

PLANNING & LICENSING COMMITTEE

14 FEBRUARY 2023

ADDENDUM REPORT

Report no.	Item no.	Application no.	Applicant	Parish
28/2023	1 AND 2	2022/0547/FUL AND 2022/0562/LBA	MR & MRS MARTIN	MORCOTT

Additional Comments:

Two additional representations have been received on behalf of the neighbour, one in response to the updated Noise Impact Assessment and comments from Public Protection, the second in response to the committee report.

The revised NIA continues to rely on incorrect standards and its only revision is to the introduction of recommendations concerning future maintenance of the AHSP. It therefore continues to remain legally flawed, and the Council should not rely on its conclusions.

With regard to the Public Protection Response, whilst this refers to extant guidance and explains its conclusions, it is considered that it fails to address the concerns with a lack of impact on Firdale Barns and reliance on standards that are not applicable here and a flawed NIA.

The Public Protection Response states that, if the barn were in the process of being converted to a dwelling, it would be considered a sensitive receptor. In planning terms, the barn has the benefit of a permission to convert and could be so converted at any time. As such, it is clearly necessary to undertake that assessment now as there would simply be no control in the future. The only other option would be for the Council to revoke any permission to convert the barn or the owner of the barn to provide a covenant that it will not be converted to residential accommodation in the future unless it was demonstrated that the noise impact of the ASHP on the accommodation would be acceptable.

The Public Protection Response rightly identify that the NIA has not applied the correct standards and legal reasoning. The NIA is clearly flawed. Nonetheless the Public Protection Response indicates that the standards of the Briefing Note Institute of Acoustics – November 2022 1 AHSP Heat Pumps Professional Advice Note (“the Advice Note”) indicate the noise impact of the ASHP is acceptable.

A copy of the Advice Note is attached with this letter. The Advice Note indicates that heat pump installations “which require full planning application” may require a more comprehensive noise assessment to be undertaken. This is emphasised in the

Summary of the Advice Notice. The ASHP at Firdale House requires a planning application and so would seem to necessitate a more comprehensive noise assessment.

The Advice Note also states that “for single units, located in noisy locations which are remote from sensitive receptors, simple desktop assessment may be sufficient as part of a proportionate approach”. The Application is not located in a noisy location and is not remote from sensitive receptors and so would indicate that a more comprehensive approach is required.

We therefore conclude that the Advice Note itself indicates that a more comprehensive noise assessment is required. Of course, in accordance with the Advice Note, a “precautionary approach” (Summary, 2nd bullet point) should be adopted with an assessment “informed by and proportionate to local circumstances and the degree of risk of a significant adverse noise impact occurring”.

Even if the standards in the Advice Note were concluded to be appropriate here, it is important to note that the NIA does not demonstrate compliance with those standards. The Advice Note requires no more than 35dB (LAeq, 15mins) at any noise sensitive façade whereas the NIA has assessed noise on the basis of LAeq 5mins. As such, the NIA does not demonstrate compliance with the standards of the Advice Note. The Public Protection Response appears to assume that the 33dBLAeq is based on LAeq, 15mins when it is, in fact, not. This must be corrected before the Council is able to take a lawful decision on this Application.

It is also noted that a “highways plan” has been submitted. We would caution the Council against relying on the dimensions shown on this Highways Plan given that it appears not to be to scale and does not appear to represent the correct features on the ground (for example, the pedestrian footpath on the other side of the High Street is shown as a straight edge). We would recommend that the Council visits the site to undertake its own measurements to satisfy itself on the dimensions of the proposed access.

The inclusion of the Highways Plan also reiterates concerns with the validity of the application as it would appear to demonstrate acceptance that the access should be included as part of the application site. This would render the current site location Plan incorrect and, if corrected, would require revised ownership certificates.

For the above reasons, the NIA is flawed (a conclusion accepted by the Public Protection comments) and the Council cannot lawfully rely on it to conclude that there are no unacceptable noise impacts. Even if the Council maintained that the standards of the Advice Note were sufficient here, it is clear that the NIA uses an incorrect noise rating level (LAeq, 5mins) to that required by the Advice Note (LAeq, 15mins). This means that the Council cannot be satisfied that the noise impact is acceptable.

The noise impact on Firdale Barns cannot be ignored and must also be assessed.

If the Council proceed to grant planning permission pursuant to the Application whilst relying on the conclusions of the NIA, it would be erring in law by failing to have regard to a material consideration. Such error of law would leave it vulnerable to judicial review. A reliable NIA which addresses the current flaws is necessary to enable the Council to proceed to determine the application.

The submitted Highway Plan also raises concerns with the validity of the application in its current form and could also potentially be the basis of legal challenge. We trust these representations will be taken into account by the Council.

