

ADDENDUM 1 – 22.10.2020

Item No: 8

Application No:	20/00273/FUL	Author	Maxine Ingram
Date valid:	16 June 2020	:	
Target decision date:	15 September 2020	☎:	0191 643 6322
		Ward:	Weetslade

Application type: full planning application

Location: Site Of Former Drift Inn Front Street Seaton Burn NEWCASTLE UPON TYNE

Proposal: Erection of 5no three bedroom houses and 5no four bedroom houses at the site of the former Drift Inn public house (Additional information solar study and revised site plan 10.07.2020 and noise report 25.09.2020)

Applicant: Northumbria Vehicles, FAO Mr Rod Purvis Northumbria Vehicle Co
Oliver House Front Street Seaton Burn NE13 6ES

Agent: Gradon Architecture, Mr Chris Allan NE40 Studios Main Road Ryton
NE40 3GA

RECOMMENDATION: Application Refused

Additional information – noise

The agent has provided additional information in response to the latest Environmental Health comments set out in the committee agenda.

Northburn Acoustics Response – 15.10.2020

The EHO has raised concerns that the dog barking was evident during both periods of monitoring, but that the early morning period appeared to be quieter. This is due to a phenomenon called sound masking whereby sounds appear quieter even though they are not. That is why I said that it was a subjective view. It had to be subjective, because the traffic noise was higher during the morning, so it was not possible to quantify the sound due to the dogs by measurement, even though the human ear can detect sound from the dogs.

The quantitative analysis was, therefore, based upon the afternoon measurements only, because the traffic noise at that time was low enough to be able to distinguish between the two sound sources. I have no evidence to suggest that noise due to dogs barking would be any different during the morning.

The EHO has stated that the rear gardens will be screened from the road and therefore the ambient noise levels will be lower. I do not dispute this, but it is not relevant because the level that triggers SOAEL is based upon an absolute sound level rather than a relative sound level. Also, it is based upon LAeq, and is averaged over the entire measurement period. Therefore, even though it did vary between 55dB and 62 dB, when the dogs were barking, there were also times when there was no barking, hence the sound level during those periods would be zero. The equation used to calculate the LAeq was presented in paragraph 5.1.4 of my report. The equation is fairly standard, and it is cited in BS4142:2014 as a means of determining the specific sound level of an intermittent sound source. The calculated LAeq value was determined by analysing the audio recording over a 30-minute period from 15:49:45 until 16:19:45; a marker was put on the data each time a period of barking began, and also when that barking ceased. Out of a total of 1800 data points (one for every second of the 30-minute period) it was evident that barking took place for 446 seconds in total, during that 30-minute period within the 1-hour afternoon feeding time. Furthermore, the 1-second LAeq for each of the 446 data points was recorded. Each 1-second LAeq was put into the equation starting with L1 and ending with L446. The time periods t1 to t446 are all 1 second, whilst the overall time period is 1800 seconds. The LAeq was evaluated over this 30-minute period when dogs were being fed, and it was assumed that this level of noise would continue over the entire day, i.e. every 30-minute period would be exactly the same as feeding time. This assumption errs on the side of caution, because if the dogs bark less frequently outside feeding time, then this would actually lower the LAeq value. This assumption is justified on the grounds that the objector specifically mentioned feeding times, thus inferring that barking noise is at its highest during those periods. The assessment shows, however, that even if the dogs bark all day with the same frequency as they did during feeding time, then the LAeq value is still below 50 dB.

I cannot comment on the number of dogs present during the survey period. As an acoustic consultant, I cannot generally expect third-parties to cooperate with the measurement process especially if they are opposed to the development, and for that reason it is my preference to do surveys on a random surreptitious basis. I can say, however, that the noise due to the dogs could be easily scaled up or down if the total number of dogs was known. In simplistic terms, doubling the number of dogs would result in a 3 dB rise in noise level.

With regard to bitches in season, I am not an expert, but it is my understanding that bitches come into season twice a year for a period of three weeks. I cannot comment on whether barking would increase or decrease during this period, but according to BS8233:2014 (planning applications) should be based upon annual average data rather than occasional events. This suggests that it need not be a determining factor.

With regard to habitable rooms at first floor level, the EHO seems to have ignored the fact that alternative ventilation has been suggested, which would mean that windows would not have to be opened for ventilation. This solution to a potential noise problem seems to be acceptable for plots 6-10 and is fairly standard practice.

I note that the EHO has used the word “may” when referring to statutory nuisance. I also note that the EHO has asserted that noise from dogs barking will be in the region of 40-45 LA_{max} even with the proposed acoustic screen. As stated previously, the sound level should be stated as LA_{eq} because it is an average. This is somewhat academic because, according to the World Health Organisation, few people are moderately annoyed by levels of 50 dB LA_{eq}, and few people are highly annoyed at levels below 55 dB LA_{eq}. I would say that the EHO should have concluded that the sound level in gardens due to dogs barking will be below the level at which few people are moderately annoyed, and significantly below the level at which few people are highly annoyed. This suggests that at 40-45 dB the noise level will not cause a significant adverse effect, and, as such, it is in accordance with paragraph 180a) of the NPPF.

