

Parish: Kirkby
Ward: Stokesley

Committee Date : 13 January 2022
Officer dealing : Mr Craig Allison
Target Date: 7 July 2021
Extension of Time agreed: 26 November 2021

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21/01348/FUL

Part retrospective permission for dust extraction installation and associated noise mitigation works

At: Burdon Limited, Station Yard, Station Road, Stokesley

For: Mr C Nicholson

The proposal is presented to Planning Committee as the site is of significant public interest

1.0 Site, context and proposal

1.1 The application site is currently occupied by Prodrive Joinery and Shopfitting Limited, within Stokesley Industrial Estate.

1.2 Prior to the submission of this application, the Local Planning Authority had served the owner with a Planning Enforcement Notice in regard to the unauthorised installation of a dust extraction system, on the 17 January 2020. The Enforcement Notice alleged the following:

"Without planning permission the installation of a dust extraction system and the erection of a wooden fence surrounding the dust extraction system".

1.3 This Enforcement Notice became effective on the 24 February 2020. No appeal of the Enforcement Notice has been made. However, the owner made an appeal against the refusal of planning permission ref. no.: 18/00447/FUL. This was submitted after the Enforcement Notice became effective.

1.4 Section 78, Paragraph 4AA of the Town and Country Planning Act 1990 (as amended) states the following:

"An appeal under this section may not be brought or continued against the refusal of an application for planning permission if -

- a) The land to which the application relates is in Wales
- b) Granting the application would involve granting planning permission in respect of matters specified in an enforcement notice as constituting a breach of planning control, and
- c) On the determination of an appeal against that notice under section 174, planning permission for those matters was not granted under section 177."

1.5 Therefore, given that an Enforcement Notice is now active and no timely appeal has been submitted against the Enforcement Notice an appeal on the grounds that any grant of planning permission would contradict an active Enforcement Notice served would be contrary to legislation set out in Section 78, Paragraph 4AA of the Town and Country Planning Act 1990 (as amended). Therefore, the appeal was not lodged due to it being contrary to Section 78 of the Town and Country Planning Act 1990 and subsequently the Enforcement Notice is still active.

- 1.6 Therefore, the applicant has re-submitted a revised planning application seeking planning permission for the retention of the dust extraction system to remove dust and particles from the workplace directly into a housed container. This application includes the submission of a noise survey to the required British Standard.

2.0 Relevant planning history

- 2.1 18/00447/FUL - Retrospective permission for the installation of new dust extraction system to remove dust and particles from the workplace directly into a housed container - Refused on 29 August 2019 for the following reason:

"On the basis of the information submitted, the Local Planning Authority cannot be satisfied that the proposal will not harm residential amenity with regard to noise and disturbance in accordance with Policy DP1. As such it is considered that the proposed development may result in a detrimental impact on neighbouring residential amenity which fails to accord with the requirements of Development Policy DP1."

3.0 Relevant planning policies

- 3.1 As set out in paragraph 2 of the NPPF planning law requires that applications for planning permission be determined in accordance with the Development Plan unless material considerations indicate otherwise. The law is set at Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990.

- 3.2 Relevant policies of the Development Plan and any supplementary planning policy advice are as follows;

Core Strategy Policy CP1 - Sustainable development
Core Strategy Policy CP17 - Promoting high quality design
Development Policies DP1 - Protecting amenity
Development Policies DP8 – Development Limits
Development Policies DP32 – General Design
Development Policies DP44 – Very Noisy Activities
National Planning Policy Framework
Noise Policy Statement for England

- 3.3 Hambleton emerging Local Plan was considered at Examination in Public during Oct-Nov 2020. Further details are available at <https://www.hambleton.gov.uk/localplan/site/index.php>
The Local Planning Authority may give weight to relevant policies in an emerging plan as advised in paragraph 48 of the NPPF.

4.0 Consultations

- 4.1 Kirkby Parish Council has commented on the application to state that the business in question is the same that was under an Enforcement Notice that was not complied with by the owner. The PC acknowledge that another noise impact assessment has been completed, however the noise emitting from the equipment, whilst in use, remains at the same level that it has done for the last four years. This equipment is being used at unsociable hours and for long periods of time. Therefore, the Parish Council wish to see the application refused.

