health Officer Comments

We are surprised to read that the EHOs are content with Applicant's proposed mitigation given the comments made above on their conclusions about the likely impacts of noise on future residents of the development.

There are also a number of clear inconsistencies between their comments made in respect of the quashed reserved matters application and this application, as detailed below. We have a number of questions for the Council's EHO officers in respect of their comments of 23 May 2019, and would be grateful for a response to them ahead of the Council's planning committee:

1. Can the Council's EHO explain, and provide detail on, how it is content that there is no tonal element of the noise being emitted from Ornua's factory given that the Applicant has submitted no detail or data justifying its assertion that the tonal content has now been removed? Ornua has not been provided with any additional information from the Applicant or the Council explaining how they consider this change has occurred, especially given that the operations at the factory have not changed since WA's 2014 assessment (i.e. the assessment mentioned in the planning condition).

The tonality assessment carried out by WA is far from conclusive having been provided with no details of its origin other than the location where it was measured. The Council must explain its position if it is diverging from the position set out in condition 19 and that taken in its advice on 5 July 2017 in respect of the quashed RMA where it stated "Our low-frequency noise assessment and the officers' site observations would support the BS:4142 assessment findings in that the [cheese factory] noise source is likely to have a significant adverse impact on the dwellings closest to the noise source.". For the avoidance of doubt, Ornua maintains that there is a tonal quality to the noise emitted from the factory which should attract a 6dB penalty and the Council's current consideration and justification of this point is not adequate

2. Can the Council's EHO please provide justification why it considers 55dB ~Aeq for external amenity areas to be acceptable? When considering the quashed application the EHO (and this extract is taken from the High Court judgment, para. 9) "said they did not agree with Wardell Armstrong that the appropriate limit for noise garden areas was 55dB, that the acceptable limit ought to be 50dB". Why is a limit above 50dB now acceptable but in December 2017 it was not?

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3. In WA's assessment under the heading "Real Time Monitoring Assessment Section" (report dated March 2019), WA provides that predicted factory noise is predicted by WA to be 9 to 10 d6 above the average background at night. This means it will be clearly audible under typical conditions. Background noise will be lower than this for 50 % of the night-time period with correspondingly increased audibility. Given this level of noise (especially in the context of BS8233 providing that BS4142 should be applied), is the Council content that this is unlikely to cause future occupiers an issue in terms of nuisance?

4. Does the Council agree with WA's assumptions, including that an open window provides "around 15dB noise attenuation"? The guidance provides that an open window provides between 10 and 15dB attenuation but WA has used 15dB upper limit in its assessment. Is the Council content for WA to put forward the best case scenario given that the usual form of assessment (ensuring a precautionary approach is taken) is a worst case scenario to ensure that mitigation works properly?

5. Can the Council please confirm how they are satisfied that the mitigation measures proposed are acceptable when no further works to the factory are proposed? Given that the measures implemented to date by the Applicant did not work, Ornuu would expect works to its site to be required, particularly as the Council was so keen to see this secured when it considered the quashed reserved matters application ref: 164078. For example, see the EHO's response of 7 June 2017 to the quashed FiMA application which provides that "At visits to the proposed site both during the day and late evening officers from our department noted the constant humming noise emanating from [the cheese factory]... which was identified as the dominant noise source in the locality and was accompanied by a hissing (pressure relief type) noise every few seconds. Without mitigation, this would seriously impact on the amenity of residential properties in close proximity to the site." As the EHO previously noted, during the daytime noise levels from the cheese factory would be between 5dB and 10dB above background level "thus indicating a likely adverse impact". Again, given that no works have been undertaken to the cheese factory that have worked to reduce noise from the factory, nor have operations at the factory changed since these comments, how is the EHO now content to find the proposed mitigation acceptable?

6. Are the Council's EHO officers content that the Council, acknowledging the likelihood that noise nuisance is likely to occur, can realistically discharge the condition on the outline consent? We do not consider that the Council can lawfully approve this application (setting a layout that will prejudice proposed future mitigation measures) where it has acknowledged that it is likely that what is proposed would constitute a statutory nuisance under the Environmental Protection Act 1990.

7. Is the Council content for there to be no proposal to ameliorate noise experienced at the properties where the levels exceed those predicted by the Applicant, particularly where mitigation measures have been undertaken and do not work?

Planning Permission for bund

Finally, Ornuu does not agree with the Applicant's assessment that consent for the bund/acoustic fence was authorised by the outline planning permission. No assessment or mention of the bund was mentioned by the planning inspector when granting permission for the outline consent nor is it covered by either the landscaping or noise conditions. The noise bunds are themselves development and require separate planning permission.

The Council should therefore ensure that a Grampian condition is included on any future consent to ensure that the bund is constructed prior to or concurrently with the erection of a number (to be agreed) of dwellings, to ensure that periodic monitoring can be undertaken to assess the effectiveness of any bund—which would tie in with a revised noise mitigation scheme.

