

Our ref: SU/MC/NT15423/0004

Date: 20th August 2021

Your ref:

Rebecca Andison
Planning Officer
North Tyneside Council

Dear Rebecca,

21/01029/FUL Quay Taphouse External Seating Area– Noise comments received on 22nd July 2021

Wardell Armstrong LLP have reviewed the recent comments made on 17th August 2021 by Environmental Health (EH) at North Tyneside Council. Please find our response to the comments raised below:

EH: I continue to have concerns regarding noise arising from the proposed external seating area for the customer of the Quay Taphouse, River Cafe and Dodgins Yard. The noise assessment has been undertaken at first floor of the Quay Taphouse at 1 metre from façade. It is noted that the monitoring was carried out over a 6 day period but the weather conditions appear to have been during a colder period when the outdoor seating area would not have been as busy.

WA: Our modelling assessments have assumed a worst-case (when the seating area is full), therefore, the assessment findings are robust. The temperature ranged between 15°C and 20°C degrees during the monitoring periods, and a review of historic weather conditions shows that the temperatures during the monitoring undertaken by EH were similar.

EH: The reviewed report compares the specific noise to ambient equivalent noise levels and has suggested that ambient is greater than the specific noise e.g. voices. If this was the case the noise would be inaudible which has not been demonstrated by the noise monitoring and sound recordings made.



Wardell Armstrong is the trading name of Wardell Armstrong LLP, Registered in England No. OC307138.

Registered office: Sir Henry Doulton House, Forge Lane, Etruria, Stoke-on-Trent, ST1 5BD, United Kingdom

UK Offices: Stoke-on-Trent, Birmingham, Bolton, Bristol, Bury St Edmunds, Cardiff, Carlisle, Edinburgh, Glasgow, Leeds, London, Newcastle upon Tyne and Truro. International Offices: Almaty and Moscow

ENERGY AND CLIMATE CHANGE
ENVIRONMENT AND SUSTAINABILITY
INFRASTRUCTURE AND UTILITIES
LAND AND PROPERTY
MINING AND MINERAL PROCESSING
MINERAL ESTATES
WASTE RESOURCE MANAGEMENT



WA: The comment made is not technically correct, ambient noise levels are captured over a period of time and noise levels can fluctuate during this period. There are expected to be periods when talking noise will be inaudible due to high ambient levels, but we also noted in our report that low level talking can be heard at the façade during lulls in ambient noise (dominated by traffic). However, the ambient noise levels at the receptors are for the most part greater than the noise from the seating area. This point is evident when reviewing the 2012 noise data for planning application 12/01745/FUL and our assessment.

Therefore, low level talking may be audible at times, but this does not necessarily follow that a significant noise impact will be felt at receptors, as our assessment demonstrates.

EH: Assessment of the impact of noise from the seating area would be considered under statutory nuisance and the methodology applied is based on case law and would suggest the specific noise is compared with the background noise level LA90, rather than the ambient equivalent noise level (leq) used by the consultant from readings made in 2011, or from the noise readings taken on the Thursday 5th August 2021 when they have indicated the seating would not be in use as the The Quay Taphouse was closed.

WA: The reference to the stated case law has not been provided, therefore, WA cannot comment on this. However, we understand that when determining statutory nuisance the EHO would consult relevant guidance and standards. At this point it is worth noting that the reference made by the EHO to assessing specific sound to background sound is likely to be in reference to BS4142:2014+A1:2019 'Methods for rating and assessing industrial and commercial sound' (BS4142). However, it should be noted that it would be incorrect to use this guidance for the sole purpose of determine statutory nuisance from people, as is clearly states in section 1.3 of BS4142 that; *'the determination of noise amounting to a nuisance is beyond the scope of this British Standard'*, an also that the standard is not intended to be applied to the assessment of sound from people.

Notwithstanding, Figure 1 of the 2012 noise data for planning application 12/01745/FUL does show a L_{AF90} level of 53dB at 1000 hours, when there was no



external seating area. This indicates that the sound level for talking at the sensitive receptor façade would typically be below background sound levels when assessing the whole operational period, as L_{A90} noise level would be expected to remain steady throughout the daytime period, in line with the L_{Aeq} levels.