- 4.2 Environmental Health (Residential Services) have reviewed the application and the noise assessment undertaken. The noise assessment has identified that without mitigation to the dust extraction system there will be a significant adverse effect from the noise of the plant on nearby residential properties. Therefore, additional mitigation should be required should enclosures not reduce the motor noise or re-radiated noise sufficiently.
- 4.3 Natural England has no comments to make in regard to the application
- 4.4 Environmental Health (Contaminated Land) have no comments to make in regard to the application.
- 4.5 A site notice was posted and neighbours were consulted on the application. Five numbers of representation from one address has been received with their comments summarised below:
- o The application should be refused planning permission as the sound survey undertaken to provide evidence of no detriment to amenity serves only to verify the previous refusal and Enforcement Notice served by the Council.
 - o The survey is not independent, is incomplete and despite all technical information should not be given credence as it is in no way accurate.
 - o The survey is based on background noise being comparable to sound levels if the extraction system is modified. Furthermore the background noise is inaccurate as this is due to a defective road surface and variable amount of transient traffic noise.
 - o The system has been in place for almost four years and despite refusal of a planning application and service of an enforcement notice the business continues to ignore the measures in place.
 - o A previous acoustic barrier fence had been erected around the unit but was recently removed, this had no effect and noise continued to destroy the amenity of the area which is made up of residential housing.
 - o The statement of operating hours is incorrect, as they operate before 8:00am and after 18:45 all day Saturday and Sunday and even on Bank Holidays.
 - o Sound levels have not been taken in the nearest residential properties to the site and therefore does not give a fair reflection of the issues on site.
 - o Prodrive lease the building from Reversionary Assets 2 and have set up a factory in a building when the lawful use of the building is a warehouse. Therefore, if planning permission is granted this is granting them consent for an industrial use adjacent to a residential use.
 - o The units are now enclosed with plywood with no air circulation and are a potential fire risk
 - o The temporary wooden structure is of a poor standard and over time will rot and disintegrate and not provide a solution to the noise problem.

- 4.6 An initial noise survey was undertaken which noted that there is harm caused to neighbouring residential properties without any mitigation undertaken. The report initially suggested that an enclosure be erected around the units to see if this mitigated any harm. An enclosure was erected around the unit and a further noise report was undertaken. Following submission of the amended noise report a further consultation took place.
- 4.7 Kirkby Parish Council commented stating that there is evidence from the local residents that the machinery is still causing disturbance, despite the enclosure and therefore the application should be refused.
- 4.8 Environmental Health (Residential Services)

November 2021 updated response:

Subsequent to my previous consultation response, a further noise assessment has been submitted to verify the effectiveness of the enclosure surrounding the motor units of the dust extraction system. With the construction of the enclosure in situ, the assessment identified an increase background sound level of 1dB when the extraction unit is running. An increase of this level is considered to have no adverse effect on neighbouring residential property. Confirmation has also been sought from the applicant that the extraction system can operate without overheating with the enclosure in situ. This has been confirmed. There is a maintenance door for the enclosure, which should only be opened for maintenance purposes, and not left in the open position when the ventilation system is in operation. In addition to my previous recommendation of restricting the hours of operation due to the noise assessment being undertaken based on the usage of the extraction system between 09:00 and 17:00, I would recommend the inclusion of the following:

- The doors to the enclosure remain closed when the extraction system is in operation. Doors should only be opened for maintenance purposes. Reason: In the interest of neighbour amenity

December 2021 additional advice:

Several of the objections refer to acoustic survey methodology carried out by Apex Acoustics. The survey follows assessment guidance found in the BS4142:20014+A1:2019 methods for rating and assessing industrial and commercial sound. This suitable for assessments of sound from fixed installations comprising of mechanical and electrical plant and equipment.

Data from the survey captures ambient sound which is typical for the area. Traffic noise and noise from elsewhere within the industrial estate are considered as part of the existing noise environment and is included within the assessment.

From this data the survey extracts the associated background sound levels also known as L90. This represents the underlying noise level that is present for 90% of the time within the sample. Road traffic noise and other burst of noise occur infrequently and would be captured within the remaining 10% of noise. The 10% value is not used further in the assessment.

