

Development Control Committee 5 January 2022

Planning Application DC/21/1986/VAR – Land West of Eriswell Road, Lakenheath

Date 26 October 2021 **Expiry Date:** 25 January 2022
Registered:

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

Parish: Lakenheath **Ward:** Lakenheath

Proposal: Removal of condition 14 part A(ii) and B of F/2013/0394/OUT for 140 dwellings

Site: Land West of Eriswell Road, Lakenheath

Applicant: Persimmon Homes Suffolk

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:

Gareth Durrant

Email: gareth.durrant@westsuffolk.gov.uk

Telephone: 01284 757345

BACKGROUND:

This application is referred to the Development Control Committee as it for 'major' development and one of the local Members has referred the proposals. Furthermore, 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 F/2013/0345/OUT. 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 outline planning permission for the construction of up to 140 dwellings at the site and was the subject of a S106 Agreement and 22 planning conditions. The planning permission is dated 20th September 2018 and the development is yet to be commenced. An application has been received to approve the reserved matters which means the 'parent' outline planning permission remains extant. The reserved matters, which are to be considered separately (and are not affected by the proposals which are the subject of this report, are yet to be determined.
3. This application proposes amendments to the wording of condition 14 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 14.

7. The applicant has provided a statement to explain and justify their requested amendments to condition 14. This is as follows:

- The amendment sought is the removal of part A(ii), where identification of specific properties for monitoring is required and details of assessment methodology. The removal of part B of the condition is also sought, which requires a methodology for post-construction noise testing and the testing itself, to verify that the requirements of part A(i) have been achieved.
- Persimmon Homes Suffolk remain committed to complying with part A(i) of condition 14 and are of the view that this part will secure satisfactory mitigation for the internal spaces of the

- approved dwellings in relation to noise impacts from passing military aircraft.
- It is no longer considered that there is a requirement for parts A(ii) and B of the condition. The Local Planning Authority have acknowledged this as Bennett Homes successfully varied a condition with the same wording under application reference DC/19/1392/VAR in February 2020 for Land off Briscoe Way, Lakenheath. Another application is currently pending a decision for the Rabbit Hill Covert site in Lakenheath, on behalf of Evera Homes (DC/21/0469/VAR) to vary the same condition in the same way. The Defence Infrastructure Organisation (DIO) is no longer requesting Part A(ii) or B of the condition to be enforced, this is demonstrated by the consultee responses on both applications referenced.
- An Environmental Noise Assessment/Acoustic Design Statement produced by Loven Acoustics dated 3 June 2021 was submitted as part of the Reserved Matters application (DC/21/1294/RM). This report recommends several 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 walls, glazing and ventilation) which can be incorporated with certainty and uniformity throughout the dwellings, and Persimmon Suffolk is happy to comply with this.
- The mechanism to agree a specification for noise reduction measures prior to the commencement of development and an obligation to implement those measures is adequate to secure this mitigation and outcomes desired by the local planning authority. There is no evidence to support the view that this cannot be done successfully through robust design.
- Persimmon Suffolk consider that part A(i) of condition 14 is entirely adequate to secure satisfactory mitigation in respect of noise levels. This part of the condition serves a "planning" purpose, however the additional requirement under parts A(ii) and B 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). It has been demonstrated through technical reports that mitigation measures can be delivered and part A(i) of condition 14 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 14.

Application Supporting Material:

8. The following documents have been submitted to support this application:

- Application form (including ownership certification)
- Site location plan and site location context plan.
- Cover letter explaining the nature of the request to amend the condition wording and the reasons behind it (paragraph 7 above).

