

TRAFFORD COUNCIL

Report to: Planning and Development Management Committee
Date: 9 December 2021
Report for: Decision
Report of: Head of Planning and Development

Report Title

Member Update:
Appeal by Accrue (Forum) 1 LLP at Former B&Q site, Great Stone Road, Stretford, M32 0YP
LPA ref. 100400/OUT/20
Appeal ref. APP/Q4245/W/20/3258552

Summary

This report provides an update to Members of the Planning and Development Management Committee in respect of the non-determination appeal by Accrue (Forum) 1 LLP following the Committee's resolution in October 2020 that they would have been minded to refuse the planning application. The appeal site is the former B&Q site on Great Stone Road in Stretford. The appeal is to be dealt with via a public inquiry.

Since the resolution of the Committee in October 2020, further evidence has been submitted on noise matters, and in particular a report produced by Vanguardia on behalf of Lancashire Cricket Club (LCC). A peer review of both the appellant's and LCC's evidence by Sandy Brown Associates on behalf of the Council has identified several problematic aspects of the appellant's noise evidence which means that it is considered that noise impacts from activity at LCC would have a harmful impact on amenity of future residents of the development, which could lead to LCC's activities being curtailed as a result of complaints. Although planning conditions could in theory be imposed to mitigate noise issues, this may require significant alterations to the design and layout of the development, which may mean that the proposed scheme is not implementable. Any late changes to the design and layout of the scheme would alter the scheme before the Inspector and prejudice the Council's well advanced case on design, as well as potentially worsening the appearance of the development.

As such, authorisation is sought to pursue a further putative reason for refusal in respect of noise matters.

Recommendation

That the Planning and Development Management Committee authorise officers to pursue noise as a further putative reason for refusal at the upcoming public inquiry in respect of planning application 100400/OUT/20.

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Introduction and Background

1. At its meeting of 15 October 2020 the Planning and Development Management Committee were minded to refuse planning permission – in accordance with officer recommendation – for application ref. 100400/OUT/20. This proposed: *The demolition of existing retail unit and associated structures; erection of buildings for a mix of use including: 333 apartments (use class C3) and communal spaces ancillary to the residential use; flexible space for use classes A1, A3, D1 and/or D2; undercroft car parking; new public realm; and associated engineering works and infrastructure.*
2. The application sought permission for access, layout, scale and appearance with landscaping being a reserved matter. It is essentially a full planning application in all but name.
3. The appellant has since confirmed that the number of apartments in the building is in fact 332, but this was a counting error rather than this change having any impact on the submitted plans. Officers are satisfied no prejudice has arisen to any party as a result of this error and the appeal can proceed on this basis.
4. The appeal is proceeding by way of public inquiry. The deadline for exchange of proofs of evidence is Tuesday 14 December 2021. Lancashire Cricket Club (LCC) have been granted 'Rule 6' status which means that they will participate in the inquiry, be represented by Counsel and give formal evidence. They intend to give evidence on noise.
5. There were seven putative (rather than actual) refusal reasons (RFRs) agreed by the Committee which referred to: 1) the impact on the fine turf and non-turf training facility at LCC; 2) the impact on the visitor experience at LCC; 3) the poor design and detrimental impact of the proposals on the street scene; 4) the lack of a planning policy compliant level of planning contributions to affordable housing and education improvements; 5) unacceptable living standards for future occupiers of the development; 6) harm to the amenity of existing residential properties; and 7) harm to Longford Park Conservation Area.
6. Noise impacts on future residents of the development did not originally form part of the Council's case.
7. The original report to Committee of 15 October 2020 stated that there were some matters on which a solution may be capable of being reached. Additional evidence in the form of 'verified views' has been produced by the appellant which has led to officers (under delegated powers) determining that the Council will not pursue RFRs 2 and 7. A peer review of the technical daylight and sunlight evidence has also been commissioned which will further inform the Council's case in respect of some aspects of RFRs 5 and 6.

8. Since the lodging of the appeal further significant evidence has been produced by LCC on noise (the Vanguardia report), which the appellant responded to by producing an updated Acoustic Design Statement (Holtz Acoustics). The Council's EHOs have provided comment on both.

