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**TOWN AND COUNTRY PLANNING ACT 1990
(AS AMENDED BY THE PLANNING AND COMPENSATION ACT 1991)**

**LAND AT HARRIS LANE, SHENLEY,
REBUTTAL PROOF OF EVIDENCE ON NOISE**

R PECKHAM BENG MPHIL CENG MIOA

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1 HM Stationary Office. Environmental Protection Act, 1990

Status: This version of this Act contains provisions that are prospective.

Changes to legislation: Environmental Protection Act 1990 is up to date with all changes known to be in force on or before 31 March 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes



Environmental Protection Act 1990

1990 CHAPTER 43

An Act to make provision for the improved control of pollution arising from certain industrial and other processes; to re-enact the provisions of the Control of Pollution Act 1974 relating to waste on land with modifications as respects the functions of the regulatory and other authorities concerned in the collection and disposal of waste and to make further provision in relation to such waste; to restate the law defining statutory nuisances and improve the summary procedures for dealing with them, to provide for the termination of the existing controls over offensive trades or businesses and to provide for the extension of the Clean Air Acts to prescribed gases; to amend the law relating to litter and make further provision imposing or conferring powers to impose duties to keep public places clear of litter and clean; to make provision conferring powers in relation to trolleys abandoned on land in the open air; to amend the Radioactive Substances Act 1960; to make provision for the control of genetically modified organisms; to make provision for the abolition of the Nature Conservancy Council and for the creation of councils to replace it and discharge the functions of that Council and, as respects Wales, of the Countryside Commission; to make further provision for the control of the importation, exportation, use, supply or storage of prescribed substances and articles and the importation or exportation of prescribed descriptions of waste; to confer powers to obtain information about potentially hazardous substances; to amend the law relating to the control of hazardous substances on, over or under land; to amend section 107(6) of the Water Act 1989 and sections 31(7)(a), 31A(2)(c)(i) and 32(7)(a) of the Control of Pollution Act 1974; to amend the provisions of the Food and Environment Protection Act 1985 as regards the dumping of waste at sea; to make further provision as respects the prevention of oil pollution from ships; to make provision for and in connection with the identification and control of dogs; to confer powers to control the burning of crop residues; to make provision in relation to financial or other assistance for purposes connected with the environment; to make provision as respects superannuation of employees of the Groundwork Foundation and for remunerating the chairman of the Inland Waterways Amenity Advisory Council; and for purposes connected with those purposes. [1st November 1990]

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M50 1974 c. 37.

79 Statutory nuisances and inspections therefor. **S**

- (1) [^{F513}Subject to subsections [^{F1131}(1ZA)] to (6A) below], the following matters constitute “statutory nuisances” for the purposes of this Part, that is to say—
- (a) any premises in such a state as to be prejudicial to health or a nuisance;
 - (b) smoke emitted from premises so as to be prejudicial to health or a nuisance;
 - (c) fumes or gases emitted from premises so as to be prejudicial to health or a nuisance;
 - (d) any dust, steam, smell or other effluvia arising on industrial, trade or business premises and being prejudicial to health or a nuisance;
 - (e) any accumulation or deposit which is prejudicial to health or a nuisance;
 - [^{F1132}(ea) any water covering land or land covered with water which is in such a state as to be prejudicial to health or a nuisance;]
 - (f) any animal kept in such a place or manner as to be prejudicial to health or a nuisance;
 - [^{F1133}(faa) any insects emanating from premises and being prejudicial to health or a nuisance;]
 - [^{F1134}(fba) artificial light emitted from—
 - (i) premises;
 - (ii) any stationary object,
 so as to be prejudicial to health or a nuisance;]
 - (g) noise emitted from premises so as to be prejudicial to health or a nuisance;
 - [^{F516}(ga) noise that is prejudicial to health or a nuisance and is emitted from or caused by a vehicle, machinery or equipment in a street [^{F517}or in Scotland, road];]
 - (h) any other matter declared by any enactment to be a statutory nuisance;
- and it shall be the duty of every local authority to cause its area to be inspected from time to time to detect any statutory nuisances which ought to be dealt with under section 80 below [^{F518}or sections 80 and 80A below] and, where a complaint of a statutory nuisance is made to it by a person living within its area, to take such steps as are reasonably practicable to investigate the complaint.

- [^{F1135}(1ZA) The Scottish Ministers may by regulations—
- (a) amend this section so as to—
 - (i) prescribe additional matters which constitute statutory nuisances for the purposes of this Part;
 - (ii) vary the description of any matter which constitutes a statutory nuisance;
 - (b) in relation to an amendment under paragraph (a), amend this Act and any other enactment to make such incidental, supplementary, consequential, transitory, transitional or saving provision as the Scottish Ministers consider appropriate.
- (1ZB) Before making regulations under subsection (1ZA) above, the Scottish Ministers must consult, in so far as it is reasonably practicable to do so, the persons mentioned in subsection (1ZC) below.
- (1ZC) Those persons are—
- (a) such associations of local authorities; and

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- (b) such other persons,
 as the Scottish Ministers consider appropriate.]
- ^{F519}[^{F1136}(1A) No matter shall constitute a statutory nuisance to the extent that it consists of, or is caused by, any land being in a contaminated state.
- [^{F1136}(1B) Land is in a “contaminated state” for the purposes of sub section (1A) above if, and only if, it is in such a condition, by reason of substances in, on or under the land, that—
- (a) significant harm is being caused or there is a significant possibility of such harm being caused; or
- (b) significant pollution of the water environment is being caused or there is a significant possibility of such pollution being caused;
- and in this subsection “harm”, “pollution” in relation to the water environment, “substance” and “the water environment” have the same meanings as in Part IIA of this Act.]]
- (2) Subsection (1)(b) [^{F1137}, (fba)] and (g) above do not apply in relation to premises [^{F1138}(or, in respect of paragraph (fba)(ii) above, a stationary object located on premises)]—
- (a) occupied on behalf of the Crown for naval, military or air force purposes or for the purposes of the department of the Secretary of State having responsibility for defence, or
- (b) occupied by or for the purposes of a visiting force;
- and “visiting force” means any such body, contingent or detachment of the forces of any country as is a visiting force for the purposes of any of the provisions of the Visiting Forces Act 1952.
- (3) Subsection (1)(b) above does not apply to—
- (i) smoke emitted from a chimney of a private dwelling within a smoke control area,
- (ii) dark smoke emitted from a chimney of a building or a chimney serving the furnace of a boiler or industrial plant attached to a building or for the time being fixed to or installed on any land,
- (iii) smoke emitted from a railway locomotive steam engine, or
- (iv) dark smoke emitted otherwise than as mentioned above from industrial or trade premises.
- (4) Subsection (1)(c) above does not apply in relation to premises other than private dwellings.
- (5) Subsection (1)(d) above does not apply to steam emitted from a railway locomotive engine.
- [^{F1139}(5ZA) For the purposes of subsection (1)(ea) above, “land”—
- (a) includes structures (other than buildings) in, on or over land;
- (b) does not include—
- (i) mains or other pipes used for carrying a water supply;
- (ii) any part of the public sewerage system;
- (iii) any other sewers, drains or other pipes used for carrying sewage;
- (iv) the foreshore, that is to say, the land between the high and low water marks of ordinary spring tides;
- (v) the seabed.

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(5ZB) In subsection (5ZA) above—

“drain”, “sewage” and “sewer” have the meanings given by section 59 of the Sewerage (Scotland) Act 1968 (c. 47);

“main” has the meaning given by section 109(1) of the Water (Scotland) Act 1980 (c. 45);

“pipe” includes a service pipe within the meaning of that section of that Act;

“public sewerage system” has the meaning given by section 29 of the Water Services etc. (Scotland) Act 2005 (asp 3).]

[^{F1140}(5AA) Subsection (1)(faa) above does not apply to insects that are wild animals included in Schedule 5 to the Wildlife and Countryside Act 1981 (c. 69).

(5AB) For the purposes of subsection (1)(faa) above, “premises” does not include—

(a) a site of special scientific interest (within the meaning of section 3(6) of the Nature Conservation (Scotland) Act 2004 (asp 6));

(b) such other place (or type of place) as may be prescribed in regulations made by the Scottish Ministers.

(5AC) Before making regulations under subsection (5AB)(b) above, the Scottish Ministers must consult, in so far as it is reasonably practicable to do so, the persons mentioned in subsection (5AD) below.

(5AD) Those persons are—

(a) such associations of local authorities; and

(b) such other persons,

as the Scottish Ministers consider appropriate.]

[^{F1141}(5BA) Subsection (1)(fba) above does not apply to artificial light emitted from a lighthouse (within the meaning of Part 8 of the Merchant Shipping Act 1995 (c. 21)).]

(6) Subsection (1)(g) above does not apply to noise caused by aircraft other than model aircraft.

[^{F524}(6A) Subsection (1)(ga) above does not apply to noise made—

(a) by traffic,

(b) by any naval, military or air force of the Crown or by a visiting force (as defined in subsection (2) above), or

(c) by a political demonstration or a demonstration supporting or opposing a cause or campaign.]

[^{F1142}(6B) In this section, “enactment” includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament.]

(7) In this Part—

“chimney” includes structures and openings of any kind from or through which smoke may be emitted;

“dust” does not include dust emitted from a chimney as an ingredient of smoke;

[^{F529}“equipment” includes a musical instrument;]

“fumes” means any airborne solid matter smaller than dust;

“gas” includes vapour and moisture precipitated from vapour;

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“industrial, trade or business premises” means premises used for any industrial, trade or business purposes or premises not so used on which matter is burnt in connection with any industrial, trade or business process, and premises are used for industrial purposes where they are used for the purposes of any treatment or process as well as where they are used for the purposes of manufacturing;

“local authority” means, ^{F1143} . . . —

- (a) in Greater London, a London borough council, the Common Council of the City of London and, as respects the Temples, the Sub-Treasurer of the Inner Temple and the Under-Treasurer of the Middle Temple respectively;
- (b) ^{F533} in England and Wales] outside Greater London, a district council; ^{F534} . . .
- (bb) ^{F535} [in Wales, a county council or county borough council;]
- (c) the Council of the Isles of Scilly; ^{F536} and
- (d) in Scotland, a district or islands council or a council constituted under section 2 of the ^{M45} Local Government etc (Scotland) Act 1994;]

“noise” includes vibration;

^{F537} “person responsible”—

- (a) in relation to a statutory nuisance, means the person to whose act, default or sufferance the nuisance is attributable;
- (b) in relation to a vehicle, includes the person in whose name the vehicle is for the time being registered under ^{F538} the Vehicle Excise and Registration Act 1994] and any other person who is for the time being the driver of the vehicle;
- (c) in relation to machinery or equipment, includes any person who is for the time being the operator of the machinery or equipment;]

“prejudicial to health” means injurious, or likely to cause injury, to health;

“premises” includes land ^{F1144} (subject to subsection (5AB) above)] and, subject to subsection (12) ^{F539} and ^{F540}, in relation to England and Wales,] section 81A(9)] below, any vessel;

“private dwelling” means any building, or part of a building, used or intended to be used, as a dwelling;

^{F545} “road” has the same meaning as in Part IV of the New Roads and Street Works Act 1991;]

“smoke” includes soot, ash, grit and gritty particles emitted in smoke;

^{F546} “street” means a highway and any other road, footway, square or court that is for the time being open to the public;]

and any expressions used in this section and in ^{F548} the Clean Air Act 1993] have the same meaning in this section as in that Act and ^{F548} section 3 of the Clean Air Act 1993] shall apply for the interpretation of the expression “dark smoke” and the operation of this Part in relation to it.

- (8) Where, by an order under section 2 of the ^{M46} Public Health (Control of Disease) Act 1984, a port health authority has been constituted for any port health district, ^{F1143} . . . the port health authority ^{F1143} . . . shall have by virtue of this subsection, as respects its district, the functions conferred or imposed by this Part in relation to statutory nuisances other than a nuisance falling within paragraph (g) ^{F554} or (ga)] of subsection (1) above and no such order shall be made assigning those functions; and “local authority” and “area” shall be construed accordingly.

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(9) In this Part “best practicable means” is to be interpreted by reference to the following provisions—

- (a) “practicable” means reasonably practicable having regard among other things to local conditions and circumstances, to the current state of technical knowledge and to the financial implications;
- (b) the means to be employed include the design, installation, maintenance and manner and periods of operation of plant and machinery, and the design, construction and maintenance of buildings and structures;
- (c) the test is to apply only so far as compatible with any duty imposed by law;
- (d) the test is to apply only so far as compatible with safety and safe working conditions, and with the exigencies of any emergency or unforeseeable circumstances;

and, in circumstances where a code of practice under section 71 of the ^{M48}Control of Pollution Act 1974 (noise minimisation) is applicable, regard shall also be had to guidance given in it.

(10) A local authority shall not without the consent of the Secretary of State institute summary proceedings under this Part in respect of a nuisance falling within paragraph (b), (d) [^{F555}, (e) or (g)] [^{F557} and, in relation to Scotland, [^{F555} paragraph (ga)],] of subsection (1) above if proceedings in respect thereof might be instituted under ^{F1145} ... [^{F559} regulations under section 2 of the Pollution Prevention and Control Act 1999] [^{F1146} or section 18 of the Regulatory Reform (Scotland) Act 2014].

(11) The area of a local authority which includes part of the seashore shall also include for the purposes of this Part the territorial sea lying seawards from that part of the shore; and subject to subsection (12) [^{F559} and [^{F560}, in relation to England and Wales,] section 81A(9)] below, this Part shall have effect, in relation to any area included in the area of a local authority by virtue of this subsection—

- (a) as if references to premises and the occupier of premises included respectively a vessel and the master of a vessel; and
- (b) with such other modifications, if any, as are prescribed in regulations made by the Secretary of State.

(12) A vessel powered by steam reciprocating machinery is not a vessel to which this Part of this Act applies.

Extent Information

E23 Ss. 79-82, which previously extended to England and Wales only, extend to Scotland from 1.4.1996 (except where specified) by virtue of the repeal of s. 83 of this Act by 1995 c. 25, s. 120(3), **Sch. 24**; S.I. 1996/186, **art. 3**

E60 This version of this provision extends to Scotland only; a separate version has been created for England and Wales only

Textual Amendments

F513 Words in s. 79(1) substituted (1.4.2000 for E., 14.7.2000 for S. and 15.9.2001 for W.) by virtue of 1995 c. 25, s. 120(1), **Sch. 22 para. 89(2)** (with ss. 7(6), 115, 117); S.I. 2000/340, **art. 2(b)** (with art. 3); S.S.I. 2000/180, **art. 2(1)(b)** (with art. 3); S.I. 2001/3211, **art. 2(c)** (with saving in art. 3)

F516 S. 79(1)(ga) inserted (5.1.1994) by 1993 c. 40, ss. 2(2)(b), 12(1)

F517 Words in s. 79(1)(ga) inserted (1.4.1996) by 1995 c. 25, s. 107, **Sch. 17 para. 2(a)** (with ss. 7(6), 115), 117; S.I. 1996/186, **art. 3**

F518 Words in s. 79(1) inserted (5.1.1994) by 1993 c. 40, ss. 2(2)(c), 12(1)

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- F1141** S. 79(5BA) inserted after s. 79(5B) (S.) (26.1.2009) by virtue of **Public Health etc. (Scotland) Act 2008** (asp 5), ss. **110(4)**, 128(2) (with s. 127); S.S.I. 2009/9, **art. 2(a)**, Sch. 1
- F1142** S. 79(6B) inserted (S.) (30.6.2014) by **Regulatory Reform (Scotland) Act 2014** (asp 3), s. 61(2), **sch. 3 para. 40(7)**; S.S.I. 2014/160, art. 2(1)(2), sch.
- F1143** Words in s. 79(7)(8) repealed (S.) (1.10.2009) by **Public Health etc. (Scotland) Act 2008** (asp 5), ss. 126, 128(2), **Sch. 3** (with s. 127); S.S.I. 2009/319, **art. 2(a)**, Sch. 1
- F1144** Words in s. 79(7) inserted (S.) (26.1.2009) by **Public Health etc. (Scotland) Act 2008** (asp 5), ss. **109(4)**, 128(2) (with s. 127); S.S.I. 2009/9, **art. 2(a)**, Sch. 1
- F1145** Words in s. 79(10) repealed (S.) (30.6.2014) by **Regulatory Reform (Scotland) Act 2014** (asp 3), s. 61(2), **sch. 3 para. 23(a)**; S.S.I. 2014/160, art. 2(1)(2), sch.
- F1146** Words in s. 79(10) inserted (S.) (30.6.2014) by **Regulatory Reform (Scotland) Act 2014** (asp 3), s. 61(2), **sch. 3 para. 3(5)**; S.S.I. 2014/160, art. 2(1)(2), sch.

Modifications etc. (not altering text)

- C85** S. 79 applied (with modifications) (17.12.1996) by 1996 c. ix, ss. **1(1)**, 24
- C295** Ss. 79–81 excluded (S.) (22.4.2006 for certain purposes and otherwise prosp.) by **Water Services etc. (Scotland) Act 2005** (asp 3), ss. **26(10)**, 37(2) (with s. 36); S.S.I. 2006/167, **art. 2**, Sch. 2

Marginal Citations

- M45** 1994 c. 39.
- M46** 1984 c. 22.
- M48** 1974 c. 40.

