



Ashfield
DISTRICT COUNCIL
MAP SCALE 1: 1250
CREATED DATE: 01/06/2023

COMMITTEE DATE 14/06/2023 **WARD** Sutton Junction and Harlow Wood

APP REF V/2022/0406

APPLICANT Ashfield District Council

PROPOSAL Application to Vary Condition 10 - Acoustic Fencing Details of Planning Permission V/2022/0785

LOCATION Land North of, Midland Road, Sutton in Ashfield, Notts, NG17 5GR

WEB-LINK <https://www.google.com/maps/@53.1220665,-1.2403979,18.5z>

BACKGROUND PAPERS A, B, C, E

App Registered 26/05/2022

Expiry Date 20/07/2022

Consideration has been given to the Equalities Act 2010 in processing this application.

This application has been referred to Planning Committee as the condition was previously required by members.

The Application

The application site is located off Midland Road in the main urban area of Sutton in Ashfield. The site is located adjacent to industrial units to the east and south and adjacent to residential properties to the north and west.

This is an application to vary the condition on the previously approved planning application relating to the installation of an absorbent acoustic fence. The condition currently reads:

“No part of the development hereby permitted shall be occupied until the acoustic fencing, shown on approved plan 31468 539 11 Rev C has been installed. The acoustic fencing shall be absorbent acoustic fencing. The acoustic fencing shall be retained for the lifetime of the development.”

The application seeks to remove the requirement for the acoustic fencing to be ‘absorbent’ acoustic fencing and proposes to vary the condition as follows:

“No part of the development hereby permitted shall be occupied until the acoustic fencing, shown on approved plan 31468 539 11 Rev C has been installed. The acoustic fencing shall be retained for the lifetime of the development.”

Since the submission of this application there has been another variation of condition application determined which was a minor amendment to the approved drainage. The amendment did not change the function or capacity of the drainage scheme so was considered minor. Due to the variation being granted. the reference number and condition number within the description of this application have been amended for the condition to be varied on the latest application to ensure the discharge of conditions are in respect of the latest approval.

During the course of processing this application a noise impact assessment and a further technical note have been submitted to explain how the proposed variation would mitigate the noise levels and address concerns that members have. The details are discussed further below.

Consultations

Site Notices have been posted together with individual notification of surrounding residents.

Residents

1 comment has been received neither supporting or objecting and raising the following:

- Clarification on height
- Side facing the rear of properties on Mowlands Close should be maintained and graffiti free.

Local Lead Flood Team

- Considering the proposal the LLFA believes it is not required to respond, as such no bespoke comments made.

Network Rail

- No further comments to make and no objection to the variation of this condition

ADC Tree Officer

- Should the fencing affect any trees or vegetation on site, appropriate measures should be taken to avoid damage to root structures

Natural England

- Not able to fully assess the potential impacts of this proposal on statutory nature conservation sites or protected landscapes or provide detailed advice.
- Lack of detailed advice does not imply that there are no impacts

NCC Highways

- No comments

ADC Regeneration

- Site backs onto Lindhurst Engineering which can be quite a noisy plant
- Questioned whether a noise impact assessment has been carried out yet and if not maybe this should be considered before looking to approve the variation

ADC Environmental Protection

(1st Comments)

- The technical notes states In the case of the subject site, the absorption coefficient of the fence has no material impact on the amenity of future occupants, as any commercial noise is either absorbed by the fence or reflected away from the subject site, yet with the absence of a noise assessment report, we are unaware of the level of noise that the future residents would be exposed from the industrial sites or if the 10 kg/m² acoustic barrier would provide sufficient mitigation.
- While we agree technically that a fence with a surface density of at least 10 kg/m² with closed surface will meet the minimal requirements of an acoustic barrier, since an absorbent acoustic fence was requested, there is little evidence provided to justify changing the condition.