The outdoor measurement location needs to be representative of both the ambient sound and residual sound at the assessment location. The residual sound is the ambient sound with the fan noise switched off. The location chosen by the acoustician

is representative of all nearest noise sensitive premises, has captured the ambient noise levels for that area and obtained a representative residual sound – with fan switched off to determine impact. The fan noise sampled at the time was with all aspects of the equipment in operation.

The L90 data is determined with the fan noise present and then with the fan noise absent to identify what impact sound from the fan has on the existing ambient noise levels. This also includes a penalty of +3dB which is added for sound which has characteristics such as starting and stopping which would make it more recognisable. Additional 1/3 octave band data was also obtained close to the extract system to look specifically at what sound wavelengths the fan was emitting.

The survey methodology is acceptable to the Environmental Health Service.

The first acoustic report (26th February 2020) submitted as part of the application identified that the extract ventilation did have an impact on the existing ambient noise environment. This was detrimental to local amenity and would be heard at the nearest noise sensitive properties. The levels did not meet the noise reduction targets requested by this Service. The report recommended specific mitigation measures that could be applied to the extract system to reduce noise emissions to an acceptable level. This was based on data taken from the 1/3 octave band data.

Mitigation measures were implemented by the applicant in the form of an acoustic enclosure.

A further acoustic assessment (23/09/2021) was carried out to determine if reduction in noise levels achieved by the mitigation had been successful. The ambient and residual noise levels were measured again in the same measurement position to allow for before and after data to be compared. This demonstrated that mitigation had been successful in reducing noise levels from the extract ventilation.

Objections raised refer to ongoing impact to residents. A noise complaint was received in 4/09/2017 regarding noise from Pro-Drive. This was investigated by the Environmental Health Service and led to a referral to the Planning Authority. No further noise complaints have been received from local residents or commercial units.

Allegations have been made that the applicant uses the business outside normal business hours. In the noise complaint received in 2017 officer notes did detail that the site was being regularly used until 19:00pm. The acoustic survey bases its assessment on the operational hours of 09:00 – 17:00 and is representative for those times only. If operations occur outside these hours, background noise levels sampled may no longer be representative and neither would the associated noise reduction. I would support the officer's previous recommendations regarding an 'hours of use' condition.

The level of noise reduction achieved through mitigation is acceptable to the Environmental Health Service and no longer has a detrimental impact on the local amenity that would lead to noise complaints.

In order to maintain this noise environment, I would also recommend that:

- the external extract system shall be acoustically screened for the for the lifetime of the development or as long as the extract system is in operation. The

enclosure shall be maintained at all times to achieve the acoustic reduction as detailed in the acoustic scheme dated 23/09/2021.

- the applicant is requested to submit a maintenance schedule to the local planning authority detailing how the dust extraction system shall be maintained for example changing of dust filters, motor units and emptying of the dust collection chamber. This should be based on manufacturers recommendations and supported by technical data. Systems which are inadequately maintained can put additional strain onto the fans / motor which can affect performance and increase noise emissions.
- The enclosure door shall remain closed during extract operation so as not to lessen the impact from the acoustic screening.

4.9 Two representations have been received from one address and their comments have been summarised below:

- o The extractor has now been enclosed by a wooden structure which appears to be temporary and a fire risk
- o The facility was designed for use outside and air cooled and therefore this will only result in issues and not resolve the noise matter.
- o The revised noise report was undertaken on the 15 September 2021, at the same day a mobile food kitchen was located approximately 15 metres away to which this unit was powered by a gas and portable generator. However, the report makes no mention of noise generated by this equipment and is therefore not a true reflection of the noise in the area.

5.0 Analysis

5.1 The main issues to consider in regard to this application include; i) the principle of development; ii) the impact of the development on the character and appearance of the area and; iii) the impact the development on neighbouring residential amenity.

Principle of development

5.2 In determining applications decisions should be taken in accordance with the development plan unless there are material considerations that indicate otherwise. The development plan for Hambleton is the Local Development Framework, of which Policy CP1 of the Core Strategy states development that would significantly harm the natural or built environment or that would generate an adverse traffic impact will not be permitted. Proposals would be supported if they promote and encourage sustainable development.