Noise impacts

9. The Council's EHOs did not originally raise any objection to the proposals on noise grounds. It was considered that noise could be mitigated via building fabric and acoustic vents for all but concert events, which are able to take place on up to seven occasions per year. Tenants of the building would be made aware of upcoming events, and make their own arrangements (e.g. to stay elsewhere) if they wished. It was not considered that occasional concert noise alone would warrant a refusal of the planning application. This was the conclusion of the officer report presented to Planning Committee in October 2020.
10. In July 2021 the Planning Inspectorate 'started' the appeal, and confirmed that it would proceed (at that time) by the informal hearing route. LCC confirmed that they would wish to make representations to PINS and appear at the hearing. Thus, in August 2021 LCC submitted their representations to PINS which included new information on noise (the Vanguardia report). A request was also made by LCC for the Council to review the Vanguardia report and for the EHOs to update their position on the proposals if appropriate.
11. LCC were particularly concerned that the 'agent of change' principle should be engaged. They were concerned that complaints about concert and other noise from residents of the new development would mean that their operations were curtailed through a change to their Premises Licence or they would be prevented from expanding their business activities in the future.
12. In summary, the conclusions of the Vanguardia report were as follows:-
 - The noise generated from test cricket, one day games, floodlit T20 and 100 ball games and music concerts makes the development site's proximity to the ground inappropriate for residential development;
 - Thus the 'agent of change' principle in the NPPF is engaged – the responsibility for mitigating impacts from existing noise generating activities or land uses falls on the developer;
 - The noise assessment accompanying the planning application (Holtz Acoustics) did not appropriately assess all sources of sound from LCC – it only covered one form of one day cricket and was carried out in a location where screening meant that measured levels would likely underestimate noise impacts on the proposed scheme;
 - The proposed mitigation is inadequate to ensure the new use can integrate effectively without prejudicing the ongoing operation and future development of noise generating businesses (i.e. LCC);
 - Mitigation measures proposed include acoustic glazing (which means windows should be kept closed) but no assessment is made of ventilation and overheating;
 - Concert noise can be mitigated by acoustic glazing and winter gardens, with mechanical ventilation and means of controlling overheating. This mitigation should be secured if the scheme is to go ahead, otherwise it should be refused.

13. The Vanguardia report was reviewed by the Council's EHOs. Their conclusion was that the information provided by Vanguardia needed to be reviewed by the appellant and that this further review may result in a change to the design and construction of the development. It should confirm what measures are required to ensure that an acceptable noise climate can be achieved in habitable rooms and in any shared amenity areas. Two conditions were suggested for noise mitigation and which were included in the Council's Statement of Case for the appeal.

14. In September 2021, following representations from the Council, and a review of the case, PINS determined that it should proceed by way of public inquiry. Officers instructed Leading Counsel and witnesses to represent the Council. LCC sought, and were granted, Rule 6 status.

15. In producing their proofs of evidence and Statement of Common Ground in November 2021 the appellant's noise consultant, Holtz Acoustics, produced an updated Acoustic Design Statement. The conclusions of this report can be summarised as follows:-

- LCC's Premises License allows for music noise levels of up to 80dB¹ at existing residential receivers;
- If it can be demonstrated that this level is unlikely to be exceeded at the proposed facades it is a strong indication that complaints [about noise nuisance] are unlikely to be upheld;
- A concert noise survey was undertaken which showed that the 80dB criteria was not exceeded at any point on any of the proposed facades;
- Many of the residential windows are screened from noise due to the courtyard design;
- The calculations from a noise level based on 'worst case' scenario for cricket matches demonstrated that internal noise levels to BS8233:2014 could be met with an updated double glazed window and acoustic trickle vents;
- A review of noise in external amenity spaces from cricket noise made no material change to the previous assessment.

16. On 15 November 2021 the Council's EHOs reviewed the updated Acoustic Design Statement and concluded that there were a number of areas of concern where impacts on future site users would not be within reasonable margins. In respect of concert noise:-

'Our review of the noise model provided by Holtz finds that the noise levels associated with concerts has potentially been underestimated. The model suggests that noise levels at the usual front of house concert noise monitoring location/mixing desk would be below 95dB. Our experience, and supporting data from Vanguardia over many years of noise monitoring during concerts, suggests that this would not be the case and that noise levels would be more likely to be those as referred to in the recent Vanguardia report reference APP/Q4245/W/20/3258552 VC-103597-EA-RP-001 R02. There are significant differences between the Vanguardia noise model and the Holtz noise model which will need to be resolved. However, we feel that the Vanguardia noise model is potentially more representative, based on our experience, of noise levels achieved during music concerts at LCC.'

