

## **Development Control Committee 4 December 2019**

### **Planning Application DC/19/1392/VAR – Land off Briscoe Way, Lakenheath**

**Date** 22 July 2019 **Expiry Date:** 5<sup>th</sup> December 2019  
**Registered:**

**Case** Gareth Durrant **Recommendation:** Approval  
**Officer:**

**Parish:** Lakenheath **Ward:** Lakenheath

**Proposal:** Amendments to condition 20 (measures to mitigate noise impacts) of planning permission DC/13/0660/FUL for the 67no. Dwellings (including 20 affordable dwellings) together with public open space, as amended. The amendments proposed to condition 20 are full removal of sub-parts A (ii) and B.

**Site:** Land off Briscoe Way, Lakenheath

**Applicant:** Bennett Homes

**Synopsis:**

Application under the Town and Country Planning Act 1990 and the Planning (Listed Buildings and Conservation Areas) Act 1990 and associated matters.

**Recommendation:**

It is recommended that the Committee determine the attached application and associated matters.

**CONTACT CASE OFFICER:**

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## **Background:**

**This application is referred to the Development Control Committee as the recommendation to grant planning permission is contrary to the views of Lakenheath Parish Council.**

**The application is recommended for conditional APPROVAL.**

## **Proposal:**

1. The application proposes amendments to the wording of one condition attached to planning permission reference DC/13/0660/FUL. The application is submitted under Section 73 of the Town and Country Planning Act 1990 (as amended) which sets out the powers for conditions to be modified after planning permission has been granted.
2. The 'parent' planning permission in this case granted full consent for the construction of 67 dwellings at the site and was the subject of a S106 Agreement and 25 planning conditions. The planning permission is dated 24<sup>th</sup> October 2018 and the development is yet to be commenced. Furthermore, no application has been received to approve details reserved under 'pre-commencement' conditions. The planning permission will expire in October 2021, unless lawfully commenced in advance.
3. This application proposes amendments to the wording of condition 20 of this planning permission. The condition was attached to the decision notice as follows:

*A. No construction for any dwelling shall commence until details in respect of each of the following has been submitted to and approved in writing by the Local Planning Authority:*

*i) Details of the development that demonstrate that for each unoccupied dwelling and its associated sound insulation that noise levels with windows closed shall not exceed a daytime level of 35 Db (16hrs) within living rooms between 07.00 and 23.00 hours, and a night-time level of 30 Db laEQ (8hrs) within bedrooms between 23.00 and 07.00 hours, using the methodology advocated within BS 8233:2014 'Guidance on sound insulation and noise reduction for buildings' (2014). The development shall adopt the proposed sound insulation measures as stated, and;*

*ii) Details of a measurement and assessment methodology for demonstrating compliance with the limits set in condition 1) i), including the identification of specific properties where monitoring shall take place. This methodology shall include measurements within more than one dwelling.*

*B. Prior to first occupation, a suitable qualified noise specialist shall demonstrate compliance with the noise criteria detailed in condition*

A) i)  
(above) using the measurement and assessment methodology as advocated in condition A) ii) (above) and during periods of normal flying operations at RAF Lakenheath and RAF Mildenhall. The findings of the compliance assessment shall be submitted to and approved in writing by the Local Planning Authority to occupation of the dwellings.

4. The reasons for the condition were stated as follows:

*To protect the amenities of the internal spaces of the approved dwellings and flats from the potentially adverse effects of noise from passing military aircraft, in accordance with policy DM2 of the West Suffolk Joint Development Management Policies Document 2015, and the National Planning Policy Framework.*

5. Planning permission is sought to vary the requirements of the imposed condition to remove subsection ii) of Part A of the condition and remove part B in full. This would leave the 'as amended' condition as follows:

*No construction for any dwelling shall commence until details in respect of each of the following has been submitted to and approved in writing by the Local Planning Authority:*

*i) Details of the development that demonstrate that for each unoccupied dwelling and its associated sound insulation that noise levels with windows closed shall not exceed a daytime level of 35 Db (16hrs) within living rooms between 07.00 and 23.00 hours, and a night-time level of 30 Db laEQ (8hrs) within bedrooms between 23.00 and 07.00 hours, using the methodology advocated within BS 8233:2014 'Guidance on sound insulation and noise reduction for buildings' (2014). The development shall adopt the proposed sound insulation measures as stated.*