The garden of Firdale House is on higher ground than 3 Willoughby Road by around 1.2 metres. This is not made clear in the report and it is important to understand in the context of privacy concerns and noise impacts.

The Noise Impact Assessment submitted with the application is entirely flawed for several reasons. It firstly seeks to rely on noise standards that are contained in the Town and Country Planning Order 2011 which, put bluntly, simply does not exist. This remains uncorrected. Secondly, it ignores any impact on the barns that have the benefit of planning permission to be converted to residential use that are immediately adjacent to the noise source. Those barns must be considered to be sensitive noise receptors and the impacts must be assessed; a failure to do so would mean that, when the barns are converted, there would be no longer any opportunity to control noise impacts from the development on the occupiers of those barns. Thirdly, the assessed noise levels do not accord with the assessment requirements of the noise standards that the public protection officer is seeking to rely on as they are based on dB LAeq, 5mins rather than the standard required of dB LAeq, 15mins. The 3D sound model in the assessment also appears to be based on an assumption that Firdale House and 3 Willoughby Road are located at the same ground level when in fact the noise source would be over 1m higher and thus closer to the bedroom windows of 3 Willoughby Road.

A condition is proposed to seek to control noise impacts by use of a condition requiring compliance with the noise mitigation measures set out in paragraph 5.1.1 of the Noise Impact Assessment. However, those mitigation measures are far too vague to properly control noise and the condition will fail to achieve what it is purporting to do. The condition should precisely identify that the noise should not exceed 35dB LAeq, 15mins at 1m from the elevation of 3 Willoughby Road (and other noise sensitive receptors) to provide clarity.

The swimming pool will impact unacceptably on the privacy both of 3 Willoughby Road and of Firdale house. This is because the steps into the swimming pool, where users are likely to congregate, afford direct views into the bedroom window of 3 Willoughby Road. Clearly, it would also afford direct views from the bedroom window of 3 Willoughby Road to the swimming pool. This relationship is a result of both the poor and unacceptable layout of the swimming pool and the fact that the swimming pool will be set at a ground level significantly higher than the ground level of 3 Willoughby Road.

The impact on heritage assets is a matter for the Council's judgment but it should be noted that this is a very sensitive site being located within the Conservation Area and surrounded by listed buildings. The changing room will be located adjoining a listed building and there is substantial concern that the construction involved will lead to harm to the existing listed boundary walls. It is also noted that the conservation officer's comments stop mid-sentence and this error should be corrected in an addendum report.

We have grave concerns with the robustness of the structural survey work that has informed the Application. It is noted that a condition requiring a construction method statement is proposed to address this concern but we conclude that the issue is of

such importance that it should not be left to a condition but rather addressed fully now before any permission is granted. This is especially the case as the previous repair work done to the northern boundary wall was 5 years ago (rather than the quoted 3 years) and that the wall has further deteriorated since the “survey” was undertaken last year. We enclose photographs of the boundary wall showing the current state of disrepair and sodden patches where water is seeping through.

It is also noted that the repair to the eastern boundary wall has been undertaken without the benefit of listed building consent and in what appears to be a substandard manner given that it is failing after only 6 weeks of being undertaken. Photographs are enclosed showing the mortar continuing to fall off the wall as well as showing that the wall has become sodden in patches with water seeping through from the land to its rear, which would appear to highlight further issues with the standard of the repairs and the pressure building up on the wall from the retained land behind;

As acknowledged by the need for the condition, there will be significant impacts on the highway. Whilst these impacts will be temporary during the construction they are very real and simply cannot be ignored. The condition requires various matters which appear extremely difficult, if not impossible, to accommodate such as a provision of visitor parking, site compounds and storage areas at the same time as ensuring there will be no queuing or waiting on the public highway. These matters cannot be accommodated within the Application Site and are reliant on neighbouring land being provided for this purpose. The Council should be satisfied that those matters are achievable before granting permission.

In addition to the above point the neighbour has sent out the following comments to Members of the Planning Committee:

My husband Michael Clayton died days before Christmas and so I am unable to speak at the Committee Meeting next Tuesday. The following may be of help to you in explaining many of the concerns which have not been addressed and the key outstanding matters. I have found these 2 planning cases difficult and complex even though I have been qualified and working in the property sphere for 40 years. I completely understand if you do not wish to read this further and you are under no obligation.

- The garden of Firdale House is set out at higher ground level than Melville House, 3 Willoughby Road. The difference is 1.2 m. The Officer’s report fails to make this clear and it is important in the context of the retaining listed stone walls, the privacy concerns and noise impacts.
- The Noise Impact Assessment ignores the impact on Firdale Barn and also states incorrect standards in assessing the impacts on our property Melville House, 3 Willoughby Road.
- The swimming pool will impact unacceptably on the privacy of both Melville House, 3 Willoughby Road and Firdale house. The steps into the pool, where users are likely to congregate, have direct views into a bedroom window of 3 Willoughby Road and vice versa from that bedroom window to the pool. This is a result of poor and unacceptable layout of the swimming pool and the fact that the pool will be set at a ground level significantly higher than the ground level of 3 Willoughby Road.

