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## **BREACH OF PLANNING CONTROL AT THE VICTORIA ROAD RESIDENTIAL DEVELOPMENT SITE, RAYLEIGH, ESSEX**

### **1. SUMMARY**

- 1.1. To consider the report of the Head of Planning Services regarding a breach of planning control namely the non-compliance of condition 5 of the planning consent F/0357/97/ROC and condition 6 of the planning consent F/0473/96ROC. These required that details of a nuisance attenuation barrier to be submitted to and approved in writing by the Local Planning Authority (LPA) and that such barrier should be provided prior to the occupation of the houses.
- 1.2. Although a barrier between the Rawreth Industrial Estate and the housing development has been provided, the specification has not been agreed formally and does not meet the minimum specifications required in terms of noise attenuation. A number of complaints concerning the noise from the industrial estate have been received from the occupiers of the houses that back onto the industrial estate.
- 1.3. Members will need to consider whether it is expedient to serve a Breach of Condition Notice on the developer in respect of condition 5 and 6. Such action is discretionary, but the mechanisms involved in taking such action are statutorily controlled.

### **2. INTRODUCTION**

- 2.1. The site is located on land off Victoria Avenue, Rayleigh, adjacent to Rawreth Industrial Estate, and forms part of a much larger site of 4.7 hectares between Rawreth Industrial Estate and Sweyne Public Open Space which was granted permission in 1997 under reference F/0473/96/ROC. Members may recall that planning permission was granted for a number of revisions to that permission in respect of 35 dwellings and garages on the southern part of this site on 12<sup>th</sup> November 1988. This area was also the subject of an earlier outline application, which was granted permission in 1995.
- 2.2. In granting permission for the above, a major consideration was the proximity of the Industrial Estate along the western boundary of the site and the potential impact on the residential amenities of the future occupiers of the proposed dwellings. All the above applications, including the outline, imposed conditions in this respect requiring some form of barrier, an earth bund, or acoustic fence, or just physical separation to ensure that the occupiers of the dwellings would have a reasonable standard of amenity.

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- 2.3. In respect to the discharge of conditions 6 & 5 of the permissions F/0473/96/ROC and F/0357/97/ROC details of the nuisance attenuation barrier submitted to the LPA have been the subject of discussion between officers and the developer. However, no formal discharge of the conditions was ever given.

### **3. CONSIDERATIONS**

- 3.1. Subsequent details submitted by the developer included a specification of the proposed attenuation barrier and two alternatives were given. The first showed a barrier of 4m height consisting of 1.2m of railway sleepers surmounted by a 2.8m high timber fence. An earth bank was to be provided on the east side of the barrier (facing the new houses) and this would be retained by the railway sleepers. The second showed a 2m high acoustic fence on top of a 2m high earth mound.
- 3.2. Following consultations with the Head of Housing, Health & Community Care, a letter was sent to the developer advising them that the preferred barrier would be based on the first option. However, this should be increased in height by 0.4m to give a total height of 4.4m consisting of 2m of railway sleepers with a 2.4m of acoustic fence on top and this barrier should run the full length of the boundary. Later it was informally agreed that the top 0.4m of the acoustic fence could consist of trellis to improve the appearance of the fence. The letter ended requesting that the revised details of the barrier be submitted for approval.
- 3.3. No further details have been submitted and it was not until the developer had finished construction of the estate that complaints from local residents highlighted the inadequacy of the noise/nuisance attenuation barrier.
- 3.4. Upon investigation it was found that whilst a barrier had been erected between the industrial estate and the new housing development, it was not strictly in accordance with the discussions/correspondence that had taken place with the developer. The earth mound/bund and railway sleepers were only up to a height of 1.2-1.3m and not 2m as requested and most importantly the acoustic fence surmounting the bund was only in the form of close-boarded fencing. Such fencing does not have sufficient acoustic properties to attenuate noise from the industrial estate adequately especially as it is of a lightweight construction and there are many gaps between the timber boards.
- 3.5. Discussions with the developer centred on the use of a proprietary brand of fencing specifically manufactured for noise attenuation. Detailed specifications of this fencing were provided by the developers and it was on the basis that this type of fencing was to be used, that the proposed noise attenuation barrier was considered to be

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acceptable, though no written confirmation discharging the planning conditions has been provided by the LPA.

- 3.6. Discussions have taken place since the discovery of this problem with the developer in an attempt to resolve the situation and this has involved an acoustic survey being undertaken by the developer's acoustic consultants and noise assessment by this Council. The report prepared by the developer's acoustic consultants suggested that the fence erected was no different from proprietary brands of acoustic fencing. However, following consultation with the Head of Housing, Health & Community Care, it is considered that this is not the case and that the existing fence needs to be replaced to the standard originally specified by the developer. Members should note that the fencing originally proposed had a superficial mass of  $21\text{kg/m}^2$  and a Weighted Sound Reduction Index of 25dB. The fence provided has a maximum mass of  $7\text{kg/m}^2$  giving at best a sound reduction of 15dB. This is confirmed by the developer's own consultants. It is the mass of a material that is the major factor in reducing airborne noise being transmitted through a barrier. As such, the lighter weight construction allows more noise to be transmitted, particularly lower frequencies. In addition, the fencing originally proposed would have been constructed to a much higher standard without any gaps in between the boards, another key feature of an effective acoustic barrier.
- 3.7. The developer has been advised that the LPA does not consider the existing fence to be adequate in providing sufficient sound attenuation and that the relevant conditions have not, therefore, been discharged. The developer was further advised that should they not confirm that such a fence would be installed then the matter would be reported to this Committee to seek authority to serve a Breach of Condition Notice. Their response is to confirm their opinion that the fence provided is an acoustic fence and therefore the condition has been met. Officers disagree with this view. The Head of Housing, Health & Community Care has confirmed that as the fence has many holes and gaps in the joints the sound reduction is significantly less than the 15dB as stated by the consultants. When considering the planning applications, a reduction of 25dB by the barrier was considered to be the minimum required.

#### **4. CONCLUSION**

- 4.1. It is considered that the developer has failed to provide a nuisance attenuation barrier in accordance with the requirements of condition 5 & 6 of the planning consents F/0473/96/ROC and F/0357/97/ROC in that no details were ever formally agreed and that the barrier provided, does not meet the minimum specification required to provide adequate noise attenuation.

**5. RECOMMENDATION**

**5.1. It is proposed that the Committee RESOLVES**

that the Corporate Director (Law, Planning and Administration) be authorised to take all necessary action including the issue of Notices and action in the Courts to secure the remedying of the breach now reported. (HPS)

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