6. All other conditions of the planning permission and the S106 Agreement completed under the 'parent' planning permission would remain unchanged, but would need to be repeated on any potential planning permission granted to vary condition 20.
7. At the point of its submission, the application also requested deletion of the elements of subsection i) of Part A that refer to night time noise levels. However, the applicant has since confirmed this particular element of the proposals has been withdrawn.
8. The applicant has provided a statement to explain and justify their requested amendments to condition 20. This is as follows:
- Bennett Homes' acoustic consultants (Adrian James Acoustics Limited) submitted a number of technical reports during the planning application process that led to the granting of planning permission DC/13/0660/FUL on 24 October 2018.
  - The Technical Report 10975/1 dated 11 March 2014 (included with this

application) included a number of recommendations in relation to the construction of the dwellings and these were updated in the Technical Memorandum dated 30 March 2017 (included with this application). The Adrian James' memorandum recommends the noise mitigation measures required to achieve a daytime noise level of 35dB and sets out the specification of such measures. These involve changes to the dwelling construction (including mitigation measures relating to external walls, roofs, glazing and ventilation) that can be incorporated with certainty and uniformity throughout the dwellings, and Bennett Homes is happy to comply with this.

- Paragraph 2.4 of the Adrian James Technical Memorandum of 30 April 2018 (included with this application) emphasises that the precise detailed design of sound insulation for every house is something that is suitable to be dealt with by way of planning condition. Adrian James Acoustics' assessments demonstrated that such planning conditions can be adhered to.
- Part A(i) of condition no. 20 requires details of the development to be submitted and approved in order to meet certain noise levels. It is through this process that the local planning authority can scrutinise such measures and satisfy themselves that the noise levels set out at condition no. 20 can be secured.
- The mechanism to agree a specification for noise reduction measures prior to the commencement of development and obligation to implement those measures is adequate to secure this mitigation and outcomes desired by the local planning authority. There is no evidence before the local planning authority which would support the view that this cannot be done successfully through robust design.
- In addition, Adrian James Acoustics' technical memorandum of 30 March 2017 noted that the noise contour levels published by the Ministry of Defence in the noise contour report (RAF Lakenheath: military aviation noise contour report (2017) exceed those that they had measured at the application site and published in their report 10975/1 and also exceed the levels reported in a previous MOD assessment for nearby locations. Nevertheless, the MOD report indicates that the approved site is in the quietest location bordering the village, adjacent to the 66dB noise contour, and in a lower band than another recently approved site in Lakenheath.
- Bennett Homes are concerned that pursuant to two of the three legal tests established in *Newbury DC v Secretary of State for the Environment* [1978] 1 W.L.R. 1241 the current wording of condition no. 20 is not imposed for a "planning" purpose and is unreasonable.
- For the reasons set out in detail above, Bennett Homes consider that part A(i) of condition no.20 is entirely adequate to secure satisfactory mitigation in respect of noise levels. In Bennett Homes' view this part of condition no. 20 serves a "planning" purpose. However, the additional requirement for post construction monitoring and reporting

does not serve a “planning” purpose as it does not serve to secure adequate mitigation is delivered over and above part A(i) of condition no.20. It has been demonstrated through technical reports that mitigation measures can be delivered and part A(i) of condition no.20 serves to ensure that satisfactory mitigation is delivered as part of the proposed development. The details that are submitted to discharge this condition will need to be approved by the local planning authority and that is the stage for the authority to satisfy themselves that they are adequate to secure the noise levels set out in condition no. 20.

