

## Planning Consultation Memo

Date	Planning Officer	Environmental Health Officer
23/01/2023	Nabeel Kasmani	Terry Vincent
Planning Application Number	Worksheet Number	
6/2022/2801/MAJ	WK135662	

**Address:** Campus East Car Park, Welwyn Garden City, Hertfordshire

**Application Details:** Demolition of all existing buildings and structures followed by the erection of five buildings to provide 313 residential units (Use Class C3) including 30% affordable housing, resident's car parking, cycle storage, refuse storage, hard and soft landscaping, external lighting, drainage, infrastructure, and all associated works.

### Considerations relevant to Environmental Health for this application

Noise from commercial operations from Waitrose deliveries.

### Description of site and discussion of considerations

#### Commercial noise:

The proposed development is unacceptable in terms of noise impact on occupiers. A number of properties are exposed to a BS4142 rating level higher than the onset of a significant adverse impact.

The National Planning Policy Framework section 185(a) states the following:

*“Mitigate and reduce to a minimum potential adverse impacts resulting from noise from new development – and avoid noise giving rise to significant adverse impacts on health and the quality of life”.*

The agent of change principle within the National Planning Policy Framework Section 187 states the following:

*“Planning policies and decisions should ensure that new development can be integrated effectively with existing businesses and community facilities (such as places of worship, pubs, music venues and sports clubs). 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 (including changes of use) in its vicinity, the applicant (or ‘agent of change’) should be required to provide suitable mitigation before the development has been completed.”*

The mitigation proposal that has been put forward by the applicant, is to provide a mechanical ventilation system, that requires occupiers to keep windows closed. The

mechanical ventilation system that has been proposed does not provide active cooling such as air conditioning would. The applicant has provided an overheating assessment (CIBSE TM59) which shows that overheating will not occur when keeping windows closed. The criteria to pass this assessment, is that the internal temperature does not exceed 26 degrees Celsius for more than three per cent of annual occupied hours.

It is significant to point out that occupiers do not just open windows for cooling. They open windows to experience fresh air, connection with the outside world or just because they want to. This is considered normal use of a property. In reference to the overheating assessment, it is not practical to suggest that occupiers will keep windows closed until internal temperatures exceed 26 degrees Celsius. There is also the matter of the recent heat waves that the country has been experiencing that have been forecast to continue. If the occupiers choose to open their windows for whatever reason, they will experience excessive noise from deliveries at Waitrose, that is very likely to amount to a statutory noise nuisance under the Environmental Protection Act 1990.

Waitrose cannot be held responsible for causing a statutory nuisance in this instance, due to the agent of change principle. The properties will be coming to the nuisance. It is the applicant's responsibility to implement sufficient mitigation by avoiding a significant adverse impact. Once you open a window, the proposed mitigation fails.

Deliveries to the Waitrose store occur seven days a week, every evening and into the early hours of the morning. This means that the significant adverse impact will reoccur regularly, during the most sensitive hours when people will be resting and sleeping. The noise report demonstrates that the LAmax levels (bangs and crashes) during each delivery, are significantly above the noise level at which awakening is likely to occur with windows open. Therefore, not only are occupiers likely to be woken up from sleep, but they will continue to be disturbed throughout the delivery and not be able to get back to sleep.

The council would not be able to serve a noise abatement notice on Waitrose due to the agent of change principle and because it would not be an actionable nuisance, as per case law - **Lord Neuberger (then President of the Supreme Court) in the Supreme Court case of Coventry and Another v Lawrence and others [2014] UKSC 13**. I draw the conclusion therefore that occupiers would be exposed to unacceptable noise levels, for which there would be no suitable resolution if the development is built as proposed. The council cannot refuse to investigate commercial noise complaints as it is a statutory duty and would be unable to take enforcement action as explained above based on the existing noise from Waitrose. In addition, the council cannot advise occupiers to close their windows to mitigate noise intrusion, this would be a clear indicator that a statutory nuisance is occurring.

Section 9.5 of the noise impact assessment submitted by Arden (Ref: 2007511-09A) states the following:

“Residents will be informed about the noise control measures built into their properties and how to use them, including the measures which mean they do not

need to open windows to provide suitable thermal comfort and internal noise levels. Residents will also be informed about the noise sources affecting the acoustic environment, including the types of noise from these sources. This information would be provided to residents within a 'Welcome Pack' and these measures can be secured by planning condition."

It has not been made clear at what stage the welcome pack would be provided to the residents. Would this be prior to the sale of any of the properties and for social housing, at the stage of offering the property to the resident. The key point being whether the resident can decide whether they wish to accept this type of scenario before any contracts have been signed. In addition, will the resident be informed that significant adverse noise will occur 7 nights a week, typically after midnight and that sleep disturbance is highly likely to occur if they do choose to open their windows.

### **Conclusion**

- Recommend planning application is permitted
- Recommend planning application is permitted but with conditions
- Recommend planning application is refused