

From: Christopher Davis
Sent: 04 March 2019 19:48
To: Planning.Responses
Cc: Simon Davis
Subject: BN/25/18/PL
Importance: High

EH Comments regards the Planning Appeal against the refusal of BN/25/18/PL

For the purpose of clarity these new comments are in blue; the Environmental Health departments stance to this planning case / appeal have not changed from our original comments herein; as sent on the 04 July 2018 17:39 along with the subsequent comments submitted on 26 July 2018 12:49 in response to the planning officers request after the receipt of a noise report commissioned by the applicant in this application.

Additional comments that I can confirm at this time are that:

Legal Notices have been served on three separate parties using the land known as Clix n Trix Dog Training Club and Gardens, namely Elaine Armstrong of Clix n Trix, Yappy Days Ltd, and the Reynolds Family (x3) who are the landowners. All of these notices were served under the provisions of the Environmental Protection Act 1990 (EPA '90) s.80 'Abatement' notice. None of the notices were appealed. To date complaints continue to be received from multiple complainants and breaches of the notices have been witnessed by authorised officers of the Arun District Council.

PACE Interviews under the provisions of the Police and Criminal Evidence Act 1984 have been conducted with two of the interested parties; having been established as the persons responsible for the breaches of the EPA '90 s.80 notices. This evidence and the typed transcripts from these recorded interviews is now in the process of being considered by the Senior Management team of the Councils Environmental Health Department for formal action which may lead to prosecution proceedings being laid to a Magistrates Court. Since the date of these PACE Interviews, complaints of noise nuisance have increased and it is alleged that the nuisance suffered by the complainants is now; to quote a complainant directly, "worse than ever".

At no time have Clix n Trix or Yappy Days Ltd put forward any meaningful changes to their business plan or offered any mitigating measures to reduce the noise nuisance to within tolerable levels for the nearest noise sensitive domestic neighbours.

If allowed to continue trading at this site, I can see no other option but a lengthy legal one that will ultimately not control the noise problems associated with continued trading in an open field with noisy dogs directly adjacent to and adjoining noise sensitive domestic dwellings; resulting in further breaches of the notices served in the future to be likely and more lengthy formal action being taken against the persons responsible for these future breaches; i.e. a never ending cycle that WILL NOT resolve the complaints.

I therefore reiterate my previous comments and state again that Planning Permission must be Refused.

Kind regards

Christopher Davis
Senior Environmental Health Officer

Environmental Health Department
(01903) 737695 (direct line)

Arun Civic Centre | Maltravers Road | Littlehampton | BN17 5LF

www.arun.gov.uk/eh



Original Comments : 04 July 2018 17:39

From: Christopher Davis
Sent: 04 July 2018 17:39
To: Planning.Responses
Cc: Simon Davis
Subject: BN/25/18/PL - Land to east of Parsonage Farm Yapton Road Barnham PO22 0BD

EH comments in relation to BN/25/18/PL

Having now evaluated the proposed development and formulated my conclusions I would state that based on the requirements of the NPPF and NPPG, this development falls into category 3 (below):

1. ~~No comments~~
2. ~~Conditions or Informatives requested~~
3. **Refusal recommended**

I therefore put forward the following;

Paragraph 123 of the NPPF states that planning policies and decisions should aim to:

- avoid noise from giving rise to significant adverse impacts on health and quality of life as a result of new development;
- mitigate and reduce to a minimum other adverse impacts on health and quality of life arising from noise from new development, including through the use of conditions;
- recognise that development will often create some noise and 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;
- identify and protect areas of tranquillity which have remained relatively undisturbed by noise and are prized for their recreational and amenity value for this reason

The principle considerations are:

1. Whether or not a significant adverse effect is occurring or likely to occur;
2. Whether or not an adverse effect is occurring or likely to occur;
3. Whether or not a good standard of amenity can be achieved

