

## ADDENDUM

<b>Application No:</b>	<b>21/01029/FUL</b>	Author	Rebecca Andison
Date valid:	13 April 2021	:	
Target decision date:	8 June 2021	☎:	0191 643 6321
		Ward:	Tynemouth

Application type: full planning application

**Location: Parking Bays Opposite 50 And 50B Bell Street North Shields Tyne And Wear**

**Proposal: Proposed use of part of the parking area opposite The Quay Taphouse, River Cafe and Dodgins Yard, to be used as additional external seating for customers of these businesses. External seating is to provide socially distanced amenity space and will feature a roadside barrier and waiter/waitress table services (AMENDED DESCRIPTION AND PLANS AND ADDITIONAL INFORMATION).**

Applicant: 55 Quay Limited, Mr Paul Sample Parking Bays Opposite 50 And 51 Bell Street North Shields NE30 1HF

Agent: ALCC Limited, Mr Andy Laurie Rake House Farm Unit 12 Rake Lane North Shields NE29 8EQ

### 1.0 Representations

1.1 1no. additional objection has been received. The additional concerns raised are summarised below.

- The latest report from the applicant's noise experts seems to imply that it is my own fault if I open my window or patio door and find it annoying that the noise impacts on my privacy and right to family life.
- When we purchased the properties there was no pub on the road for 240+ people to be talking, laughing, shouting etc. and the road noise was of no concern to residents as it already existed.
- This is a land grab of a public road for commercial purposes.
- There are still well in excess of 100 seats used daily with more stored on Western Quay.

### 2.0 Additional Information

2.1 The applicant has submitted a letter from Wardell Armstrong in response to the Manager of Environmental Health's comments. A copy of this letter is enclosed.

2.2 The Manager of Environmental Health has provided additional comments.

### 2.3 Manager of Environmental Health (Pollution)

2.4 I do not consider noise monitoring data utilised in 2012 application for flats can be considered representative of the current background noise levels.

2.5 The assessment of voices should be considered against statutory nuisance. Nuisance is based on case law which considers character of the area, frequency, duration etc, while British standards and guidance allow to consider the impact of noise on a normal person. This application will change the character of the area and will cause an intensification of the limited seating currently utilised by the restaurants.

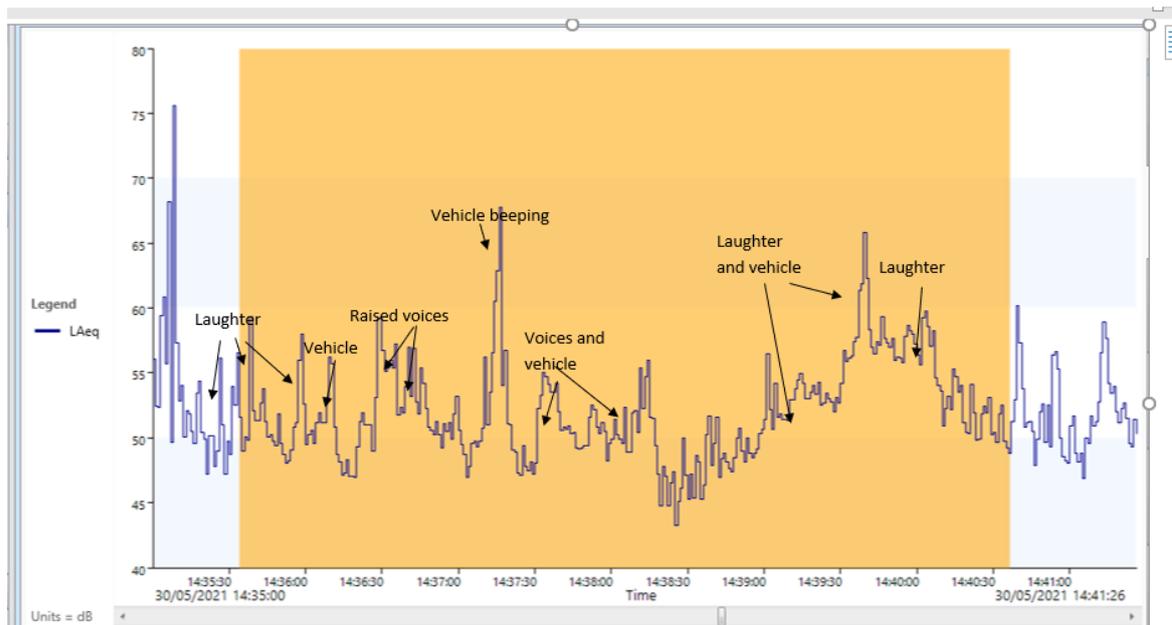
2.6 The applicant will have a defence on statutory nuisance of best practicable means for the noise and any change in character of the area would also need to be considered.