¹ Actually 80dB LAeq, 15 minutes but shortened throughout for simplicity.

At this stage the noise model from Holtz Acoustics does not give sufficient reassurance that concert music noise at the proposed development will not result in adverse impact to residents and potentially could lead to justified noise complaints being received by Trafford Council. Justified noise complaints received by the Council could result in the LCC premises license being reviewed to the detriment of concerts being held at LCC'.

17. In respect of cricket noise:-

'Whilst Holtz report that original insulation specification would be sufficient to protect residents from noise during sporting events, this conclusion cannot yet be supported in view of the comments provided above in relation to concert noise and the potential for cumulative impacts from all LCCC operations.

Holtz refer to trickle vents as being the primary method of ventilation whilst windows are closed during cricket matches and concerts, however, both cricket matches and concerts will occur during warmer months and trickle ventilation may be an inadequate alternative to opening windows during warmer weather. It is felt that a specification should be provided of mechanical ventilation and heat recovery to confirm that a realistic alternative to opening windows is available to residents during matches and events held at LCC'.

18. The Council's EHOs recommended that an independent review of LCC's and appellant's submission was needed to provide specialist advice on how noise impacts from LCC operations can be assessed and mitigated to reduce impacts on future site users.

19. On 23 November 2021 the Planning Service commissioned Sandy Brown Associates to carry out the peer review and provide the specialist advice recommended by the EHOs. Sandy Brown Associates have previously assisted the Council in similar circumstances; assessing potential noise impacts from Victoria Warehouse on the No. 1 Old Trafford development and suggesting appropriate mitigation. This scheme is built and occupied.

20. Sandy Brown Associates' review was completed on 1 December 2021. It covered the noise survey data, assessments and acoustic design of the proposed development from Holtz Acoustics, and a review of the appeal documentation from Vanguardia. Its key findings were as follows:-

- Music noise from concerts at LCC has not been correctly assessed by the appellant and further work is required to correctly determine the external noise levels at the proposed facades of the development and internal noise levels, including from low frequency noise;
- It is recommended that internal noise level criteria in line with BS8233:2014 are achieved in the proposed residential development at all times, including during all events at LCC (albeit this does not mean that events would be inaudible). This is to protect future residential amenity whilst still allowing LCC to operate as they do currently, in line with the agent of change principle;
- Assessments of acoustics, ventilation and overheating and ground-borne re-radiated noise (from Metrolink) are recommended during the planning stage (i.e. before the appeal is determined);
- The revised façade sound insulation assessment will likely result in a very high façade sound insulation performance requirement. This in turn may

require changes to the building massing and / or layout to incorporate winter gardens or circulation space as a buffer space on the north-east façade. It is noted that the central corridor layout of the scheme does not easily lend itself to having circulation space relocated to an external elevation.

21. On the basis of this new evidence it is considered appropriate to pursue noise as a further putative reason for refusal on three grounds:-

- That noise impacts from activity at LCC would have a harmful impact on the amenity of future residents of the development;
- That, given the above, noise complaints are likely which could lead to the review of LCC's premises licence. Applying the agent of change principle, LCC should not be required to curtail their own activities to accommodate new development; and
- Even if a planning condition is able to deal with the matters above, the impacts on the design and layout of the development are currently unknown and the proposed scheme may not be implementable. Although it is an outline application, the appellant seeks approval for the matters of 'appearance' and 'layout'. A revised scheme to accommodate appropriate acoustic mitigation would not necessarily be the scheme now in front of the Inspector (for example it may change the proportions of fenestration to solid wall construction), and late changes to the design and layout of the scheme would prejudice the Council's well advanced and detailed case on design being put forward at the inquiry. It may also worsen the design impacts of the proposal, by, for example, requiring large stretches of solid wall.

22. If Members are minded to authorise this report then the Council's inquiry statement of case will be updated immediately and Sandy Brown Associates will be called to give evidence on the Council's behalf.

RECOMMENDATION

23. It is recommended that the Planning and Development Management Committee authorise officers to pursue noise as a further putative reason for refusal at the upcoming public inquiry in respect of planning application 100400/OUT/20.