80 Summary proceedings for statutory nuisances. **E+W**

- (1) ^{F561}Subject to subsection (2A)] where a local authority is satisfied that a statutory nuisance exists, or is likely to occur or recur, in the area of the authority, the local authority shall serve a notice (“an abatement notice”) imposing all or any of the following requirements—
- requiring the abatement of the nuisance or prohibiting or restricting its occurrence or recurrence;
 - requiring the execution of such works, and the taking of such other steps, as may be necessary for any of those purposes,
- and the notice shall specify the time or times within which the requirements of the notice are to be complied with.
- (2) ^{F562}Subject to section 80A(1) below, the abatement notice] shall be served—
- except in a case falling within paragraph (b) or (c) below, on the person responsible for the nuisance;
 - where the nuisance arises from any defect of a structural character, on the owner of the premises;
 - where the person responsible for the nuisance cannot be found or the nuisance has not yet occurred, on the owner or occupier of the premises.
- ^{F563}(2A) Where a local authority is satisfied that a statutory nuisance falling within paragraph (g) of section 79(1) above exists, or is likely to occur or recur, in the area of the authority, the authority shall—
- serve an abatement notice in respect of the nuisance in accordance with subsections (1) and (2) above; or

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- (b) take such other steps as it thinks appropriate for the purpose of persuading the appropriate person to abate the nuisance or prohibit or restrict its occurrence or recurrence.
- (2B) If a local authority has taken steps under subsection (2A)(b) above and either of the conditions in subsection (2C) below is satisfied, the authority shall serve an abatement notice in respect of the nuisance.
- (2C) The conditions are—
- (a) that the authority is satisfied at any time before the end of the relevant period that the steps taken will not be successful in persuading the appropriate person to abate the nuisance or prohibit or restrict its occurrence or recurrence;
 - (b) that the authority is satisfied at the end of the relevant period that the nuisance continues to exist, or continues to be likely to occur or recur, in the area of the authority.
- (2D) The relevant period is the period of seven days starting with the day on which the authority was first satisfied that the nuisance existed, or was likely to occur or recur.
- (2E) The appropriate person is the person on whom the authority would otherwise be required under subsection (2A)(a) above to serve an abatement notice in respect of the nuisance.]
- (3) [^{F564}A person served with an abatement notice] may appeal against the notice to a magistrates' court [^{F565}or in Scotland, the sheriff] within the period of twenty-one days beginning with the date on which he was served with the notice.
- (4) If a person on whom an abatement notice is served, without reasonable excuse, contravenes or fails to comply with any requirement or prohibition imposed by the notice, he shall be guilty of an offence.
- (5) Except in a case falling within subsection (6) below, a person who commits an offence under subsection (4) above shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale together with a further fine of an amount equal to [^{F566}one-tenth of the greater of £5,000 or level 4 on the standard scale] for each day on which the offence continues after the conviction.
- (6) A person who commits an offence under subsection (4) above on industrial, trade or business premises shall be liable on summary conviction to [^{F567}a fine].
- (7) Subject to subsection (8) below, in any proceedings for an offence under subsection (4) above in respect of a statutory nuisance it shall be a defence to prove that the best practicable means were used to prevent, or to counteract the effects of, the nuisance.
- (8) The defence under subsection (7) above is not available—
- (a) in the case of a nuisance falling within paragraph (a), (d), (e), (f) [^{F568}, (fa)] or (g) of section 79(1) above except where the nuisance arises on industrial, trade or business premises;
 - [^{F569}(aza) in the case of a nuisance falling within paragraph (fb) of section 79(1) above except where—
 - (i) the artificial light is emitted from industrial, trade or business premises, or
 - (ii) the artificial light (not being light to which sub-paragraph (i) applies) is emitted by lights used for the purpose only of illuminating an outdoor relevant sports facility;]

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- [^{F570}(aa) in the case of a nuisance falling within paragraph (ga) of section 79(1) above except where the noise is emitted from or caused by a vehicle, machinery or equipment being used for industrial, trade or business purposes;]
- (b) in the case of a nuisance falling within paragraph (b) of section 79(1) above except where the smoke is emitted from a chimney; and
- (c) in the case of a nuisance falling within paragraph (c) or (h) of section 79(1) above.
- [^{F571}(8A) For the purposes of subsection (8)(aza) a relevant sports facility is an area, with or without structures, that is used when participating in a relevant sport, but does not include such an area comprised in domestic premises.
- (8B) For the purposes of subsection (8A) “relevant sport” means a sport that is designated for those purposes by order made by the Secretary of State, in relation to England, or the National Assembly for Wales, in relation to Wales.
- A sport may be so designated by reference to its appearing in a list maintained by a body specified in the order.
- (8C) In subsection (8A) “domestic premises” means—
- premises used wholly or mainly as a private dwelling, or
 - land or other premises belonging to, or enjoyed with, premises so used.]
- (9) In proceedings for an offence under subsection (4) above in respect of a statutory nuisance falling within paragraph (g) [^{F572}or (ga)]of section 79(1) above where the offence consists in contravening requirements imposed by virtue of subsection (1)(a) above it shall be a defence to prove—
- that the alleged offence was covered by a notice served under section 60 or a consent given under section 61 or 65 of the ^{M51}Control of Pollution Act 1974 (construction sites, etc); or
 - where the alleged offence was committed at a time when the premises were subject to a notice under section 66 of that Act (noise reduction notice), that the level of noise emitted from the premises at that time was not such as to constitute a contravention of the notice under that section; or
 - where the alleged offence was committed at a time when the premises were not subject to a notice under section 66 of that Act, and when a level fixed under section 67 of that Act (new buildings liable to abatement order) applied to the premises, that the level of noise emitted from the premises at that time did not exceed that level.
- (10) Paragraphs (b) and (c) of subsection (9) above apply whether or not the relevant notice was subject to appeal at the time when the offence was alleged to have been committed.

Extent Information

- E25** Ss. 79-82, which previously extended to England and Wales only, extend to Scotland from 1.4.1996 (except where specified) by virtue of the repeal of s. 83 of this Act by 1995 c. 25, s. 120(3), [Sch. 24; S.I. 1996/186, art. 3](#)
- E26** This version of this provision extends to England and Wales only; a separate version has been created for Scotland only

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Textual Amendments

- F561** Words in s. 80(1) inserted (E.W.) (6.4.2006 for E. and 27.10.2006 for W.) by Clean Neighbourhoods and Environment Act 2005 (c. 16), ss. 86, 108; S.I. 2006/795, art. 2(3), Sch. 2; S.I. 2006/2797, art. 2(q)
- F562** Words in s. 80(2) substituted (5.1.1994) by 1993 c. 40, ss. 3(2), 12(1)
- F563** S. 80(2A)-(2E) inserted (E.W.) (6.4.2006 for E. and 27.10.2006 for W.) by Clean Neighbourhoods and Environment Act 2005 (c. 16), ss. 86, 108; S.I. 2006/795, art. 2(3), Sch. 2; S.I. 2006/2797, art. 2(q)
- F564** Words in s. 80(3) substituted (5.1.1994) by 1993 c. 40, ss. 3(3), 12(1)
- F565** Words in s. 80(3) inserted (1.4.1996) by 1995 c. 25, s. 107, Sch. 17 para.3 (with ss. 7(6), 115, 117); S.I. 1996/186, art.3
- F566** Words in s. 80(5) substituted (E.W.) (12.3.2015) by The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Fines on Summary Conviction) Regulations 2015 (S.I. 2015/664), reg. 1(1), Sch. 3 para. 6(4) (with reg. 5(1))
- F567** Words in s. 80(6) substituted (E.W.) (12.3.2015) by The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Fines on Summary Conviction) Regulations 2015 (S.I. 2015/664), reg. 1(1), Sch. 4 para. 22(5) (with reg. 5(1))
- F568** Words in s. 80(8)(a) inserted (E.W.) (16.3.2006 for certain purposes for W., 6.4.2006 for E. and 31.1.2007 in so far as not already in force for W.) by Clean Neighbourhoods and Environment Act 2005 (c. 16), ss. 103(2)(a), 108; S.I. 2006/768, art. 3; S.I. 2006/795, art. 2(3), Sch. 2; S.I. 2006/2797, art. 6(b) (as amended (30.1.2007) by S.I. 2007/120, art. 3)
- F569** S. 80(8)(aza) inserted (E.W.) (16.3.2006 for certain purposes for W., 6.4.2006 for E. and 31.1.2007 in so far as not already in force for W.) by Clean Neighbourhoods and Environment Act 2005 (c. 16), ss. 103(2)(b), 108; S.I. 2006/768, art. 3; S.I. 2006/795, art. 2(3), Sch. 2; S.I. 2006/2797, art. 7(b) (as amended (30.1.2007) by S.I. 2007/120, art. 3)
- F570** S. 80(8)(aa) inserted (5.1.1994) by 1993 c. 40, ss. 3(4), 12(1)
- F571** S. 80(8A)-(8C) inserted (E.W.) (16.3.2006 for certain purposes for W., 6.4.2006 for E. and 31.1.2007 in so far as not already in force for W.) by Clean Neighbourhoods and Environment Act 2005 (c. 16), ss. 103(3), 108; S.I. 2006/768, art. 3; S.I. 2006/795, art. 2(3), Sch. 2; S.I. 2006/2797, art. 7(b) (as amended (30.1.2007) by S.I. 2007/120, art. 3)
- F572** Words in s. 80(9) inserted (5.1.1994) by 1993 c. 40, ss. 3(5), 12(1)

Modifications etc. (not altering text)

- C86** S. 80(4) restricted (E.) (13.4.2001) by S.I. 2001/1478, reg. 3(b)

Marginal Citations

- M51** 1974 c. 40.

80 Summary proceedings for statutory nuisances. **S**

- (1) Where a local authority is satisfied that a statutory nuisance exists, or is likely to occur or recur, in the area of the authority, the local authority shall serve a notice (“an abatement notice”) imposing all or any of the following requirements—
- requiring the abatement of the nuisance or prohibiting or restricting its occurrence or recurrence;
 - requiring the execution of such works, and the taking of such other steps, as may be necessary for any of those purposes,
- and the notice shall specify the time or times within which the requirements of the notice are to be complied with.
- (2) ^{F562}Subject to section 80A(1) below, the abatement notice] shall be served—

Status: This version of this Act contains provisions that are prospective.

Changes to legislation: Environmental Protection Act 1990 is up to date with all changes known to be in force on or before 31 March 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- (a) except in a case falling within paragraph (b) or (c) below, on the person responsible for the nuisance;
 - (b) where the nuisance arises from any defect of a structural character, on the owner of the premises;
 - (c) where the person responsible for the nuisance cannot be found or the nuisance has not yet occurred, on the owner or occupier of the premises.
- (3) ^{F564}A person served with an abatement notice] may appeal against the notice to a magistrates' court ^{F565}or in Scotland, the sheriff] within the period of twenty-one days beginning with the date on which he was served with the notice.
- (4) If a person on whom an abatement notice is served, without reasonable excuse, contravenes or fails to comply with any requirement or prohibition imposed by the notice, he shall be guilty of an offence.
- ^{F1147}(4A) Where a local authority have reason to believe that a person has committed an offence under subsection (4) above, the local authority may give that person a notice (a "fixed penalty notice") in accordance with section 80ZA offering the person the opportunity of discharging any liability to conviction for that offence by payment of a fixed penalty.]
- (5) Except in a case falling within subsection (6) below, a person who commits an offence under subsection (4) above shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale together with a further fine of an amount equal to one-tenth of that level for each day on which the offence continues after the conviction.
- (6) A person who commits an offence under subsection (4) above on industrial, trade or business premises shall be liable on summary conviction to a fine not exceeding ^{F1148}£40,000].
- (7) Subject to subsection (8) below, in any proceedings for an offence under subsection (4) above in respect of a statutory nuisance it shall be a defence to prove that the best practicable means were used to prevent, or to counteract the effects of, the nuisance.
- (8) The defence under subsection (7) above is not available—
- (a) in the case of a nuisance falling within paragraph (a), (d), (e), (f) or (g) of section 79(1) above except where the nuisance arises on industrial, trade or business premises;
 - ^{F570}(aa) in the case of a nuisance falling within paragraph (ga) of section 79(1) above except where the noise is emitted from or caused by a vehicle, machinery or equipment being used for industrial, trade or business purposes;]
 - (b) in the case of a nuisance falling within paragraph (b) of section 79(1) above except where the smoke is emitted from a chimney; and
 - (c) in the case of a nuisance falling within paragraph (c) or (h) of section 79(1) above.
- (9) In proceedings for an offence under subsection (4) above in respect of a statutory nuisance falling within paragraph (g) ^{F572}[or (ga)]of section 79(1) above where the offence consists in contravening requirements imposed by virtue of subsection (1)(a) above it shall be a defence to prove—
- (a) that the alleged offence was covered by a notice served under section 60 or a consent given under section 61 ^{F1149}... of the ^{M51}Control of Pollution Act 1974 (construction sites, etc); ^{F1150}...

Status: This version of this Act contains provisions that are prospective.

Changes to legislation: Environmental Protection Act 1990 is up to date with all changes known to be in force on or before 31 March 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

F1150(b)
 F1151(c)
 F1152(10)

Extent Information

- E25** Ss. 79-82, which previously extended to England and Wales only, extend to Scotland from 1.4.1996 (except where specified) by virtue of the repeal of s. 83 of this Act by 1995 c. 25, s. 120(3), **Sch. 24**; S.I. 1996/186, **art. 3**
- E61** This version of this provision extends to Scotland only; a separate version has been created for England and Wales only

Textual Amendments

- F562** Words in s. 80(2) substituted (5.1.1994) by 1993 c. 40, ss. **3(2)**, 12(1)
- F564** Words in s. 80(3) substituted (5.1.1994) by 1993 c. 40, ss. **3(3)**, 12(1)
- F565** Words in s. 80(3) inserted (1.4.1996) by 1995 c. 25, s. 107, **Sch. 17 para.3** (with ss. 7(6), 115, 117); S.I. 1996/186, **art.3**
- F570** S. 80(8)(aa) inserted (5.1.1994) by 1993 c. 40, ss. **3(4)**, 12(1)
- F572** Words in s. 80(9) inserted (5.1.1994) by 1993 c. 40, ss. **3(5)**, 12(1)
- F1147** S. 80(4A) inserted (S.) (26.1.2009) by Public Health etc. (Scotland) Act 2008 (asp 5) {ss. 113(2)}, 128(2) (with s. 127); S.S.I. 2009/9, **art. 2(a)**, Sch. 1
- F1148** Words in s. 80(6) substituted (S.) (28.10.2004) by Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8), ss. 66, 145(2), **Sch. 2 Pt. 1 para. 4(4)**; S.S.I. 2004/420, **art. 3**, Sch. 1
- F1149** Words in s. 80(9)(a) repealed (S.) (30.6.2014) by Regulatory Reform (Scotland) Act 2014 (asp 3), s. 61(2), **sch. 3 para. 23(b)(i)**; S.S.I. 2014/160, art. 2(1)(2), sch.
- F1150** S. 80(9)(b) and word repealed (S.) (30.6.2014) by Regulatory Reform (Scotland) Act 2014 (asp 3), s. 61(2), **sch. 3 para. 23(b)(ii)**; S.S.I. 2014/160, art. 2(1)(2), sch.
- F1151** S. 80(9)(c) and word repealed (S.) (30.6.2014) by Regulatory Reform (Scotland) Act 2014 (asp 3), s. 61(2), **sch. 3 para. 23(b)(iii)**; S.S.I. 2014/160, art. 2(1)(2), sch.
- F1152** S. 80(10) repealed (S.) (30.6.2014) by Regulatory Reform (Scotland) Act 2014 (asp 3), s. 61(2), **sch. 3 para. 23(b)(iv)**; S.S.I. 2014/160, art. 2(1)(2), sch.

Modifications etc. (not altering text)

- C86** S. 80(4) restricted (E.) (13.4.2001) by S.I. 2001/1478, **reg. 3(b)**
- C296** S. 79-81 excluded (S.) (22.4.2006 for certain purposes and otherwise prosp.) by Water Services etc. (Scotland) Act 2005 (asp 3), ss. **26(10)**, 37(2) (with s. 36); S.S.I. 2006/167, **art. 2**, Sch. 2

Marginal Citations

- M51** 1974 c. 40.