- The heritage assets concern a very sensitive site being located in the Conservation Area and surrounded by listed buildings. The changing room will be located adjoining a listed building and there is substantial concern that the construction involved will lead to harm to the existing listed boundary walls. The Conservation Officer's report stops mid-sentence before the end paragraphs without a conclusion.
- We have grave concerns with the robustness of the structural survey work that has informed the application. A condition requiring a construction method statement is proposed to address this but we are advised that this is of such importance that it should not be left to a condition but addressed fully now before any permission is granted. This is especially valid as previous repair work to the northern boundary wall was over 5 years ago – not the quoted 3 years -and the wall has further deteriorated since the 'survey' was done nearly a year ago. Photos are attached in this respect and a diagram showing the lean of the Wall well over the centre of gravity - building practice states it is unsafe if it leans outside the middle third of the base shown by the plumb line which it clearly does.
- Much inferior repair work has been carried out to the boundary Wall along the front of Willoughby Road without Listed Building Consent and this is now failing after only 6 weeks. Photos are attached showing mortar and stonework falling off and the Wall is saturated with water in large areas coming through from the pressure building up from the retained land behind.
- The highway will be seriously impacted resulting in the Highways Department requirement for conditions. These impacts on a busy and narrow part of the village roads will be temporary for several months but significant and include provision for staff and visitor parking, site compounds, storage areas and ensuring there is no queuing or waiting on the roads. This may be impossible as they cannot be accommodated with the Application Site and reliant on neighbouring land provided. Surely the Council should be satisfied that all this can be achieved before granting planning permission?

As you can see from the above points, numerous risks are exposed which need investigating and addressing prior to any permission being granted. Adequate time should be allowed and while the proposed conditions go some way, it is surely important that any conditions are sufficient and secure what they were intended to do.

The development's layout maximises unacceptable impacts on privacy which a more considered and reasonable position of the swimming pool could eliminate.

Due to the evidence in the many various reports regarding these two applications, ideally they should be refused but the Case Officer has recommended approval. As it is all so technical, we appreciate the Councillors will not have the required technical experience to assess it in detail although the main point of ensuring the boundary Walls are safe before any other building works are obvious. Four walls have crashed down in this village this winter including one approx 25 long and 10 feet high very recently.

I hope you find this helpful. In my dire personal circumstances I have had to enlist others to represent me. A Chartered Surveyor with Listed Building experience of over 20 years will speak for 3 minutes at the meeting in my place, if it is not deferred.

Officer Comments:

The agent has submitted amended plans to remove the air source heat pump from the scheme and provided additional information in relation to the parking area.

Following the on going concerns relating to noise from the proposed air source heat pump the applicants have now amended the scheme to remove the air source heat pump from the scheme and replace it with a more traditional electric or gas boiler. In view of this it is considered that there will no longer be any potential noise issues subject to the proposals been conditioned to the amended plans.

Concerns have been raised in relation to levels changes and the potential for overlooking. However given the significant existing boundary treatments and the fact that the change is minimal it is considered that there will not be any significant adverse impact from overlooking from users of the swimming pool.

Concerns have also been raised in relation to highway safety and impact on listed wall. These issues have all been fully assessed in the main agenda report.

Recommendation:

2022/0547/FUL

APPROVAL subject to the following revised conditions:

1. The development shall be begun before the expiration of three years from the date of this permission.
Reason: To comply with the requirements of Section 91 of the Town and Country Planning Act 1990, as amended by the Planning and Compulsory Purchase Act 2004.
2. The development hereby permitted shall not be carried out except in complete accordance with the details shown on the submitted plans: 2021-16-07e Proposed Elevations, Layout and Section

Reason: For the avoidance of doubt and in accordance with Policies CS19 and CS22 of the Core Strategy, Policies SP15 and SP20 of the Site Allocations and Policies DPD.
3. Prior to any above ground development, the following shall be submitted to and be approved in writing by the Local Planning Authority. Development shall then take place in accordance with these approved details.
 - a) Sample stone
 - b) Details of coursing of the stone
 - c) Details of the mortar mix to be used and the method of application

- d) Roof material sample
- e) Details of all doors and windows
- f) Details of the rooflights (shall be conservation rooflights)

Reason: To ensure that materials of an acceptable quality appropriate to the area are used and to accord with policies CS19 and CS22 of the Core Strategy and Policies SP15 and SP20 of the Site Allocations and Policies DPD.

