

Supplementary report to the Planning Applications Committee
on 15 March 2023

LW/21/1000

Pages 9-46

Land west of Oxbottom Lane, Newick, East Sussex

Representations:

Since the application was heard at the committee meeting on 15th February 2023 a video survey of the watercourse adjacent to the site has been submitted by a neighbour and has been shared with ESCC and the applicant.

An additional letter of support has been received and is summarised as follows:-

- This parcel of land has always been a blight;
- Noted that the address given is Newick when it should be Chailey.

OFFICER COMMENT: It is noted in the report that the site falls within Chailey Parish but the address record for the site lists it as Newick, hence the reference in the site address.

A statement of objection has been received from a neighbour, as follows:-

I am writing to object to the proposed development of 21 residential dwellings on the Land West of Oxbottom Lane, Newick. We live at Bag End, Lower Station Road and the land in question is directly behind our property's rear boundary. We are new to the property having only moved here in January 2022. I specifically remember speaking with our solicitor during our purchase of the property regarding the issue of surface water flooding in the area as it came up in one of our searches. We were satisfied by our enquires that there is sufficient drainage infrastructure in place in and around the property to serve it currently and went ahead with the purchase. During recent heavy rain in November, our patio was flooded with about 3 inches of water. Thankfully not enough to reach the house and the drainage system obviously worked well enough. My concern with this development is that the drainage plan is not clear at all from the proposal, or the planning officer's report. Our garden, and the land in question, slope down towards our house from where the new development would be, so my overriding concern is that any heavy rain would therefore run straight down our garden and overwhelm the drainage system we have in place. This would lead to flooding for us and the other properties whose gardens border the proposed site. This is a completely unacceptable scenario and the drainage planning therefore needs to be much more comprehensive. I therefore strongly object to this proposal.

Secretary of State Call In

A request has been made for the application to be called in by the Secretary of State. This means that, if members resolve to approve the application, no decision can be made until the Secretary of State has been informed and has confirmed whether they wish to call the application in or allow for the decision to be issued as per the committee resolution.

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Bridge Farm, Barcombe Mills Road, Barcombe

With regards the required footpath diversion the committee further resolves: -

The diversion of part of public footpath 7b is necessary to enable the development hereby approved to be carried out and upon an application being received to divert the footpath to the other side of the hedge, the Head of Planning is granted delegated authority to

- A) Make a Diversion Order under s.257 TCPA'90 relating to part of Public Footpath 7b
- B) To carry out all legal steps required to publicise and consult on the Order and,
- C) Subject to no objections being received or any objection received having been withdrawn, to make and confirm the Order and to publicise it as required by the legislation.
- D) To make minor modifications to the Draft Order, or to re-make and confirm the Order with minor modifications if required

SDNP/22/05011/CND

Pages 75-90

The Macs Farm, Dumbrells Court Road, Ditchling,

Applicant's Response to Objections

- The objections on the portal are regarding historic noise issues from Summer 2021, where all weddings and music by law, had to be moved outside due to COVID-19
- In early 2022 we starting working with LDC and a new EH officer. We employed acoustic engineers and wrote a comprehensive Noise Management Plan
- We used this NMP to successfully run our 5 OUTSIDE EVENTS during the summer of 2022
- A number of direct neighbours have commented on the difference between the 2 years and are very satisfied now a NMP is in place and adhered to
- This current application is completely separate to our 5-family friendly, outside events during the summer that all finish at 9 or 10pm
- This application is regarding a range of INSIDE events e.g. farmers markets/food nights/pop up shops etc. through the winter months from October-March
- The space that will be utilised will have double glazed windows before any winter events take place
- This application is for reuse of an existing building.