Contrary to the statement that no noise complaints have been lodged against the business within the submission documentation by Stephen Jupp (Chartered Town Planner) dated 11 May 2018 on behalf of the applicant Elaine Armstrong of 'Clix and Trix'; in fact Arun District Council Environmental Health (EH) department has received numerous noise complaints dating back to 07/03/2017. In addition to numerous written confirmations of noise complaints, authorised officers of the EH department have also visited the premises and have directly spoken to Elaine Armstrong of Clix and Trix where verbal and written confirmation of noise nuisance complaints has been relayed to the business owner / operator and verbal warnings administered. The dates of these visits include 15/03/2017 and again on 10/05/2018

Authorised officers of EH have also witnessed nuisance from dog barking and raised voices of dog trainers during training sessions. These episodes of nuisance / disturbance witnessed to date have not resulted in formal action being taken but if more evidence is gathered then the council shall be taking formal action, against the person(s) responsible for the nuisance, to abate the nuisance; this will occur as no efforts have been made to date to mitigate the disturbances following advisory visits by EH officers

As well as ongoing investigations into noise nuisance, I would state the following;

1. Having reviewed the development proposal and supplied information, it has been determined that noise from dogs barking / raised voices will cause '**an unacceptable adverse effect**', as defined within the Planning Practice Guidance. The noise exposure will cause extensive and sustained changes in behaviour without an ability to mitigate the effect of noise. The impacts on health and quality of life are such that regardless of the benefits of the activity causing the noise, this situation should be prevented from occurring. It is considered very likely that should permission be granted for the development proposal a 'statutory' nuisance as defined under the Environmental Protection Act 1990 will likely occur / reoccur. **I therefore recommend refusal.**
2. The application proposes to introduce commercial activity into an area with noise sensitive receptors. Noise from dogs barking in open fields adjacent noise sensitive receptors will adversely impact the amenity of existing occupiers in the area. No information on noise control measures is provided within the application and therefore it is considered that the application contains insufficient detail to be properly determined. In order to ensure any adverse noise impacts are appropriately mitigated, a noise impact assessment is

required which characterises the current prevailing noise environment and identifies any potentially significant sources of noise from the proposed development. Noise mitigation measures would also need to be proposed by a competent acoustician and considered by the Planning Authority. **I therefore recommend refusal.**

Please note:

Acoustic barriers / fences – these generally only work well for steady state noises – such as road traffic noise and are much less useful for impact noises and unpredictable noises such as noise from a sports pitch, dogs barking, motor-racing or noise from skate parks. They also are much more effective when close to either the source of the noise or the premises they are aiming to protect.

Informatives

1. The granting of this planning permission does not in any way indemnify against 'statutory' nuisance action being taken should substantiated complaints within the remit of the Environmental Protection Act 1990 be received.