On the basis of the information provided above, Ornuu does not consider that the application in its current form adequately ensures that future residents of the development will not complain about noise from the cheese factory. The detail provided to date by the Applicant is inadequate to address the noise that will be experienced at the site and the approval of the layout will prejudice what mitigation is proposed in the future. This is unreasonable given that the mitigation proposed will not work at all properties. It is unclear why the Council thinks it will be acceptable for a small number of properties to be adversely affected by noise. If these properties are adversely affected they should be

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removed from the scheme given what the Council knows in terms of the mitigation that will be proposed in the future by the Applicant.

Ornua maintains its objection to the proposed scheme and given the information above requests that the Council refuses this application.

We look forward to raising these issues in person with the members of the planning committee on 18 June 2019.

Following receipt of the above, the applicants, Barratts have responded as follows –

I propose to take extracts from the specific part of the letter and comment on them accordingly. These extracts will be in **bold italic**.

We are, unfortunately, in the exact same position as we were in 2017 when the Council authorised the quashed reserved matters application ref: 164078. The layout will prejudice the effective and successful delivery of any future noise mitigation scheme.

This is simply not the case – that reserved matters approval was quashed on the basis of a procedural error by the Council not (nor could it have been) on the basis of the planning merits. The position we in now, unlike last time, is that all of the relevant information is before the Council.

Both the Applicant and the Council's Environmental Health Officers (EHO) acknowledge that the proposed layout of the development, with the outlined mitigation measures in place, could result in complaints from future residents. It is unreasonable for the Council's EHO to state that "we cannot say for certain therefore whether complaints from future occupants may or may not arise in the future".

We support the Council's position in this regard. Rather than being unreasonable the Council are being simply realistic given the entirely subjective nature of the human reaction and tolerance to noise. This is reflected in the Government's decision to remove the requirement for the assessment of the likelihood of complaints from the BS4142 standard in 2014.

We consider that it is unreasonable for the EHO to conclude that desirable bedroom daytime noises can be achieved at the majority of the properties with their windows closed but that "there are a handful of dwellings with facades facing east and west where this cannot be achieved. Although this is not ideal, our department does not object to this proposal as noise mitigation is possible in the majority of the impacted dwellings and satisfactory daytime internal noise levels at ground floor level can be achieved due to the fencing mitigation."

We believe this is a carefully selected quote which is misleading and does not provide the full context. In the preceding line it is stated that desirable daytime noise standards in bedrooms can be achieved with windows closed. To clarify, it is only a handful of properties where it is necessary to close windows to both front and rear facing bedrooms in order to achieve the desirable daytime noise standard.

The impact on amenity to future residents is clear and having to rely on residents keeping their windows closed in order to reduce noise is not a reasonable form of mitigation.

We agreed with the EHOs conclusions and would like to emphasise that closed windows with suitable alternative ventilation to having to open a window, is a reasonable form of mitigation, and wholly in accordance with technical and planning guidance.

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Our client also has serious concerns about the conclusion of both the Applicant and the Council's EHOs in determining that the tonal quality of the noise being emitted from the factory has now disappeared. Ornuia disagrees with the Applicant and the Council that the noise emitted from the factory is not tonal. Operations at the factory have not changed since the 2014 noise assessment undertaken by the Applicant, which demonstrated a tonal quality to the noise being emitted from the site. Ornuia's own noise experts maintain that the noise from the factory is tonal.

Based on our observations and measurements we have noted quite a significant change in operations at the factory since 2014. We stated in our submission we believe the tonal noise has been addressed by the on-site mitigation works and this has been supported by the WA 2019 Noise Assessment. No technical assessment/evidence has been provided to dispute this.

As noise is such an important part of the proposed development, Ornuia would expect to see a scheme of mitigation and a layout that ensures that appropriate noise levels can be achieved at all properties proposed as part of this phase of the development.

Our scheme clearly demonstrates that appropriate internal and external noise levels can be achieved at all proposed dwelling with the proposed mitigation measures in place. This has been demonstrated through the noise measurements undertaken within plots 1 & 2.

It is not clear which document submitted by the Applicant actually proposes the scheme of mitigation required by the outline consent given that the summary document is so brief. There is inconsistency in this document as the "Summary of the Noise Mitigation Measures", dated 22 February, details noise mitigation to be applied to properties (outlined in Figures 2 and 3) but these figures include properties which are not even a part of Phase 1.

The 'Summary of the Noise Mitigation Measures' document dated 22 February is not applicable to this submission. The noise report prepared by WA dated March 2019 details the works undertaken to date and the mitigation measures required to achieve appropriate noise levels across the development site for phase 1 only.