Environmental Health Response to Solicitor's Letter re Community Protection Order

A Community Protection Warning (CPW) letter was served which is very different to a Notice, it is a warning letter informing the Farm that a

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disturbance occurred. A CPW requires a low burden of proof to serve and the noise on the 22 July was not witnessed by an Officer but assessed from a Noise App recording. Macs Farm did not fail to comply with an Officer request to abate the noise disturbance to local residents, they have fully engaged with the Council and employed an acoustic Consultant on the advice of the Council, carrying out the Consultants recommendations. The recordings that have been submitted since the 22 July have been assessed by the Council and have not given cause for the Council to follow up the CPW with a CPN. It should be emphasised that complaints have been about events outside, not within a barn with double glazing.

**Environmental Health Response to Acoustic Report Peer Review provided by
Clarke Saunders Acoustics**

I am satisfied that Anderson Acoustics Noise Impact Assessment (12.01.2023) provided sufficient information to enable a recommendation for relevant noise controls, to ensure events held in the Nest Box Barn would not cause a nuisance to the neighbours. The proprietary CADnaA model provided an indication of noise levels that might be experienced under a specific set of circumstances, demonstrating that the levels required to avoid nuisance to the neighbours can be met. (These levels are described in BS4142:2014 and A1:2019 Methods for Rating and Assessing Industrial and Commercial Sounds, and World Health Organisation Guidelines for Community Noise.)

The Clarke Saunders Acoustics peer review report provided a fair commentary and the key points made regarding issues within the Noise Impact Assessment are valid, as follows:

- The short 15-minute averaging time of the background measurements created a slight increase in the reported background level (compared to a longer averaging time which is more commonly used when referring to background levels), and
- lack of corrections (as prescribed within BS4142) to account for impulsivity, tonality, intermittency or “other”, resulted in reduced model input noise levels, used to identify potential noise emissions from loud music (90dBA) played in the venue.
- These two points were then compounded, as the resulting model output was used to identify relative acceptability of the calculated noise emissions in the context of the reported background levels.

Although they are valid points, well made and well explained, the issues identified don't have a bearing on the recommended conditions which I will explain now.

The list of events mentioned in the application documents would, in the main, not be enhanced by anything louder than background music so we are not anticipating many events (if any) to have loud music playing. As the barn will be fully enclosed, we would not expect “background music” to be heard outside of the premises. Despite this, the Council requested the noise impact

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assessment to ensure that should an event have loud music playing that this had been considered and would be subject to relevant controls should the application be approved. The recommended controls comprise operational controls and, additionally, noise limits for any events playing music that is louder than background music.

If the application is approved and the recommended conditions are applied, as well as the list of operational controls, for events where anything louder than background music is playing, background monitoring will be required and maximum noise level limits, as measured on the boundary during the event, will apply. The maximum noise levels should not exceed 5dB above the measured background, which is a difference of marginal significance (according to BS 4142). There is a recommended maximum sound pressure level limit of not more than 50dBA (LAMax) which is based on WHO guidelines to avoid annoyance. (The publications from which these limits derive are commonly drawn upon for planning conditions, and are BS4142:2014 and A1:2019 Methods for Rating and Assessing Industrial and Commercial Sounds, and World Health Organisation Guidelines for Community Noise.)

Other points made related to the potential number and frequency of events. Assuming there is no nuisance caused by events in the Barn, there is no reason for us to control the number or frequency of events.

As a legislative backstop we have the Environmental Protection Act 1990 s79 statutory nuisance provisions should a statutory nuisance be found to be caused, but I anticipate that compliance with the conditions for events held within the Nest Box Barn through the winter months (should the application be approved) will ensure that residents of Ditchling are protected against intrusive noise in their homes.

Further Comments from Clarke Saunders Acoustics on the Officer Report

There are issues with the proposed noise conditions (section 10, p88), which make them ineffective, inappropriate and unenforceable.

The proposed internal level “limit” of 90dBA (LAMax) wording does not place control on low frequency noise levels or describe how this would be limited or enforced. Meanwhile the containment of low frequency sound insulation of the Nest Box structure once glazed has only been estimated – uncertainty over such predictions is greatest at the lowest frequencies.