[F573] 80A Fixed penalty notice: supplemental

- (1) This section applies to a fixed penalty notice given under section 80(4A).
- (2) A fixed penalty notice must give reasonable particulars of the circumstances alleged to constitute the offence.
- (3) A fixed penalty notice must also state—
 - (a) the amount of the fixed penalty;
 - (b) the period within which it may be paid;
 - (c) the—

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Changes to legislation: Environmental Protection Act 1990 is up to date with all changes known to be in force on or before 31 March 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- (i) person to whom; and
 - (ii) address at which,
payment may be made;
 - (d) the method or methods by which payment may be made;
 - (e) the consequences of not making a payment within the period for payment.
- (4) The amount of the fixed penalty under section 80(4A) is—
- (a) in the case of a nuisance relating to industrial, trade or business premises, £400;
 - (b) in any other case, £150.
- (5) The period for payment of the fixed penalty is 14 days beginning with the day after the day on which the notice is given.
- (6) The local authority may extend the period for paying the fixed penalty in any particular case if they consider it appropriate to do so by sending notice to the person to whom the fixed penalty notice was given.
- (7) No proceedings for an offence under section 80(4) may be commenced before the end of the period for payment of the fixed penalty.
- (8) In proceedings for an offence under section 80(4), a certificate which—
- (a) purports to be signed by or on behalf of a person having responsibility for the financial affairs of the local authority; and
 - (b) states that payment of the amount specified in the fixed penalty notice was or was not received by the expiry of the period within which that fixed penalty may be paid,
- is sufficient evidence of the facts stated.
- (9) Where proceedings for an offence in respect of which a fixed penalty notice has been given are commenced, the notice is to be treated as withdrawn.
- (10) Any sum received by a local authority under section 80(4A) accrues to that authority.
- (11) The Scottish Ministers may, by regulations—
- (a) provide that fixed penalty notices may not be given in such circumstances as may be prescribed;
 - (b) provide for the form of a fixed penalty notice;
 - (c) provide for the method or methods by which fixed penalties may be paid;
 - (d) modify subsection (4)(a) or (b) above so as to substitute a different amount (not exceeding level 2 on the standard scale) for the amount for the time being specified there;
 - (e) provide for the amount of the fixed penalty to be different in different cases or descriptions of case;
 - (f) modify subsection (5) above so as to substitute a different period for the period for the time being specified there;
 - (g) provide for the keeping of accounts, and the preparation and publication of statements of account relating to fixed penalties under section 80(4A).
- (12) Before making regulations under subsection (11) above, the Scottish Ministers must consult, in so far as it is reasonably practicable to do so, the persons mentioned in subsection (13) below.

Status: This version of this Act contains provisions that are prospective.

Changes to legislation: Environmental Protection Act 1990 is up to date with all changes known to be in force on or before 31 March 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- (13) Those persons are—
- (a) such associations of local authorities; and
 - (b) such other persons,
- as the Scottish Ministers consider appropriate.]

Textual Amendments

F573 S. 80ZA inserted (S.) (26.1.2009) by Public Health etc. (Scotland) Act 2008 (asp 5) {ss. 113(3)}, 128(2) (with s. 127); S.S.I. 2009/9, art. 2(a), Sch. 1

^{F574}80A Abatement notice in respect of noise in street.

- (1) In the case of a statutory nuisance within section 79(1)(ga) above that—
 - (a) has not yet occurred, or
 - (b) arises from noise emitted from or caused by an unattended vehicle or unattended machinery or equipment,
 the abatement notice shall be served in accordance with subsection (2) below.
- (2) The notice shall be served—
 - (a) where the person responsible for the vehicle, machinery or equipment can be found, on that person;
 - (b) where that person cannot be found or where the local authority determines that this paragraph should apply, by fixing the notice to the vehicle, machinery or equipment.
- (3) Where—
 - (a) an abatement notice is served in accordance with subsection (2)(b) above by virtue of a determination of the local authority, and
 - (b) the person responsible for the vehicle, machinery or equipment can be found and served with a copy of the notice within an hour of the notice being fixed to the vehicle, machinery or equipment,
 a copy of the notice shall be served on that person accordingly.
- (4) Where an abatement notice is served in accordance with subsection (2)(b) above by virtue of a determination of the local authority, the notice shall state that, if a copy of the notice is subsequently served under subsection (3) above, the time specified in the notice as the time within which its requirements are to be complied with is extended by such further period as is specified in the notice.
- (5) Where an abatement notice is served in accordance with subsection (2)(b) above, the person responsible for the vehicle, machinery or equipment may appeal against the notice under section 80(3) above as if he had been served with the notice on the date on which it was fixed to the vehicle, machinery or equipment.
- (6) Section 80(4) above shall apply in relation to a person on whom a copy of an abatement notice is served under subsection (3) above as if the copy were the notice itself.
- (7) A person who removes or interferes with a notice fixed to a vehicle, machinery or equipment in accordance with subsection (2)(b) above shall be guilty of an offence, unless he is the person responsible for the vehicle, machinery or equipment or he does so with the authority of that person.

Status: This version of this Act contains provisions that are prospective.

Changes to legislation: Environmental Protection Act 1990 is up to date with all changes known to be in force on or before 31 March 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) [View outstanding changes](#)

- (8) A person who commits an offence under subsection (7) above shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.]

Extent Information

E27 Ss. 79-82, which previously extended to England and Wales only, extend to Scotland from 1.4.1996 (except where specified) by virtue of the repeal of s. 83 of this Act by 1995 c. 25, s. 120(3), **Sch. 24**; S.I. 1996/186, **art. 3**

Textual Amendments

F574 S. 80A inserted (5.1.1994) by 1993 c. 40, ss. 3(6), 12(1)

Modifications etc. (not altering text)

C87 S. 80A applied (with modifications)(17.12.1996) by 1996 c. ix, ss. 1(1), 24(2)

C88 Ss. 79-81 excluded (S.) (22.4.2006 for certain purposes and otherwise prosp.) by **Water Services etc. (Scotland) Act 2005 (asp 3)**, ss. 26(10), 37(2) (with s. 36); S.S.I. 2006/167, **art. 2**, Sch. 2

81 Supplementary provisions. **E+W**

- (1) [^{F575}Subject to subsection (1A) below, where] more than one person is responsible for a statutory nuisance section 80 above shall apply to each of those persons whether or not what any one of them is responsible for would by itself amount to a nuisance.

[^{F576}(1A) In relation to a statutory nuisance within section 79(1)(ga) above for which more than one person is responsible (whether or not what any one of those persons is responsible for would by itself amount to such a nuisance), section 80(2)(a) above shall apply with the substitution of “any one of the persons” for “the person”.

- (1B) In relation to a statutory nuisance within section 79(1)(ga) above caused by noise emitted from or caused by an unattended vehicle or unattended machinery or equipment for which more than one person is responsible, section 80A above shall apply with the substitution—

- (a) in subsection (2)(a), of “any of the persons” for “the person” and of “one such person” for “that person”,
- (b) in subsection (2)(b), of “such a person” for “that person”,
- (c) in subsection (3), of “any of the persons” for “the person” and of “one such person” for “that person”,
- (d) in subsection (5), of “any person” for “the person”, and
- (e) in subsection (7), of “a person” for “the person” and of “such a person” for “that person”.]

- (2) Where a statutory nuisance which exists or has occurred within the area of a local authority, or which has affected any part of that area, appears to the local authority to be wholly or partly caused by some act or default committed or taking place outside the area, the local authority may act under section 80 above as if the act or default were wholly within that area, except that any appeal shall be heard by a magistrates’ court [^{F577}or in Scotland, the sheriff] having jurisdiction where the act or default is alleged to have taken place.

- (3) Where an abatement notice has not been complied with the local authority may, whether or not they take proceedings for an offence [^{F578}or, in Scotland, whether or

2. Environment Agency. Method Implementation Document for BS 4142, March 2023



Guidance

Method implementation document (MID) for BS 4142

Published 27 March 2023

Applies to England

Contents

1. Scope
2. Normative references
3. Terms and definitions
4. Preparation
5. Instrumentation
6. Measurement procedure
7. Specific sound level
8. Background sound level
9. Rating level
10. Uncertainty
11. Assessment of the impacts
12. Information to be reported

Annex A (informative)

Annex B to Annex E

Bibliography Standards publications

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National and international standards sometimes need supporting 'Method implementation documents' (MIDs) to make sure they are followed consistently. MIDs explain how to use the standards and guidance for regulatory monitoring when you are applying for a permit or complying with permit conditions.

This MID supplements BS 4142:2014+A1:2019 Method for rating and assessing industrial and commercial sound (BS 4142).

You must follow the requirements in this MID if you are:

- applying to the Environment Agency for a new environmental permit or applying to vary an existing permit
- sending sound monitoring and assessments to the Environment Agency – you must also follow the requirements of BS 4142 and the guidance [Noise and vibration management: environmental permits](#)

The section numbers in this MID follow the clause numbers of BS 4142. This document does not repeat text from the standard or re-state all its provisions. It just provides extra guidance where needed.

BS 4142 is the authoritative document and you must read and comply with all its requirements. If there is a dispute, the accreditation body will decide how to resolve it.

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1. Scope

1.1 The Environment Agency requires operators to assess industrial sound (and sound of an industrial nature) following BS 4142 – where appropriate and relevant.

BS 4142 is a method to assess the impact on humans in residential premises.

It is appropriate for assessing sound levels outside a building that are from:

- industrial premises, manufacturing premises or fixed installations
- mobile plant, vehicles, train or ship movements within the permit boundary

It is not appropriate for:

- any non-human receptors, including bats, birds or other protected species
- non-residential premises such as offices, schools, churches or outdoor areas such as recreational parks, gardens or sports grounds

1.2 The term 'outside a building' does not just apply to external gardens or land, it applies to balconies and outside any room where occupants would expect or need quiet – studies, bedrooms, sitting rooms. If there is no clear evidence that a room is unoccupied, you must presume that it is, for example an attic window.

1.3 You must use BS 4142 to investigate complaints.

You must also use it to assess sound from industrial or commercial sources that are:

- existing
- proposed
- new
- modified
- additional

You must also use it to assess sound at proposed new dwellings or premises used for residential purposes.

You must not use the standard to assess whether sound amounts to a noise nuisance. That is not within the scope of BS 4142.

You should not use BS 4142 to assess impact from vehicles or fixed installations that are outside of a site's permitted boundary. For example, if a waste wagon drives to a site, while it is outside the permitted boundary the sound is 'road noise' and is covered by planning or nuisance. Once it is inside the permitted boundary, it is part of the commercial or industrial sound.

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8.5 Introduction of a new noise sensitive receptor

You must not use BS 8233 to assess noise pollution from an industrial or commercial sound. BS 8233 is a method to identify sound insulation requirements from constant sound sources such as traffic or railways. It does not take into account any acoustic features such as:

- tonality
- impulsivity
- intermittency
- other distinguishable features usually associated with industrial and commercial sound sources

You should consider any proposed new noise sensitive receptors and any planning applications that have been granted. Additionally, if reductions in background sound are likely in the coming years, for example due to expected changes to road use or layout, you should also take these into account in the assessment.

8.6 Precision when reporting a sound level measured

No additional comments.

9. Rating level

9.1 General

You can only add character corrections where the acoustic feature is audible at the receptor, not at a location closer to the source or at an artificially quieter time.

You should round any character corrections to the nearest whole decibel.

You must apply character corrections using simple linear addition. You must add all corrections regardless of the scale of each individual correction. Character corrections are added to the specific sound level and not the residual sound level.

The calculated methods are designed to replicate human hearing. This includes both the objective and reference methods to assess tonality and the prominence of impulsivity. If

3 Office of The Deputy Prime Minister. Planning Policy Guidance 24. Planning and Noise, 1994

Planning Policy Guidance 24: Planning and Noise

Publication title: Planning Policy Guidance 24: Planning and Noise

Date published: September 1994

ISBN: 0 11 752924 9

Price: £7.50 (available in HTML pages below)

Summary

Planning Policy Guidance 24 (PPG24) guides local authorities in England on the use of their planning powers to minimise the adverse impact of noise. It outlines the considerations to be taken into account in determining planning applications both for noise-sensitive developments and for those activities which generate noise.

It explains the concept of noise exposure categories for residential development and recommends appropriate levels for exposure to different sources of noise.

It also advises on the use of conditions to minimise the impact of noise. Six annexes contain noise exposure categories for dwellings, explain noise levels, give detailed guidance on the assessment of noise from different sources, gives examples of planning conditions, specify noise limits, and advise on insulation of buildings against external noise.

Order

This is a priced publication available from TSO (The Stationery Office), PO Box 29, Norwich NR3 1GN. Order through the Parliamentary Hotline (Lo-call): 08457 023 474, fax: 0870 600 5533, textphone 0870 240 3701, email: book.orders@tso.co.uk or visit www.tsoshop.co.uk to buy online.

Alternative formats under Disability Discrimination Act (DDA): if you require this publication in an alternative format (eg Braille or audio) please email alternativeformats@communities.gsi.gov.uk quoting the title and product code/ISBN of the publication, and your address and telephone number.

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proposals map. However, it will generally be inappropriate for a proposals map to show detailed noise contours as noise emissions may change significantly over time (eg in the case of an aerodrome, operational changes may lead to significant variations in the impact of the noise on those living in the area).

5. Plans should contain policies designed to ensure, as far as is practicable, that noise-sensitive developments are located away from existing sources of significant noise (or programmed development such as new roads) and that potentially noisy developments are located in areas where noise will not be such an important consideration or where its impact can be minimised. It may also be appropriate for local planning authorities to adopt policies to avoid potentially noisy developments in areas, which have remained relatively undisturbed by noise nuisance and are prized for their recreational and amenity value for this reason.

6. The Secretary of State considers that housing, hospitals and schools should generally be regarded as noise-sensitive development, but planning authorities may wish to include other developments or uses within this definition, depending on local circumstances and priorities and, if so, these should be explained in the development plan.

7. Where it is particularly difficult to separate noise-sensitive development from noisy activities, plans should contain an indication of any general policies which the local planning authority propose to apply in respect of conditions or planning obligations.

Noise exposure categories for residential development

8. This guidance introduces the concept of Noise Exposure Categories (NECs), ranging from A-D, to help local planning authorities in their consideration of applications for residential development near transport-related noise sources. Category A represents the circumstances in which noise is unlikely to be a determining factor, while Category D relates to the situation in which development should normally be refused. Categories B and C deal with situations where noise mitigation measures may make development acceptable. Annex 1 illustrates this approach in more detail. It also explains why the NEC procedure cannot be used in the reverse context for proposals, which would introduce new noise sources into areas of existing residential development.

9. The table in Annex 1 contains a recommended range of noise levels for each NEC covering day and night-time periods. However, in some cases it may be appropriate for local planning authorities to determine the range of noise levels which they wish to attribute to any or each of the NECs. For example, where there is a clear need for new residential development in an already noisy area some or all NECs might be increased by up to 3-dB (A) above the recommended levels. In other cases, a reduction of up to 3 dB (A) may be justified.

Annex 1

Noise Exposure Categories For Dwellings

1. When assessing a proposal for residential development near a source of noise, local planning authorities should determine into which of the four noise exposure categories (NECs) the proposed site falls, taking account of both day and night-time noise levels. Local planning authorities should then have regard to the advice in the appropriate NEC, as below:

NEC	
A	Noise need not be considered as a determining factor in granting planning permission, although the noise level at the high end of the category should not be regarded as a desirable level.
B	Noise should be taken into account when determining planning applications and, where appropriate, conditions imposed to ensure an adequate level of protection against noise.
C	Planning permission should not normally be granted. Where it is considered that permission should be given, for example because there are no alternative quieter sites available, conditions should be imposed to ensure a commensurate level of protection against noise.
D	Planning permission should normally be refused.

2. A recommended range of noise levels is given below for each of the NECs for dwellings exposed to noise from road, rail, air, and "mixed sources". Annex 2 provides a detailed explanation of how the boundaries of each of the NECs have been derived. Paragraph 9 of the main text explains that in some cases local planning authorities may be able to justify a range of NECs of up to 3 dB(A) above or below those recommended.

3. The NEC noise levels should not be used for assessing the impact of industrial noise on proposed residential development because the nature of this type of noise, and local circumstances, may necessitate individual assessment and because there is insufficient information on people's response to industrial noise to allow detailed guidance to be given. However, at a mixed noise site where industrial noise is present but not dominant, its contribution should be included in the noise level used to establish the appropriate NEC.

4. The NEC procedure is only applicable where consideration is being given to introducing residential development into an area with an existing noise source, rather than the reverse situation where new noise sources are to be introduced into an existing residential area. This is because the planning system can be used to impose conditions to protect incoming residential development from an existing noise source but, in general, developers are under no statutory obligation to offer noise protection measures to existing dwellings which will be affected by a proposed new noise source. Moreover, there would be no obligation on individuals with an interest in each dwelling affected to take up such an offer, and therefore no guarantee that all necessary noise protection measures would be put in place.

5. Thus, where new industrial or commercial development is proposed near a residential area the effect of the new noise source on the surrounding area will have to be assessed in

accordance with existing procedures. In many cases where a new source of noise is to be introduced by a project that requires environmental assessment (EA) (see paragraph 22), the effect of noise will be considered in this context; but it must be accepted that in these circumstances the options to control noise are likely to be more limited than where residential development is proposed in an area with an existing noise source. It must also be borne in mind that when dealing with new roads and aerodromes, schemes may exist to provide insulation in specified circumstances.

Other noise-sensitive development

6. Developments such as offices, hospitals and schools will contain buildings and activities which are noise-sensitive. But these developments are likely to occupy sizeable sites and to contain a proportion of buildings and activities which are less noise-sensitive. The NEC principle cannot therefore be sensibly applied to such developments and it will be more appropriate to refer to specific guidance on internal noise standards in respect of each activity. General information can be found in BS 8233 1987. Information about guidance for health and hospital buildings is available from NHS Estates, an Executive Agency of the Department of Health, 1 Trevelyan Square, Boar Lane, Leeds LS1 6AE. The Department for Education publishes guidance for schools (see Annex 8).

Noise index and measurement positions

7. Traditionally, different indices have been used to describe noise from different sources, and limits have been set over different time periods. This has caused confusion, and this PPG follows the move towards consistency advocated in BS 7445: 1991 by expressing all noises in terms of $L_{Aeq,T}$. The recommended time periods are 07.00-23.00 and 23.00-07.00.