Planning History:

9. Outline planning permission granted in September 2018 for construction of up to 140 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:

10. The planning application was the subject of a single round of consultation. The following is a summary of all responses received;
11. **Defence Infrastructure Organisation** – do not object and provide the following comments:
 - The MOD has previously written in relation to the outline application F/2013/0394 and reserved matters application DC/21/1294/RM to which this variation of conditions relates to and regarding the reserved matters application offered no objection subject to the dwellings being built in line with the proposed mitigation measures identified within the noise impact assessment.
 - With regards to this application to remove sub-parts A (ii) and B of condition 14 the MOD response dated the 27th July 2021 remains extant. Therefore, we have no concerns subject to the dwellings being built in line with the proposed acoustic mitigation measures i.e. acoustically treated glazing, mechanical ventilation, and enhanced roof/ceiling sound insulation.
 - It is recommended that a condition be added to any permission granted requiring the applicant to carry out the development in accordance with the details laid out in the submitted Noise Impact Assessment.
 - Whilst measures have been carried out to mitigate noise for the new dwellings, it is important to note the external amenity will be adversely affected by aircraft noise.
 - Therefore, in the event of permission being granted it is also recommended that an informative is added that states:

"The application site is located close to a military airfield. Future occupants should be made aware that military aircraft may be seen and heard operating in the area and that aircraft may overfly the site. The mitigation of noise in external areas may not be possible. Future occupants should also be made aware that aircraft types, flight paths and ground-based activity can vary over time and this may cause

disturbance.”

12. **West Suffolk (Public Health and Housing)** comments *PH&H would have no objection to the removal of parts A(ii) and B of Condition 14 subject to the dwellings being built in line with the acoustic mitigation measures identified as a requirement to comply with part A(i) of this condition.*
13. **National Highways** (formerly Highways England), **Suffolk County Council** (Growth, Highways and Infrastructure Team, the Flood & Water Management Team and the Development Contributions Team) – wrote to confirm they did not wish to comment on the proposals or held ‘no objections’.

Representations:

14. The planning application was the subject of a single round of consultation. The following is a summary of all responses received;
15. **Lakenheath Parish Council** – “strongly objects” and provides the following comments to support those objections:
 - The applicant claims that there is precedent; this is not so. The Briscoe Way site is more than 3km away while the Eriswell Rd site is less than 1km from the end of the runway. It is within 750m of the flightline immediately after take-off and considerably less with multiple aircraft sorties making reduced radius turns.
 - The site sits entirely within the RAFs 72Db Laeq contour with existing aircraft and at the time of the Briscoe Road waiver there was considerable doubt whether the F35 would be stationed at Lakenheath. There was little or no actual data on noise. Both of these circumstances have changed; the F35s arrive within six weeks and the US Air Force has published Environmental Impact Statements for five US Air Bases (including properties being rendered uninhabitable). This site is therefore quite different from those cited. The developer states that part B does not serve a planning purpose. Rather the Planning Authority has to be seen to base its decisions on the best and fullest information available.
 - Unfortunately, the Developer has a very public track record which suggests a considerable gap between design and construction, and the Planning Authority especially where potentially greater impact is likely has an obligation to ensure that developments are safe and sustainable.
 - The noise report is premised on modelling and a (too) brief actual collection of data. Given the imminence of the F35s arrival, surely a more responsible approach would be to premise any application on the actual circumstances as they will be in a few months’ time, rather than push for a cost saving which might render the development unsustainable in both Planning and Commercial terms.

16. One letter was received from **a local resident objecting** to the proposed development. The objector did not raise any matters directly relating to the content of the planning application to hand (i.e. amendments to the requirements of the noise mitigation condition) but raised matters pertinent to the determination of the outline planning application and/or its reserved matters. This included concerns about potential impacts to Stone Curlew (species protected by the Breckland SPA designation) which are addressed by this report below.

Policy:

17. 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
18. 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

19. The Government has recently 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.
20. 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:

21. 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 F/2013/0345/OUT and (with the exception of matters pertaining to the Breckland SPA) cannot be revisited as part of this application.

National Planning Policy and advice.

22. 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.
23. 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.
24. The Planning Practice Guidance includes a whole section on 'Noise'. Given the fact that the planning 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.
25. 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 six 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

26. 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

27. 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.
28. 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_{max} 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.