EH: I would also query that ambient noise levels are representative for empty seating area as the seating area is utilised by 3 different commercial premises including Dodgins Yard and River Café, and it was indicated that only The Quay Tapouse was closed. No observations were made for the Thursday evening.

WA: We agree with this comment, as we were not aware at the time that the external seating area could have been used by Dodgins Yard and River Café to serve outside customers on the Thursday evening. However, the point is still valid when making the comparison with the 2012 noise levels.

EH: No background noise levels were taken throughout the noise monitoring period.

WA: Background sound levels (L_{A90}) are always taken during our surveys. The levels were not reported as they were not relied upon in our assessment. As agreed in the previous comment, L_{A90} noise levels are unlikely to be representative due to the existing seating area operations. Therefore, if background sound levels were to be considered, we suggest the background level during the 2012 noise monitoring would be more appropriate.

EH: The impact of the noise would also be considered with regard to general World Health Community noise guidance for internal noise and outdoor noise levels which gives guidance on levels of annoyance for daytime. These levels are based on anonymous noise only and is considered less annoying by its nature.

The WHO states for daytime noise levels for general enjoyment is 35 dB internally and 50dB for moderate annoyance and 55dB for serious annoyance for outdoor areas. As the patio doors were partially open on vent during the monitoring period carried out by Environmental health I would suggest the introduction of the seating area would be moderate annoyance.



WA: We have calculated, based on the seating area being fully occupied, that the typical noise level from patrons talking would be approximately 50dB(A) at the receptor façade. Therefore, this meets the lower external guideline noise level.

However, the comment from EH seems to confuse internal and external noise levels by stating that with patio doors open the resident would be moderately annoyed. The 50dB external guideline noise level for moderate annoyance should not be considered internally, regardless of the façade makeup. Furthermore, based on the 2012 noise assessment report acoustic ventilation was suggested for the apartments. This mitigation did not include having patio doors or windows open to ventilate the property. The specified acoustic ventilation would provide sufficient ventilation for the properties with all windows and doors closed. Therefore, by having the patio door open, the ventilation system is not being used as designed.

EH: Environmental Health carried out the noise monitoring at ESR 1 residential apartments at the Water Front Apartments between the 17th – 22nd June 2021 and the equipment was set up to run continuously with a trigger switch provided to enable the resident to make 5 minute sound recordings and to keep a record log. The noise monitoring has shown that voices of customers gave rise to noise levels peaking up to 68 dB, internally, with patio door partially open, and overall noise levels from loud voice ranged between 45-55 dB but on a couple of occasions the shouting of the customers did record as high as 63 dB and 68 dB; cheering, chanting and whistling was noted as giving noise levels of around 48 to 52 dB and the LAeq 1 hour internally was in the region of 51 dB. The real time noise monitoring has shown that it will be difficult to mitigate noise from customer voices. The voices were elevated with evidence of customers singing, cheering, whistling and shouting. There was also one occasion where customers using the seating area were playing loud music and the noise monitoring data would suggest that it would be difficult for the applicant to control the volume of noise from patrons using this area.

WA: Firstly, we note that reference has been made to the patio door being open when the monitoring was undertaken, this will significantly impact upon the acoustic performance of the façade. Due to the high ambient noise levels at the receptor, mitigation has been provided for the residents to ventilate the property without the need to open windows or doors. Therefore, the mitigation should be used as designed.



With the patio door or windows open the internal noise level would exceed guideline noise level, with or without the seating area in operation, hence the requirement for façade mitigation.

We disagree that the scenario presented by the EHO is typical for the seating area. The data was captured during the Euro 2020 football tournament when it would be expected that most external seating areas, attached to restaurants and bars, up and down the country would produce increased noise levels, but would not necessarily amount to statutory nuisance as they are very rare events. Our assessment period is considered more representative of the typical noise levels from the seating area throughout the year.

Although music was observed by the resident, this was not associated with TQT operations. It is considered that a Noise Management Plan for the seating area can be secured via a suitable noise Condition as part of any planning approval.