8. Values in the table below refer to noise levels measured on an open site at the position of the proposed dwellings, well away from any existing buildings, and 1.2m to 1.5m above the ground. The arithmetic average of recorded readings should be rounded up. Where that average falls on the boundary between NECs B and C it will be for the local planning authority to determine which is the more appropriate NEC for the proposal.

9. Levels of noise from road and rail traffic are often specified at one metre from a facade, and these facade levels should be assumed to be 3 dB(A) higher than levels measured away from any buildings, unless a more accurate figure is available. For road traffic noise in NECs C and D, $L_{Aeq,16h} \simeq L_{A10,18h} - 2$ dB.

10. For aircraft, the noise levels refer to aircraft noise exposure contour values which are specified at 1.2m above the ground and published at 3 dB(A) intervals (each 3 dB(A) increment represents a doubling of noise energy). Because most aircraft noise originates from above, contours include the effects of ground reflection (see Note 2 below).

Recommended Noise Exposure Categories For New Dwellings Near Existing Noise

Sources

Noise Levels ⁰ Corresponding To The Noise Exposure				
Categories For New Dwellings L _{Aeq,T} dB				
Noise Source	Noise Exposure Category			
	A	B	C	D
road traffic				
07.00 - 23.00	<55	55 - 63	63 - 72	>72
23.00 - 07.00 ¹	<45	45 - 57	57 - 66	>66
rail traffic				
07.00 - 23.00	<55	55 - 66	66 - 74	>74
23.00 - 07.00 ¹	<45	45 - 59	59 - 66	>66
air traffic ²				
07.00 - 23.00	<57	57 - 66	66 - 72	>72
23.00 - 07.00 ¹	<48	48 - 57	57 - 66	>66
mixed sources ³				
07.00 - 23.00	<55	55 - 63	63 - 72	>72
23.00 - 07.00 ¹	<45	45 - 57	57 - 66	>66

Notes

⁰**Noise levels:** the noise level(s) (L_{Aeq,T}) used when deciding the NEC of a site should be representative of typical conditions.

¹**Night-time noise levels (23.00 - 07.00):** sites where individual noise events regularly exceed 82 dB L_{Amax} (S time weighting) several times in any hour should be treated as being in NEC C, regardless of the L_{Aeq,8h} (except where the L_{Aeq,8h} already puts the site in NEC D).

²**Aircraft noise:** daytime values accord with the contour values adopted by the Department for Transport which relate to levels measured 1.2m above open ground. For the same amount of noise energy, contour values can be up to 2 dB(A) higher than those of other sources because of ground reflection effects.

³**Mixed sources:** this refers to any combination of road, rail, air and industrial noise sources. The "mixed source" values are based on the lowest numerical values of the single source limits in the table. The "mixed source" NECs should only be used where no individual noise source is dominant.

To check if any individual noise source is dominant (for the purposes of this assessment) the noise level from the individual sources should be determined and then combined by decibel addition (remembering first to subtract 2 dB (A) from any aircraft noise contour values). If the level of any one source then lies within 2 dB(A) of the calculated combined value, that source should be taken as the dominant one and the site assessed against the appropriate NEC for that source, rather than using the "mixed source" NECs. If the dominant source is industrial noise see paragraph 19 of Annex 3.

If the contribution of the individual noise sources to the overall noise level cannot be determined by measurement and/or calculation, then the overall measured level should be used and the site assessed against the NECs for "mixed sources".

Annex 2

Noise Exposure Categories: Explanation Of Noise Levels

1. The following is an explanation of how the boundaries of each of the noise exposure categories (NECs) in the table in Annex 1 have been calculated or derived. Wherever possible figures have been based on research findings or figures contained in statutory regulations. However, the NEC table attempts to give guidance across a broad spectrum of situations and not all of these are covered by existing research work or regulations. In these instances assessments and interpolations have had to be made and these are also explained below.

2. The explanations under each heading make specific reference to each of the transport modes: road, rail, and air. However, separate explanations of "mixed sources" are not given. The "mixed source" values are based on the lowest numerical values of the single source limits in the table.

3. The values given in the NEC table are free-field levels, together with an addition of 2 dB(A) for ground reflection of air traffic noise. Details of correction factors to convert between facade levels and free-field where appropriate are given below. For night-time levels typical insulation values for window installations that are likely to be used in each NEC have been assumed. Because the insulation performance of different window installations is likely to vary, these values are nominal.

Noise levels at the boundary of NEC A and NEC B

Daytime

4. There is no recent, major, U.K.-based research from which to take figures for road or rail traffic. The level at the boundary of NEC A and NEC B is therefore based on guidance provided by the World Health Organisation¹ that "general daytime outdoor noise levels of less than 55 dB (A) L_{eq} are desirable to prevent any significant community annoyance". The figure of 55 dB(A) has been taken to be free-field and therefore no adjustments have been necessary for road and rail traffic noise levels before inserting them in the table. In respect of air traffic noise a considerable amount of research has been carried out². 57 dB(A) L_{eq} (previously 35 NNI) relates to the onset of annoyance as established by noise measurements and social surveys.

Night-Time

5. As for daytime, there is no recent, major, U.K.-based research from which to take figures for road or rail traffic. There has been research on the effects of aircraft noise, most recently on sleep disturbance³, which looks at noise levels at which people are awoken from sleep. The nighttime noise level at the boundary of NEC A and NEC B is based on the WHO guideline previously referred to which states that for nighttime: "based on limited data available, a level of less than 35 dB(A) is recommended to preserve the restorative process of sleep" and this is considered more relevant when seeking to achieve the best practicable conditions for rest and

4 World Health Organisation, Guidelines for Community Noise, 2000.

GUIDELINES FOR COMMUNITY NOISE

Edited by

Birgitta Berglund
Thomas Lindvall
Dietrich H Schwela

This WHO document on the *Guidelines for Community Noise* is the outcome of the WHO-expert task force meeting held in London, United Kingdom, in April 1999. It bases on the document entitled "Community Noise" that was prepared for the World Health Organization and published in 1995 by the Stockholm University and Karolinska Institute.



World Health Organization, Geneva

Cluster of Sustainable Development and Healthy Environment (SDE)

Department for Protection of the Human Environment (PHE)

Occupational and Environmental Health (OEH)

Foreword

Noise has always been an important environmental problem for man. In ancient Rome, rules existed as to the noise emitted from the ironed wheels of wagons which battered the stones on the pavement, causing disruption of sleep and annoyance to the Romans. In Medieval Europe, horse carriages and horse back riding were not allowed during night time in certain cities to ensure a peaceful sleep for the inhabitants. However, the noise problems of the past are incomparable with those of modern society. An immense number of cars regularly cross our cities and the countryside. There are heavily laden lorries with diesel engines, badly silenced both for engine and exhaust noise, in cities and on highways day and night. Aircraft and trains add to the environmental noise scenario. In industry, machinery emits high noise levels and amusement centres and pleasure vehicles distract leisure time relaxation.

In comparison to other pollutants, the control of environmental noise has been hampered by insufficient knowledge of its effects on humans and of dose-response relationships as well as a lack of defined criteria. While it has been suggested that noise pollution is primarily a “luxury” problem for developed countries, one cannot ignore that the exposure is often higher in developing countries, due to bad planning and poor construction of buildings. The effects of the noise are just as widespread and the long term consequences for health are the same. In this perspective, practical action to limit and control the exposure to environmental noise are essential. Such action must be based upon proper scientific evaluation of available data on effects, and particularly dose-response relationships. The basis for this is the process of risk assessment and risk management.

The extent of the noise problem is large. In the European Union countries about 40 % of the population are exposed to road traffic noise with an equivalent sound pressure level exceeding 55 dB(A) daytime and 20 % are exposed to levels exceeding 65 dB(A). Taking all exposure to transportation noise together about half of the European Union citizens are estimated to live in zones which do not ensure acoustical comfort to residents. More than 30 % are exposed at night to equivalent sound pressure levels exceeding 55 dB(A) which are disturbing to sleep. The noise pollution problem is also severe in cities of developing countries and caused mainly by traffic. Data collected alongside densely travelled roads were found to have equivalent sound pressure levels for 24 hours of 75 to 80 dB(A).

The scope of WHO’s effort to derive guidelines for community noise is to consolidate actual scientific knowledge on the health impacts of community noise and to provide guidance to environmental health authorities and professional trying to protect people from the harmful effects of noise in non-industrial environments. Guidance on the health effects of noise exposure of the population has already been given in an early publication of the series of Environmental Health Criteria. The health risk to humans from exposure to environmental noise was evaluated and guidelines values derived. The issue of noise control and health protection was briefly addressed.

At a WHO/EURO Task Force Meeting in Düsseldorf, Germany, in 1992, the health criteria and guideline values were revised and it was agreed upon updated guidelines in consensus. The essentials of the deliberations of the Task Force were published by Stockholm University and

Karolinska Institute in 1995. In an recent Expert Task Force Meeting convened in April 1999 in London, United Kingdom, the Guidelines for Community Noise were extended to provide global coverage and applicability, and the issues of noise assessment and control were addressed in more detail. This document is the outcome of the consensus deliberations of the WHO Expert Task Force.

Dr Richard Helmer
Director, Department of Protection of the Human Environment
Cluster Sustainable Development and Healthy Environments

Preface

Community noise (also called environmental noise, residential noise or domestic noise) is defined as noise emitted from all sources except noise at the industrial workplace. Main sources of community noise include road, rail and air traffic, industries, construction and public work, and the neighbourhood. The main indoor sources of noise are ventilation systems, office machines, home appliances and neighbours. Typical neighbourhood noise comes from premises and installations related to the catering trade (restaurant, cafeterias, discotheques, etc.); from live or recorded music; sport events including motor sports; playgrounds; car parks; and domestic animals such as barking dogs. Many countries have regulated community noise from road and rail traffic, construction machines and industrial plants by applying emission standards, and by regulating the acoustical properties of buildings. In contrast, few countries have regulations on community noise from the neighbourhood, probably due to the lack of methods to define and measure it, and to the difficulty of controlling it. In large cities throughout the world, the general population is increasingly exposed to community noise due to the sources mentioned above and the health effects of these exposures are considered to be a more and more important public health problem. Specific effects to be considered when setting community noise guidelines include: interference with communication; noise-induced hearing loss; sleep disturbance effects; cardiovascular and psycho-physiological effects; performance reduction effects; annoyance responses; and effects on social behaviour.

Since 1980, the World Health Organization (WHO) has addressed the problem of community noise. Health-based guidelines on community noise can serve as the basis for deriving noise standards within a framework of noise management. Key issues of noise management include abatement options; models for forecasting and for assessing source control action; setting noise emission standards for existing and planned sources; noise exposure assessment; and testing the compliance of noise exposure with noise immission standards. In 1992, the WHO Regional Office for Europe convened a task force meeting which set up guidelines for community noise. A preliminary publication of the Karolinska Institute, Stockholm, on behalf of WHO, appeared in 1995. This publication served as the basis for the globally applicable *Guidelines for Community Noise* presented in this document. An expert task force meeting was convened by WHO in March 1999 in London, United Kingdom, to finalize the guidelines.

The *Guidelines for Community Noise* have been prepared as a practical response to the need for action on community noise at the local level, as well as the need for improved legislation, management and guidance at the national and regional levels. WHO will be pleased to see that these guidelines are used widely. Continuing efforts will be made to improve its content and structure. It would be appreciated if the users of the *Guidelines* provide feedback from its use and their own experiences. Please send your comments and suggestions on the WHO *Guidelines for Community Noise – Guideline document* to the Department of the Protection of the Human Environment, Occupational and Environmental Health, World Health Organization, Geneva, Switzerland (Fax: +41 22-791 4123, e-mail: schwelad@who.int).

Experimental noise exposure consistently produces negative after-effects on performance (Glass & Singer 1972). Following exposure to aircraft noise, schoolchildren in the vicinity of Los Angeles airport were found to be deficient in proofreading, and in persistence with challenging puzzles (Cohen et al. 1980). The uncontrollability of noise, rather than the intensity of the noise, appears to be the most critical variable. The only prospective study on noise-exposed schoolchildren, designed around the move of the Munich airport (Hygge et al. 1996; Evans et al. 1998), confirmed the results of laboratory and workplace studies in adults, as well the results of the Los Angeles airport study with children (Cohen et al. 1980). An important finding was that some of the adaptation strategies for dealing with aircraft noise, such as tuning out or ignoring the noise, and the effort necessary to maintain task performance, come at a price. There is heightened sympathetic arousal, as indicated by increased levels of stress hormone, and elevation of resting blood pressure (Evans et al. 1995; Evans et al. 1998). Notably, in the airport studies reported above, the adverse effects were larger in children with lower school achievement.

For aircraft noise, it has been shown that chronic exposure during early childhood appears to impair reading acquisition and reduces motivational capabilities. Of recent concern are concomitant psychophysiological changes (blood pressure and stress hormone levels). Evidence indicates that the longer the exposure, the greater the damage. It seems clear that daycare centers and schools should not be located near major sources of noise, such as highways, airports and industrial sites.

3.8. Effects of Noise on Residential Behaviour and Annoyance

Noise annoyance is a global phenomenon. A definition of annoyance is “a feeling of displeasure associated with any agent or condition, known or believed by an individual or group to adversely affect them” (Lindvall & Radford 1973; Koelega 1987). However, apart from “annoyance”, people may feel a variety of negative emotions when exposed to community noise, and may report anger, disappointment, dissatisfaction, withdrawal, helplessness, depression, anxiety, distraction, agitation, or exhaustion (Job 1993; Fields et al. 1997 1998). Thus, although the term annoyance does not cover all the negative reactions, it is used for convenience in this document.

Noise can produce a number of social and behavioural effects in residents, besides annoyance (for review see Berglund & Lindvall 1995). The social and behavioural effects are often complex, subtle and indirect. Many of the effects are assumed to be the result of interactions with a number of non-auditory variables. Social and behavioural effects include changes in overt everyday behaviour patterns (e.g. closing windows, not using balconies, turning TV and radio to louder levels, writing petitions, complaining to authorities); adverse changes in social behaviour (e.g. aggression, unfriendliness, disengagement, non-participation); adverse changes in social indicators (e.g. residential mobility, hospital admissions, drug consumption, accident rates); and changes in mood (e.g. less happy, more depressed).

Although changes in social behaviour, such as a reduction in helpfulness and increased aggressiveness, are associated with noise exposure, noise exposure alone is not believed to be sufficient to produce aggression. However, in combination with provocation or pre-existing anger or hostility, it may trigger aggression. It has also been suspected that people are less willing to help, both during exposure and for a period after exposure. Fairly consistent evidence

shows that noise above 80 dBA is associated with reduced helping behaviour and increased aggressive behaviour. Particularly, there is concern that high-level continuous noise exposures may contribute to the susceptibility of schoolchildren to feelings of helplessness (Evans & Lepore 1993)

The effects of community noise can be evaluated by assessing the extent of annoyance (low, moderate, high) among exposed individuals; or by assessing the disturbance of specific activities, such as reading, watching television and communication. The relationship between annoyance and activity disturbances is not necessarily direct and there are examples of situations where the extent of annoyance is low, despite a high level of activity disturbance. For aircraft noise, the most important effects are interference with rest, recreation and watching television. This is in contrast to road traffic noise, where sleep disturbance is the predominant effect (Berglund & Lindvall 1995).

A number of studies have shown that equal levels of traffic and industrial noises result in different magnitudes of annoyance (Hall et al. 1981; Griffiths 1983; Miedema 1993; Bradley 1994a; Miedema & Vos 1998). This has led to criticism (e.g. Kryter 1994; Bradley 1994a) of averaged dose-response curves determined by meta-analysis, which assumed that all traffic noises are the same (Fidell et al. 1991; Fields 1994a; Finegold et al. 1994). Schultz (1978) and Miedema & Vos (1998) have synthesized curves of annoyance associated with three types of traffic noise (road, air, railway). In these curves, the percentage of people highly or moderately annoyed was related to the day and night continuous equivalent sound level, L_{dn} . For each of the three types of traffic noise, the percentage of highly annoyed persons in a population started to increase at an L_{dn} value of 42 dBA, and the percentage of moderately annoyed persons at an L_{dn} value of 37 dBA (Miedema & Vos 1998). Aircraft noise produced a stronger annoyance response than road traffic, for the same L_{dn} exposure, consistent with earlier analyses (Kryter 1994; Bradley 1994a). However, caution should be exercised when interpreting synthesized data from different studies, since five major parameters should be randomly distributed for the analyses to be valid: personal, demographic, and lifestyle factors, as well as the duration of noise exposure and the population experience with noise (Kryter 1994).

Annoyance in populations exposed to environmental noise varies not only with the acoustical characteristics of the noise (source, exposure), but also with many non-acoustical factors of social, psychological, or economic nature (Fields 1993). These factors include fear associated with the noise source, conviction that the noise could be reduced by third parties, individual noise sensitivity, the degree to which an individual feels able to control the noise (coping strategies), and whether the noise originates from an important economic activity. Demographic variables such as age, sex and socioeconomic status, are less strongly associated with annoyance. The correlation between noise exposure and general annoyance is much higher at the group level than at the individual level, as might be expected. Data from 42 surveys showed that at the group level about 70% of the variance in annoyance is explained by noise exposure characteristics, whereas at the individual level it is typically about 20% (Job 1988).