The introduction of the LAMax parameter into the wording (ref: EHO response email) is an additional restriction, but one which may effectively prevent any “live bands” playing and may limit overall music levels to an unworkable level, which would confound attempts to enforce the condition, and if impractical provide an opportunity for its circumvention.

It would be more appropriate to condition the determination of an allowable internal level, based on the finished building structure after it has been enclosed and glazed. This could then require a power/level restricting music

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limiter to be in operation within the venue. The limiting level (and limiters) should take into account low frequency noise and should be set up and agreed with the EHO.

There is no proposed limit on the number or frequency of events. This is a crucial factor which needs to be considered in the context of the other music events which occur on the wider Mac's Farm site.

On the proposed monitoring arrangements, the phrasing around measuring background levels on 'a day prior to the event' is problematic, and could be interpreted to yield elevated baseline conditions. Any comparison with background conditions needs to be established and agreed to be representative of the realistic worst case, as it would be unreasonable to expect the venue operators to adjust the music level for an event depending on varying ambient conditions that week.

In conclusion, the proposed controls would not be workable or enforceable and would not necessarily limit disturbance. They may, conversely, provide a perception of 'compliance' that the operator could operate within while causing significant disturbance.

Response to points made in letter dated 13 March 2023 from E.H. Clarke of Clarke Saunders Acoustics to Claire Tester – [in blue text](#), adjacent to the relevant text copied from the letter

There are issues with the proposed noise conditions (section 10, p88), which make them ineffective, inappropriate and unenforceable. [The response in blue text below presents why the conditions are expected to be effective, appropriate and enforceable.](#)

The proposed internal level "limit" of 90dBA (LAmax) wording does not place control on low frequency noise levels or describe how this would be limited or enforced.

[The proposed internal limit was not intended to control low frequency noise levels. This was a level proposed by the applicant's acoustician based on "front of stage" historically measured data \(including octave band centre frequency levels\) held by Anderson Acoustics and was the basis of the input data used in the model. It is likely that noise levels above this would be uncomfortable for the customers and staff. As the applicants have a sound level meter, they would be able to monitor their events to ensure this limit was being met and act if it was being exceeded. They might instead choose to use a different monitoring mechanism such as a noise warning device or a sound level limiter. The technology they would choose to use is for them to decide rather than for us to prescribe.](#)

Meanwhile the containment of low frequency sound insulation of the Nest Box structure once glazed has only been estimated – uncertainty over such predictions is greatest at the lowest frequencies.

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The proprietary software INSUL, used by Anderson Acoustics for the estimations, is widely used for this purpose. The calculations within the model have been refined over a couple of decades and it is considered an appropriate tool when actual measurements are unable to be made, as in this case.

The introduction of the LAmax parameter into the wording (ref: EHO response email) is an additional restriction, but one which may effectively prevent any “live bands” playing and may limit overall music levels to an unworkable level, which would confound attempts to enforce the condition, and if impractical provide an opportunity for its circumvention.

Live bands would be expected to control their noise levels if the limit set is exceeded. The limit may indeed preclude a band with a trombone or bagpipes but the level of noise from most instruments can be controlled by playing style or (in the case of drums) mufflers.

It would be more appropriate to condition the determination of an allowable internal level, based on the finished building structure after it has been enclosed and glazed. This could then require a power/level restricting music limiter to be in operation within the venue. The limiting level (and limiters) should take into account low frequency noise and should be set up and agreed with the EHO.

A power/level restricting limiter is equipment that is sometimes required in pubs and clubs where loud music is played frequently and there are close neighbours who could be adversely affected. In this instance it is not thought that a limiter would be necessary to control noise levels, but this would be an option, along with a number of other options to mitigate noise emissions, should there be a need.

There is no proposed limit on the number or frequency of events. This is a crucial factor which needs to be considered in the context of the other music events which occur on the wider Mac’s Farm site.