- Bennett Homes also considers the imposition of requirements for post-construction monitoring and reporting are unreasonable. As set out above, part A(i) of condition no.20 is adequate to secure the mitigation that is required by the local planning authority and there is no sound reason for condition no. 20 imposing additional obligations on Bennett Homes.
- Bennett Homes considers that such requirements could cause substantial delays between the construction of dwellings and the securing of local planning authority approval pursuant to part B of condition no. 20 which creates the real risk of impacting the deliverability of the development. As with all residential housebuilders, Bennett Homes invest substantially in the construction of the dwellings on its sites and is not in a position to leave these products standing vacant for a number of weeks or even months awaiting the approval of the requirements of part B of condition no. 20 in writing from the local planning authority. We have doubts as to whether plot purchasers would agree to commit to exchange contracts conditionally on the approval of such matters or whether Bennett Homes would be prepared to contract unconditionally with plot purchasers and set a date for completion without this approval being secured from the local planning authority beforehand. Bennett Homes consider the imposition of such a delay post-construction of residential dwellings before they can be occupied to be wholly unreasonable.
- Paragraph 55 of the National Planning Policy Framework is clear that planning conditions should be kept to a minimum and only imposed where they are “necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects”.
- In this regard we note Paragraph: 005 Reference ID: 21a-005-20140306 of the Planning Practice Guidance (PPG) states that conditions which place an unjustifiable and disproportionate financial burden on an application “will fail the test of reasonableness”.
- In addition, we draw the local planning authority’s attention to Paragraph: 006 Reference ID: 21a-006-20140306 of the PPG which sets out that “conditions that unnecessarily affect an applicant’s ability to bring a development into use, allow a development to be occupied or otherwise impact on the proper implementation of the planning permission should not be used”.

- The same paragraph sets out that “[a] condition requiring the re-submission and approval of details that have already been submitted as part of the planning application is unlikely to pass the test of necessity”. It is Bennett Homes’ position that requiring further details of the effectiveness of noise mitigation measures to be submitted following the earlier approval of mitigation measures by the local planning authority is akin to this and is simply not necessary.
- We also consider that condition no. 20 does not serve any practical purpose as drafted. Whilst part A(ii) and part B of condition no. 20 requires (in the view of Bennett Homes unnecessarily) post construction monitoring and reporting there is nothing in condition no. 20 that requires further work or mitigation measures to be imposed to secure the noise levels set out at condition no. 20 A(i). This requirement serves no useful purpose and for the reasons set out above is unnecessary, unreasonable and does not serve any “planning” purpose as a result. Bennett Homes’ technical consultants have already demonstrated the types of mitigation that are deliverable and Bennett Homes remains committed to complying with part A(i) of condition no.20 to deliver acceptable noise levels for occupiers of the dwellings that it wishes to construct on the site.

#### **Application Supporting Material:**

9. The following documents have been submitted to support this application:
  - Application form (including ownership certification)
  - Site location plan.
  - Cover letter explaining the nature of the request to amend the condition wording and the reasons behind it (paragraph 8 above).
  - Copies of the noise assessment material and other noise related advice submitted to the Council for consideration as part of the ‘parent’ planning permission DC/13/0660/FUL.

#### **Planning History:**

10. Full planning permission granted in October 2018 for construction of 67 dwellings. Application DC/13/0660/FUL refers. This is the ‘parent’ planning permission for this application under Section 73 of the Act. A copy of the planning permission (which sets out the conditions) is attached to the Committee papers as Working Paper 1.

#### **Consultations:**

11. The planning application was the subject of a single round of consultation which commenced at the end of July this year. The following is a summary of all responses received;
12. **Defence Infrastructure Organisation** – The DIO comment that the noise assessment carried out in 2014 was insufficient to assess the noise at the site given its very brief assessment period of 6 hours on a day in

February 2014. In this regard, they note that condition 20A(i) of the planning permission requires further assessment prior to construction rather than post construction.