When the type and amount of noise exposure is kept constant in the meta-analyses, differences between communities, regions and countries still exist (Fields 1990; Bradley 1996). This is well demonstrated by a comparison of the dose-response curve determined for road-traffic noise

(Miedema & Vos 1998) and that obtained in a survey along the North-South transportation route through the Austrian Alps (Lercher 1998b). The differences may be explained in terms of the influence of topography and meteorological factors on acoustical measures, as well as the low background noise level on the mountain slopes.

Stronger reactions have been observed when noise is accompanied by vibrations and contains low frequency components (Paulsen & Kastka 1995; Öhrström 1997; for review see Berglund et al. 1996), or when the noise contains impulses, such as shooting noise (Buchta 1996; Vos 1996; Smoorenburg 1998). Stronger, but temporary, reactions also occur when noise exposure is increased over time, in comparison to situations with constant noise exposure (e.g. HCN 1997; Klæboe et al. 1998). Conversely, for road traffic noise, the introduction of noise protection barriers in residential areas resulted in smaller reductions in annoyance than expected for a stationary situation (Kastka et al. 1995).

To obtain an indicator for annoyance, other methods of combining parameters of noise exposure have been extensively tested, in addition to metrics such as $L_{Aeq,24h}$ and L_{dn} . When used for a set of community noises, these indicators correlate well both among themselves and with $L_{Aeq,24h}$ or L_{dn} values (e.g. HCN 1997). Although $L_{Aeq,24h}$ and L_{dn} are in most cases acceptable approximations, there is a growing concern that all the component parameters of the noise should be individually assessed in noise exposure investigations, at least in the complex cases (Berglund & Lindvall 1995).

3.9. The Effects of Combined Noise Sources

Many acoustical environments consist of sounds from more than one source. For these environments, health effects are associated with the total noise exposure, rather than with the noise from a single source (WHO 1980b). When considering hearing impairment, for example, the total noise exposure can be expressed in terms of $L_{Aeq,24h}$ for the combined sources. For other adverse health effects, however, such a simple model most likely will not apply. It is possible that some disturbances (e.g. speech interference, sleep disturbance) may more easily be attributed to specific noises. In cases where one noise source clearly dominates, the magnitude of an effect may be assessed by taking into account the dominant source only (HCN 1997). Furthermore, at a policy level, there may be little need to identify the adverse effect of each specific noise, unless the responsibility for these effects is to be shared among several polluters (*cf.* The Polluter Pays Principle in Chapter 5, UNCED 1992).

There is no consensus on a model for assessing the total annoyance due to a combination of environmental noise sources. This is partly due to a lack of research into the temporal patterns of combined noises. The current approach for assessing the effects of “mixed noise sources” is limited to data on “total annoyance” transformed to mathematical principles or rules of thumb (Ronnebaum et al. 1996; Vos 1992; Miedema 1996; Berglund & Nilsson 1997). Models to assess the total annoyance of combinations of environmental noises may not be applicable to those health effects for which the mechanisms of noise interaction are unknown, and for which different cumulative or synergistic effects cannot be ruled out. When noise is combined with different types of environmental agents, such as vibrations, ototoxic chemicals, or chemical odours, again there is insufficient knowledge to accurately assess the combined effects on health

4.3. Specific Environments

Noise measures based solely on LAeq values do not adequately characterize most noise environments and do not adequately assess the health impacts of noise on human well-being. It is also important to measure the maximum noise level and the number of noise events when deriving guideline values. If the noise includes a large proportion of low-frequency components, values even lower than the guideline values will be needed, because low-frequency components in noise may increase the adverse effects considerably. When prominent low-frequency components are present, measures based on A-weighting are inappropriate. However, the difference between dBC (or dBlin) and dBA will give crude information about the presence of low-frequency components in noise. If the difference is more than 10 dB, it is recommended that a frequency analysis of the noise be performed.

4.3.1. Dwellings

In dwellings, the critical effects of noise are on sleep, annoyance and speech interference. To avoid sleep disturbance, indoor guideline values for bedrooms are 30 dB LAeq for continuous noise and 45 dB L_{Amax} for single sound events. Lower levels may be annoying, depending on the nature of the noise source. The maximum sound pressure level should be measured with the instrument set at "Fast".

To protect the majority of people from being seriously annoyed during the daytime, the sound pressure level on balconies, terraces and outdoor living areas should not exceed 55 dB LAeq for a steady, continuous noise. To protect the majority of people from being moderately annoyed during the daytime, the outdoor sound pressure level should not exceed 50 dB LAeq. These values are based on annoyance studies, but most countries in Europe have adopted 40 dB LAeq as the maximum allowable level for new developments (Gottlob 1995). Indeed, the lower value should be considered the maximum allowable sound pressure level for all new developments whenever feasible.

At night, sound pressure levels at the outside façades of the living spaces should not exceed 45 dB LAeq and 60 dB L_{Amax}, so that people may sleep with bedroom windows open. These values have been obtained by assuming that the noise reduction from outside to inside with the window partly open is 15 dB.

4.3.2. Schools and preschools

For schools, the critical effects of noise are on speech interference, disturbance of information extraction (e.g. comprehension and reading acquisition), message communication and annoyance. To be able to hear and understand spoken messages in classrooms, the background sound pressure level should not exceed 35 dB LAeq during teaching sessions. For hearing impaired children, an even lower sound pressure level may be needed. The reverberation time in the classroom should be about 0.6 s, and preferably lower for hearing-impaired children. For assembly halls and cafeterias in school buildings, the reverberation time should be less than 1 s. For outdoor playgrounds, the sound pressure level of the noise from external sources should not

5 The Planning Inspectorate Appeal Decision 3304106



Appeal Decision

Hearing held on 8 November 2022

Site visit made on 9 November 2022

by M Woodward BA (Hons) MA

MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 December 2022

Appeal Ref: APP/C3810/W/22/3304106 Land rear of Paynters Croft, Burndell Road, Yapton BN18 0HR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr Jason Osborn (Driftstone Homes) against the decision of Arun District Council.
 - The application Ref F/22/21/PL, dated 4 November 2021, was refused by notice dated 18 February 2022.
 - The development proposed is full application for 23 dwellings with associated access, infrastructure, landscape, open space at land to the rear of Paynters Croft, Yapton.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. Interested parties provided me with copies of several nearby planning permissions of relevance to the consideration of this appeal. The main parties were given an opportunity to comment on them, and I refer to them in more detail in my reasoning.
3. A street scene drawing was submitted shortly before the hearing. I have treated this as illustrative only. Amended plans were also submitted with the appeal which alter the proposed housing mix and floorplans, and the dimensions of parking spaces and garages. An additional noise report was also submitted. I am satisfied that the provision of this additional information does not significantly alter the proposal from that originally publicised at the planning application stage, does not prejudice interested parties, and the Council had the opportunity to address this material as part of their statement of case.

4. In relation to the above, and prior to the hearing, the Council confirmed that they were satisfied that several of the Reasons for Refusal (RfR) contained in the decision notice had been resolved by the submission of additional evidence during the appeal process¹, including that relating to the compatibility of the proposal with the nearby waste management facility².

¹ Statement of Common Ground signed 20th October 2022 and Statement of Common Ground Addendum signed 4th November 2022

² RfR no 3

-
5. Notwithstanding this, prior to the hearing I issued a *pre-hearing note*¹ which set out my initial identification of the main issues, taking into account all the evidence before me, including representations received from interested parties. This included a main issue concerning the scheme's relationship with all nearby businesses², which was more expansive than the Council's RfR 3, which referred to the waste management facility only. The main issues were also aired during the hearing and no party raised any objection to them.
6. As a result of the above, I allowed the Council and the appellant an opportunity to set out their respective positions in relation to noise (the first main issue highlighted below). All parties at the hearing were given an opportunity to comment on the statements subsequently submitted, and I have considered the responses as part of my determination of this appeal.

Main Issues

7. The main issues in this case are:
- The scheme's compatibility with existing businesses, with particular regard to potential noise impacts.
 - The effect of the proposal on the character and appearance of the area.

Reasons

8. Paragraph 187 of the National Planning Policy Framework (the Framework) states that decisions should ensure new development can be integrated effectively with existing businesses and community facilities. Existing businesses and facilities should not have unreasonable restrictions placed on them as a result of development permitted after they were established. Where the operation of an existing business or community facility could have a significant adverse effect on new development in its vicinity, suitable mitigation should be provided before the development has been completed.

¹ Dated 1st November 2022

² With particular regard to noise

9. The appellant carried out a noise assessment which included a survey of the prevailing noise climate, against which the suitability of the scheme was assessed. A further noise assessment was carried out in response to West Sussex County Council's³ (WSCC) concerns relating to the proximity of an existing waste recycling facility⁴ and the potential for noise disturbance. This assessment included an appraisal of the recent planning permission to expand the facility to include the processing of inert waste.
10. The noise assessments concluded that there could be an adverse impact arising from the existing and future operations associated with the waste facility. To mitigate potential impacts on the external amenity areas of proposed dwellings which would face the southern boundary of the site, a 2.5m acoustic fence would be installed beyond the end of these rear gardens, along the southern and eastern boundaries of the scheme. The Council are satisfied that, in

respect of the nearby waste management facility, this mitigation would be sufficient to ensure no unacceptable noise impacts.

11. However, the waste management facility is not the only business within the locality which may emit additional noise. Most notably, there is an extant prior notification approval for a grain store associated with the agricultural business at the adjacent lying Northwood Farm⁵. Whilst I accept that the noise surveys carried out by the appellant would have recorded any background noise levels associated with the farm at the time of the survey, the resultant noise assessment did not take into account likely future activities associated with the permitted grain store.
12. The likelihood of impacts is increased partly due to proximity, with the grain store proposed just beyond the southern boundary of the appeal site, extending the farm operations in a westerly direction and closer to the appeal site boundary. As I saw on my site visit, preparatory groundwork has commenced within the farm complex which would appear to be in connection with this building. I have no reason to believe that the grain store will not be built.
13. Furthermore, the grain store would be located closer to the appeal site than the waste management facility and the closest commercial receptor, which formed part of the submitted noise assessments⁶. Therefore, the assessments considered potential noise sources further away from the appeal site than the proposed grain store.
14. In addition, I was told during the hearing by a representative of Northwood Farm that the grain store will include a conditioning floor or other means of ventilation to assist with the drying of crop. Whilst the details accompanying the relevant prior notification do not

³ West Sussex County Council are the waste planning authority

⁴ TJ Waste and Recycling - existing facility with recent planning permission to expand (planning reference - West Sussex County Council - WSCC/037/19)

⁵ Arun District Council - approval under Schedule 2, Part 6 of the Town and Country Planning (General Permitted

Development) Order 2015 - planning reference CM/29/21/AG

⁶ Figure AS12213/SP1 of ProPG Stage 1 Risk Assessment & BS4142 Assessment - Clarke Saunders 15 February 2022

refer specifically to a grain drying facility, nor do they show details of external plant or venting, 'conditioning floor' is included in the description of development on the Council's decision notice. Moreover, it seems to me that any ventilation system associated with the grain store could operate at any time during the day or night.

15. As a result, I am concerned that the use of plant, machinery, and the comings and goings of vehicles associated with the grain store and extended farm complex could create a tension between the proposed residential development and the expanded agricultural business. As such, it could lead to noise and disturbance for future occupiers of the proposed dwellings. This in turn could lead to constraints on the operations of the business due to complaints from future residents.
16. As well as the potential impact from the grain store in isolation, the Government's Planning Practice Guidance (PPG) highlights that the cumulative impacts of more than one noise source can influence the prevalence of noise⁷. Whilst I accept that noise impacts from the waste management facility alone are unlikely to lead to unacceptable adverse effects, this has not been calculated taking into account the future expansion of the farm.

17. Moreover, I have also been made aware of nearby planning permissions for a Flexible Generator Plant⁸ and concrete batching plant⁹. These schemes would be located further away from the appeal site than Northwood Farm, and the appellant has appraised each of the respective planning permissions to conclude that there would be no significant noise effects of each in isolation.

18. Nevertheless, it is clear to me that the relationship between noise and impacts is complex and is dependent on the combination of various factors in any particular situation. I note the appellant's claims that the various noise sources may contribute to the ambient environment, meaning that individual sources would not be identifiable or harmful in reality. However, this statement is not supported by detailed objective analysis properly appraising each noise source relative to the proposal so that the cumulative impact can be readily understood. Such an approach is advocated by PPG which makes it clear that businesses or other facilities that are permitted to be carried out should be taken into account, even if they are not occurring at the time of the application being made¹⁰.

19. I appreciate that the proposed acoustic fencing would likely reduce noise levels from all sources from within the scheme. However, even if I was to accept the appellant's assertion that internal noise levels within each of the proposed dwellings would be low, the appellant accepts that sources may be audible at some of the external areas¹³.

⁷ PPG paragraph: 006 Reference ID: 30-006-20190722

⁸ Arun District Council – planning permission ref CM/69/21/PL

⁹ Arun District Council – planning permission ref CM/6/18/PL

¹⁰ PPG paragraph: 009 Reference ID: 30-009-20190722 ¹³ See – appellant statement (noise comments)

With reference to the significance criteria set out in PPG, the appellant states that generally noise exposure could be between *No*

*Observed Adverse Effect Level (NOAEL) and the Lowest Observed Adverse Effect Level (LOAEL)*¹¹. However, according to PPG, even a LOAEL would represent a present and intrusive noise which would require further mitigation.

20. Turning to mitigation (over and above the proposed acoustic fence), I have considered the imposition of a planning condition¹⁵ which could set out details of any necessary additional measures, based on the findings of a further acoustic report. However, even if I was to accept the appellant's assertion that suitable measures could be incorporated in order to reduce noise entering the proposed dwellings, I have concerns that the rear external amenity areas of dwellings would be particularly exposed.
21. In this regard, I have been provided with limited details proposing additional mitigation measures. Whilst it is suggested that the height of the proposed fence could be increased, I do not know if this would provide effective mitigation. Furthermore, an increase in fence height may adversely affect the usability of the garden spaces or the visual amenity of the surroundings, and such effects have not been assessed.
22. Therefore, due to the proximity of the grain store and associated activities, along with other existing and potential future noise generating uses in the area, I cannot be certain that the acoustic fence would provide the mitigation necessary, and no other suitable measures have been suggested. Intrusive noise within the proposed gardens would mean future residents would be less

likely to use them, or would do so facing potentially adverse effects on their health and quality of life.

23. I recognise that the Council did not object to the proposal on cumulative noise grounds until late in the process, and the noise objections they raised were not reflected in the Council's RfR, nor did they form the basis of the Council's appeal statement of case. Irrespective of this, the appellant did not submit substantive evidence to refute the concerns raised by interested parties relating to noise. I am obliged to examine all the evidence before me, which I have done in order to reach a reasoned decision.
24. I note that the appeal site comprises garden spaces associated with existing properties, and I am not aware of any noise complaints relating to the existing businesses. However, my concerns relate mainly to the introduction of further noise generating activities, some of which would be closer to the appeal site than existing.
25. In conclusion, it has not been demonstrated that the proposal would be compatible with existing businesses with particular regard to noise impacts. Nearby existing and potential future uses would be likely to adversely affect the living conditions of future occupiers, with regard to noise. The proposal could curtail existing and future commercial uses in the area as a result. This would be in conflict with policy QE SP1 of

¹¹ PPG Paragraph: 005 Reference ID: 30-005-20190722 ¹⁵ As suggested by the appellant

the Arun Local Plan 2011-2031 (2018) (Local Plan), and policy EE3 of the Ford Neighbourhood Plan 2017-2031 (2018) (Neighbourhood Plan) and paragraph 187 of the Framework which require, amongst other matters, that the location of existing commercial uses and businesses is taken into account to ensure the amenity of new developments is safeguarded from incompatible land uses. In addition, there would be conflict with policy W2 of the West Sussex Waste Local Plan (2014) as the residential scheme could prejudice the waste management facility in combination with other noise sources.

26. The appeal site lies outside the Built-Up-Area Boundary as depicted by the Local Plan and for the purposes of planning policy is in the countryside. On a district level, it is situated within the *30 Bilsham Coastal Plain* Landscape Character Area (LCA) as identified in the Arun Landscape Study 2006 (ALS). The ALS recognises this as an area of substantial landscape sensitivity, with low/medium capacity. Its main characteristics comprise its enclosed arable landscape appearance, and its rural agricultural setting to settlements including Yapton.
27. The key characteristics of the landscape set out in the ALS are not altogether reflective of the observations I made on my site visit, nor those set out in the appellant's submitted landscape and visual appraisal. For example, most of the appeal site constitutes well-manicured residential gardens with hedgerows and vegetation along the boundaries. This serves to significantly enclose the appeal site. Moreover, despite its location outside the defined settlement boundary, it lies close to relatively modern housing to the north along with a fragmented array of large buildings further to the south associated with Northwood Farm and commercial uses which occupy the former airfield. Therefore, the appeal site lacks the eminent rurality associated with the open countryside which lies generally to the west and southwest.
28. As a result, I define the appeal site as semi-rural, as it is influenced by the suburban form nearby. Added to that its current domestic use, it therefore has more affinity with the suburban areas associated with the adjacent settlement than it does with the open countryside. In addition, despite the scheme's resultant moderate extent of urban encroachment, the trees and hedgerows located along the site boundaries which make an important contribution to the landscape's character would largely be retained. Furthermore, there would be no loss of arable fields and the impact on the prevailing topography and wider countryside would be limited. Consequently, I find no harm to the landscape's character.
29. In terms of visual effects, some of the proposed buildings and the acoustic fencing would be visible above the existing boundary vegetation. However, it is important to recognise that the extent to which views of these elements would be obtainable from the surroundings would mainly be limited to Public Rights of Way (PRoW), which lie generally to the west and southwest of the site.