It is not anticipated that the proposed indoor events during the winter months will cause nuisance, as noise emissions will be controlled. It is not thought necessary to limit the number or frequency of events on that basis.

On the proposed monitoring arrangements, the phrasing around measuring background levels on ‘a day prior to the event’ is problematic, and could be interpreted to yield elevated baseline conditions.

Comparing boundary noise levels with background levels is one way of ensuring the emissions are unlikely to be cause for annoyance and complaints, in accordance with BS4142 guidelines. It is anticipated that evening background levels would mainly be impacted by traffic and weather but would not vary widely otherwise. Making use of recently measured background levels for comparison purposes ensures that any change due to introduction of new/unusual noise sources in the area is accounted for.

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Having this condition in combination with an absolute maximum boundary level (50dBA) adds an additional measure to this end. You could say it is a “belt and braces” approach.

Any comparison with background conditions needs to be established and agreed to be representative of the realistic worst case, as it would be unreasonable to expect the venue operators to adjust the music level for an event depending on varying ambient conditions that week. 13 March 2023
Page 2 of 2 AS12934 The Nest Box at Macs Farm Review Acoustic Report Peer Review
In conclusion, the proposed controls would not be workable or enforceable and would not necessarily limit disturbance. They may, conversely, provide a perception of ‘compliance’ that the operator could operate within while causing significant disturbance.

If the noise levels measured at the boundary meet the proposed limits, then significant disturbance is unlikely, as described in BS 4142 and the World Health Organisation guidelines.

Additional Representations

2 residents have provided logs of events which they consider have caused noise problems in the past.

4 further representations have been received objecting on similar grounds to those summarised in the report, but also raising the following additional matters:

- There are relevant policies referred to in Richard Buxton’s letter of 24th February that are not dealt with in your report e.g. farm diversification.
- The ability to enforce the proposed conditions is a key consideration in granting approval. Past events have not been enforced by the Council and it is unlikely that there will be Council staff available to monitor events during the October to April season, or the technical equipment to monitor noise.
- The condition about doors and windows remaining shut seems particularly unworkable and unlikely to be adhered to in practice, as well as difficult to enforce.
- The report and recommendation to approve has been made without consideration of the peer review by Clarke Saunders of the Applicant’s noise assessment. We understand that the Environmental Health Officer is to provide comments on that review in a supplemental report but as your report recommending approval has already been made and published, there is a risk of pre-determination and failure to take into account all relevant considerations, which could render any decision by the Council to approve the application unlawful.
- The Council’s response of 5th January to a freedom of information request refused to disclose information on the basis of an ongoing investigation. It seems unreasonable and irrational to recommend approving the application in the context of an ongoing investigation.

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- Section 3.2 – no reference to North End, some of the closest properties.
- Section 10 – this stipulates that the barn shouldn't be used after 1st October 2023 until the glazing has been installed. As the proposed conditions don't appear to prevent the barn being used prior to this date, shouldn't this requirement apply with immediate effect, for belt and braces?
- During the camping season there is amplified music from 6-9 ish every evening that the campsite is open and residents do hear music that is played inside the barn.
- Residents don't wish the business any harm and support what they do, just want them to compromise a little and do it more quietly.
- Events in the buildings are still audible to residents who hear the base booming through their windows.
- Some visitors to Macs Farm go down driveway adjacent to campsite entrance and make a mess in the wet winter months when vehicles turn round on the grass. Signage erected by the residents is ignored.

1 further letter of support has been received on the following grounds:

- This business has been the subject of campaigns by some commenters who have been vocal in this application, despite being proved incorrect not only by scientific research but also proved innocent by the local council. So this is just history repeating itself.
- Due to the damage sustained by the business due to these negative campaigns, they have had no choice but to diversify.
- The farm was there before Dumbrells Court.
- Traffic impacts from main road more disruptive than traffic to Macs Farm, other farm uses generate more traffic.