(2nd Comments following submission of noise impact assessment and technical note)

- Reviewed technical report which compares the acoustic performance of acoustically absorbent fence compared to standard acoustic fence and offers to support the proposal to use a standard acoustic fence.
- The noise modelling included in the report appears to present logical data outputs and from our review of the noise mapping it is our view are likely to represent real-world conditions at the application site. On this basis we would not question the outputs of the noise model or noise data included within the report.
- The report indicates that, with the installation of an acoustic absorbent fence, there is a slight acoustic benefit at the approximate position of MP2 compared to the use of a standard acoustic fence. This benefit is limited to a single area on that specific plot. Whilst it was reasonable to assume that there may be a slight benefit to the use of acoustic absorbent fencing, the model suggests that this is more limited than we would have originally assumed.
- In reviewing the noise modelling data, it is apparent that noise levels in all external amenity areas would be below the upper guideline noise level of 55 dB LAeq,16hr, with the majority of gardens exposed to noise levels ≤ 50 dB LAeq,16hr. Given that the majority of gardens are exposed to noise levels ≤ 50 dB LAeq,16hr this represents a reasonable standard of amenity for these dwellings, when using a standard acoustic fence. The lower (50 dB) level is the preferred design target that we would seek to achieve for dwellings located close to commercial and industrial areas. Had the majority of gardens been at or above the upper guidance level of 55 dB this would have caused us considerable concerns, clearly this is not the case in this instance and the lower level of noise likely to be experienced in these gardens is duly noted.
- The concern raised by Members about the variability of the commercial/industrial noise from the industrial estate is likely to have been

addressed by the duration of this survey and whilst it is possible that there could be noise sources on the estate that have not been present at their loudest level during the survey periods, the extended survey is longer than the vast majority of similar developments that we deal with, so would under any other circumstances, be considered extensive and therefore representative of a realistic worst case scenario.

- Taking into account the noise levels predicted within the garden areas and taking into account the requirements of paragraphs 56 & 185 of the NPPF, we do not consider that we could reasonably require the installation of acoustically absorbent fencing for this development site.

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Policy

Having regard to Section 38 of the Planning and Compulsory Purchase Act 2004 the main policy considerations are as follows:

Ashfield Local Plan Review (ALPR) (2002)

ST1 – Development

ST2 – Main Urban Area

EM4 - Protection of Employment Land Allocations

HG5 – New Residential Development

National Planning Policy Framework (NPPF) (2021)

Part 2 – Achieving Sustainable Development

Part 5 – Delivering a Sufficient Supply of Homes

Part 6 – Building a Strong, Competitive Economy

Part 8 – Promoting Healthy and Safe Communities

Part 11 – Making Effective Use of Land

Part 12 – Achieving Well Designed Places

Supplementary Planning Documents (SPD) (2014)

Residential Design Guide

Relevant Planning History

V/2021/0776 – 20no Dwellings Comprising of 4no 1 Bed Flats, 4no 2 Bed Flats, 6no 2 Bed Semi's & 6no 3 Bed Semi's – Conditional

V/2022/0237 – Application for Approval of Details Reserved by Conditions 3 – Ground Levels, 4-Road Details and 8 – Remediation Scheme of Planning Permission V/2021/0776 – CD Determined

V/2022/0444 – Revision to Previous Drainage Drawings for 20no Dwellings Comprising 4no 1 Bed Flats, 4no 2 Bed Flats and 6no 2 BED Semi's & 6no 3 Bed – Withdrawn

V/2022/0785 – Application to Remove/Vary Condition 15 of Planning Permission

V/2021/0776 – Revised Drainage Scheme - Conditional

V/2023/0024 – Application for Approval of Details Reserved by Condition 8 of Planning Permission V/2021/0776 – Remediation Scheme – CD Determined

Comment :

Main Considerations

The main issues to consider in the determination of this application are:

- Principle of Development
- Residential Amenity

Principle of Development

Policy ST1 of the Ashfield Local Plan Review (2002) sets out that development will be permitted where it does not adversely affect the character, quality, amenity or safety of the environment. This is also reflected in paragraph 130 of the National Planning Policy Framework (2021), which seeks to create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users.

Residential Amenity

One comment has been received from residents regarding the size of the fence and its maintenance. It should be noted that this application does not seek to vary the height or location of the fence but the type of acoustic fence to be installed.