30. In order to quantify the extent of visibility, on my site visit I walked along the most affected parts of the PRow¹². The western-most length of the PRow extends east along part of Cinders Lane, before heading south, skirting existing housing. From here views of the appeal site are largely obscured by vegetation, trees and existing built form. Glimpses of the proposed two-storey houses would be obtainable (particularly the roofs), but given the distance involved (*circa* 250m at its closest point) and the prevalence of hedgerows and trees **on the site's boundary**, the development would not appear overly prominent.
31. The PRow then routes in a generally south-easterly direction where more open views of the appeal site are obtainable. However, not only would a combination of distance and the existing site boundary landscaping reduce the prominence of the built form when viewed from this stretch of footpath, but the scheme would be seen alongside modern housing associated with *Yapton View*¹³. Observing the wider panorama, housing associated with *Cinders Lane*¹⁸ is also clearly visible in the landscape, along with large buildings associated with Northwood Farm and other commercial uses located within the former airfield.
32. From further along the PRow the existing site boundary vegetation would remain the dominant feature, and views of the proposal would be restricted due to this, distance and other screening. Overall, the visual effects of the proposal from sensitive receptors would be limited.
33. In terms of the proposed acoustic fence, impacts would be limited to oblique angle views from various points along the PRow. However, the fence would largely be seen against the backdrop of the proposed housing and the existing buildings associated with Northwood Farm. It would not be a dominant feature in the landscape.
34. I appreciate that the scheme would rely on the retention of trees and hedgerows along the site boundaries to mitigate visual effects. I see no reason

why these features could not be excluded from the boundaries of individual properties, so that they could be retained and maintained as part of a wider landscape management plan, to be secured by condition. This would reduce the likelihood of these existing landscape features being removed.

35. In respect of the proposed access, the rurality of Burndell Road has been diminished by the presence of other accesses at various points along the street, which utilise modern surfacing materials. Whilst the widening of the access as proposed would have an urbanising effect mainly due to a loss of vegetation and the provision of signage, a planning condition could be imposed to control the type of materials to be used in its

¹² PRow no. 166

¹³ Arun District Council - planning permission ref Y/98/18/RES ¹⁸ Arun District Council - planning permission ref Y/4/19/RES

construction¹⁴. The Council agrees that the use of a more rustic material would be in more in keeping with the area's character. Moreover, existing trees close to the junction with Burndell Road would be retained, and a condition could be imposed detailing construction techniques to avoid root damage which could compromise the trees. I find no harm in this respect.

36. Turning to the scheme's design and appearance. Like the proposal, the prevailing pattern of existing housing in the area includes those with a considerable set-back from Burndell Road. Furthermore, the composition of the proposed dwellings would be appropriate in terms of height and overall scale. The varied house types, the position of dwellings within their plots, and the varied spaces between them would add variety to the street scene. Details of the type and colour of roofing materials could be conditioned, ensuring a varied roofscape could be secured, thus addressing the Council's concerns. I am also satisfied that the proposed half-hipped roof design would reflect roof forms in the locality, including examples I saw nearby along Burndell Road.
37. The rear gardens associated with proposed plots 5 - 10 would be less than the 10.5m advocated by the Arun Design Guide Supplementary Planning Document 2021 (SPD). However, the purpose of this requirement, according to the SPD, is to ensure adequate privacy. In addition, the SPD advocates flexibility where it can be justified. In this case, none of the rear garden boundaries would face other properties, thus there would be no impact on the privacy of existing occupiers. Furthermore, these garden spaces would face hedgerows and trees and future occupiers would benefit from verdant surroundings. Overall, the quality and useability of these garden spaces would be acceptable.
38. In terms of materials, the use of black timber weatherboard would feature heavily on the facades of the proposed dwellings, although it would be contrasted with brick. Moreover, and despite the omission of flint²⁰, a traditional vernacular material present in the locality, the wider area displays a diverse palette of walling materials. Burndell Road is testament to this, with variation in the building materials which face the street. I also saw weatherboard on the walls of some buildings close to the appeal site, and in relation to a modern housing scheme at Navigation Drive. Despite the latter's location some distance away and appreciably separate from the appeal site, it nevertheless forms part of the settlement's character and further reinforces local variety. Moreover, whilst *black* weatherboard is not specified, 'Weatherboard' is nevertheless listed as a local material in the SPD.

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39. Therefore, on balance, I am satisfied that the proposed materials would relate to the surrounding context, utilising a simple robust palette which would be attractive and of high quality.
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¹⁴ Apart from the first 15m of the proposed access, which would be hard surfaced ²⁰ Flint proposed but limited to a single boundary wall within the scheme

40. However, well designed places are not just about the appearance of the buildings within them. The Government's National Design Guide¹⁵ makes it clear that, amongst other things, parking should be well-designed and sensitively integrated into the built form. This is not reflected in the scheme.
41. My main area of concern relates to an extensive area of hardstanding (comprising block paving) and car parking generally fronting plot no's 5 – 10. A number of these parking spaces would be positioned perpendicular to, and directly in front of, proposed dwellings and aligned in a single parking 'block'. When entering the development along the main access road these components of the layout would be prominent in views, with parked vehicles and hard surfacing dominating the street scene.
42. In addition to which, this parking area would be positioned such that it would form a hard edge to the public open space (POS) proposed immediately to the south. Opportunities available for tree planting would be limited due to an underground drainage attenuation tank proposed beneath the POS, and limited space within the proposed layout to incorporate planting to soften impacts.
43. Therefore, the scheme in part would fail to align with the principles of good design, with proposed parking being poorly integrated, undermining the scheme's identity by introducing elements of built form which would be unattractive. In turn this insensitive urban feature would also harm the attractiveness and useability of the proposed POS.
44. However, the extent of harm I have identified is moderated in this case as concerns mainly relate to the north-western portion of the proposed layout only. Moreover, the substandard street layout of this part of the site would have a limited impact on the character and appearance of the wider countryside. In respect of other design elements, I find that the proposal would address the requirements of the SPD for the reasons set out.
45. As a result, I find moderate harm to the character and appearance of the area. There would be conflict with policies D SP1 and D DM1 of the Local Plan, policies H1 and H6 of the Neighbourhood Plan and paragraph 130 of the Framework which require, amongst other matters, that development reflects the characteristics of the site in terms of layout, provides layouts which are attractive with appropriate provision for planting, and is visually integrated with its surroundings. The scheme would fail to sensitively integrate parking into the layout resulting in an obtrusive element, contrary to the SPD and the National Design Guide.

Other Matters

46. The Council's RfRs originally included concerns relating to surface water drainage and the potential to increase flood risk. Nevertheless, both the proposed access and main site could be drained using sustainable drainage techniques. The Council no longer raise an objection subject to additional details, which could be secured by planning condition.

¹⁵ MHCLG 2021

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47. The submitted bi-lateral S106 agreement includes contributions towards affordable housing, off-site highway mitigation, and a sustainable travel plan. I am satisfied that these elements would address the requirements set out in the Council's RfR 2.
48. Concerns raised by interested parties in relation to highway safety are not supported by the Council or the evidence before me. Conditions could be imposed in order to ensure a safe and suitable access, and to address other concerns relating to sustainable travel and other highway matters.
49. RfR 4 refers to the document - *Accommodation for Older People and People with Disabilities 2020*. The proposal would meet this guidance in part by ensuring 30% of proposed dwellings would adhere to M4(2) Accessible Homes standards. The requirement to provide 2no dwellings to meet M4(3) Wheelchair Accessible Homes has not been met. However, this document does not constitute formal supplementary planning guidance nor is it a planning policy. In any event, the Council are now satisfied that the proposal would meet policies D DM1 and D DM2 in accessibility and internal space standard terms, and that RfR 4 would be addressed. Therefore, given general compliance with specific planning policy requirements, I am satisfied that the proposal would make suitable provision for all users in terms of accessibility, and I find no conflict with policy in this regard.

Planning Balance and Conclusion

50. In the interests of clarity, in ascribing weight to the benefits and harm I have used the following scale: limited, moderate, significant and substantial.
51. The Council's housing land supply position stands at approximately 2.4 years. As such, Arun District are unable to demonstrate a five-year supply of deliverable housing sites as required by paragraph 68 of the Framework. Therefore, the policies which are the most important for determining the appeal are considered out of date. In such circumstances, paragraph 11d(ii) of the Framework indicates that permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
52. Therefore, the housing land supply shortfall is substantial. Furthermore, Arun's Housing Delivery Test measurement of 2021 stood at 65%, suggesting that housing delivery has not significantly improved based on recent performance. Therefore, whilst the number of houses proposed would be relatively modest, the scheme would make a notable contribution in the face of considerable housing under supply and recent delivery. As a result, I attribute the provision of market housing significant weight as a benefit in this case.
53. In terms of affordable housing, the Council described the current need as 'extremely high'. The appellant also points to significant affordability issues in the district. Consequently, the provision of 7 affordable homes in this case carries significant weight in favour.

54. The benefits to the local economy, both during construction and indirectly through a likely increase in local spending by future residents, would be proportionate to the modest scale of the scheme. Therefore, these benefits carry moderate weight.
55. The Council does not dispute that overall biodiversity net gain is achievable, although there is uncertainty over the extent to which the scheme would be capable of delivering enhancement. Therefore, these benefits carry limited weight in this case.
56. Turning to harm. Due to the proximity of existing businesses, and the potential for both individual and cumulative noise generation from them, there is a likelihood that living conditions of future occupiers of the proposed dwellings would be unacceptably diminished, and the operational capacity of existing and future businesses constrained due to the potential for complaints from future residents. It has not been demonstrated that the scheme would be compatible with businesses in the local area. There would be conflict with several associated development plan policies as a result. I give substantial weight to this conflict.
57. Moreover, in terms of the proposed layout, part of the scheme would be dominated by parking and hardstanding, which would also diminish the aesthetic quality of the nearby POS. When viewed in context of the other positive elements of design exhibited by the scheme, and the limited impact on the wider countryside, the conflict with associated development plan policies attracts moderate weight against the proposal. Overall, I consider that the proposal would conflict with the development plan when taken as a whole.
58. Weighing these matters in the balance, I find that the harm would be overriding, and would significantly and demonstrably outweigh the benefits outlined. The proposal would not constitute sustainable development with regard to paragraph 11 d ii) of the Framework. Therefore, this decision should be taken in accordance with the development plan, and no material considerations indicate otherwise. This leads me to conclude that the appeal should be dismissed.

M Woodward

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Karen Barnes	Agent - Turley
Simon Packer	Agent - Turley
Jason Osborn	Appellant – Driftstone Homes
Stephen Wadsworth	Briarwood Landscape Architecture Ltd
Alec Korchev	Noise consultant - Clarke Saunders Associates
Chris Purdy	MH Architects

FOR THE LOCAL PLANNING AUTHORITY:

Jessica Riches	Arun District Council
David Easton	Arun District Council Juan Baeza

Arun District Council

INTERESTED PARTIES:

John Gosling	TJ Waste & Recycling
Graham Abbot	Northwood Farm
Susan Abbot	Northwood Farm

6 The Planning Inspectorate Appeal Decision 3175606

Appeal Decision

Inquiry Held on 9-12 January 2018 Site visit made on 12 January 2018 **by Beverley**

Doward BSc BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 March 2018

Appeal Ref: APP/P0240/W/17/3175605

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Landcrest Developments Ltd against the decision of Central Bedfordshire Council.
 - The application Ref CB/16/01012/OUT, dated 4 March 2016, was refused by notice dated 29 November 2016.
 - The development proposed is the demolition of existing dwelling and erection of up to 38 dwellings with all matters reserved except access.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The planning application subject to this appeal was submitted in outline with all matters other than access to be reserved. It was accompanied by supporting information and an illustrative layout plan indicating 38 dwellings. During the application process amended and additional supporting information was submitted to the Council in order to attempt to overcome concerns that had been raised, including in relation to the activities at Bury Farm and their potential impact on future occupiers of houses at the appeal site, in respect of noise and disturbance.
3. After the determination of that application a number of amended and additional supporting documents were produced and submitted by the appellant as part of a revised application for the site. The revised application was expressed in the same terms as the appeal proposal and related to the same site. It was subsequently refused planning

permission for the same reasons as the appeal proposal. The amended and additional documents submitted as part of the revised application consisted of a revised Heritage Assessment, dated 7 February 2017; a Structural Survey Report, dated 18 April 2017; a Noise Assessment referenced P01-16279 Rev 6, dated 22 September 2017; and an illustrative sketch layout referenced 17539 – 1005 Rev E, indicating 35 dwellings. The Statement of Common Ground (SoCG), dated 7 January 2018, indicates that the appellant wishes to rely upon these supporting documents for the appeal. It also indicates that the Council does not object to the inclusion of these documents as they had been considered and consulted upon as part of the revised application.

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4. A further iteration of the illustrative sketch layout was submitted with the appellant's appeal documentation (referenced 17539 - 1005 Rev F). This indicates 35 dwellings but differs to that referenced 17539 – 1005 Rev E in so far as it indicates landscaping along the western boundary of the site, and a 3m high acoustic screen along its southern boundary. At the Inquiry I sought the views of the parties as to the status of the various sketch layouts and in particular that referenced 17539 - 1005 Rev F to which both the appellant's and the Council's noise evidence refers.
 5. The parties agreed that as the appeal was submitted in outline with all matters other than access to be reserved, the various layout plans were for illustrative purposes only. It was no part of anyone's case that the description of development should be changed from that given in the heading above. It was also agreed that the plan referenced 17539 -1005 Rev F had been included in the appellant's noise reports that had accompanied the subsequent planning application on the site and had therefore been subject to public consultation. The Council also confirmed that it did not oppose the consideration of the evidence on the basis of the plan referenced 17539 - 1005 Rev F. Having regard to all of the above I am therefore satisfied that no parties would be prejudiced by my consideration of the appeal on the basis of the plan referenced 17539 - 1005 Rev F, albeit for illustrative purposes. I informed the parties at the Inquiry that I would deal with the appeal on this basis.
 6. I made an accompanied visit to the appeal site and the nearby Bury Farm on 12 January 2018. During my site visit I was afforded the opportunity to listen to the noise environment with the grain dryers and the grain dresser at Bury Farm in operation, with only the grain dryers in operation, and with neither the grain dryers nor the grain dresser in operation. The rest of my site visit on 12 January 2018 was undertaken on an unaccompanied basis, with the agreement of the parties.
 7. On 5 March 2018 the Government published the consultation draft of the revised National Planning Policy Framework. As this is a consultation document its content could change. It is not extant government policy and does not change my conclusions on this appeal.

Main Issues

8. The planning application was refused by the Council for three reasons. Firstly, that the development by virtue of its siting and scale, would result in harm to the character and

appearance of the site, and the area, through urbanisation of the countryside, the poor relationship between the site and the built up area of Meppershall, and the demolition of non-designated heritage assets at the site. Secondly, that the development, by virtue of its proximity to Bury Farm, would result in unsatisfactory living conditions for future residents, through noise and disturbance and that this harm could not be acceptably mitigated thereby resulting in poor quality accommodation. Thirdly, that the absence of a completed legal agreement securing the provision of affordable housing and financial contributions required to mitigate impacts of the development on local infrastructure would mean that the proposal would not constitute sustainable development.

9. In relation to the Council's first reason for refusal the SoCG indicates that following consideration of the further information submitted with the revised application for the site, referred to above, the parties are in agreement that the demolition of non-designated heritage assets on the site should not be a barrier to the grant of planning permission. It also indicates that accordingly the Council no longer seeks to pursue this element of the first reason for refusal. I concur with that approach and as a consequence take this matter no further.
10. The SoCG indicates that subject to the submission of a satisfactory executed legal agreement relating to Affordable Housing and Education Contributions the Council would not contest its third reason for refusal. A completed Unilateral Undertaking (UU) dated 11 January 2018 was submitted at the Inquiry. The UU includes obligations relating to the provision of Affordable Housing and financial contributions in respect of education provision. As a consequence the Council did not contest its third reason for refusal and confirmed in closing submissions that the third reason for refusal had been addressed. I return to the matter of the UU below.
11. At the time of its consideration of the planning application subject to this appeal, the Council accepted that it could not demonstrate a five year supply of deliverable housing sites (5YHLS). Furthermore, the planning application was determined prior to the judgment of the Supreme Court¹⁶ on the interpretation of the phrase '*relevant policies for the supply of housing*' at paragraph 49 of the National Planning Policy Framework (the Framework). The judgment confirmed that a 'narrow interpretation' of policies for the supply of housing is the correct one for the purposes of paragraph 49 of the Framework.
Subsequent to its consideration of the planning application, and at the time of preparing its written evidence, the Council indicated that it could demonstrate a 5YHLS.
12. The appellant disputed this in written evidence. However, the SoCG indicates that it is now a matter of common ground between the main parties that the full Objectively Assessed Housing Need (OAN) for Central Bedfordshire is 32,000 dwellings for the period 2015-35; the annual OAN for Central Bedfordshire is 1600 dwellings per annum; that Luton's unmet need should not be included in the housing requirement for 5YHLS purposes, albeit Luton's unmet need is a material consideration of significant weight; the Council is not a persistent under delivering authority for the purposes of paragraph 47 of the Framework; and that the

¹⁶ Suffolk Coastal DC v Hopkins Homes Ltd & SSCLG and Richborough Estates Partnership LLP & SSCLG v Cheshire East BC [2017] UKSC 37

appropriate buffer to apply when calculating the 5YHLS is 5%. The SoCG indicates that it is now common ground between the main parties that the Council can demonstrate a supply of 9812 dwellings as having a realistic prospect of delivery over the next 5 years and that accordingly it can demonstrate a 5YHLS.