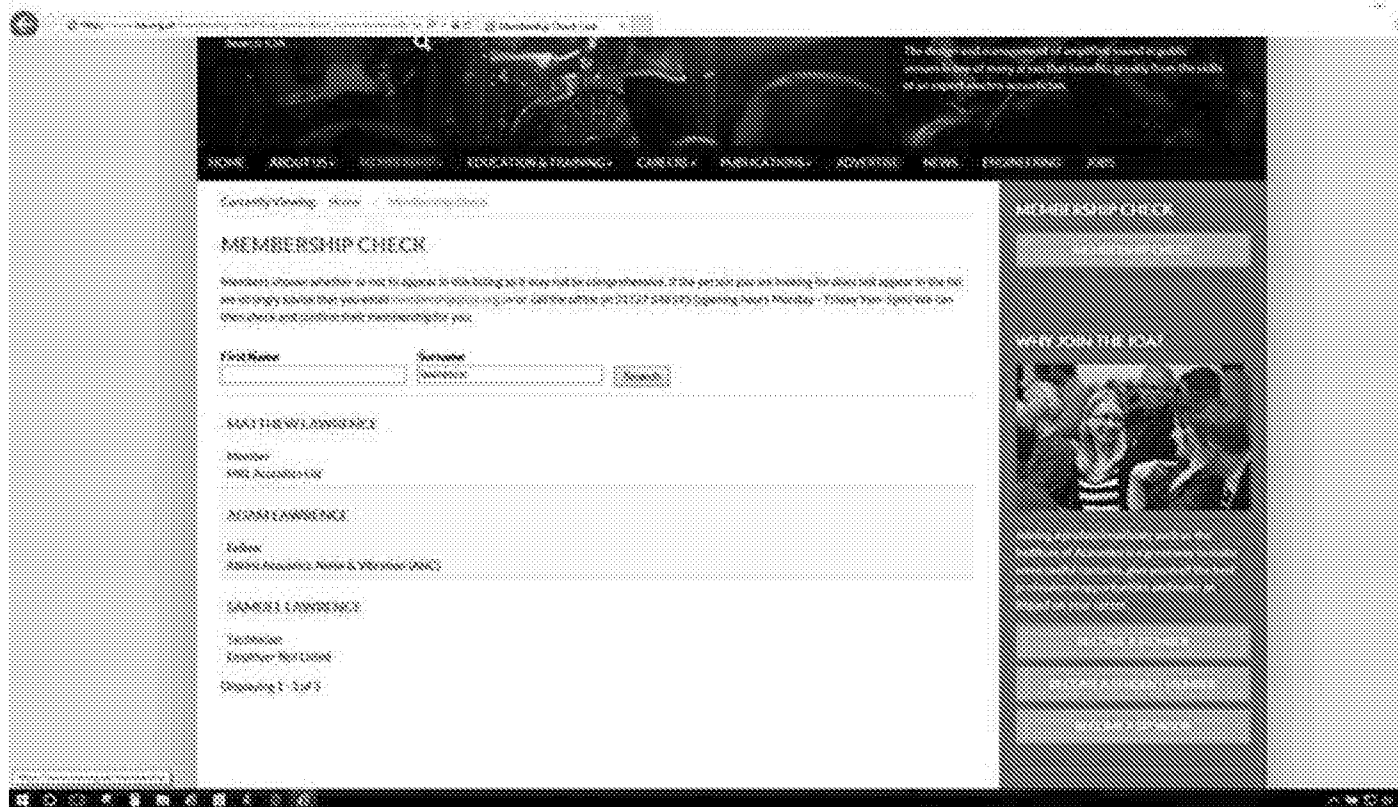
For further information please contact the Environmental Health Department on 01903 737500

Subsequent Comments : submitted on 26 July 2018 12:49

From: Christopher Davis
Sent: 26 July 2018 12:49
To: Simon Davis
Cc: Anna Appleton; Nat Slade
Subject: RE: Noise Report for BN/25/18/PL
Importance: High

Hi Simon

My first point of reference with any Acoustics report is to check membership with the Institute of Acoustics (IOA) and as you can see from the screen grab below neither of the two report authors, namely John Lawrence and Thomas Lawrence are members of the IOA. This instantly casts a shadow of doubt over the reports validity as membership to the IOA requires the IOA diploma in Acoustics and Noise Control as a minimum and recommends all members hold the Certificate of Competence in Environmental Noise Measurement too.



This being said, I read the report on its merits and would state the following:

It is noted that the noise measurements were taken on a Monday (9th July). Having spoken to the both complainants and Elaine Armstrong (Owner of Clix and Trix) the potentially worst day is a Thursday.

The noise report also only considers two one hour sessions run in the presence of Elaine Armstrong. As an competent and fully qualified acoustician myself I would have preferred to see as a minimum a 7 day unattended continuous monitoring (to include a weekend) as well as representative attended monitoring at times that show the worst case.