With regards to the questions put to your EHOs we can provide the following comments

- 1) WA assessment and the Council's own assessment has demonstrated that there is no tonal sound from the Ornuia factory.
- 2) Only a small number of properties, which are located closest to Leadon Way, have a noise level in gardens of between 50 and 55dB(A). The noise in gardens across the remainder of the site is 50dB(A) or less. During pre-application discussions, back in 2016, we were specifically directed to back properties onto Leadon Way by your Highways officer as, from a pedestrian safety perspective, he was keen to avoid the potential for undesired pedestrian routes (coming in and out of the site) all along Leadon Way (not utilising safe crossing areas) which was seen as a pedestrian safety risk. Therefore there is a very strong highway safety reason for this particular layout design.
- 3) It is accepted by both WA, and the EHO, that noise from the Ornuia factory is above the background sound level at night when considered externally. However, the level of sound is low. Additionally, residents will be within dwellings during the night-time, and noise from the Ornuia factory has been shown to be less than the internal guideline noise level for bedrooms during the night-time in Plots 1 and 2, and even without any mitigation measures at the site. The noise from the Ornuia factory will be even less than has been measured in Mar/Apr 2019 Plots 1 & 2 when the proposed bund and barrier, and appropriate glazing and ventilation is fully installed.

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- 4) We believe that 15dB is a well-regarded level of attenuation to use for an open window.
- 5) We disagree that noise mitigation measure did not work as it has been demonstrated that the works have been effective against the tonal noise emitted from the factory. Our observations and readings show that the level and character of noise from the factory has varied over time and therefore reference to observations made in 2017 are no longer relevant.

The Council's Environmental Health Officers have reviewed these subsequent comments and responds as follows –

These comments are subsequent to Burgess Salmon's response dated 14th June 2019. With our consultation response of 23rd May 2019 in black

General comments

Layout and proposed mitigation

As far as we are aware Ornuu has been kept informed of all noise reports that have come through the planning process subsequent to the High Court decision in summer 2018 which includes the proposed noise mitigation outlined in the Wardell Armstrong report dated March 2019 so we are not sure why Burgess Salmon contend that they have not been consulted. (Bottom sentence first page).

We have attempted to answer the objector's key concerns regarding the potential for future noise complaints in the body of our response below. We cannot comment on the applicant's potential further application for reserved matters as this is not the subject of this reserved matters application. However we do not think unreasonable to state that further noise mitigation is likely to be required at source and we will scrutinise most carefully any reserved matters application made for the 46 houses currently termed 'Phase 2' omitted from this application.

We do not think para 4 of page 2 of the letter makes much sense. The key issue regarding factory noise is the night time noise levels at an anticipated 43dB LAeq to the outside façade of the closest houses so we are not sure where the quoted 55dB night time noise level comes from. Para 3 page 2 we have not said that no properties will be adversely impacted by road traffic noise. As much as we would aim for no properties to have to rely on closing the windows at the front façade during the day time at some point to block out road traffic noise during the day, and our representations are clear on this, we are of the opinion that if a refusal was granted on this basis it could be successfully challenged by the applicant.

The real time monitoring undertaken in March and April at the properties most likely to be adversely impacted by factory noise would indicate that the projected noise levels presented are not in practice as adverse as anticipated.

Mitigation on site has either contributed to the removal or removed the tonal element of the noise in early 2019. This is not insignificant as the tonal quality of the noise affects the BS4142 assessment and it is the characteristics of the noise which contribute towards its intrusiveness.

We cannot comment on the last paragraph of page 2 regarding the supposed agreement between Ornuu and the applicant that regarding the acceptability or not of a predicted rating of 37dB LAeq at the façade of the closest houses to the factory as we have not had sight of such an agreement. We have a note from Ornuu's noise consultants indicating that this is what was agreed dated 4th May 2018. We subsequently sought confirmation from the applicants regarding this but no confirmation was received.

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We are not sure why Burges Salmon suggest that Council is promoting land use competition as the site has outline planning permission granted by the HM Planning Inspectorate for up to 321 houses (with appropriate noise mitigation) and note that Ornuia did not respond to the consultation regarding the outline planning application 150884.

In the objector's letter it is contended that the Council should ensure that noise limits are secured at each stage of development and that hard noise targets be set and achieved at each stage of the development. We do not think that this is a reasonable approach given the removal of the 46 proposed houses closest to the factory from Phase 1 and the real life monitoring results found on site. This approach would be without precedent and impractical, it could be challengeable and furthermore this does not prevent the factory from upping its noise output by for example failing to maintain external plant and equipment.

Background

With regard to this site and application there has been previous extensive correspondence, meetings and site visits to discuss concerns over environmental noise concerns in the area and the likely impact on the proposed dwellings. The proposed development site is located on the outskirts of Ledbury, on a greenfield site identified as a predominantly rural setting, however, in close proximity to two main noise sources; traffic noise (Leadon Way bypass) to the north and 24/7 Ornuia factory noise to the west. The reserved matters proposal for 275 houses omits 46 houses closest to the factory included in the proposed layout of the outline application.