5.3 Policy DP8 states that permission for development will be granted within the settlement development limits provided that it is consistent with other LDF Policies. As the site is located within the development limits of Stokesley Industrial Estate it is considered this is a sustainable form of development. Furthermore, the proposed dust extraction system is required to ensure the function of the business and is situated adjacent to the existing business on the site. Therefore, in principle the development is considered acceptable subject to other material planning considerations.

Impact of the development on the Character of the Area

- 5.4 One of Hambleton's strategic planning objectives, set out in The Core Strategy Local Development Document (2007), is "To protect and enhance the historic heritage and the unique character and identity of the towns and villages by ensuring that new developments are appropriate in terms of scale and location in the context of settlement form and character."
- 5.5 Policies CP17 and DP32 require the highest quality of creative, innovative and sustainable design for buildings and landscaping that take account of local character and settings, promote local identity and distinctiveness and are appropriate in terms of use, movement, form and space.
- 5.6 The National Planning Policy Framework supports this approach and, at paragraph 134, states that planning permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions. Paragraph 132 sets an expectation that applicants engage with the local community in drawing up the design of their schemes:
- "Design quality should be considered throughout the evolution and assessment of individual proposals. Early discussion between applicants, the local planning authority and local community about the design and style of emerging schemes is important for clarifying expectations and reconciling local and commercial interests. Applicants should work closely with those affected by their proposals to evolve designs that take account of the views of the community. Applications that can demonstrate early, proactive and effective engagement with the community should be looked on more favourably than those that cannot."
- 5.7 The dust extraction system is located within the car park of the unit known as Prodrive, also partially screening the development is a 1-metre-high close boarded enclosure. The unit is visible from a public viewpoint perspective but is situated within an Industrial Estate and it is considered that this type of equipment is commonly located within industrial sites. The industrial unit is located to the rear, but when in the public car park of Prodrive and the adjacent unit of Jewsons the dust extraction system is visible. The unit is 6 metres by 1.3 metres and is located adjacent to the existing building. As the unit has been positioned adjacent to the existing building this ensures that the unit is a natural extension to the building and is of an appropriate scale not to cause any impact on the character and appearance of the area.
- 5.8 Furthermore, the 1 metre high close boarded fence does provide some screening to the unit in question and softens the impact that this has on the character and appearance of the area. The fence that has been erected around the unit is constructed out of plywood however the applicant has advised that this will have a waterproof layer added to the outside to provide water resistance. This will change the overall appearance and will further soften the impact by having a layer added to the fencing. It is considered appropriate to impose a condition to ensure this layer is added within two months following any decision being made by the Council. It is therefore considered that the unit does not cause any significant harm to the character of the area and is in accordance with the Council's Local Plan Policies.

Impact on neighbouring residential amenity

- 5.9 Policy DP1 states that all development proposals must adequately protect amenity, particularly with regard to privacy, security, noise and disturbance, pollution (including light pollution), odours and daylight.
- 5.10 The policy outlines that development must not unacceptably reduce the existing level of amenity space about buildings particularly dwellings, and not unacceptably affect the amenity of residents or occupants.
- 5.11 Policy DP44 states that noise sensitive development will not be permitted in areas where potential for harmful noise levels is known to exist. Development likely to generate harmful noise levels will be directed to appropriate locations away from known noise sensitive locations.
- 5.12 Paragraph 185 of the National Planning Policy Framework states decisions should also ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment, as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development. In doing so they should:
- (a) mitigate and reduce to a minimum, potential adverse impacts resulting from noise from new development - and avoid noise giving rise to significant adverse impacts on health and the quality of life.
- 5.13 The Noise Policy Statement for England defines three levels of noise:
- Significant observed adverse effect level: This is the level of noise exposure above which significant adverse effects on health and quality of life occur.
 - Lowest observed adverse effect level: this is the level of noise exposure above which adverse effects on health and quality of life can be detected.
 - No observed effect level: this is the level of noise exposure below which no effect at all on health or quality of life can be detected.
- 5.14 Within the Policy Statement it states that all reasonable steps should be taken to ensure mitigation is applied to ensure that any noise levels do not cause any significant observed effect level and reduce the level of noise to ensure it does not affect people's health or quality of life.
- 5.15 As part of the application a noise survey was produced. The findings of the assessment indicated that noise from the existing system exceeds the background sound level by 12db during the daytime at the nearest residential property. It was therefore considered that the noise impact from the unit is more likely to cause significant adverse effects upon neighbouring residential properties. This is considered to be Lowest Observed Adverse effect level, where it is considered that this affects the acoustic character of the area such that there is a small actual or perceived change in the quality of life. It is advised that at this level mitigation is needed to reduce the level of noise.
- 5.16 Therefore, in order to reduce the noise impact to a suitable level, a scheme of mitigation would be required. It was suggested that to reduce noise impact from the motor units that these be enclosed, and as the units require sufficient air flow to