4. No demolition/development shall commence until a written scheme of investigation (WSI) has been submitted to and approved in writing by the local planning authority in writing. For land that is included within the WSI, no demolition/development shall take place other than in accordance with the agreed WSI, which shall include the statement of significance and research objectives. The programme and methodology of site investigation and recording and the nomination of a competent person(s) or organisation to undertake the agreed works. The programme for post-investigation assessment and subsequent analysis, publication and dissemination and deposition of resulting material. This part of the condition shall not be discharged until these elements have been fulfilled in accordance with the programme set out in the WSI.

Reason: To ensure satisfactory archaeological investigation and recording and to accord with policies CS19 and CS22 of the Core Strategy and Policies SP15 and SP20 of the Site Allocations and Policies DPD.

5. Prior to the commencement of development, a construction management plan setting out the method of construction for the swimming pool, to include delivery methods, safeguards to protect the boundary walls, including exclusion zones, a comprehensive monitoring regime to assess the current vertical and horizontal alignment of the northern wall followed by daily readings during construction, to include trigger values which if exceeded would halt work until such time as appropriate safeguards/remediation works can be carried out having first been approved in writing by the Local Planning Authority. Development shall only take place in accordance with these approved details.

Reason: To protect the listed walls and to accord with policies CS19 and CS22 of the Core Strategy and Policies SP15 and SP20 of the Site Allocations and Policies DPD.

6. No development shall take place until a Construction Management Plan has been submitted to and approved in writing by the Local Planning Authority. The Construction Management Plan shall include the following:-
- a) A scheme for the monitoring, reporting and control of construction noise and vibration including hours of working and scope for remedial action.
 - b) A scheme for the control of dust and scope for remedial action in the event that dust is identified as an issue or any complaints are received.

- c) A scheme of chassis and wheel cleaning for all construction vehicles to include the details of location and specification of a fully working jetted drivethru bath type wheel wash system together with hard surfacing laid between the apparatus and public highway in either concrete or tarmacadam, to be maintained free of mud, slurry and any other form of contamination whilst in use. A contingency plan including if necessary the temporary cessation of all construction operations to be implemented in the event that the approved vehicle cleaning scheme fails to be effective for any reason.
- d) Haul routes to the site and hours of delivery.
- e) Measures to ensure that vehicles can access the site upon arrival to ensure that there is no queuing on the public highway.
- f) Details of site compounds, storage area and contractor and visitor parking.
- g) Details of the site enclosure or part thereof and gated site security.
- h) A scheme for dealing with complaints.

The development shall thereafter be carried out in accordance with the approved Construction Management Plan.

Reason: In the interests of highway safety and in accordance with Policy SP15 of the Site Allocations and Policies DPD.

Informatives

You are advised that a separate listed building application is required to carry out necessary work to the boundary walls. The developer must contact the Highway Control Team to agree the extent of a pre-condition highway survey and carry out a joint inspection of the condition of the public highway before site traffic uses the road/s. A similar inspection will take place on completion of works.

You are advised a submission under the Party Wall Act is likely to be required.

2022/0562/LBA

APPROVAL subject to the following revised conditions:

1. The works shall begin before the expiration of 3 years from the date of this consent. Reason: To comply with the requirements of Section 18(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, as amended by the Planning and Compulsory Purchase Act 2004.
2. The works hereby permitted shall not be carried out except in complete accordance with the details shown on the submitted plan: 2021-16-07e Proposed Elevations, Layout and Section
Reason: For the avoidance of doubt and to comply with Policy CS22 Core Strategy and Policy SP20 of the Site Allocations and Policies DPD.

3. Prior to any above ground works, the following shall be submitted to and be approved in writing by the Local Planning Authority. Works shall then take place in accordance with these approved details. -Sample stone -Details of coursing of the stone 28 -Details of the mortar mix to be used and the method of application -Roof material sample -Details of all doors and windows -Details of the rooflights (shall be conservation rooflights)

Reason: To ensure that materials of an acceptable quality appropriate for the listed building and to accord with Policy CS22 of the Core Strategy and Policy SP20 of the Site Allocations and Policies DPD.

4. Prior to the commencement of works, a construction management plan setting out the method of construction for the swimming pool, to include delivery methods, safeguards to protect the boundary walls, including exclusion zones, a comprehensive monitoring regime to assess the current vertical and horizontal alignment of the northern wall followed by daily readings during construction, to include trigger values which if exceeded would halt work until such time as appropriate safeguards/remediation works can be carried out having first been approved in writing by the Local Planning Authority. Works shall only take place in accordance with these approved details.

Reason: To protect the listed walls and to accord with Policy CS22 of the Core Strategy and Policy SP20 of the Site Allocations and Policies DPD.

Informatives

You are advised that a separate listed building application is required to carry out necessary work to the boundary walls.