ProPG: Planning and Noise (New Residential Development)

29. 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.
30. 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 relevant British Standards and WHO guidance.

Discussion

31. The wording of the noise condition (the subject of this planning application) was agreed with the Defence Infrastructure Organisation (DIO) prior to outline planning permission being granted for the (up to) 140 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 then Secretary of State not to call in the planning application for his own determination.
32. 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.
33. Officers consider that the condition as drafted and imposed 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 14).
34. With the benefit of hindsight, the requirements of Parts Aii) and B of condition 14 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 that the condition, as drafted (in part), would fail against the tests for imposition of planning conditions. The application proposals would retain the requirement in the existing condition to incorporate adequate noise mitigation measures into the construction of the dwellings. The amended condition would (if approved) still require the developer to propose noise mitigation measures to the LPA for approval and, following approval, be implemented in the construction/fitting out of the dwellings. Accordingly,

if either i) dwellings begin to be constructed at the site without noise mitigation measures having been agreed or ii) dwellings are constructed without incorporation of the agreed measures, the Council would be able to enforce the requirements of the condition, formally by means of service of notice/s should the need arise.

35. The application to amend the condition 14 of the 'parent' planning permission is therefore recommended for approval.

Planning Obligations

36. 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 F/2013/0394/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.
- Primary education contribution (£4,685.50 per dwelling for construction and £323.50 per dwelling for land).
- Early years education contribution (£921.80 per dwelling for built construction and £47.78 per dwelling for land).
- Libraries contribution (£216 per dwelling).
- Public Open space Commuted Sum (optional payment, only triggered if the developer opts to transfer the public open spaces to the Council for future management and maintenance).
- Local Green Infrastructure contribution (£4,640.50 total payment).
- Strategic Green Infrastructure contribution (£18,579.00 total payment)
- Strategic Highways Contribution (£44,248.87).
- NHS Contribution (£329.14 per dwelling).

The Conservation of Habitats and Species Regulations 2017

37. 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.
38. 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.
39. An Appropriate Assessment was carried out in relation to the 'parent' planning permission for the proposed development (reference F/2013/0345/OUT). 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.

40. There is currently a reserved matters application submitted in pursuance of the conditions of the parent planning permission reference F/2013/0394/OUT with the Council for determination. As part of that application, Natural England has requested further stone curlew nesting information to establish that there continues to be no significant adverse impacts to the Special Protection Area.
41. The applicants are currently working to provide this information to supplement the reserved matters submission. Given that this planning application submitted under s73 of the Town and Country Planning Act 1990 (as amended) would, if approved, result in a fresh grant of planning permission, the Local Planning Authority is not able to issue that consent until it is content the proposals also satisfy the strict requirements of the Habitats Regulations. Accordingly, if the Committee resolves to grant planning permission for the proposals, the decision notice will not be released until the proposals have secured a positive 'Appropriate Assessment', as required under the Habitats Regulations.
42. The recommendation as set out at the foot of this report has been crafted to ensure the Habitats Regulations requirements are fully met. Should the proposals fail a future 'Appropriate Assessment', the recommendation would enable the S73 planning application to be returned to the Committee for further consideration and a fresh determination.

Recommendation:

43. Following:

- i) the adoption by the Local Planning Authority of an 'Appropriate Assessment' under the provisions of Regulation 63 of The Conservation of Habitats and Species Regulations 2017 which confirms no likely significant effects to the Breckland Special Protection Area, arising from the proposals,

and;
- ii) Completion of a S106 Agreement (or equivalent) to secure the planning obligations captured from the related planning permission F2013/0394/OUT (as discussed in the report)

Planning permission be GRANTED.

44. 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 14 which shall be amended as set out below:

- **Condition 14** - 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.

45. In the event that it cannot be demonstrated the proposals would not lead to likely significant effects to the Breckland Special Protection Area, the planning application be returned to this Committee for further consideration and fresh determination.

Documents:

Attachments

Working Paper 1 – Copy of 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/>