Discussions held with Mrs. Armstrong during the service of the section 80 'Abatement' Notice under the provisions of the Environmental Protection Act 1990 (by hand) on Friday 13th July 2018 shows that she is aware that the "worst noise" occurs during the times that she is not in control of her business; in that when she rents out the Dog Garden to Yappy Days Doggy Daycare and she is not onsite.

Having read the report in its entirety I note that the report does not contains sufficient information to assist decision makers and falls short of a robust assessment for multiple reasons.

Competence

The NPPF provides a Glossary with the following definition:

<https://www.gov.uk/guidance/national-planning-policy-framework/annex-2-glossary>

Competent person (to prepare site investigation information)

"A person with a recognised relevant qualification, sufficient experience in dealing with the type(s) of pollution or land instability, and membership of a relevant professional organisation"

None of the qualifications listed in the report are acoustics qualifications relevant to the application of assessment method.

I can see no overt evidence of experience in the field of acoustics and noise control for planning purposes.

While the individuals may be well qualified in other fields it is possible that neither of these persons meet the criteria for a competent person as outlined above.

The term 'Stage II' noise level readings is not explained (within the Executive Summary)
It is possible they mean Stage 2 from ProPG but further clarification may be required.

If it is indeed Stage 2 from ProPG the guidance document has this to say:

Stage 2 – a systematic consideration of four key elements.

2.4 The four key elements to be undertaken in parallel during Stage 2 of the recommended approach are:

- Element 1 – demonstrating a "Good Acoustic Design Process";
- Element 2 – observing internal "Noise Level Guidelines";
- Element 3 – undertaking an "External Amenity Area Noise Assessment"; and
- Element 4 – consideration of "Other Relevant Issues".

I'm not sure there is enough information present to demonstrate this and in any case ProPG is only guidance stating *"This Professional Practice Guidance does not constitute an official government code of practice and neither replaces nor provides an authoritative interpretation of the law or government policy on which users should take their own advice as appropriate. " and further: "The scope of this ProPG is restricted to the consideration of new residential development that will be exposed predominantly (see Section 2) to airborne noise from transport sources (noting that good professional practice should have regard to any reasonably foreseeable changes in existing and/or new sources of noise)."*

(again within the Executive Summary)

The readings cannot be made both at the boundary and the source simultaneously (unless two sound level meters (SLM's) were in use and only one referenced). The source cannot also be the receptor - further clarification is required here.

"The secure and safe environment afforded to pet owners and dog handlers by Clix and Trix provides a valuable service to the local community. The area is strictly managed and controlled by rules placed upon those persons private and commercial who rent the garden"

This is not a valid noise issue and potentially indicates bias.

There is no such thing as a noise meter. It is a sound level meter, noise is a subjective term based on human response; sound is an objective quantity that can be measured. A competent person would be expected to know this.

$L_{A_{Max}}$ is measured using fast time weighting unless otherwise directed to do so by guidance (i.e. measurement of certain railway sound). There is no justification for using $L_{A_{Max} Slow}$. The ProPG guidance and BS 8233 consider individual events in terms of $L_{A_{Max} Fast}$.

Barks were made at 1m from the source, I am not sure it is ethical to encourage dogs to bark and it is unclear as to how many barks were measured from what breeds, and under what circumstances the bark was induced.

The report references the 'noise at work' actions levels (Health and Safety legislation). They are measured in terms of daily exposure LEP_d (an L_{eq} based value) and $L_{C_{Peak}}$ not $L_{A_{Max} slow}$ and in any case noise at work exposure action values are not a valid planning concern.

BS5228 is not an appropriate Standard to use for the assessment of this site; the scope of BS5228 is clear:

"This part of BS 5228 gives recommendations for basic methods of noise control relating to construction sites, including sites where demolition, remediation, ground treatment or related civil engineering works are being carried out, and open sites, where work activities/operations generate significant noise levels, including industry-specific guidance"

This site is not an 'open site' as defined by BS5228:

"3.11 open site:

Site where there is significant outdoor excavation, levelling or deposition of material

NOTE 1 - Examples include quarries, mineral extraction sites, an opencast coal site or other site where an operator is involved in the outdoor winning or working of minerals.