The EHO has also stated “prolonged dog barking will give rise to high maximum noise levels and potentially result in causing disturbance to the future occupiers of this development”. However, the EHO seems to have ignored the noise mitigation measures suggested in my report. This is important because the EHO has also stated that paragraph 182 of the NPPF states that new development needs to be integrated effectively with existing businesses and community facilities and that existing businesses and facilities should not have unreasonable restrictions placed upon them as a result of development permitted after they were established. I do not dispute this, and to be fair, the applicant is not suggesting that the operation of the kennels should be curtailed in any way. In that sense the business is protected by paragraph 182 of the NPPF, which goes on to say “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 paragraph is clear in that new development needs to be integrated effectively with existing businesses, and that it is the responsibility of the agent of change (i.e. the applicant) to provide suitable mitigation measures. In other words, the dog kennel owner has nothing to worry about. In fact, there is an argument to say that the objection is invalid because there would be no loss of amenity to the objector. The agent of change has provided a bona fide noise assessment together with mitigation measures that would reduce the likelihood of justifiable complaints.

I note that in the final paragraph the EHO still refers to dog barking in the region of 55-62 dB. This is simply not true for the reasons that I have given above.

I am not an expert in planning law, but the way I see it is as follows. In any other situation noise would not be a valid reason to object to a C3 development on land adjacent to an existing C3 development. Is it not the case, however, that Meadow Cottage has been given quasi-commercial status by the issue of an animal welfare licence, without a change of use classification, i.e. it remains C3? I suspect that this is a problem for North Tyneside Council to resolve, because they realise that if the application is permitted, they cannot take action against the kennels on the grounds of noise, especially because they issued the licence, and yet they cannot lawfully object to C3 adjacent to C3 on the grounds of noise. I also suspect that the objector does not have grounds for objection.

The land has to be used for something, and C3 would be the most appropriate use given the existing C3 use on the adjacent site. The applicant has assessed noise due to dogs barking and has put forward mitigation measures in accordance with the agent of change principle. I can see no reason to object on the grounds of noise.

Manager for Environmental Health

I have reviewed the additional comments from the applicant dated 15th October 2020, I disagree that the dog barking will not give rise to potential statutory nuisance, which is the primary legislation that will be used should complaints be received if the development is permitted. The noise report averages the dog barking over a 30 minute period rather than considering the LAeq 1second levels which ranged from 55-62 dB.

The objector has raised concerns that on the dates during the monitoring a number of their dogs were not present in the kennels. They also outline that during times when the dogs are in season then the dog barking is more pronounced. The noise consultant advises that if the number of dogs was doubled then this would result in an increase of 3 dB, however the concern is that if more dogs are present then it is not just the maximum noise level that will be influenced but the duration of the dog barking which will be extended and result in further prolonged dog barking. There is also the possibility that if 1 dog is agitated this will result in the other dogs becoming agitated and more frequent barking during the day and possibly during the night period, especially during periods when the dogs are in season.

Although it is noted that mitigation in the form of glazing and an alternative ventilation system has been proposed as mitigation against the dog barking, there is no requirement for the future occupiers to use the ventilation provided and to keep their windows closed. Should the occupiers wish to open their windows then they will be subject to potentially prolonged dog barking which will result in them being disturbed, especially during the early morning when the dogs are fed at 6.30am, which is still during the night period. The evidence from the noise assessment is that during the 30 minute assessment there were 446 individual barks accounting for around 8 minutes of barking. The objector advised that not all dogs were present during the

assessment and therefore the barking could be more prolonged. This then occurs again during the afternoon for the second feed. I consider this frequency of noise would give rise to statutory nuisance and restrictions would be placed on the owner of the kennels under section 79 of the Environmental Protection Act via the service of a statutory abatement notice, if the development was permitted and complaints were received.

I would agree with the appliance that the gardens will be afforded some screening by a 2m acoustic fence, however, dog barking in the gardens will still be evident as levels will be in the region of 40-45 L_{Amax}.

It is my opinion that prolonged dog barking will give rise to high maximum noise levels and potentially result in causing a disturbance to the future occupiers of this development. Paragraph 182 of the National Planning Policy Framework states that new development needs to be integrated effectively with existing businesses and community facilities and that existing businesses and facilities should not have unreasonable restrictions placed on them as a result of development permitted after they were established. The noise assessment has shown that the maximum levels of noise from the dog barking will be in the region of 55-62 dB. I have concerns that the dog barking may result in significant adverse impacts for the proposed occupiers and give rise to statutory nuisance for the owners of the kennels, resulting in restrictions being imposed on them under the Environmental Protection Act 1990 and for this reason would recommend refusal of this application.

If planning consent is to be given, I would recommend the following:

Prior to development submit and implement on approval of the local Planning Authority a noise scheme providing details of the window glazing and sound attenuation measures to be provided to habitable rooms to ensure bedrooms meet the good internal equivalent standard of 30 dB(A) at night and prevent the exceedance of L_{max} of 45 dB(A) and living rooms meet an internal equivalent noise level of 35dB(A) and garden areas achieve a level of below 55 dBL_{Aeq} as described in BS8233:2014 and the World Health Organisation community noise guidelines.

Prior to occupation, submit details of the ventilation scheme for approval in writing and thereafter implemented to ensure an appropriate standard of ventilation, with windows closed, is provided. Where the internal noise levels specified in BS8233 are not achievable, with window open, due to the external noise environment, an alternative mechanical ventilation system must be installed, equivalent to System 4 of Approved Document F, such as mechanical heat recovery (MVHR) system that addresses thermal comfort and purge ventilation requirements to reduce the need to open windows. The alternative ventilation system must not compromise the facade insulation or the resulting internal noise levels.

HOU04

SIT03

Additional information – Meadow Cottage

The occupier of Meadow Cottage has also advised that the opening to install a further window in the south west elevation of their kitchen has commenced on site (17.10.2020). They have provided a photograph to confirm the commencement of this work.