13. It appears that a further assessment (Technical Memorandum M001A) of the most recent MANCs was carried out in 2017 and in the applicant's rebuttal to the parish council objections they state that this recommends increased acoustic glazing specification and mechanical ventilation for the development. However in the memo itself it details glazing sound reduction performance figures for acoustically treated glazing and passive ventilators and only suggests that mechanical ventilation may be suitable. There is also an assumption that as the site sits within the 66-72 dB LAeq16hr contour it has been taken as having a predicted level of 67 dB and the levels of mitigation for glazing and ventilation have been based upon this in order that the target noise level of 35 dB LAeq16hr for living rooms can be achieved. In the absence of any further prolonged noise monitoring, if the higher end of the 66-72 dB contour is used the sound reduction performance for the Pilkington Optiphon acoustically treated glazing proposed would still suffice but I would recommend that mechanical ventilation systems are incorporated into the dwellings to minimise disturbance. This should also reduce the level of disturbance from night flying when this takes place. Therefore it may be possible that the conditions could be amended as requested but I would suggest that the applicant would need to adhere to the above.
14. As such MOD have no particular concerns about the removal of part (B) or (A) (ii) of condition 20 related to the requirement for a noise verification report.
15. The DIO did also provide comments and express concerns about the initial proposals to remove the elements of condition 20(i) which referred to night time noise levels, but these comments are not reported given the applicant has withdrawn those specific proposals from the application.
16. **Suffolk County Council (Development Contributions Manager)** – referred to the planning obligation secured under the related planning permission DC/13/0660/FUL and advised the planning obligations must be re-secured under this S.73 application if the Council resolves to approve it.
17. **West Suffolk (Public Health and Housing)** Confirms the technical (noise) reports submitted adequately demonstrate that with the proposed acoustic mitigation construction methods installed, the day time internal target level of 35dBA, measured as a LAeq16 hr level with windows closed and other forms of ventilation provided, will be met. The service had no adverse comments to make regarding the request for removal of the post construction testing requirement as the reports provide adequate reassurance that under typical conditions the noise limits will be met.
18. The service did express concerns about the proposals to remove controls over night time noise levels from the condition, but those comments are not reported given the applicant has withdrawn those specific requests

which no longer form part of the application.

19. **Environment Agency, Natural England, Suffolk County Council (Growth, Highways and Infrastructure team and the Flood and Water Management Team), West Suffolk (Environment Team) and Lakenheath Internal Drainage Board** – wrote to confirm they did not wish to comment on the proposals.

### **Representations:**

20. The planning application was the subject of a single round of consultation which commenced at the end of July this year. The following is a summary of all responses received;
21. **Lakenheath Parish Council** – “strongly objects” and provides the following relevant comments to support those objections:
- If this condition is relaxed it will set a precedent for the future. This will then allow for other developments, including that of the potential school, to request the same withdrawal.
  - Lakenheath Parish council would remind you that the condition within the approval notice was imposed initially by the DIO for good reason. To comply with BS8233 to ensure full compliance with the NPPF and WHO guidelines. They were put there for a purpose - to safeguard future residents - especially children from sudden and adverse noise. It was originally written into the statement of common ground prepared for the Single Issue Review and signed off by both the DIO and FHDC. This is clearly reiterated in the DIO letter of 02.02.2018 to FHDC.
  - It is impossible to predict future USAF operations. Military operations by their nature are unpredictable and override everything in terms of defence. Therefore, the highest standards of Environmental Protection must be retained for the benefit of the community.
  - Lakenheath Parish Council continue to support the existing approval conditions that FHDC planning required.
  - Noise assessment work carried out on all of the major developments essentially agreed that internal noise levels can be controlled by providing the enhanced sound insulation in the buildings constructions, closing the doors and windows and providing attenuated alternative means of ventilation and cooling. The acceptability of these solutions should continue to be a pre-requisite for establishing the suitability of any proposal. Lakenheath Parish Council object to any attempt to put aside these important environmental protection planning conditions.
22. Concerns expressed by the Parish Council about initial proposals to remove the night time noise level requirements from the condition are not reported given that the applicant has withdrawn that particular aspect of the proposals from the application.



23. Two letters were received from **local residents objecting** to the proposed development. The issues and objections raised are summarised as follows (in no particular order);

- The developer should comply with the terms of the approval notice.
- The Inspectors report received following the SALP examination reinforced the need to comply with BS8233 to ensure full compliance with the NPPF and WHO and the insistence of the DIO (ref Statement of Common Ground FHDC and DIO dated 18<sup>th</sup> August 2017).
- This is cutting corners to save on costs.
- If approved, it will set an undesirable precedent for the future, including the potential school.
- The F35's will add extra noise.