EH: The applicant refers to the Taphouse not playing music at the premises and this is noted, the noise monitoring confirmed that there was one occasion only where customers using the seating area were playing loud music and the resident confirmed it was not from the restaurants and for this reason I would suggest it is difficult for the applicant to control the volume of noise from patrons using the outdoor seating area.

WA: As set out above, it is considered that a Noise Management Plan for the seating area can be secured via a suitable noise Condition as part of any planning approval.

EH: The complainants log indicated that the majority of the noise was patrons using the outdoor seating area, although it is accepted that occasional noise did arise from the seating closer to ESR1; an extract from part of the log is shown below:



17/6/21	5.35	5.40	8	beginning to get noisy - large group in 5 mins
17/6/21	5.45	5.50	9	1/5 full - chants/whistles 5 mins
17/6/21	5.53	5.58	9	1 table making the noise furthest from us! 5 mins
17/6/21	6.02	6.07	9	Just 1 table still making noise 5 mins
17/6/21	6.35	6.37	10	Raucous singing NOT washing anywhere 2 mins
18/6/21	5.55	6.00	10	Group in Daddys Broke table - then left it was general conversation - intrusive 5 mins
19/6/21	5.40	5.45	9	can hear actual conversations. 30 mins
	5.50	5.55	9	

The noise monitoring carried out by Environmental Health was during the Euro 2020 football tournament and is therefore reflective of a busy period for the restaurants.

WA: We strongly disagree that monitoring undertaken during the Euro 2020 football tournament is reflective of a typical busy period and that assessment should be based on this data. We suspect and chanting, and shouting would have been football related and that during typical busy periods throughout the year this is unlikely to happen. We consider it more appropriate to consider the typical noise levels rather than events that take place every two to four years. Therefore, our assessment is considered robust in assessing the typical noise levels from the seating area.

EH: *The noise levels from the monitoring suggested raised voices for prolonged periods of time and for this reason suggested borderline nuisance. However, further evidence is required to verify the duration and frequency of the noise and for this reason the investigation is ongoing. The determination of whether the noise from the use of the outdoor seating area is established as a statutory nuisance is based on the frequency, duration and extent of the noise and this takes time to establish. The remit for statutory nuisance does not extend to noise arising from people in the street or vehicular noise in the street. Statutory nuisance can be established based on 1 complaint.*

WA: We agree, further evidence is required to demonstrate any nuisance, as the monitoring was undertaken during the Euro 2020 tournament which is not a frequent event. For this planning application, we believe our assessment provides a robust representation of the typical noise levels from the seating area and can be used in determining the application.



We understand statutory nuisance cannot be applied to people or vehicles in the street. However, the reference to noise arising from people in the streets was included to add context to the assessment. It highlights that these noise sources already exist, and they should not be confused with the noise levels from the seating area.

EH: The consultants report indicates the noise readings and observations that the noise from general voices with approximately half the tables in use was 50 to 55 dB which was corrected to 50dB due to general ambient noise levels.

I would accept these measurements for general talking however the photos show that the groups at tables were small with no more than 2 or 3 person at table from photo taken on the 3 August at 18:56 attached to report. My experience would indicate that the greater number of persons at tables, the greater the level at which persons will converse and raise their voices. This would not be considered unruly behaviour but general social interaction.

WA: The maximum number of patrons using the seating area was accounted for in our assessment. The noise model was calibrated for the monitoring location based on the seating area being half full (observed on a relatively busy evening). Then to consider the seating area when at full capacity, the source was doubled in the noise model. The full capacity scenario was used when assessing the potential noise impact and is therefore robust.

EH: I would therefore disagree with the suggestion that the noise readings made in June which had larger groups of persons was not representative of noise levels experienced but would be exceptional due to Euro Football. The noise readings are based on larger groups and are comparable to readings made in May which were not connected to Euro Football tournament.

WA: We strongly disagree, it is simply not correct to assume that unattended monitoring undertaken during the Euro 2020 tournament is representative when considering the planning application. This approach would not provide a true representation of the typical noise levels across the year.



Furthermore, no data or survey methodology has been provided for the May monitoring, therefore we cannot comment on the point raised. Notwithstanding, we consider our assessment to be robust and suitable for assessing the potential noise impact from the seating area.

