

Item Number: 7
Application No: 20/00088/FUL
Parish: Amotherby Parish Council
Appn. Type: Full Application
Applicant: Mr Simon Richardson
Proposal: Erection of extension to existing feed bins to allow installation of additional 12no. bulk outloading bins for animal feed storage, together with integral weighbridge.
Location: BATA The Mill Main Street Amotherby Malton North Yorkshire YO17 6TT

Registration Date: 3 February 2020
8/13 Wk Expiry Date: 30 March 2020
Overall Expiry Date: 3 September 2020
Case Officer: Niamh Bonner **Ext:** 43325

CONSULTATIONS:

Environmental Health HSE's Advice:	Do Not Advise Against
Highways North Yorkshire	No objections
Amotherby Parish Council	Objection
Environmental Health	Recommend conditions

Representations: Mrs Rachel Smith, Ms Sally Raines, Mr Richard William Bell, Miss Lucinda Pulling, Margaret Mackinder, Joe Mackinder,

UPDATE REPORT AUGUST

This proposal was originally brought to Planning Committee on the 8th June 2021, where it was deferred for site visit. The site visit undertaken on Monday 21st June 2021.

Members subsequently deferred the proposal at the Planning Committee Meeting on the 6th July to seek clarification on a number of questions, to be put to BATA.

These questions were received by the Local Planning Authority on 15th July 2021 from Cllr Mason and Sally Raines and were forwarded to BATA.

The response from BATA has been received on the 26th July 2021 and is appended to this report in full. This provides commentary on the following points which can be reviewed in full by Members, together with a narrative on the onsite operations.

- Noise issues
- Hours of operation
- Emergencies
- Permit
- SWLF (South West Lancashire Farmers)
- Conclusions

Legal Advice:

Additionally, on the 6th July, Members were provided with the unredacted legal advice from independent Counsel from Kings Chambers Leeds. This is appended as an annex.

The Counsel concluded that *“in my opinion, the conclusion in the Officers report that there has been no intensification is legally sound. As a matter of law, even if there has been intensification, but the new use remains in the same use class as the permitted use class of the land, then that would be permissible.”*

During the July meeting, some members had raised concerns that the KVA Planning report (commissioned by the Parish Council) had not been specifically referred to within this advice from Counsel.

During the July meeting the Council Solicitor Mr McCusker advised Members that the Counsel had reviewed this KVA planning document, noting *“Counsel has been provided with all the documentation that has come into the Council. Council has had very little time in which to provide his opinion so what he has attempted to do is provide a summary, or a high level opinion. Now if we wanted a more detailed opinion to look at these documents and comment on them he advised his opinion would not be available for tonight’s meeting. So we thought that it important for members of PC to have an opinion albeit not a detailed opinion before them tonight to be able to make a decision, rather than delay matters or wait for a more detailed opinion. But Counsel has confirmed that the summary and conclusion of his opinion will still be the same even if he has provided a detailed opinion.”*

In advance of the August Meeting, Officers have re-engaged Counsel, who has provided an additional response dated 26th July 2021, within which they have responded to the issues raised in the KVA Planning document. This is appended as an annex and provides a view on the following summarised aspects:

- Confirmation on the submitted application type
- Intensification
- Perception as a material consideration
- Noise

The conclusion made by Counsel in his response dated 26th July 2021 notes *“The KVA Report does not raise anything that causes me to revise the Opinion I have previously provided. The points raised by the KVA Report are ultimately quite narrow and in my opinion do not raise any issues that undermine the approach that has been taken by Officers in assessing the application and instead are simply an alternative planning judgment to that which has been set out by Officers.”*

In conclusion, it is therefore both officer’s view and the view of the independent legal Counsel that there has been no material change of use within the site. The KVA report does not put forward evidence of the asserted intensification at the site capable of amounting to a change of use by way of intensification. Additionally, the end use remains within the same use class.

Specific tonnages were requested via the incoming questions, however these have not been provided by BATA. It is appreciated that these may be commercially sensitive. However, given the legal advice received, it is not considered that the operational development as proposed would be likely to result in any change of use of the site, nor intensification amounting to a change of use.