### **Policy:**

24. The Development Plan relevant to the old 'Forest Heath' part of the West Suffolk area comprises the policies set out in the Single Issue Review of Core Strategy Policy DM7 (adopted September 2019), the Site Allocations Local Plan (adopted September 2019), Joint Development Management Policies document (adopted February 2015) and the Core Strategy Development Plan document (adopted May 2010). The following policy is applicable to the proposal:

- Policy DM2 (Development Principles and Local Distinctiveness) from the Joint Development Management Policies document

25. There are no policies in the Core Strategy (including the Single Issue Review) or Site Allocations Local Plan documents which are directly relevant to the outcome of the specific proposals included in this planning application. There are many policies in these documents (and further Development Management policies) which would be relevant to the context of the 'parent' planning permission and the various conditions and S106 obligations that need to be re-imposed if planning permission is granted. Accordingly, these policies are not included in the report, but will be listed as relevant policies on the final decision notice.

### **Other Planning Policy:**

#### National Policy and Guidance

26. The Government has recently (February 2019) updated national planning policies and has published a revised National Planning Policy Framework (hereafter referred to as the Framework or the NPPF). The policies set out in the Framework are material to the consideration of this planning application and are discussed in the 'officer comment' section of this report.

27. The Planning Practice Guidance (PPG) is an on-line Government controlled resource which assists with interpretation about various planning issues and advises on best practice and planning process. Relevant advice from the Planning Practice Guidance is discussed in the 'officer comment'

section of this report.

**Officer Comment:**

28. The application proposals are highly specific insofar as they propose amendments to a single condition attached to an existing planning permission. The condition in question seeks to protect the occupiers of a new housing development against the potentially adverse effects of aircraft noise by securing defensive noise mitigation measures as part of the construction of the dwellings. Accordingly, the issues raised by the proposals centre upon matters of noise impacts to future occupiers of the approved housing development, particularly in the context of the proposed amendments to the wording of the condition. All other matters and issues were settled under the 'parent' planning permission DC/13/0660/FUL and cannot be revisited as part of this application.

National Planning Policy and advice.

29. The Framework states that planning decisions should ensure that a site is suitable 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. It also advises that, in doing so, planning decisions should (inter alia) avoid noise giving rise to significant adverse impacts on health and the quality of life. In the context of achieving well designed places, the Framework confirms that planning decisions should create places with a high standard of amenity for existing and future users.
30. With regard to planning conditions, the NPPF advises these should be kept to a minimum and only imposed where they meet the 'six tests'. These are that the condition must be necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.
31. The Planning Practice Guidance includes a whole section on 'Noise'. Given the fact that the application seeks to vary a condition of an existing planning permission and the principle of the proposed development (including in relation to its noise context) is not at stake, the advice in relation to 'noise' is of limited relevance and not summarised here.
32. The Practice Guide also advises with respect to planning conditions. In the context of the current application proposals, the following extracts are relevant:
- The objectives of planning are best served when the power to attach conditions to a planning permission is exercised in a way that is clearly seen to be fair, reasonable and practicable (paragraph ID 21a-001-20140306).
  - The 'six tests' set out in the NPPF need to be satisfied for each

condition which an authority intends to apply (paragraph ID 21a-003-20190723).

- Rigorous application of the 6 tests can reduce the need for conditions and it is good practice to keep the number of conditions to a minimum wherever possible (paragraph ID 21a-018-20190723).
- Conditions which place unjustifiable and disproportionate financial burdens on an applicant will fail the test of reasonableness (Paragraph ID: 21a-005-20190723).
- Conditions that unnecessarily affect an applicant's ability to bring a development into use, allow a development to be occupied or otherwise impact on the proper implementation of the planning permission should not be used (Paragraph ID: 21a-006-20140306).
- In deciding an application under section 73, the local planning authority must only consider the disputed condition/s that are the subject of the application – it is not a complete re-consideration of the application (paragraph ID: 21a-031-20180615)
- The original planning permission will continue to exist whatever the outcome of the application under section 73. To assist with clarity, decision notices for the grant of planning permission under section 73 should also repeat the relevant conditions from the original planning permission, unless they have already been discharged (paragraph ID: 21a-040-20190723).