NOTE 2 - Waste disposal sites and long term construction projects can, in most cases, be treated as open sites."

It is further noted that no instance of either of the words "dog" and / or "dogs" are present anywhere in the 166 pages that form the BS 5228 guidance documentation.

The following text within the report is misleading; as the assessment approach is incorrect:

"In summary, the premises provides a key service to the local community ensuring the security and safety of owners pets in a controlled environment which is well managed and which poses negligible nuisance by way of noise to local residents in line with the standards and criteria set in the British Standard document BS 5228:1 Part 6."

There are no calibration certificates or any indication the equipment used was in calibration, no serial number has been provided nor any indication of field calibration taking place either before measurements commenced or after measurements were taken. A product brochure included with the report is not the same thing as valid calibration certificates. A *"higher level educational establishment based in Hampshire"* is not necessarily a recognised and accredited calibration laboratory such as UKAS. Therefore it is possible that this equipment was not within calibration - further clarification is required here.

Measurements made 1.2m from the ground may not have been 'free field'; as it is possible a boundary fence or similar was present.

The diagram included in the report is disproportionate; Receptor A (20m from the source) appears to be 4 times the distance of Receptor B which is stated as 10m from the source? - further clarification is required here.

Measurements taken every 15 minute interval for a period of 5 minutes may be a typographical error but may also be an indication of inadequate monitoring - further clarification is required here.

By way of an over simplified comparison, the WHO guidelines indicate 55dB as the level at which most people are seriously annoyed.

BS 5228 does not provide a framework for assessing nuisance and the foreword states :

"Compliance with a British Standard cannot confer immunity from legal obligations"

The Chartered Institute of Building (CIOB) Rules and regulations of professional competence and conduct (attached) state:

2. Members shall demonstrate a level of competence consistent with their class of membership.

5 Members shall discharge their duties with complete fidelity and probity. In particular they shall:

5.3 ensure, when providing an advisory service, that the advice given is fair and unbiased;

6 Members shall not undertake work for which they knowingly lack sufficient professional or technical competence, or the adequate resources to meet their obligations.

7 Members who are not competent to undertake part or all of a particular advisory service shall either decline to give advice or secure appropriate competent assistance.

13 Members shall keep themselves informed of current thinking and developments appropriate to the type and level of their responsibility. They should be able to provide evidence that they have undertaken sufficient study and

personal development to fulfil their professional obligations in accordance with the current guidelines for Continuing Professional Development (CPD).

It may be necessary to check qualifications. The usual term for someone with MCIOB is either Chartered Builder or Chartered Construction Manager not necessarily Chartered Member of the Chartered Institute of Building.

<http://www.ciob.org/grades/chartered-membership>

With all this said, I'm sure you can see that I don't consider this to be a acoustics report and therefore recommend that the report be redressed by means of a competent acoustician before resubmission

Kind Regards

Christopher Davis
Environmental Health Officer
Environmental Health Department

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www.arun.gov.uk/eh



From: Simon Davis
Sent: 16 July 2018 09:33
To: Christopher Davis
Subject: FW: Noise Report for BN/25/18/PL

Dear Chris,

Please see attached. Can you advise whether this alters the advice you have already given.

Cheers

Simon J Davis MRTPI | Principal Planning Officer, Planning Department, Directorate of Place, Arun District Council |
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Visit Arun's web site at www.arun.gov.uk



Save the environment - think before you print.

From: Clix and Trix Training Club [REDACTED]
Sent: 13 July 2018 22:38
To: Simon Davis
Subject: Noise Report for BN/25/18/PL

Hi Simon,

Here is the noise report to add to my application.

Regards
Elaine Armstrong