The Council's Environmental Protection team have commented that the noise modelling and mapping represent real world conditions at the application site. They noted that the report indicates an absorbent fence would have a very slight acoustic benefit, but this benefit is limited to a single small area. The data shows that when using a standard acoustic fence noise levels in all external amenity areas would be below the upper guideline noise limit of 55db LAeq, 16hr with the majority of gardens exposed to noise levels ≤ 50 dB LAeq, 16hr which represents a reasonable standard of amenity for these dwellings. The lower level is the preferred target, and it is noted that the majority of gardens would be near this lower level. In relation to concerns surrounding the variability of the commercial/industrial noise it is possible there could be noise sources on the estate that have not been present at their loudest during the survey periods, however the extended survey is longer than the vast majority of similar surveys, so would under any other circumstances be considered extensive and representative of a realistic worst case scenario. Overall they have concluded in their comments that taking into account the noise levels predicted, they do not consider that we could reasonably require the installation of acoustically absorbent fencing.

Conclusion :

After considering the submitted information and comments received it is concluded that the difference between using an absorbent acoustic fence and standard acoustic fence would be negligible and both would be below the upper guideline noise limit. Therefore, in this case the benefits associated with using an absorbent acoustic fence do not outweigh the benefits associated in using a standard acoustic fence. Due to this the proposed variation would not warrant a refusal based on impact on residential amenity from noise from the adjacent industrial units and a standard

acoustic fence will ensure an acceptable standard of amenity to future occupiers is still achieved.

A new decision is required to be issued taking into account the required change from this application, this now applies to condition 13 with other conditions being changed to take account of the previous applications which has resulted in conditions previously being discharged or altered.

Recommendation: - Vary condition – conditional consent

CONDITIONS

1. The materials and finishes to be used for the external elevations and roof of the proposal shall match those detailed in the submitted application form.
2. The development hereby permitted shall be carried out in accordance with the finished floor level details previously agreed in writing by the Local Planning Authority on 23/05/2022.
3. The development hereby permitted shall be carried out in accordance with the new road details previously agreed by the Local Planning Authority on 23/05/2022.
4. No dwelling forming part of the development hereby permitted shall be occupied until its associated access/driveway/parking area is constructed with provision to prevent the unregulated discharge of surface water from the access/driveway/parking area to the public highway. The provision to prevent the unregulated discharge of surface water to the public highway shall then be retained for the life of the development.
5. The site access shall be constructed and surfaced in a bound material in accordance with the Proposed Site Plan on drawing number 31468 539 03 revision H and no other part of the development shall be commenced until the access has been completed in accordance with those plans.
6. No part of the development hereby permitted shall be occupied until the parking and turning areas are provided in accordance with the approved plan 31468 539 03 revision H. The parking and turning areas shall not be used for any purpose other than parking, turning of vehicles.
7. The hereby approved development shall be carried out in accordance with the verification report previously agreed by the Local Planning Authority on 10/03/2023.
8. The hereby permitted development shall be carried out in accordance with the recommendations and enhancement measures outlined in Sections 5 and 6 of the submitted Ecological Impact Appraisal prepared by RammSanderson (dated October 2021).
9. The close boarded fencing, shown on drawing no.31468 539 11 Rev A, shall be installed with the provision of 'Hedgehog Highways' as recommended on

pages 43-44 of the Ecological Impact Appraisal prepared by RammSanderson (dated October 2021).

10. The hereby permitted development shall be carried out in accordance with the submitted Arboricultural Method Statement and Tree Removal Plan prepared by RammSanderson (dated October 2021).
11. The hereby permitted development shall be carried out in accordance with the submitted Construction Management Plan prepared by Lindum (received 22/10/21).
12. The hereby permitted development shall be carried out in accordance with the recommendations contained within Section 3 of the Japanese Knotweed Report prepared by Oliver Brown Ltd (dated January 2021).
13. No part of the development hereby permitted shall be occupied until the acoustic fencing, shown on approved plan 31468 539 11 Rev C has been installed. The acoustic fencing shall be retained for the lifetime of the development.
14. This permission shall be read in accordance with the following plans:
 - Site Location Plan, Drawing No. 31468 539 01 Rev C
 - Proposed Site Layout Plan, Drawing No. 31468 539 03 Rev H
 - Proposed Floor Plans and Elevations - Type A, Drawing No. 31468 539 04
 - Proposed Floor Plans and Elevations - Type B, Drawing No. 31468 539 05
 - Proposed Floor Plans and Elevations – Type C Drawing No. 31468 539 06
 - Proposed Landscape Plan, Drawing No. 2122-PL1-02 Rev B
 - Proposed Boundary Treatment Plan, Drawing No. 31468 539 11 Rev C
 - Proposed Drainage Strategy, Drawing No. 0410 Rev C4, received 26/10/2022

The development shall thereafter be undertaken in accordance with these plans unless otherwise agreed in writing by the Local Planning Authority.