Our department has been asked to comment on the noise constraints and proposed mitigation. In general terms when examining the impact of noise on residential development, we refer to BS8233: 2014 Guidance on sound insulation and noise reduction for buildings and BS4142:2014 Methods for rating and assessing industrial and commercial sound as well as the associated planning policy framework and guidance including the Noise Policy Statement for England, Planning Practice Guidance – Noise, National Planning Policy Framework (NPPF) and the ProPG Guidance.

Road traffic noise

Noise monitoring adjacent to Leadon Way gave an arithmetic average of 64.3dB LAeq day and 62.3 LAeq at night in 2014. The applicants noise assessment report dated March 2019 (Wardell Armstrong) proposes road traffic noise mitigation along the northern section of the site to protect proposed dwellings immediately to the south of Leadon Way.

These include:

- a) A reduction in the speed limit on Leadon Way from 60 to 40mph on the approach to the new roundabout (half way along the northern side of the development).
- b) A 3.00m high barrier comprising of a close boarded fence constructed with a minimum density of 10kg/m² to the eastern section of the northern boundary to the site.
- c) A 2.1m high barrier comprising of a close boarded fence constructed with a minimum density of 10kg/m² to the western part of the northern site boundary.
- d) A 1.8m high close boarded fence around all remaining gardens areas.

Figures 2, 3 and 4 of the applicant's March 2019 noise report (Wardell Armstrong) give the results of road traffic noise modelling at the proposed dwellings across the site with the above mitigation in place.

External amenity Answer to question 2

All the gardens to the northern side of the site after mitigation will be exposed to daytime road traffic noise of between 50 and 55dBLAeq. This is slightly higher than the desirable standard for external amenity areas of 50dB but less than 55dB considered to be the upper guideline value for noisier environments. We are of the opinion that this greenfield site is not a 'noisy environment' and in our response of July 2017 we raised concerns that road traffic noise could be elevated in garden amenity areas closest to the road above 50dB. Our position with regard to this has not changed; we raised concerns in July 2017 but did not object. In June 2017 the ProPG guidance was published. This guidance specifically extends the advice contained in BS8233:2014 regarding external amenity and para 3(v) of the guidance allows for further external noise mitigation if a public amenity area or green space is within 5 minutes walk, hence our qualified next comment 'However it is recognised that the proposal incorporates close by recreational space further away from Leadon Way which is considerable quieter and less than 50dB which provides for some mitigation in accordance with the ProPG guidance.* So in this context we do not think that the amenity noise levels for the dwellings closest to Leadon Way are unacceptable. '

Internal noise levels

Daytime road traffic noise at the facades of the first floor of the proposed dwellings closest to the road are, however, predicted to be above 60dB LAeq, These exposure levels are higher than the desirable external standard of 50dB at the façade which would enable the achievement of desirable internal noise levels with the windows open. Therefore the north facing elevations of the proposed dwellings and some of the side elevations would have, without mitigation, internal noise levels with partially open windows above the desirable bedroom daytime standard of 35dB.

The applicant's noise report therefore proposes the following mitigation:

e) Two different higher glazing specifications and acoustic vents in the dwellings shown in Figure 3 of the noise specification report. The applicant has been requested to install the higher of the two glazing specifications in all the identified properties i.e. 10/12/6 glazing with acoustic vents and this has been agreed.

Windows on the impacted elevations will need to be kept closed during the daytime to ensure desirable daytime noise standards in bedrooms. Of the properties impacted, the majority will have south facing elevations where desirable bedroom daytime noises can be achieved with the windows open as facades away from the road will have noise level of less than 50dB. However, there are a handful of dwellings with facades facing east and west where this cannot be achieved. Although this is not ideal, our department does not object to this proposal as noise mitigation is possible in the majority of impacted dwellings and satisfactory daytime internal noise levels at ground floor level can be achieved due to the fencing mitigation.

Figure 4 of the report models road traffic noise impacts at night time where BS8233 specifies a desirable standard of 30dB in bedrooms. Noise levels at the worst impacted facades are predicted to be greater than 55dB with a number of properties with noise exposure levels between 45 and 55dB. The mitigation discussion in e) above equally applies to night time road traffic noise impacts. In other words bedroom windows for some north facing dwellings that about the road will be required to have their windows closed and mitigation proposed in e) above will apply.

NB Day and night time noise monitoring undertaken by Ornua's noise consultant December 2017 to establish background noise levels used the same monitoring location as the

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applicant's location for road traffic noise. This gave readings of 50-55dB and not as high as the applicants' measurements.