This is considered to be the case as within the original Counsel Advice dated 6th July 2021, it was noted in Section 17 that “As a matter of law, even if there has been intensification, but the new use remains in the same use class as the permitted use class of the Land then that would be permissible.”

Therefore it is not considered appropriate or necessary to demand that BATA provide projected 5 year output levels from milling operation.

Updated Environmental Health Response

The Council’s Environmental Health Manager has provided a further formal consultation response on this application, in response to the KVA Planning report dated 28th June 2021. This is attached as part of the annexing but is also copied directly below.

“Noise Impacts of the proposal

The author of the report has been selective on the guidance documents referenced and more specifically which parts/sections of these guidance documents that have been included in the report. In one section the author refers to guidance for Mineral Planning Authorities and the aim to establish a noise limit at a noise sensitive property. RDC is not a Mineral Planning Authority nor is BATA a mineral activity. Standard planning policy guidance (PPGN) does “not go as far as setting times and controls for permissible noise levels.” The NPPF does not set out numerical criteria for noise affecting proposed development sites but states that planning policies and decisions should prevent new development from contributing to unacceptable levels of noise pollution.

Specific indoor noise levels are detailed in both BS 8233:2014 “Guidance on sound insulation and noise reduction for buildings sets out desirable internal ambient noise levels for dwelling” and WHO guidance document “Guidelines for Community Noise”

7.7.2 Table 4.1 – Indoor Ambient Noise Levels in Dwellings (BS 8233)

Activity	Location	Good Indoor Ambient Noise Levels	
<i>Resting</i>	<i>Living Room</i>	<i>35 dB LAeq (0700–2300)</i>	<i>-</i>
<i>Dining</i>	<i>Dining Room/Area</i>	<i>40 dB LAeq (0700–2300)</i>	<i>-</i>
<i>Sleeping (daytime resting)</i>	<i>Bedroom</i>	<i>35 dB LAeq (0700–2300)</i>	<i>30 dB LAeq (2300–0700)</i>

BS 8233 also states that “where development is considered necessary or desirable, despite external noise levels above WHO guidelines, the internal target levels may be relaxed by up to 5 dB and reasonable internal conditions still achieved. It is evident that BS 8233 considers that reasonable resting and sleeping conditions are achieved with ambient noise levels of less than or equal to 40 dB LAeq (0700-2300) and less than or equal to 35 dB LAeq (2300-0700) i.e. 5 dB above the desirable levels.

BS 8233 also states that if relying on closed windows to meet the guide values, there needs to be an appropriate alternative ventilation that does not compromise the façade insulation or the resulting noise level. It is accepted that partially opened window will provide 15dB(A) sound insulation from

external noise level. A closed standard double-glazed window with standard trickle vents to provide ventilation provide circa 27dB(A) sound insulation.

The sound level map provided in the NOVA Acoustics report (Page 13) shows specific sound level emissions from the proposed development during operational times and this indicates that the highest sound levels at the factory boundary to be in the range of 48 – 51 dB(A). All but three dwellings on the main street of Amotherby will experience sound level emissions that would result in the desired highest standard of indoor ambient noise levels during the night time (2300 – 0700). Mapping for the three dwellings nearest the proposed development indicates exposure to external noise level in the range of 45 – 48 dB(A) which with a 15 dB(A) reduction for partially opened windows would result in reasonable internal conditions i.e. 30 – 33 dB(A). Closed windows with standard trickle vents would achieve the desired highest standard. All dwellings on the main street of Amotherby will experience sound level emissions that would result in the desired highest standard of indoor ambient noise levels during the day time (0700 - 2300).