#### Local Planning Policy

33. Vision 1 of the Core Strategy seeks to provide 'a higher quality of life' for residents. Policy DM2 of the Joint Development Management Policies Document seeks to safeguard (inter alia) residential amenity from potentially adverse effects of new development and not site sensitive development where its users would be significantly and adversely affected by (inter alia) noise, unless adequate and appropriate mitigation can be implemented.

#### Relevant standards and Guidelines for noise

*World Health Organisation (WHO): 1999: Guidelines for Community Noise*

34. This is a wide ranging document describing the effects of community noise. It provides information about the effects of noise that may occur at certain levels of exposure. For dwellings, the critical effects of noise are taken to be sleep disturbance, annoyance and speech interference.
35. Indoor guideline values are provided for bedrooms with the aim of protecting against sleep disturbance, a guideline value of 30 dB LAeq for continuous noise and 45 dB L<sub>Amax</sub> for single sound events (no more than 10-15 occasions per night) is recommended. To enable casual

conversation during the daytime an internal guideline noise level of 35 dB LAeq is provided.

*British Standard 8233:2014 (Guidance on sound insulation and noise reduction for buildings)*

36. The applicants carried out their noise assessment in accordance with this British Standard. British Standard 8233:2014 provides recommendations for the control of noise in and around buildings. It suggests appropriate criteria and limits for different situations, which are primarily intended to guide the design of new buildings, or refurbished buildings undergoing a change of use, rather than to assess the effect of changes in the external noise climate.
37. The standard suggests suitable internal noise levels within different types of buildings, including residential dwellings. It suggests that for steady external noise sources, during the day, an internal noise level of 35 dB LAeq,T is appropriate for resting conditions within living rooms and bedrooms and a level of 40 dB LAeq,T is applicable to dining rooms. During the night, an internal noise level of 30 dB LAeq,T is recommended within bedrooms.
38. The recommended levels are based on the guidelines issued by the WHO and assume normal diurnal fluctuations in external noise. It is also stated that *'Where development is considered necessary or desirable, despite external noise levels above WHO guidelines, the internal target levels may be relaxed by up to 5 dB and reasonable internal conditions still achieved.'*
39. For regular individual noise events with the potential to cause sleep disturbance it is stated that a guideline value may be set in terms of sound exposure level (SEL) or LAmax,F. No further guidance is provided with respect to an appropriate criterion which may be adopted for the assessment of such events.

*ProPG: Planning and Noise (New Residential Development)*

40. The guidance focusses on proposed new residential development and existing transport noise sources and reflects the Government's overarching Noise Policy Statement for England (NPSE), the National Planning Policy Framework (NPPF) and Planning Practice Guidance, as well as other authoritative sources of guidance.
41. The guidance provides advice for Local Planning Authorities (LPAs) and developers, and their respective professional advisers which complements Government planning and noise policy and guidance. In terms of the specific matters raised by this application the guideline values for internal dwelling noise levels proposed are the same as those provided in BS 8233:2014 and WHO guidance.

#### Discussion

42. The wording of the noise condition (the subject of this planning

application) was agreed with the Defence Infrastructure Organisation (DIO) prior to planning permission being granted for the 67 dwelling scheme. The imposition of the condition was sufficient to enable the DIO to remove its objections to the planning application and, in turn, for the Secretary of State not to call in the planning application for his own determination.

43. The condition as drafted is in two parts. Part Ai) sets out the noise standards which need to be adhered to inside the dwellings. These reflect the standards set out in WHO guidance. This part of the condition requires the developer to demonstrate how the standards will be met and these requirements would not change if the amendments to condition 20 are accepted. Parts Aii) and B of the condition require a methodology for post-construction testing to be agreed and then for the constructed dwellings to be tested for compliance with the standards set out in Part Ai). It is these particular requirements which the applicant is seeking to remove from the condition.
44. The applicant has submitted a reasonable and cogent justification for their requests to amend the wording of condition 20 and this is set out at paragraph 8 above. Having carefully considered the content of the applicant's case, officers are in full agreement with the reasoning. The condition as drafted introduces an unnecessary requirement to test the noise mitigation measures post construction. This is despite the mitigation measures having been fully justified in advance (i.e. under part Ai of Condition 20).
45. With the benefit of hindsight, the requirements of Parts Aii) and B of condition 20 are unnecessary and unreasonable and if the condition were to remain unchanged it is likely to cause unnecessary delay, cost and uncertainty to the development. Accordingly, it is considered the condition, as drafted (in part) would fail against the six tests for imposition of planning conditions. The application proposals would retain the requirement to incorporate adequate noise mitigation measures into the construction of the dwellings.
46. The application to amend the condition 20 of the 'parent' planning permission is therefore recommended for approval.