Factory noise from the Ornua cheese factory

The Ornua cheese factory noise runs 24/7 generating an audible constant low frequency sound (hum) in close proximity to the factory. Unlike the passing traffic noise the factory noise source is in a fixed location so creating an audible directional point source at the north west area of the proposed development site. Road traffic noise from Leadon Way and to a degree Dymock Road is dominant during the daytime, however during the night (23:00 – 07:00), at the south western section of the proposed site the factory noise becomes the main dominant audible sound.

Answer to Question 1

Over the time period of this application from 2014 through to 2019 officers of the council have assessed the factory sound levels using calibrated sound level meters and undertook additional subjective assessments of the noise characteristics as specified in the 'BS:4142:2014 method for rating and assessing industrial and commercial sound'. Over this time our findings are that the specific sound levels (loudness) from the factory have not altered significantly, (Approximately 3dB changes in sound levels.) However officers have noted changes in the character of the factory sound. The BS:4142 subjective method identifies 'certain acoustic features can increase the significance of impact over that expected from a basic comparison between specific sound level and background sound level; identifying 'tonality', 'impulsivity', 'intermittency' and 'other sound characteristics' as sound characteristics that could create a distinguishing sound characteristics that will attract attention. As such the assessment allows for a penalty to be placed on an identified characteristic depending on the subjective assessment of the sound characteristic. E.g. tonality when the sound has a distinctive tone which is audible over the other general sounds a penalty of; +2db just perceptible at receptor, +4dB clearly Perceptible and +6 highly perceptible.

In 2015 officers subjective assessment of the factory noise characteristics identified the sound to contain a general low frequency sound with additional high pitched continuous tone characteristic clearly perceptible over a continuous and slightly cyclical low frequency constant tone at the location of the proposed dwellings. For this tonal characteristic we broadly that concur the tonal penalty awarded to the applicants BS:4142 sound assessment was correct. In 2017 the factory sound characteristics were again assessed as part of our consultation response and it was noted the noise continued to have distinguishing sound characteristics. However we believe that the comment made in question 1 regarding our comments made on the 5th July 2017 with reference to the applicants BS:4142 assessment in which we stated, as quoted 'the noise source is likely to have a significant adverse impact on the dwellings closest to the noise source' is misleading as these comments were made in relation to the circumstances where the original applications detailed an additional 46 houses closest to the factory now omitted.

There has been extensive correspondence on this issue and subsequently noise mitigation work at the factory has taken place and further noise mitigation is proposed:

- The noise mitigation works were undertaken in early 2019 on the factory site included the removal of the green box extract, the acoustic enclosure of the pump motor and additional silencer to the yellow extractor. Officers from the local authority have verified subsequently that the low frequency tonal element of the noise was reduced so audibly less intrusive, however measurements of the overall volume of the factory sound was found not to be reduced.

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- The applicant has removed the most adversely impacted proposed dwellings from this site proposal, increasing the distance of the now proposed dwellings from the factory (Phase 1) as the matter to be addressed in this application.

Question 1 continued Subsequent to the mitigation works at the factory site officers visited the vicinity at night-time on the 5th February 2019. The factory noise was witnessed to be a steady state with no distinctive noise characteristics including the previously witnessed tonal elements. Therefore following this visit we concur that it is inappropriate to award a tonal penalty. No evidence has been supplied by the objectors that a maximum tonal penalty of +6dB is still relevant in the current circumstances.

f) A 3 m high noise barrier sited on top of a physical bund 75m in length maintaining a height of AOD 55m to the north west corner of the site closes to the Ornuu cheese factory is proposed.

Factory noise

It is not disputed by the representatives of the Ornuu factory that the noise from the Ornuu site is generally continuous and steady during the noise sensitive night-time hours (23:00-07:00), where the local authority's main concerns have been raised with regards to the factory noise at this proposed site.

Background noise level

Central to the BS4142 assessment of the impact of the factory noise on the proposed dwellings is the establishment of a representative background sound level i.e. what is typical in context to the area. The methodology is not simply to ascertain what the lowest background sound level as is suggested by the Hayes McKenzie report of the 4th April but to identify a general, most frequently occurring representative value.

Ornuu's noise consultants (Hayes McKenzie) have argued the quietest background noise levels (between 4-5 am) are lower than the typical background noise levels of 33/34dB for a proportion of the time therefore it is more appropriate to refer to background noise levels of 27dB. With factory noise significantly above the 27dB level at the facades at the closest dwellings they contend that this might lead to complaints. Our department does not disagree that background noise levels will fluctuate and that therefore the steady continuous noise from the factory may be more audible at the lowest background sound level, however the methodology to be used is BS4142 relies on the use of a typical background sound level, in context to the area being assessed.

We would concur with the applicant's noise report (Wardell Armstrong) that given the range of findings of background sound levels found that the selection of a representative background for use in the assessment of 33-34dB (LA90) night time and 41-44dB daytime is appropriate. These levels take into account that traffic movements will be through the night although to a much reduced level than in the day time. Also the presence of the factory needs to be considered as it is a well-established industrial unit in the area. The lowest measured background reading (27dB L90) would be more representative of a fully rural, green site area. The 33-44dB (LA90) background reading is more representative and in context with the development site being on the outskirts of Ledbury town where rural meets a small market town divided by a by-pass road.