The NOVA Acoustics report (Methodology and assessment based on BS4142:2014 Rating industrial noise affecting mixed residential and industrial areas) and the KVA Planning Report both use and refer to the Noise Policy Statement for England (NPSE) which sets out the long-term vision of promoting good health and a good quality of life through the effective management of noise within the context of Government policy on sustainable development. NPSE describes the following levels at which noise impacts may be identified:

- *NOEL – No Observed Effect Level. This is the level below which there is no detectable effect on health and quality of life due to the noise.*
- *LOAEL – Lowest Observed Adverse Effect Level. This is the level above which adverse effects on health and quality of life can be detected.*
- *SOAEL – Significant Observed Adverse Effect Level. This is the level above which significant adverse effects on health and quality of life occur.*

For the proposed development the specific noise level emissions with a BS 4142 rating applied are predicted to be 2 dB below the lowest statistically most repeated background level measured during the day time period. This equates to NOEL when assessing in accordance with NPSE. The rating noise levels from the proposed development during the night period is indicated to be 2 dB above the background level thus indicating the potential for adverse impact. This equates to LOAEL. The second aim of the NPSE is to mitigate and minimise adverse impacts on health and quality of life from environmental, neighbour and neighbourhood noise within the context of Government policy on sustainable development. This second aim refers to the situation where the impact lies somewhere between LOAEL and SOAEL and requires that all reasonable steps should be taken to mitigate and minimise adverse effects on health and quality of life. Whilst the assessment during the night is LOAEL it does not relate to a new noise source as the proposal is for increased storage for an activity/process that is already taking place and as such the projected exceedance of 2dB is deemed to be negligible particularly when given a NMP will be conditioned for use within the site, where presently there is no NMP in place at all. The NOVA Acoustic report also refers to a IEMA Ambient Noise Level Assessment which according to IEMA guidelines rates the impact of the proposed development as low impact.”

Other Matters

Investigations being undertaken by the Council's Environmental Health Team with regard to the separate noise nuisance allegations are ongoing.

The EHO has also confirmed that these complaints in his opinion is not related to the ongoing planning application.

This relates to enforcement powers under separate Environmental Legislation which is being fully investigated. Members are advised that the planning process should not be used to attempt to duplicate these powers. The conclusion of this investigation should not prohibit the planning decision.

Conclusion

In conclusion, it is therefore both officer's view and the view of the independent legal Counsel that there has been no material change of use within the site. Any perceived intensification at the site does not amount to a material change of use, capable of being enforced against if the end use remained within the same use class. This has been further explored previously in the report.

The additional information provided by BATA dated 26th July 2021 is noted, which includes a detailed overview of the site operations and their key role as an essential service to farmers. It additionally confirms on the operational improvements the proposed additional bins would provide in terms of efficiency.

This document also confirms upon their need for flexible working patterns. It is noted that there is no planning restriction on hours of operation presently within this Victorian Mill. It would not be appropriate or reasonable in planning terms to attempt to control the operational hours of the whole site as part of this limited application for operational development. This would not meet the tests of soundness for a planning condition.

BATA's commitment to working with the Environmental Health Team is confirmed within their incoming document and the potential for a dedicated out of hours telephone line will be further discussed with the Environmental Health Officers. This could potentially be incorporated within the Noise Management Plan to be conditioned. Members will be updated on this point during the meeting. The response from the Council's Environmental Health Manager and his assessment of the noise impacts of the proposal is clearly outlined above, in which it is clear they are satisfied. The imposition of the Noise Management Plan is welcomed. This represents the first Noise Management Plan within the site and will be a site wide commitment.

It is considered that whilst there have been a number of responses received raising concerns in relation to amenity, following review of the incoming supporting information, including the Noise Assessment and the Noise Management Plan to which a clear commitment has been made, it is not considered that this proposed operational development to support the long established business would result in additional material harm to residential amenity.

The proposal is also considered acceptable in principle to support an established local business. Careful review has been undertaken with independent legal Counsel on the concerns raised relating to potential material intensification/change of use issues, the conclusions of which have been outlined above.

Subject to the recommended conditions, the proposed additional development to support the existing

works at this premises have been found to be acceptable in principle and in terms of design and landscape impact, residential amenity and access and highway safety.

This proposal relates to a relatively low level addition to a long established industrial site and this would not be considered likely to materially increase the intensity of operations.