operate, there would be requirements for attenuated ventilation to the envelope of each enclosure. Furthermore, if enclosing the units did not reduce the noise significantly then sound dampening paint to the unit casing or the installation of steel dampening pads should be carried out.

- 5.17 As the dust extraction unit was already installed it was considered that an enclosure should be installed and a further noise report undertaken to ensure that noise levels were reduced. The applicant undertook this work and enclosed the unit with 18mm timber plywood. Following any approval granted by the Council the timber plywood would be coated with a waterproofing layer; rockwool, mineral wool insulation between timber framework; heavyweight vinyl sheet to inner face. Within the acoustic report these additional changes to the plywood would not affect any noise performance currently recorded. Following the installation of the timber fence a further noise report was commissioned.
- 5.18 From measurements taken on site it shows that the enclosure erected around the unit has reduced the ambient sound level in the near vicinity to between 10-12db. Therefore, it is considered that the addition of the enclosure has mitigated the sound to the required level so that it does not exceed background sound levels. Therefore, with the proposed mitigation this reduces the level to no observed adverse effect level which states that noise can be heard but does not cause any change in behaviour, attitude or other physiological response. It would impact slightly on the acoustic character of the area but not such that there is a change in the quality of life.
- 5.19 As part of the development it is considered that conditions should be imposed to ensure that the current mitigation in place does not increase any undue harm on neighbouring residential properties. As the report provided only assessed noise impact during the daytime, then it is appropriate to ensure that the machinery is only in operation during the daytime to ensure that no noise impact is caused on residents in the evening. Therefore, it is considered appropriate to impose an operational time condition to ensure that neighbouring residential amenity is protected.
- 5.20 It was noted during the assessment of the application, that doors have been fitted to the plywood fence, and if opened this could result in causing an impact on neighbouring residential amenity. Therefore, it is reasonable to impose a condition to state that the doors shall remain closed at all times, and the doors should only be opened if maintenance of the equipment is required. To further ensure that noise levels are acceptable a further condition should be imposed to ensure that a maintenance schedule is kept to ensure that the unit is working effectively and no further changes are required to the unit. This would ensure that neighbouring residential amenity is protected.
- 5.21 Therefore, subject to the conditions described, it is considered that the development is in accordance with Policy DP1 and DP44 of the Council's Local Development Framework and the overarching principles of the NPPF.

Other Issues

- 5.22 It was also raised that the use of the site by Prodrive is an unauthorised use and therefore if permission was granted for the dust extraction system this would ensure a permanent industrial use on the site.