Character correction and tonality

Noise which is tonal, impulsive and /or intermittent can be more intrusive and the BS4142 methodology awards penalties for the character of the noise. The initial noise report undertaken in 2014 found that there was a clearly audible tonal element to the noise and our

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own readings initially found that the noise had a low frequency characteristic. Ornua's noise consultants in December 2017 also identified a tonal element to the factory noise which they concluded would lead to a character correction of the noise by 6dB

The noise mitigation undertaken at the factory site in early 2019 has been found by the applicant's noise consultants not to have led to an overall reduction in the loudness of the factory noise. However, the distinctive tonal element of the noise previously identified has been eliminated and therefore in the March 2019 applicant's noise report no character corrections or penalties have been applied to the BS4142 rating. Local authority officers in spring 2019 subsequent to the mitigation works have been able to verify that the tonal element to the noise is no longer present.

Answer to question 5.

The mitigation for this proposal Phase 1 provides for a distance barrier between the factory and the proposed dwellings which was not there in the quashed reserved matters application 164078. Please note that our comments quoted in question 5 relate to the amenity of residential properties in close proximity to the site. These properties have been removed under the reserved matters proposal in question.

The measures implemented in early 2019 did work in the sense that the tonal element of the factory noise was removed so we do not think true to say that the measures 'implemented to date by the Applicant did not work' as suggested. Our subsequent comments in our response of May 2019 has been to say that road traffic noise is dominant during the day time not the factory noise. See below comment (bottom para page 4 of response 23rd May) 'These sites have been visited twice by Officers from the local authority during the daytime subsequent to the Ornua site mitigation. On both occasions road traffic noise was found to be dominant as expected for this time of day

The predicted factory noise has been modelled in the applicant's report such that it is expected that the rating level i.e. the specific noise level at the façade of the closest proposed dwelling will now be 43dB LAeq at first floor bedroom window height. Ornua's noise consultants in their response of 5th April 2019 argue that this is worse than what was initially predicted by Barrett's consultants of 37dB LAeq in their earlier modelling in 2018 but this is addressed in Barrett's noise consultant's response to EHO questions on 25th April.

The BS4142 assessment however also requires the assessment of the industrial noise in a context. The absolute background sound levels are low and there would be noise mitigation through the structure of the proposed dwelling allowing for a 10-15dB reduction through an open window.

Answer to question 4

Ornua have queried EHO acceptance of the assumption by Wardell Armstrong that an open window would mitigate noise by 15dB (not 10dB). (All the guidance suggests a sound reduction of 10-15dB). EHOs confirm that we have accepted this 15dB sound reduction because the bedrooms and the top hung casement windows at the development are small, a higher glazing specification has been agreed which would provide some mitigation with windows open and the on-site monitoring undertaken by Wardell Armstrong found at Plot 1 at 5.00am found 28dB inside the rooms against measured 43dB at the front façade which would support this approach.

The outcome of the Wardell Armstrong report is that predicted noise levels across the site from the cheese factory is shown in figure 5. Their BS4142 initial assessment finds that at night time when background noise levels are lower there will be at the very closest houses a moderate adverse impact although we would advise that a difference of 9 or 10dB. The BS4142 methodology advises 'a difference of +5dB is likely to be an indication of an

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adverse' and 'a difference of +10 dB or more is likely to be an indication of a significant adverse impact depending on the context'.

Factors that the local authority has taken into consideration when considering the assessments findings in the context include a judgement that a night-time background noise level of 33-34dB is relatively low, there is still the bund and acoustic fence as mitigation to be undertaken and real-time overnight noise monitoring inside the worst impacted dwellings which are constructed show houses has been found to have desirable (BS8233) internal noise levels.

g) The March 2019 report proposes enhanced glazing and acoustic vents to the properties as set out in Figure 3 and Figure 4 to address road traffic noise impacts from Dymock Road. These will provide mitigation also for the factory noise.

Real time noise monitoring assessment

Two dwellings have been constructed in early 2018 as show houses for the site. (These are nos 1 SH and 2 SH shown on the amended site layout plans drawings 5000B and 5001B Feb 2019 which are the same plots 1 and 2 as shown on the drawings 1000AM and 1001AM submitted in September 2016 164078). This has enabled the concerns regarding the adverse impacts at the properties closest to the factory presented in the Wardell Armstrong report which anticipated moderate adverse impacts to be verified in practice.

These sites have been visited twice by Officers from the local authority during the daytime subsequent to the Ornuia site mitigation. On both occasions road traffic noise was found to be dominant as expected for this time of day.