EH: The original planning permission for properties at the Waterfront Apartments, Bell Street did include glazing and ventilation but this was for traffic noise which is anonymous noise, rather a busy outdoor restaurant environment. Voices are not anonymous noise and the sound recordings clearly distinguish voices. #

WA: Road traffic noise is significantly higher than the noise from the seating area, therefore when mitigating traffic noise (closing windows and doors, and opening vents), the receptors are in turn mitigating the talking noise. It has been established that the patio door was open and that the measurements were undertaken during an atypical event. Therefore, no significant weight should be applied to this because with doors and windows closed (to mitigate road traffic), during typical periods of noise from the seating area, the internal noise levels would be significantly less, and are unlikely to cause any internal noise impact to residents.

EH: Noise and sound recordings were also carried out in May 2021 during a warm spell which gave similar noise readings to those obtained in June 2021.

WA: No data, methodology or meteorological conditions have been provided for the May 2021 survey; therefore, no comment can be made on this.

EH: Even where acoustic glazing and ventilation is provided to ensure that internal noise levels in the habitable rooms meet the World Health Organisation levels of 35 dB for living rooms, residents may still wish to have open windows. The resident did state that they did choose to keep the doors and windows on the vent position due to the very warm weather conditions.

WA: It is the choice of the resident to open their windows and close them when required. However, mitigation measures have been provided to reduced noise from external source to below guideline noise levels.



EH: The Building Regulations Approved Document F clarifies that the ventilation schemes are sized for the winter period and that the control of thermal comfort is not within the control of building regulations and as such residents may need to open doors and windows for thermal comfort.

WA: Approved Document F mentions overheating once in the document in relation to reducing solar gains to control overheating. As quite rightly pointed out, the control of thermal comfort is not within the control of building regulations. On occasions residents may wish to open windows for further ventilation, however, this is at the choice of the occupant and at the detriment to the acoustic mitigation provided to mitigate ambient noise levels. Overheating occurrences are not the norm and therefore the amount of time in which the occupier may wish to open a window to control overheating would be low in comparison to the whole year.

EH: When determining whether noise gives rise to a statutory nuisance under the Environmental Protection Act 1990 the determination can be made on the basis that windows and doors can be partially open.

WA: As the properties have been designed to have windows closed to mitigate external ambient noise levels, it would seem unreasonable to apply a different test to another external source, especially when the noise from the seating area is significantly lower than the general ambient noise levels at the receptor façade.

It is our opinion that taking the EH approach would stack all the worst-case assumption up and test an unreasonable scenario, especially when considering how often the window may need to be opened to mitigate overheating and the likelihood of very high noise from the seating area coinciding with that specific period (as the data that was collected during the EURO 2020 tournament). This also assumes that the resident would not be annoyed by the higher road traffic noise levels from Bell Street during that time or use mitigation that has been provided.

Therefore, we consider it more appropriate to assess the potential noise impact with windows and doors closed and vent open during a more representative period.



EH: The background noise levels should be used to compare against specific noise associated with seating. The noise monitoring carried out by environmental health does provide the internal background noise level for the full duration of monitoring with window and doors open and closed. It was not possible to restrict to when windows were open so was not considered representative. Consideration was therefore given to general annoyance based on the WHO levels with window open. I would suggest that voices are intrusive and annoying to occupiers facing the seating area. The option is available for occupiers to shut the window but homeowners should be permitted to open windows without experiencing regular disturbance from the noise.

WA: For reasons given in this letter we generally do not agree with this. However, we do agree that residents should be permitted to open and close windows as required. For reasons highlighted in our response to the previous comment, regular disturbance is unlikely when taking into account all the contributing factors. As noise disturbance is unlikely to be regular and is also under the control of the resident. Therefore, noise impacts have not been found to be significant.

EH: It is considered that the external seating area will exacerbate the noise levels in the area resulting in more noise disturbance for local residents as the noise from voices is more distinctive than road traffic noise. The 5 minute sound recordings obtained in June 2021 indicated frequent vehicular noise but the frequency was noted as being every few minutes rather than every 30 seconds as suggested by the updated noise report. The sound recordings suggested that voices from customers were pronounced. Noise monitoring also carried out in May 2021 at the same location representative of ESR1 showed similar noise levels as those in June 2021.