#### Planning Obligations

47. An approval of this application under Section 73 of the 1990 Act would constitute a grant of a fresh and 'stand-alone' planning permission. Accordingly the planning obligations secured from the 'parent' planning permission DC/13/0660/FUL need to be secured again. The simplest and most likely method to achieve this is to amend the existing S106 Agreement so that it is enforceable against either and both of the planning permissions. An amendment under S106A of the 1990 Act will be completed in advance of a planning permission being issued. The following planning obligations (summarised) were secured under the 'parent' planning permission (all cash contributions will be index linked):

- 30% affordable housing (20 dwellings on site and 0.5 dwelling cash equivalent for off-site provision).
- Primary education contribution (£262,388 for construction and £18,116 for land).
- Early years education contribution (£64,526 for construction and £4,344 for land).
- Libraries contribution (£14,472).
- Public Open space Commuted Sum (if the spaces are transferred to the Council for future management and maintenance - £36,090).
- Strategic Green Infrastructure contribution (£120,000).
- Strategic Highways Contribution (£21,176.24).

#### The Conservation of Habitats and Species Regulations 2017

48. The application site is in close proximity to European designated nature conservation site and, without specific mitigation measures, is likely to give rise to significant effects upon those designations.
49. Regulation 63 states the decision making authority before deciding to...give permission...for a plan or project which is likely to have a significant effect on a European site and is not directly connected with or necessary to the management of that site, must make an 'appropriate assessment' of the implications of the plan or project for that site in view of that site's conservation objectives.
50. An Appropriate Assessment was carried out in 2018 in relation to the 'parent' planning permission for the proposed development (reference DC/13/0660/FUL). The assessment concluded the proposal alone, and in combination with other projects, would not result in likely significant effects on the Breckland Special Protection Area or the Breckland Special Area of Conservation.
51. As the current proposals seek to amend the wording of one condition attached to the previous planning permission and the condition in itself has no implications for the designated European sites, it is considered appropriate to carry forward the outcome of the first Appropriate Assessment and apply it to this planning application. A copy of the Appropriate Assessment is attached to this report as Working Paper 2.

#### **Recommendation:**

52. Following completion of a S106 Agreement (or equivalent) to secure the planning obligations captured from the related planning permission DC/13/0660/FUL (as discussed in the report) planning permission be GRANTED.
53. The planning permission shall be subject to the same conditions as attached to planning permission DC/13/0660/FUL (as set out in the attached Working Paper 1) with the exception of condition 20 which shall be amended as set out below:
  - **Condition 20** - No construction for any dwelling shall commence until

details in respect of each of the following have been submitted to and approved in writing by the Local Planning Authority:

i) Details of the development that demonstrate for each unoccupied dwelling and its associated sound insulation that noise levels with windows closed shall not exceed a daytime level of 35 Db (16hrs) within living rooms between 07.00 and 23.00 hours, and a night-time level of 30 Db laEQ (8hrs) within bedrooms between 23.00 and 07.00 hours, using the methodology advocated within BS 8233:2014 'Guidance on sound insulation and noise reduction for buildings' (2014). The development shall adopt the proposed sound insulation measures as stated.

### **Documents:**

#### **Attachments**

**Working Paper 1** – Copy of planning permission DC/13/0660/FUL

**Working Paper 2** – Copy of the Appropriate Assessment carried out for planning permission DC/13/0660/FUL

All background documents including application forms, drawings and other supporting documentation relating to this application can be viewed online:

<https://planning.westsuffolk.gov.uk/online-applications/>