REASONS

1. To ensure the satisfactory appearance of the development.
2. To ensure the satisfactory appearance of the development, in the interests of residential amenity.
3. To ensure the development is constructed to adoptable standards.
4. To ensure surface water from the site is not deposited on the public highway causing dangers to road users.
5. To enable vehicles to enter and leave the public highway in a slow and controlled manner and in the interests of general highway safety.
6. To ensure that adequate off-street parking provision is made to reduce the possibility of the proposed development leading to on-street parking problems

- in the area and to enable vehicles to enter and leave the site in a forward direction all in the interests of Highway Safety.
7. To ensure that contaminated land is properly treated and made safe and to safeguard the health and safety of the future occupants in accordance with NPPF, paragraph 178. This condition is necessary as a pre-commencement condition because is the absence of a robust remediation plan even the early stages of the development process (other than as specified) could result in the spread of contamination and a risk to public health.
 8. In the interests of local ecology
 9. In the interests of local ecology
 10. In the interests of visual amenity
 11. In order to minimise disturbance to surrounding properties.
 12. To prevent the spread of an invasive species, in the interests of local amenity.
 13. In the interests of residential amenity
 14. To ensure that the development takes the form envisaged by the Local Planning Authority.

INFORMATIVE

1. The applicant/developer is strongly advised to ensure compliance with all planning conditions, if any, attached to the decision. Failure to do so could result in LEGAL action being taken by the Ashfield District Council at an appropriate time, to ensure full compliance. If you require any guidance or clarification with regard to the terms of any planning conditions then do not hesitate to contact the Development & Building Control Section of the Authority on Mansfield (01623 450000).
2. The applicant should note that notwithstanding any planning permission that if any highway forming part of the development is to be adopted by the Highways Authority, then the new roads/footways and any highway drainage will be required to comply with the Nottinghamshire County Council's current highway design guidance and specification for roadworks.
 - i) The Advanced Payments Code in the Highways Act 1980 applies and under section 219 of the Act payment will be required from the owner of the land fronting a private street on which a new building is to be erected. The developer should contact the Highway Authority with regard to compliance with the Code, or alternatively to the issue of a Section 38 Agreement and bond under the Highways Act 1980. A Section 38 Agreement can take some time to complete. Therefore, it is recommended that the developer contact the Highway Authority as early as possible.
 - ii) It is strongly recommended that the developer contact the Highway Authority at an early stage to clarify the codes etc. with which

compliance will be required in the particular circumstance, and it is essential that design calculations and detailed construction drawings for the proposed works are submitted to and approved by the County Council (or District Council) in writing before any work commences on site.

- iii) Correspondence with the Highway Authority should be addressed to: -
Highways Development Control North,
Nottinghamshire County Council,
Welbeck House
Sherwood Energy Village
Ollerton
Nottinghamshire
NG22 9FF
(E) hdc.north@nottsc.gov.uk

3. The contractor must ensure compliance with current legislation on noise and dust control including the Environmental Protection Act 1990 and the Control of Pollution Act 1974. Relevant Codes of Practice set out procedures for dealing with the control of noise on construction and demolition sites are contained in BS5228: 2009 Noise and Vibration Control on Construction and Open Sites.
4. In order to avoid impacts to nesting birds, all tree/shrub/hedgerow/scrub and rough grassland removal work be undertaken outside of the bird-breeding season (March-September inclusive). If works are to be carried out during this time then a suitably qualified ecologist should be on site to survey for nesting birds prior to any vegetation clearance. As you will be aware all nesting birds', birds' nests, young and eggs (except pest species) are protected by the Wildlife and Countryside Act 1981 (and as amended). Nesting is taken to be from the point at which birds start to build a nest, to the point at which the last chick of the last brood of the season has fully fledged and left the nesting area.
5. Midland Road is not presently subject to any traffic regulation orders. The inclusion of traffic regulation orders along the road should be investigated by the applicant/developer in consultation with local residents and business owners, and the County Council. Should traffic regulation orders be required, these should be provided at the applicant/developer's expense. Any traffic regulation orders should be sought before development commences.