WA: Our notes were taken during the attended survey, and during that time we could not establish a clear 30 second recording of noise from the seating area before a car interrupted the reading. We accept that there will be some period where cars are less frequent, but this does not detract from the fact that road traffic is the dominate noise source at the receptors. Also, our monitoring data is in keeping with the findings of the 2012 survey, which suggest road traffic is frequent and dominant.



EH: The noise monitoring equipment is installed for a period of time and the resident is asked to make notes of the noise and as such the evidence is obtained via the noise monitoring and sound recordings logged during the siting. The complainants observations were that the majority of the noise was from patrons using the outdoor seating area, and not from people walking past the monitoring location. There is currently only limited external seating areas provided at the restaurants close to building which will provide some attenuation. This additional seating area will subject the residential premises to increased levels of distinctive and sporadic noise from patrons using the seated area and noise from customer voices will be evident for a more prolonged period of time.

WA: We understand why the resident was requested to take notes of the noise sources, however, we question the timing and methodology of the survey and why this was not attended by an EHO, if the noise is of significant concern. Our assessment has found that representative noise from the seating area is unlikely to cause a significant noise impact at sensitive receptors.

EH: Occupants from the adjacent residential apartments should not be obliged to have to close windows and doors to mitigate against patron noise from this area, especially on warm summer evenings when the seating area use is likely to be busier. If approval is to be provided it will be difficult for the premises to control the noise from the patrons in the seating area.

WA: We agree that resident should be permitted to open and close windows as required. However, for reasons highlighted in our response to the previous comment, regular disturbance is unlikely when considering all the contributing factors.

It is considered that a Noise Management Plan for the seating area can be secured via a suitable noise Condition as part of any planning approval.

EH: The additional comments from the applicants noise consultant indicate that the ambient noise level within the area will already be elevated and for this reason I would emphasise that if planning consent is given for this seating area this will exacerbate the noise levels in the area resulting in more noise disturbance for local residents.



WA: We disagree, and our reports has clearly shown noise from the seating area to be significantly below the existing ambient noise levels. Therefore, there would be no significant change to the level or character of the ambient noise at sensitive receptor facades.

EH: The proposed use of 1.2m high timber fencing around the seating area afford will no acoustic screening of customer voices or amplified music played within the area. The seating area will be in use daily until 9pm and occupants from the adjacent residential apartments should not be obliged to have to close windows and doors for prolonged periods of time to mitigate against patron noise, especially on warm summer evenings when the seating area use is likely to be busier.

WA: We agree that the timber fence provides little noise reduction, and is not required based on our assessment. Our assessment findings are not suggesting that residents would need to keep windows and doors closed for prolonged periods. However, it should be noted that due to existing ambient noise levels (road traffic), this would be required to meet internal noise guideline levels. Hence why mitigation was implemented for the development.

EH: In addition the use of external lighting around the seating area will also extend its use during the hours of dusk. NPPF Paragraph 180 states that any new development should mitigate and reduce to a minimum potential adverse impact resulting from noise from new development and avoid noise giving rise to significant adverse impacts on health and the quality of life. I continue to have concerns that if this development is given planning consent then the noise from customers using the seating area will give rise to adverse impacts for neighbouring residents. There will be additional noise from the increased seating and external space from customers who in groups will have raised voices and for this reason I would therefore recommend refusal of this planning application.

If minded to approve I would recommend the following conditions:

NOI02

HOU03: 08:00 – 21:00 hours



Submit and implement for approval to the Local Planning Authority a noise scheme for the external seating areas detailing measures to be provided to minimise noise from patrons in this area, such as use of CCTV, signage and regular inspections, to be agreed and thereafter implemented.

WA: We agree that a Noise Management Plan for the seating area can be secured via a suitable noise Condition as part of any planning approval.

We trust the above is clear, however, if you have any questions please don't hesitate to contact us.

Yours sincerely

for Wardell Armstrong LLP

SIMON URQUHART

Technical Director

surquhart@wardell-armstrong.com