Wardell Armstrong have undertaken overnight noise monitoring to verify the impact of the mitigation at the factory. The findings of overnight monitoring undertaken on 29th March 2019 find that without the proposed mitigation bund and fence in place, factory noise levels dropped to below the BS8233 desirable internal noise level of 30dB inside the factory facing bedrooms. On 4th April 2019 Wardell Armstrong set up further night time noise monitoring in plots 1 and 2 closest to the factory with partially open windows (approximately 10 - 12cm) witnessed by local authority officers when overnight noise monitoring set up was taking place. These measurements were undertaken in rooms without soft furnishings and curtains.

The BS4142:2014 guidance no longer addresses the likelihood of complaints referred to in the Hayes McKenzie report. Whilst our findings are that within the most sensitive dwellings there may be occasions where at night time in the bedrooms facing the factory the factory noise is audible (due to fluctuations in background noise levels) with the windows open, it is unlikely to be intrusive.

Answer to question 3 The predicted 9-10dB above background noise levels at night-time outlined in the Wardell Armstrong report of March 2019 have not been evidenced in practice despite the lack of a bund as proposed mitigation. Noise levels in the bedrooms were below 30dB at night time with windows open (thus complying with the desirable standards set out in BS8233) and as outlined above, the BS4142 findings are always set in a context.

Ornuia's noise consultants Hayes McKenzie contend that complaints may also occur regarding factory noise in gardens leading to complaints (there will be no attenuation through the fabric of a building). Whilst factory noise may be audible in gardens (again due to fluctuating background noise levels), the dominant noise during daytime and early evening when gardens may be in use will be road traffic noise.

Conclusion

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Ornua's representative's argue that the revised NPPF (the relevant section published 24th July 2018) (reserved matters application received 18th July 2018) places an onus on the developer (the 'agent of change') such that existing businesses should not have unreasonable restrictions placed on them as a result of development permitted after they were established. This application eliminates a substantial number of proposed dwellings in close proximity to the factory and creates a distance buffer between the factory and the proposed dwellings. There are no planning controls on the factory to ensure that factory noise is not increased by for example additional plant, more intensive use of equipment or plant maintenance failure and we cannot say for certain therefore whether complaints from future occupants may or may not arise in the future.

Answer to question 6

In our response above we do not acknowledge nor contend as quoted in question 6 that nuisance is likely to occur. We acknowledge that we cannot say for certain whether or not complaints may arise that is all. We do not suggest at all in our response that the proposal would lead to Statutory Nuisance under the Environmental Protection Act 1990 as suggested. (This is also the answer to last sentence in question 3).

Question 7

We are sorry but we do not understand this question.

Conclusion

We are of the view that substantial mitigation has been proposed by the applicant which renders the majority of the site to fall below the Lowest Observable Adverse Effect Level (LOAEL) as set out in the Noise Policy Statement for England (NPSE) and the perimeter to the north and factory facing as being above the LOAEL but below the SOAEL (Significant Observed Adverse Effect Level). The proposed dwellings in these localities would be categorised by the classification of the noise having an Observed Adverse Effect Level which could lead to small changes in behaviour or attitude and having to keep close windows for some of the time because of noise. The objective to which would be to mitigate and reduce to a minimum. The Noise Policy Statement for England (NPSE) concludes that where the noise impacts fall between the LOAEL and SOAEL 'all reasonable steps should be taken to mitigate and minimise adverse effects on health and quality of life while also taking into account the guiding principles of sustainable development.' The second objective of the NPSE (after the avoidance of significant adverse effects).

Our department therefore takes the view that it does not object to the details of the reserved matters scheme as it relates to the noise constraints and challenges on the site providing that the noise mitigation specified in a) to g) above is conditioned.

*Pro PG Planning & Noise: Professional Practice Guidance on Planning & Noise (Acoustics and Noise Consultants, Institute of Acoustics, Chartered Institute of Environmental Health)

The Council's Service Manager Built and Natural Environment (Building Conservation Officer) has comment following receipt of a Heritage Statement on 12 June 2019 as follows

Having looked at the proposals and the submission by the heritage consultant, my view would be that the bund and fence would cause a low level of harm to the setting of the buildings at Hazle Farm. This harm would be at the lower end of less than substantial harm and I would leave the weighing up of public benefit to you in this instance.

OFFICER COMMENTS

Further to the additional submissions made by Ornuu, these have been assessed by both the Council's Environmental Health Officers and the applicants, and the points raised have been assessed and covered. As such the conclusions at 6.48-6.50 of the Report stand.

CHANGE TO RECOMMENDATION

Minor changes to the list of recommended conditions to fully reflect the associated report.

Condition 8 has duplicated Condition 2 and should relate to the agreed glazing standards contained within the supporting documents and proposed plans. Condition 8 should read –

Development shall be carried out in accordance with the glazing specification details submitted within Figure 3 of the Noise Assessment Report by Wardell Armstrong dated March 2019.