2.7 When considering character it considers the locality, which is a mixed residential/commercial area and the assessment of the new noise source from seating must consider the background noise levels.

2.8 Statutory nuisance assesses if the noise materially interferes with the enjoyment of a person's property. It cannot be argued that the resident should expect to keep his windows closed and on vent, during warm weather, when persons are enjoying the seating area. I would consider the need for residents to alter their behaviour and keep windows closed can be considered materially interfering with the enjoyment of their dwelling.

2.9 The level of noise is considered against the frequency and the duration. The duration of potential raised voices is to be restricted to 21:00 hours. The frequency of elevated noise will be dependent on users of the facility and will by its nature be variable and therefore more annoying particularly when residents wish to open their windows or use their balconies.

2.10 I would disagree with the comments that the noise monitoring levels carried out by Environmental Health were not representative as Euro football was on. Similar readings were made between 28 and 31 May 2021. I attach a sample of graph of sound recording with comments made for noise readings. This monitoring was carried out at same location as in June with windows partially open.



2.11 The internal noise readings in May are of persons laughing and conversing. It is not unreasonable behaviour by the users of the seating area that is experienced by the resident, only an annoyance due to the frequency it occurs. I therefore consider the readings made in June and May are representative of noise levels experienced internally at location ESR1.

2.12 On reflection I do agree that the temperature was not a factor with regard to the numbers of persons present. I would emphasise that a group of persons are more likely to have greater elevation in conversing than if two persons sitting at table, as was observed by the applicant's consultant.

2.13 I therefore consider internal noise readings made with windows partially open are representative of noise readings.

2.14 The consultant considers EHO approach was unreasonable as noise would be greater with windows open and they consider windows with vents only should be assessed. They also consider the noise levels experienced during Euro were not representative but exceptional.

2.15 I would refer to planning decision *May v Rother District Council* QBD 27 February 2014 [2014] EWHC 456, which went to the Queen's Bench on Appeal. This considered the impact of noise from the development upon the internal noise levels of properties with windows open and raised concern over the need to consider amenity as well as statutory nuisance.

2.16 The opinion of appeal court indicated open windows and open spaces could be considered with regard to statutory nuisance and when considering impact on amenity. It states "in the warmer evenings when the occupiers could reasonably expect to use their garden and have their windows open" was reasonable for assessing impact of general noise from an activity. The appeal court also indicated that there is a clear distinction to be drawn between the

existence of a statutory noise nuisance on the one hand and on the other the existence of an impact on residential amenity from noise which has not reached the level of a statutory nuisance or to which there may be some defence available to the creator of the nuisance. In other words, the standard required of an impact on amenity for instance from noise can be lower, so as to justify the refusal of planning permission.

2.17 I would therefore still consider that this application should be refused on amenity grounds and potential statutory nuisance.

2.18 The applicant has been critical of comparison of outdoor WHO noise levels against internal noise levels. There are no British standards or WHO guidance specifically produced for the assessment of voices.

2.19 WHO Community noise guidance sets internal and external levels based on anonymous noise e.g. traffic. BS8223 for properties is based on WHO and traffic noise, while BS4142 relates to commercial noise and utilises background against specific noise. None of the guidance and British standards are set for voices. They are therefore used to demonstrate what a normal person would be expected to consider annoying.

2.20 The standards and guidance are therefore used to measure impact noise upon the normal population.

2.21 Without the benefit of a specific recognised guidance note for assessment of noise from voices an assessment will be based on case law and any available standards or guidance available to obtain a subjective opinion on noise nuisance and amenity.

2.22 The internal noise levels used for houses recommended are based on predominant traffic noise. The noise from seating area is the predominant noise from noise monitoring carried out within the resident's flat.

2.23 Comparison with external rather than internal noise levels set by the WHO community noise from traffic with noise readings obtained during monitoring was to reflect that patio doors in the room were open and to consider more as an open balcony. If considered for internal noise with window open, then this would be considered annoying. Statutory nuisance cannot insist that resident keeps the window shut and during warm spells of weather the opening of windows will be necessary to maintain a pleasant temperature.