13. In the light of all that I have read, heard and seen therefore the main issues in this appeal are:

- the effect of the proposed development on the character and appearance of the area; and
- whether the proposed development would provide satisfactory living conditions for future occupiers of the proposed dwellings with regards to potential noise and disturbance.

Reasons

14. The adopted development plan for the area within which the appeal site lies comprises the Central Bedfordshire Core Strategy and Development Management Policies Development Plan Document (DPD) (2009) (the Core Strategy), the saved policies of the Mid Bedfordshire Local Plan First Review (2005) (Local Plan) and the Site Allocations DPD (2011). These plans all pre-date the Framework. However, paragraph 215 of the Framework indicates that due weight should be given to relevant policies in existing plans according to their degree of consistency with the Framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given). The parties agree that there are no saved policies of the Local Plan, or specific policies in the Site Allocations DPD, that are relevant to this appeal.

15. A new Local Plan for Central Bedfordshire is being prepared. The Central Bedfordshire Pre-submission Local Plan 2015-2035 (emerging Local Plan) was published in January 2018. However, given the early stage in the plan's preparation I attach limited weight to it.

16. The reasons for refusal refer to a number of policies of the Core Strategy. However, having regard to the Council's position regarding the non-designated heritage assets at the site referred to in its first reason for refusal and its position regarding the third reason for refusal, the remaining pertinent policies referred to are policies CS14, DM3 and DM4. Whilst the proposal falls to be considered against the development plan as a whole under Section 38(6) of the Planning and Compulsory Purchase Act 2004 (the Act) the relevant policies for the purposes of determining this appeal focus upon policies CS14, DM3 and DM4 of the Core Strategy. Accordingly, I have proceeded on this basis.

17. The appeal site lies on the edge of Meppershall, to the west of High Street, at the southern end of the village. It consists of a detached dwelling (100 High Street) and land to the rear of the dwellings at Nos 84-100 High Street. Access to the site is currently provided by a narrow vehicular access from High Street.

18. There are a number of buildings and structures on the site associated with its former horticultural use which, the evidence indicates, ceased operating some time ago. The buildings and structures on the site, which include former glasshouse structures, a boiler house, chimneys and water towers, are in various states of disrepair and dereliction. There are large areas of overgrown vegetation, a pond and grassland on the site. The Landscape and Visual Impact Assessment (LVIA) submitted by the appellant indicates that the current use of the site is primarily given over to grassland and from what I saw on my site visit I agree with this assessment.
19. The site is contained by boundary planting made up of scrub, hedge and trees to the west and north. To the north, south and west of the site is countryside and to the east are the rear garden boundaries of 84-98 High Street, which are separated from the site by mature vegetation and High Street itself. The open countryside to the west of the site is in arable use. To the north is an area of open land and then the open rear gardens to Nos 2 and 3 Long Acre. The western part of the northern boundary comprises a paddock and a mixed agricultural landscape lies further north with small paddocks turning into large scale arable field systems further away from the village. Within the countryside immediately to the south is a paddock area as well as a group of agricultural buildings associated with Bury Farm. Campton Road runs along the southern edge of Bury Farm with a mixed agricultural landscape further south.
20. The existing dwelling at 100 High Street together with its immediate curtilage is included within the settlement envelope of Meppershall as defined in policy DM4 of the Core Strategy. However, the majority of the site lies outside the settlement envelope of Meppershall. Therefore, notwithstanding that part of it is occupied by former horticultural buildings/structures, it is within the countryside for planning policy purposes.
21. Policy DM4 of the Core Strategy relates to development within and beyond settlement envelopes. Beyond settlement envelopes, the policy only expressly permits limited extensions to gardens. Accordingly, the appeal proposal for residential development on a site, the majority of which lies beyond the settlement boundary of Meppershall, would fail to accord with policy DM4 of the Core Strategy.
22. In the light of the advice at paragraph 215 of the Framework the weight to be attributed to policy DM4 of the Core Strategy is a matter of dispute between the parties. However, both agree that in the light of the findings of the Inspector in a recent appeal decision¹⁷ at Potton it should not be afforded full weight. In considering policy DM4 of the Core Strategy the Inspector in the Potton case found that it is not fully consistent with the policies of the Framework, which seek to recognise the intrinsic character and beauty of the countryside rather than to specifically ‘protect’ it. He went on to conclude that in such circumstances, it should be afforded moderate weight. I agree with the Inspector’s findings in relation to the consistency of policy DM4 of the Core Strategy with the policies of the Framework, which seek to recognise the intrinsic character and beauty of the countryside and I see no reason, from the evidence, to conclude that it should be afforded any lesser weight to that indicated by the Inspector in the Potton case.

¹⁷ APP/P0240/W/17/3176444 64 Biggleswade Road, Potton (Core Document 13.01)

- I deal with the matter of the link between paragraphs 215 and 14 of the Framework and whether an inconsistency with the Framework renders a relevant policy out of date below.
23. The other policies of the Core Strategy against which the proposal falls to be assessed in relation to this main issue are policies CS14 and DM3. These policies require development to be of the highest quality by, amongst other things, respecting local context, and the varied character and local distinctiveness of places. They are consistent with the core planning principles of the Framework that planning should always seek to secure high quality design and take account of the different roles and character of different areas.
24. The village of Meppershall is essentially linear in character being arranged along High Street and Shefford Road running broadly north to south. The ‘central core’ of the village, which contains the bulk of its services and housing, lies further north within the vicinity of the junction of High Street and Fildyke Road. The appeal site is not within this ‘central core’ like the new housing development referred to as the Croudace development but is instead, as indicated above, at the southern end of the village. The settlement pattern within this part of the village is not one of ‘development in depth’ but rather of
- a linear nature. This is notably so on the western side of High Street where, with the exception of the small development of 4 houses at Long Acre, the pattern of development is essentially one of single plot depth that fronts on to High Street with countryside beyond.
25. Notwithstanding that layout is a reserved matter, it seems to me that the appeal proposal, for up to 38 dwellings, would inevitably result in a residential estate type development at some depth with dwellings sited behind existing properties fronting High Street. Accordingly, it would be out of keeping with the prevailing settlement pattern and at odds with the existing arrangement of built form in this edge of settlement location, at the southern end of the village. It would appear as an alien intrusion into the countryside.
26. In terms of the visual impact of the appeal proposal I note that the LVIA submitted by the appellant identifies only one viewpoint (No 5), being the view from High Street, Meppershall (along which the John Bunyan Way, a long distance walking route, passes), with significant visual effects. The other eight viewpoints are identified as having minor or negligible visual effects. The Council however raises specific concerns about the visual impact of the proposal from both viewpoints No 5 and No 1, as indicated in the LVIA. I took these in at my site visit.
27. The existing view from viewpoint No 5 is of the dwelling at No 100 High Street, with its well planted boundary to the road, and the adjacent narrow access track, which runs alongside the dwelling and leads to the land to the rear, which was previously in horticultural use. There is no view of open countryside from this viewpoint. Nevertheless there is equally no view of urban development. Rather it has a rural aspect, appropriate to the character of the village and particularly to this part of it.
28. Access is not a reserved matter and the proposed access plan indicates that the main access into the site would comprise an engineered bellmouth junction with a 5.5 metre

wide carriageway and two 2 metre wide footpaths. Accordingly, as acknowledged by the appellant's witness, it would result in a significant change and appear very much as an 'urban estate road' leading to a housing estate. Although the appeal proposal is in outline form with all matters other than access reserved for future consideration, it seems to me that some houses would undoubtedly be clearly visible, whilst others would be partially visible. The illustrative layout plan suggests as much. Accordingly, anyone passing the site along High Street, which forms part of the John Bunyan Way, could not fail to be aware that there was a housing estate at some depth beyond the existing building line of the dwellings on the western side of High Street. This would be out of keeping and at odds with the prevailing character and appearance of the southern end of the village.

29. When approaching Meppershall along Campton Road the site is not visible along the full length of the road due to the undulating topography and the curve of the road. Nevertheless there is a sizeable stretch of the road where the site is visible over the fields through gaps in the hedgerow. With regard specifically to viewpoint No 1, along Campton Road, the site is visible across the fields through a substantial gap in the hedgerow. The agricultural buildings associated with Bury Farm are visible from this viewpoint. However, despite being large, they comprise part of a farmstead within the countryside. As such they do not appear out of character in this location.
30. The housing development, known as the Croudace development, which is under construction in the core of the village is also visible in the distance from viewpoint No 1 and there are also glimpsed views of the houses fronting on to High Street. However, any views of the houses on High Street are restricted to their rooftops. Furthermore, in relation to the existing built development on the appeal site, whilst the tops of the chimneys on its eastern boundary are visible the former glasshouses are not. Accordingly, the existing built form of the site has no impact on the view of the countryside from this viewpoint.
31. Having regard to the illustrative layout plan a residential development of up to 38 dwellings would inevitably result in development towards the western edge of the site. The parties agreed at the Inquiry that the proposed dwellings would be likely to have an eaves height of at least 5m, and ridge heights of around 9m. On that basis there would be significant views of the dwellings from viewpoint No 1. I appreciate that there would be the potential for a scheme of landscaping to provide some screening. However, the proposed development, even with some alternative means of providing an acoustic buffer to the acoustic fence indicated on the illustrative layout plan, or even with a reduction in the extent of any fence/buffer, would appear as a prominent backland development extending beyond the existing building line of the dwellings in this part of the village, and into the countryside. Despite not being subject to any landscape designation the countryside in this location provides the rural setting to the southern edge of Meppershall. Accordingly, notwithstanding that the Council's landscape officer did not object to the proposal, I consider that the proposed development would, by virtue of its incursion into the countryside, erode the rural character and appearance of this end of the village and cause material harm to its character and appearance.

32. Taking account of all of the above therefore, notwithstanding that the appearance, landscaping, layout and scale of the development would be reserved for future consideration, I conclude that the proposed development would cause significant harm to the character and appearance of the area. Accordingly, it would be contrary to Core Strategy policies CS14 and DM3 and the core planning principles of the Framework that planning should always seek to secure high quality design and take account of the different roles and character of different areas. It would also be contrary to policy DM4 of the Core Strategy albeit for the reasons indicated above the conflict with this policy is afforded only moderate weight in this appeal.
33. The appeal site lies to the north of Bury Farm and its associated agricultural buildings. The operations at the farm include storing, drying and dressing grain for Bury Farm and four other farms. The parties agree that there are various noise sources associated with the operations at Bury Farm. These are the grain dryer fans within the agricultural buildings used as grain stores to the south of the appeal site, a free-standing grain dresser unit within another agricultural building to the south, tractor and lorry movements and a hand held blower.
34. Of the three grain dryers only two operate at any time. However, when in use noise from their operation is continuous and tonal. In addition they can operate for 24 hours per day/7 days per week throughout the harvest period (July to October). The grain dresser, can also operate throughout the harvest season. It is quieter than the grain dryers but the large roller shutter door and smaller side door, which the evidence indicates are left open when it is in operation, mean that the noise of the grain dresser is likely to break out of the building. The noise from the vehicles used to move grain around the farm and to load and unload grain from lorry deliveries and from the hand held blower used to keep the grain stores clean when required, during the harvest season, is restricted to daytime hours, albeit sometimes this occurs in the very early morning. There is no dispute between the parties that the grain dryers are the dominant source of noise associated with the activities at Bury Farm.
35. The appropriate methodology to be employed in the assessment of noise is a matter of dispute. At the Inquiry the parties provided much detail and extensive technical information about their respective preferred assessments. In addition both main parties sought to question the credibility and reliability of the others expert technical witness on this main issue. It is unfortunate that both parties omitted to bring some matters of relevance to their evidence on this main issue to the attention of the Inquiry in the first instance. However, this does not lead me to necessarily question their credibility as reliable witnesses. I do not doubt that both are technical experts in their field albeit they hold differing views regarding the appropriate methodology to be employed in the assessment of the noise sources in this case and whether or not the proposal would provide satisfactory living conditions for future occupiers of the proposed dwellings with regards to potential noise and disturbance.

36. The Council contends that the proposal should be assessed on the basis of BS 4142¹⁸ which provides methods for rating and assessing sound of an industrial and/or commercial nature and that this is the appropriate standard to apply when introducing new residential development into the vicinity of a dominant noise source, as is the case here. However, the appellant contends that the rigid application of such an approach would render housing on the site acceptable only if noise levels are lower than the current background levels, takes no account of proposed mitigation levels by focusing on external facade levels, and pays no attention to the current noise levels at the existing neighbouring properties on High Street or the absence of complaints from existing residents. The appellant contends that the approach advocated by the Council should be rejected in favour of an alternative ‘hybrid’ approach which, it is maintained, provides a more practical and sensible approach for the assessment of noise in this case and is commonly used by acousticians and planning authorities.
37. It is not disputed that if the proposal was to be considered on the basis of a BS 4142 assessment as espoused by the Council then it would be found wanting. Accordingly, it is not necessary to consider the details of such an assessment but rather to consider the appropriateness of the ‘hybrid’ approach, advocated by the appellant, as an alternative.
38. The ‘hybrid’ approach takes as its starting point that part of BS 8233⁴ which identifies satisfactory noise levels both internally and externally and then seeks to address the particular character of the relevant noise, which in this case is the tonality, by reducing the target level as considered appropriate in line with
- the method set out in BS 4142. In this case the appellant has included a +6 dB penalty, as a ‘worst case’ assessment.
39. The appellant refers to the note at paragraph 8.5 of BS 4142 which states that other guidance and criteria in addition to or alternative to this standard can also inform the appropriateness of both introducing a new noise-sensitive receptor and the extent of required noise mitigation, and suggests that BS 8233 and BS 4142, when read together, are consistent with the ‘hybrid’ approach. However, I note that no specific endorsement of the ‘hybrid’ approach is provided in the correspondence between the appellant and the Chairman of the BS 4142 Committee, which sought clarification about the reference in the note referred to above and the appropriateness of applying the criteria/guidance used in this case. Furthermore, no evidence of any specific endorsement of the merits of the ‘hybrid’ approach by way of a peer review in any relevant journal or of any article or report endorsing the approach were provided to the Inquiry.
40. Two appeal decisions¹⁹ were referred to in evidence by the appellant as examples of where the ‘hybrid’ approach has previously been used. However, I am not aware of the full circumstances of these cases. Neither the Council nor the appellant’s witnesses

¹⁸ BS 4142:2014 Methods for rating and assessing industrial and commercial sound (Core Document 11.02) ⁴ BS 8233⁴:2014 Guidance on sound insulation and noise reduction for buildings (Core Document 11.03)

¹⁹ APP/R0660/A/12/2170820 Land at Crewe Road, Crewe (Core Document 9.08) and APP/D0840/A/14/2225653 Land to the east of Mount Crescent, Par, Cornwall (Core Document 9.22)

appeared at either of the Inquiries. Furthermore, in relation to the Par case it appears that the matter of the methodology to be employed was not in dispute between the parties. Accordingly, I do not afford these decisions any great weight.

41. The appellant also referred in evidence to a prior approval²⁰ decision of the Council where it is contended that the ‘hybrid’ approach had been used to derive the internal noise standards to be achieved by a noise mitigation scheme referred to in the relevant condition. The Council’s witness in this case did not advise the Council on that proposal and was not able to provide the details. Therefore, I do not afford this matter any great weight in my consideration of this case.
42. At the Inquiry the appellant’s witness accepted that the ‘hybrid’ approach is not specifically endorsed in national policy/guidance, there being no specific reference to it within the Framework, the Planning Practice Guidance (PPG), the DEFRA Noise Policy Statement for England, BS 8233 or BS 4141. The ProPG⁷ referred to by the appellant in support of the ‘hybrid’ approach was produced by the Chartered Institute of Environmental Health, the Institute of Acoustics and the Association of Noise Consultants. It is intended to provide practitioners with guidance on a recommended approach to the management of noise within the planning system. However, the ProPG is clear that it does not constitute an official Government code of practice and neither replaces nor provides an authoritative interpretation of the law or government policy. In any event it also indicates in its introduction that its scope is restricted to the consideration of new residential development that will be exposed predominantly to airborne noise from transport sources. That is not the position here. I appreciate that the ProPG does indicate that some of its content is relevant to other sources of noise. However, I am also mindful that it then goes on to state that detailed consideration of other sources of noise (such as dominant noise from industrial, commercial or entertainment premises) is outside its scope. Accordingly, in the light of the above it seems to me that the ProPG is not applicable to this case and therefore it is not necessary to consider its details further.
43. Having regard to all of the above, the degree of support for an assessment based on the ‘hybrid’ approach is somewhat lacking. Its appropriateness as an alternative to the Council’s BS 4142 assessment is therefore questionable. Even if this were not to be so, and the ‘hybrid’ approach was to be considered appropriate, whilst the external noise targets proposed for the gardens would be met, mitigation would be required in order to achieve the internal noise targets proposed.
44. Given the outline nature of the appeal proposal there is the potential for the details of the proposal submitted as reserved matters to seek to minimise the impact of the noise from the activities at Bury Farm as much as possible, for example by positioning the quieter facades of the houses further away from the noise source, and to provide a screen for the existing dwellings from the noise sources at Bury Farm. Nevertheless, the appellant accepts that in this case achieving the ‘target levels’ for the internal rooms of the

²⁰ Decision Notice ref CB/17/02134/PADO Hampden House (Core Document 11.09) ⁷ Professional Practice Guidance on Planning and Noise (Core Document 11.01)

proposed dwellings during the times when the grain dryers at Bury Farm are operational will, in many cases, be dependent upon keeping windows shut. A system of mechanical ventilation and heat recovery (MVHR) is therefore proposed for all of the proposed dwellings on the site. The acceptability of this is a matter of dispute between the parties.