- 5.23 Within the objection received comments have been raised in regard to the acoustic survey methodology carried out by Apex Acoustics. The survey follows assessment guidance found in the BS412:20014 methods for rating and assessing industrial and commercial sound. This is suitable for assessments of sound from fixed installations comprising of mechanical and electrical plant and equipment.
- 5.24 Data from the survey captures ambient sound which is typical for the area. Traffic noise and noise from elsewhere within the industrial estate are considered as part of the existing noise environment and is included within the assessment.
- 5.25 From this data the survey extracts the associated background sound levels also know as L90. This represents the underlying noise level that is present for 90% of the time within the sample. Road traffic noise and other burst of noise occur infrequently and would be captured within the remaining 10% of noise. The 10% value is not used further in the assessment.
- 5.26 The outdoor measurement location needs to be representative of both the ambient sound and residual sound at the assessment location. The residual sound is the ambient sound with the fan noise switched off. The location chosen by the acoustician is representative of all nearest noise sensitive premises, has captured the ambient noise levels for that area and obtained a representative residual sound, with the fan switched off to determine impact. The fan noise sampled at the time was with all aspects of the equipment in operation.
- 5.27 The L90 data is determined with the fan noise present and then with the fan noise absent to identify what impact sound from the fan has on the existing ambient noise levels. This also includes a penalty of plus 3dB which is added for sound which has characteristics such as starting and stopping which would make it more recognisable. Additional 1/3 octave band data was also obtained close to the extract system to look specifically at what sound wavelengths the fan was emitting. Based on the methodology undertaken by the acoustic engineers the Council's Environmental Health service have reviewed this further and consider this to be an acceptable survey of the unit.
- 5.28 In 1981 planning permission was granted under reference 80/1599/EUC for the "Use of land and part of the existing building for general industrial purposes and storage of engineering equipment". This was an application for the storage of engineering equipment together with a minor amount of cleaning and reconditioning of equipment and use of lathes and drilling machines. This application split the building into two uses. Ayton Engineering (Prodrive part) as a workshop/general industrial and DAB Chemicals (Jewson) for storage of equipment. The application form also states Existing Industrial use is nil and the Proposed Industrial use is 2000sqft. Storage existing; 10500sqft and proposed; 3500sqft. Therefore from 1981 the building was split into two and had two uses operating from the site; storage and industrial use.
- 5.29 Then in 2007 planning permission was granted under reference 07/00189/FUL for the "Replacement roof, wall cladding and alterations to windows and doors at existing industrial unit". The development included removing the first and ground floor partitioning to make it one unit. It also involved removing the office within the building. On the application form it states that the type of business is to be industrial use and storage; as the use which was previously approved. However, this was to be tied in across the whole unit.

- 5.30 No further permissions have been granted since the 2007 permission. The unit has now been split again into two with the rear of the site being used as industrial (Prodrive); B2 use and the front by Jewson as a builder's merchant; B8 use. Therefore, no material change of use has occurred in regard to the building and it is used as per the previous planning approvals. Therefore, in the view of the Local Planning Authority no breach of planning control has occurred.

Planning Balance

- 5.31 The dust extraction system that has been installed was initially considered to affect neighbouring residential properties due to noise caused by the unit. However, during the course of the application the applicant has undertaken mitigation measures which have resulted in a reduction in noise levels to what is considered to be an acceptable level in terms of residential amenity. Furthermore, the site does not cause significant harm to the character and appearance of the area and is considered to be in accordance with the Council's Local Plan Policies and the overarching principles of the National Planning Policy Framework.

6.0 Recommendation

That subject to any outstanding consultations the application be **GRANTED** for the following reason(s):

1. The permission hereby granted shall not be undertaken other than in complete accordance with the drawing(s) numbered Layout Plan; Ductwork Plan and Location Plan; received by Hambleton District Council on 12 May 2021; unless otherwise approved in writing by the Local Planning Authority.
2. The acoustic enclosure by way of a timber enclosure as shown in the amended Report received by Hambleton District Council on the 28 September 2021 shall be suitably maintained whilst the dust extraction unit is in operation and the door providing access to the unit shall be kept closed when not being used in connection with maintenance.
3. The dust extraction system shall not be operated on the premises outside the hours of 09:00 and 17:00 hours.
4. Within three months of the date of this decision, the waterproofing layer set out in the submission is to be provided to the plywood fence surrounding the dust extraction system.
5. A log of all maintenance undertaken on the dust extraction system shall be kept on site for inspection by the Local Planning Authority as required.

Reasons:

1. In order that the development is undertaken in a form that is appropriate to the character and appearance of its surroundings and in accordance with the Development Plan Policy(ies) CP16 and DP32;.

2. To ensure that the unit does not affect the occupiers of the neighbouring property in accordance with Policy DP1.
3. To ensure that the dust extraction system does not cause a noise and disturbance to local residents in accordance with Policy DP1
4. To ensure that an appropriate layer is added to the plywood fence which would lessen its impact on the character and appearance of the area and is in accordance with Policy CP16 and DP32.
5. To ensure a maintenance log is kept on the site to ensure that the equipment is maintained to ensure no defects result from lack of maintenance which could result in causing harm to the neighbouring residential amenity in accordance with Policy DP1.