Reason: To ensure adequate levels of amenity are maintained with those dwellings and to Comply with Herefordshire Core Strategy policies SS6 and SD1 and paragraphs 127 and 180 of the National Planning Policy Framework.

A referenced pre occupation condition regarding provision of waste facilities has been omitted in error. A Condition 9 is recommended stating –

Prior to the first occupation of the development hereby permitted, details of waste and refuge facilities serving plots 116-118 and 156-158 as shown on the drawings listed under Condition 1 of this Reserved Matters permission shall be submitted to the Local Planning Authority for written approval and made available for use prior to occupation.

Reason: To ensure suitable waste and refuge facilities are available and to comply with Herefordshire Core Strategy policy SD1.

(NB: The published update has been amended to include the following late comment received from Ledbury Town Council that was read to the meeting.)

Ledbury Town Council would like to make the following comments in respect of the above planning application

1. The Town Council wishes for their previous objections to be taking into account, whilst also taking into account the following:-
 - i. The developers have not taken local vernacular context into account in a meaningful way in so far as the dwelling designs are of a generic design proposal.
 - ii. The various house-types and designs are distinct for each of the categories (private, intermediate and rented) which does not comply with the design guide with insufficient integration with private ownership properties.
 - iii. There does not appear to be any evidence of Ledbury's rural environment having been taken into account as the boundary edge appear to be a hard edge rather than a tapering off of the density.
 - iv. This Council consider that the large "bund" is unnatural in its design and whilst we appreciate it is being used to reduce the view of the Cheese Factory it has a negative impact on the view towards the AONB from the Dymock Road.

182617 - PROPOSED RESIDENTIAL DEVELOPMENT OF 32 DWELLINGS OF WHICH 13 WILL BE AFFORDABLE HOMES, ECOLOGICAL CORRIDOR, SEPARATE PUBLIC OPEN SPACE AND PROVISION OF ACCESS ENHANCEMENTS TOGETHER WITH PARTIAL (ALMOST TOTAL) DEMOLITION OF FORMER RAILWAY BRIDGE AT LAND ADJACENT TO CAWDOR GARDENS, ROSS ON WYE, HEREFORDSHIRE,

For: Mr Jones per Mrs Caroline Reeve, 6 De Salis Court, Hampton Lovett Industrial Estate, Droitwich Spa, WR9 0QE

ADDITIONAL REPRESENTATIONS

The applicants' agent has provided a supporting statement to the proposals as follows –

Policy SS1 of the Core Strategy reflects that of the Framework, where a positive approach will be taken to development proposals, unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits or b) specific elements of national policy indicate that development should be restricted. Clearly, the site does not fall within any of the 'closed list' elements which restrict development. The applicants consider that the proposals are fully aligned to policy SS1. Moreover, and in light of the lack of 5 year housing land supply, SS1 is brought into sharper focus and the 'tilted balance' is fully engaged. The applicants have always maintained that there are no adverse impacts associated with the development that are so significant that they would indicate a refusal – either alone or cumulatively. The site is well-located within the town and offers sustainable travel options for new residents. There would be attendant social and economic benefits already set out in the planning statement – highlighting how uncontroversial the scheme is. It has been subject to numerous revisions and iterations over a significant period of time, in order to address officer's concerns and the applicants consider that the scheme should be approved without delay.

In respect of Policy SS7 of the Core Strategy, the position of the site relative to services and facilities of the town already means that travel behaviours are likely to be far more sustainable, with the option of walking and cycling being genuinely available - reducing the need to use cars. The site is not located on the best and most versatile agricultural land. The proposals incorporate significant ecology buffers and landscaping, contributing positively to biodiversity gain over time. The gardens associated with the dwellings are generally much larger than the industry standard, offering residents the opportunity to grow some of their own food. Each of the properties will have an excellent level of energy efficiency, with the adoption of the 'fabric-first' approach to insulation, thereby reducing the need for as much energy in the first place. The applicants consider they are very much aligned to policy SS7.

The Council's Planning Obligations Manager has provided clarification and background on an aspect of the commuted sums –

The contribution towards Hereford Hospital is included in the draft heads of terms as a response to a request from Shakespeare Martineau Solicitors who act on behalf of the Wye

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Valley Trust. The Wye Valley Trust run Hereford Hospital and this is where the contribution will be directed.

The doctors surgeries are operated by the Clinical Commissioning Group who have not commented on the application.

OFFICER COMMENTS

With regards to the applicants' comments on Core Strategy policies SS1 and SS7, Officers agree the proposal is policy compliant when assessment is made in respect of SS1 and SS7 as detailed within the Report. The detailed comments provide further outline on how and why the proposals satisfy these policies and represent both sustainable development and help contribute to addressing climate change.

NO CHANGE TO RECOMMENDATION