45. The Council acknowledges that there are instances where it has accepted MVHR on other developments. However, I note that the circumstances in the various cases referred to by the appellant are different to this case either because of the location of the site, or the source of the noise.
46. In cases of new residential development where the proposed mitigation relies on windows being kept closed most of the time, the PPG specifically refers to the necessity of a suitable means of alternative ventilation. This would suggest that, in principle, similar solutions as that proposed here, may form an accepted part of the approach to mitigating against the impact of noise. This was considered to be so in the two appeal decisions specifically referred to by the appellant, namely the Crewe Road case referred to above and the Secretary of State decision on the Aspenden Road case²¹.
47. I note that the Inspector in the Crewe Road case found that, neither the location of the site, be it an urban or semi-rural location, nor the nature of the noise, be it industrial or road traffic noise, makes a difference to the ‘in-principle’ acceptability of MVHR. However, I am also mindful of the findings of the Inspectors in two more recent appeal decisions included in the appeal documentation, namely the Somerby Hill and St Helen’s Avenue²² cases.
48. In the Somerby Hill case the Inspector made a distinction between the acceptability of assisted mechanical ventilation on a development on a greenfield site towards the edge of a settlement within a rural setting, as opposed to, say, a development on an urban-located site close to existing noise-generating uses. Furthermore, in the St Helen’s Avenue case the Inspector found that the need for future occupiers of a development in a rural area, such as is the case here, to sleep, especially in the summer months, in sealed rooms, relying upon alternative means of ventilation, or alternatively to experience noise entering through open windows, would result in a development that fails to adequately address the connections between people and places and the integration of the new development into the built environment. Such a situation, he found, would not provide a good standard of amenity for the future occupiers of that development. I agree and consider these findings to be particularly applicable in this case. The Crewe Road decision therefore does not provide an insurmountable precedent as to the acceptability of MVHR.
49. I also note that the Inspector in the Crewe Road decision suggested that residents with MVHR will quickly become used to mechanical ventilation. However, I am mindful that in the case subject to this appeal noise from the grain dryers would occur during the day and night, throughout the harvest period, and then not for the rest of the year. In such a

²¹ APP/J915/A/14/2224660 Land at Aspenden Road, Buntingford, Hertfordshire (Core Document 13.03)

²² APP/E2530/W/16/3163514 Land to the north side of A52, Somerby Hill, Bridge End Road, Grantham (Core Document 9.21) and APP/Q3115/W/16/3163844 Land off St Helen’s Avenue, Benson (Core Document 9.20)

circumstance it seems to me that it is not reasonable to assume that the residents of the proposed development will necessarily become used to living with MVHR. Where a window can be opened then it is very likely that it will be opened, particularly when the weather is fine during the summer months, which is the very time of year when the grain dryers are likely to be in continuous use. The opening of windows would compromise the intended mitigation and result in the internal noise levels proposed by the 'hybrid' approach being exceeded such that satisfactory living conditions would not be provided for the future occupiers of the proposed dwellings.

50. Having regard to all of the above therefore, I am not satisfied that the appeal proposal would provide satisfactory living conditions for future occupants of the proposed dwellings as a result of noise and disturbance from the activities at Bury Farm. Although not specifically referred to in the Council's relevant reason for refusal it is also pertinent to consider the effect that the residents of the proposed houses may have on the operation of Bury Farm. This formed a minor part of the Council's case at the Inquiry and is a concern of the owner of Bury Farm.
51. I note that there have been relatively few complaints from existing neighbours about noise from the activities at Bury Farm. However, this is not a matter to which I attach any particular significance. Bury Farm has been in operation for some time and the last new grain dryer was installed over 20 years ago. I would suspect therefore that among existing residents there is likely to be an element of resignation and acceptance of the noise associated with the grain dryers. Accordingly, I give little weight to the level of complaints about noise from Bury Farm from existing residents as an indication of the future likelihood of complaints.
52. Paragraph 123 of the Framework indicates, amongst other things, that existing businesses wanting to develop in continuance of their business should not have unreasonable restrictions put on them because of changes in nearby land uses since they were established. I note the findings of the Inspector in the Crewe Road case in relation to the reasonableness of any complaints being made against the nearby business use and the likelihood of any such complaints being successful. However, these were made on the basis that he considered the proposed mitigation measures to be suitable and that therefore there would be a good standard of amenity for future residents. As detailed above this is not my finding in this case. Therefore, I consider there can be no certainty that there would not be complaints from future residents about noise and disturbance from the activities at Bury Farm. Accordingly, I cannot be satisfied that the viability of this long established rural business would not be compromised.
53. To conclude on this issue therefore, having regard to all of the above I am not satisfied that the appeal proposal would provide satisfactory living conditions for future occupants of the proposed dwellings in relation to noise and disturbance. Accordingly, it would be contrary to policies CS14 and DM3 of the Core Strategy which require high quality development.
54. I have found above that the appeal proposal would be contrary to policies DM4, CS14 and DM3 of the Core Strategy. Whilst I attribute moderate weight to the conflict with

policy DM4 I attribute full weight to the conflict with the other relevant policies, namely CS14 and DM3. Accordingly, I consider that the appeal proposal would be contrary to the development plan as a whole.

55. Section 38(6) of the Act requires that applications for planning permission must be determined in accordance with the development plan unless material conditions indicate otherwise. The Framework has the status of a material consideration which (when considered together with any other relevant material considerations) may or may not indicate that an appeal should be determined otherwise than in accordance with the development plan.
56. Paragraph 14 of the Framework provides that where the development plan is absent, silent or relevant policies are out of date the presumption in favour of sustainable development means that permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole or specific policies in the Framework indicate development should be restricted. The test of whether any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole is commonly referred to as ‘the tilted balance’.
57. There is no dispute that the Council can demonstrate a 5YHLS for the purposes of this appeal. However, the appellant contends that policies DM4 and CS5 of the Core Strategy which are indicated in the SoCG as relevant to this appeal are out of date and that therefore ‘the tilted balance’ comes into play. The Council disputes this.
58. In support of their respective cases the main parties have referred me to a number of other appeal decisions where this issue has been considered. However, none of these are determinative in their own right on this matter. In the Langford decision²³, referred to by the appellant and which dates back to June 2015, the Council accepted that the relevant policies for the supply of housing which was considered at the time to include policy DM4 of the Core Strategy were out of date. However, this was prior to the judgment of the Supreme Court that found the ‘narrow interpretation’ to be the correct one for the purposes of paragraph 49. In the case of the Flitton²⁴ decision also referred to by the appellant there is only limited information as to the arguments put to the Inspector in relation to this matter, it having been dealt with by the written representation procedure.
59. In the Clophill appeal decision^{25,26} referred to by the Council I note that, unlike in the later Potton decision, and my findings above, the Inspector in that case considered policy DM4 of the Core Strategy to be consistent with the Framework. I also note that he went on to conclude that providing it was not preventing the delivery of a supply of housing, which he found it was not due to the proven existence of a 5YHLS, then the relevant policies, including policy DM4, and the relevant policies for the supply of housing, were

²³ APP/P0240/A/14/2228154 Land to the east of Station Road, Langford, Bedfordshire (Core Document)

²⁴ APP/P0240/W/16/3154220 Land off Greenfield Road, Flitton (Core Document 9.01)

²⁵ APP/P0240/W/17/3152707 Former Readshill Quarry, Back Street, Clophill, Central Bedfordshire (Core Document

²⁶ .07)

not out of date. However, it seems to me that relevant policies can be out of date even where there is a 5YHLS, a position which the Council accepts in the current case.

60. The Council also refer to the Potton decision in relation to this matter. I have referred to the Potton case in some detail above in my consideration of policy DM4 of the Core Strategy, and its consistency or otherwise with the Framework. I note the footnote in that decision which states that the tilted balance is not engaged as the LPA can demonstrate a 5 year supply of deliverable housing supply sites and thus paragraph 49 of the Framework does not engage paragraph 14 of the Framework. However, again as indicated above and as accepted by the Council, relevant policies can be out of date even where there is a 5YHLS. Whilst the Inspector in the Potton decision found policy CS5 of the Core Strategy to be out of date he did not express a view on policy DM4 in relation to this matter as it was not necessary to do so having previously found that the proposal would accord with the development plan as a whole.
61. Turning to the current appeal at the Inquiry the Council's witness accepted that relevant policies can be out of date even where there is a 5YHLS. The Council also accepts that in the light of the Potton appeal decision, policy DM4 of the Core Strategy should not be afforded full weight. The Inspector's conclusion in that case, as to the weight to be afforded to policy DM4, came after his finding that when read plainly, the policy is at odds with the Framework and that it is applied by the Council in a manner that involves reading in a major modification. At the Inquiry into this appeal the Council's witness accepted that these could be considered to be features of a policy that was out of date. I appreciate that this was not the finding of the Inspector in the Potton case. However, as detailed above, he did not express a view at all on policy DM4 in relation to this matter.
62. I am mindful that the link between paragraphs 215 and 14 of the Framework has been examined by the Courts and that they have found that any inconsistency between those policies in the development plan and the Framework would render them out of date and cause the approach set out in paragraph 14 of the Framework to be engaged. Accordingly, it seems to me that in this case the inconsistency between policy DM4 and the Framework is such that paragraph 14 of the Framework and 'the tilted balance' set out in it is engaged. Having regard to this finding, it is not necessary for me to go on to consider further whether policy CS5 of the Core Strategy which, although not one of the policies referred to on the decision notice, is referred to in the SoCG as relevant to this appeal, is also out of date.
63. In respect of the main issues in this appeal there would be significant environmental harm arising from the damage that would be caused to the character and appearance of the area and to the living conditions for future occupants of the proposed dwellings through noise and disturbance. The impact of the harm in respect of the living conditions of the future occupiers of the proposed dwellings would have potentially serious and enduring consequences.
64. In relation to the environmental harm the proposal would conflict with the development plan, being contrary to policies CS14, DM3 and DM4 of the Core Strategy, albeit the conflict with policy DM4 is afforded only moderate rather than full weight in this appeal. It would also be contrary to the core planning principles of the Framework that planning should always seek to secure high quality design and a good standard of amenity for all

existing and future occupants of land and buildings, and take account of the different roles and character of different areas. It would fail to comply with the advice at paragraphs 109 and 120 of the Framework which respectively indicate that the planning system should prevent new development from being put at unacceptable risk from, or being adversely affected by, unacceptable levels of noise pollution, and that to prevent unacceptable risks from pollution planning decisions should ensure that new development is appropriate for its location.

65. In addition to the environmental harm caused by reason of the poor living conditions for future occupiers of the proposed dwellings with regard to the noise and disturbance associated with the activities at Bury Farm the viability of this existing long established rural business risks being compromised by complaints or the threat of complaints from the future occupants of the proposed dwellings. This would be contrary to the principle of the Framework of supporting a prosperous rural economy and the advice at paragraph 123 of the Framework which indicates that businesses should not have unreasonable restrictions put on them because of changes in nearby land uses since they were established. I consider that the harm identified in relation to this matter should also be afforded significant weight.
66. The identified harm needs to be balanced against the benefits of the proposed development. Notwithstanding that the Council can demonstrate a 5YHLS the parties agree that the development of up to 38 dwellings, both market and affordable housing, would serve to address the needs of the District and the wider Housing Market Area, especially Luton's unmet needs and that this is a matter that carries significant weight. I see no reason to disagree. However, the proportion of affordable housing proposed is, at 35%, no more than that required by the development plan and whilst I appreciate that the emerging Local Plan indicates a lesser requirement of affordable housing (30%) this plan is at an early stage of preparation. The scale of the proposed development would be appropriate to the scale of Meppershall and would be in an accessible location. Taken together I afford significant weight to the social benefits of the proposal.
67. The proposal would deliver economic benefits including the creation of employment opportunities estimated at 85 full time equivalent jobs during the construction period, construction spend of around £4.5m-£5m and increased household expenditure assessed at around £849,000 pa some of which would provide support to the local economy and for local facilities. However, the contributions made by way of the UU to education provision are required to mitigate against negative impacts of the proposal. Therefore, they are neutral factors and do not carry weight in favour. Overall I attach considerable weight to the economic benefits.
68. In so far as the proposal is in outline form there may be the potential for the layout of the proposed dwellings to serve as a screen that would attenuate the level of noise experienced in the gardens of the existing dwellings at Nos 82 to 98 High Street from the noise sources at Bury Farm. However, this cannot be known at this stage. Accordingly, I do not afford weight to this matter in the overall balance.
69. The development would result in the re-use of a site within the countryside which has previously been used for horticultural purposes. However, although it does have some areas of hardstandings and the remains of buildings it is primarily given over to

grassland. Accordingly, I afford little weight to this as a benefit in the overall balance. The removal of the existing structures on the site, some of which are potentially dangerous does not constitute a benefit of the appeal proposal given that, if their safety is of genuine concern, the landowner would be obliged to address this matter irrespective of whether or not the appeal proposal were to succeed.

70. Taking account of all of the above, I conclude that the adverse impacts identified would significantly and demonstrably outweigh the benefits of the proposed development and therefore, the proposal would not benefit from the presumption in favour of sustainable development. The conflict with the development plan is not outweighed by other material considerations.
71. Interested parties including Meppershall Parish Council raised concerns regarding highway safety particularly in relation to the removal of the existing parking spaces on High Street in order to facilitate the provision of the necessary visibility splays from the proposed access to the site, the proximity of the site to the primary school and the width of High Street. However, there is no substantive technical evidence to lead me to conclude differently to the position indicated in the SoCG which is that with appropriate conditions the proposed development would be acceptable in terms of highway safety.
72. As indicated above a completed UU was submitted at the Inquiry. The UU includes obligations relating to the on-site provision of 35% affordable housing and financial contributions in respect of education provision (early years, lower school, middle school and upper school). I have considered these in the light of the Framework, the PPG and the Community Infrastructure Regulations 2010 (CIL Regs). I am satisfied that the obligations meet the statutory tests and comply with the CIL Regs and paragraph 204 of the Framework.
73. For the reasons given above I conclude that the appeal should be dismissed.

Beverley Doward INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

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He called:	
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FOR THE APPELLANT:

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Patrick Allen BSc (Hons) CEng FIOA MEWI	Director, Cass Allen Associates Ltd
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Russel Gray BA (Hons) Dip UP MRTPI	Director, Woods Hardwick Planning Ltd

INTERESTED PERSONS:

Mark Brinkley	Bury Farm, Meppershall
Stuart Travers	On behalf of Mr Gilbert (Local Resident)
Dr Susan Chappell	Local Resident
Roger Martin Smith	Meppershall Parish Council
Alessandra Marabese	Clerk to Meppershall Parish Council

DOCUMENTS SUBMITTED AT THE INQUIRY

1. List of appearances for the appellant Landcrest Developments Ltd 2. List of proposed conditions submitted on 9 January 2018
3. Folder CD13 (core documents) comprising:

- CD 13.01 64 Biggleswade Road, Potton Appeal Decision Letter (APP/P0240/W/17/3176444).
- CD13.02 64 Biggleswade Road, Potton Appeal (APP/P0240/W/17/3176444) – Appellant’s Closing Submissions. CD13.03 Land to the east of Aspenden Road, Buntingford, Hertfordshire SoS Appeal Decision Letter (APP/J1915/A/14/2224660).
- CD13.04 Land Registry Titles for nos. 102, 106, 108, 110 and 112 High Street, Meppershall.
- CD13.05 Pusey&Anor v Somerset County Council [2012] EWCA Civ 988 (19 July 2012).
- CD13.06 Central Bedfordshire Pre-Submission Local Plan 2015-2035 January 2018.
- CD 13.07 Report to CBC Executive on Central Bedfordshire PreSubmission Local Plan.
- CD13.08 Extracts of proposed criteria for the assessment of low frequency noise disturbance Revision 1 December 2011 prepared for DEFRA.
- CD13.09 A Review of Published Research on Low Frequency Noise and its Effects Report for DEFRA May 2003.
- CD13.10 Correspondence on the non-designated heritage assets issue. CD13.11 Valley Lane, Long Bennington, Grantham, Lincolnshire, NG23 5DY Appeal Decision Letter (APP/E2530/A/10/2136247).
4. Opening submissions on behalf of Central Bedfordshire Council
 5. Statement read by Stuart Travers on behalf of Philip Gilbert of 94 High Street, Meppershall
 6. A3 copies of noise modelling printouts titled Inquiry Document 1
 7. Revised list of proposed conditions submitted on 12 January 2018
 8. Signed Unilateral Undertaking dated 11 January 2018
 9. Closing submissions on behalf of Central Bedfordshire Council
 10. Closing submissions on behalf of the appellant