



**PLANNING APPEAL BY  
HEALEY DEVELOPMENT SOLUTIONS (HAYES) LTD**

**PUBLIC HEARING STATEMENT: NOISE  
EXPERT REPORT OF PAUL GRAY BSC(HONS), MIOA**

**STANFORD HOUSE  
9 NESTLES AVENUE, UB3 4SA**

**PLANNING INSPECTORATE REF:  
APP/N5090/W/17/3189843**

**LONDON BOROUGH OF HILLINGDON REF:  
51175/APP/2018/4260**



**the journey is the reward**

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| <b>Project Code:</b> | <b>DWNestlesAvenue(N)3.9</b> |
| <b>Prepared by:</b>  | <b>P Gray BSc(Hons) MIOA</b> |
| <b>Issue Date:</b>   | <b>JULY 2019</b>             |
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## Qualifications and Experience

I am Paul Gray. I am a Technical Director at Mayer Brown Limited, consulting engineers specialising in transport planning, infrastructure design and environmental assessment. I head the practice's Noise and Vibration Team.

I have over twenty nine year's practical acoustic consultancy experience. My day to day work responsibilities include undertaking environmental noise and vibration impact assessments for a wide variety of environmental, residential, commercial and industrial projects.

I have been a corporate Member of the Institute of Acoustics since 1994.

I have given expert evidence in connection with numerous appeals, hearings and public inquiries before the Planning Inspectorate; Transport Commissioner; House of Lords Select Committee and in relation to licensing matters and both civil and criminal court proceedings.

Clients include private individuals, companies, developers, charities and Local Authorities, including the City of Westminster, Royal Borough of Kensington and Chelsea and the London Borough of Haringey.

Statements of fact within this Hearing Statement are within my own knowledge except where indicated, in which case the matters stated are true to the best of my information and belief. I confirm that insofar as the facts stated in this Statement are within my own knowledge I have made clear which they are and I believe them to be true, and that the opinions I have expressed represent my true and complete professional opinion, developed in accordance with the code of conduct of my professional institution (the Institute of Acoustics).

# 1 Introduction

- 1.1 This planning appeal relates to the refusal of planning permission by the London Borough of Hillingdon (LBH) for the proposed demolition of an existing building (Stanford House) at 9 Nestles Avenue, UB3 4SA and redevelopment to provide a building up to 10 storeys, with 868 sq.m of commercial or community (Use Class B1 or D1) at ground floor level and 81 residential units to the upper floors, with associated landscaping, access, car parking and cycle parking.
- 1.2 The planning application was appealed against non-determination on 7 June 2019.
- 1.3 The planning application was subsequently presented to Members of the LBH's Major Application Planning Committee on 19 June 2019. Members resolved to refuse planning permission citing eleven reasons for refusal.
- 1.4 The fifth reason for refusal relates to the noise impact of the scheme and states:
- “The development provides a high proportion of single aspect dwellings and dwellings with their sole aspect facing towards Strategic Industrial Land. The development fails to provide sufficient separation from the western boundary of the site to mitigate against a potential noise generating use on the neighbouring site and as such, the proposal fails to take responsibility for mitigating impacts from existing noise-generating activities or uses on the proposed new noise-sensitive residential development and thereby fails to provide a suitably high quality of residential amenity for future occupiers contrary to Policy BE1 of the Local Plan: Part One (November 2012); Policy OE1 of the Local Plan: Part Two (November 2012) and Policy 7.15 of the London Plan (2016) and Paragraph 182 of the NPPF (2019).”*
- 1.5 The scope of this Hearing Statement is structured as follows:
- **Section 2** reviews the recommendation given to Members, as set out in the Officer Report prepared for the Committee Meeting on 19 June 2019; and
  - **Section 3** presents my views on the content of the Officer's report and the reasonableness of the Member's resolution to refuse planning permission.
  - My conclusions are presented in **Section 4**.

## 2 Officer Report

- 2.1 The reason for refusal relating to noise is supported by the following commentary provided in the Officer Report presented to Members:

*“Paragraph 180 of the NPPF (2019) states that planning decisions should avoid noise from giving rise to significant adverse impacts on health and quality of life as a result of new development, and mitigate and reduce to a minimum other adverse impacts on health and quality of life arising from new development, including through the use of conditions.*

*According to the government's Noise Policy Statement for England (NPSE) of March 2010, these aims should be achieved within the context of Government policy on sustainable development.*

*Saved Policies OE1 and OE3 of the Local Plan (2012) seek to protect the environment from the adverse effects of pollutants and to ensure sufficient measures are taken to mitigate the environmental impact of the development and ensure that it remains acceptable. Saved Policy OE3 seeks to ensure that uses which have the potential to cause noise be permitted only where the impact is appropriately mitigated.*

*The submitted report demonstrates the future occupants would be provided with sufficient levels of insulation. However, the report fails to consider the site to the west (No. 7 Nestles Avenue) which is an allocated industrial site. Should this come forward in the future with noise generating uses given its lawful designation as an industrial unit, the habitable rooms, terraces and balconies on the western elevation would be affected by ongoing noise and disturbance. It further demonstrates the application site has not been sufficiently setback from the western boundary to mitigate against this and for this reason, the application is contrary to Policy BE1 or the Local Plan: Part One (November 2012) and draft policy D12 of the draft London Plan (2017).”*

- 2.2 The “submitted report” referenced in the final paragraph is the “Noise and Vibration Assessment” I approved on behalf of Mayer Brown Limited, which was submitted with the application. The commentary provided to Members was that this report “failed” to consider the potential noise impacts of the scheme on land adjoining the west of the site at 7 Nestles Avenue.

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- 2.3 This “failure” is then used to recommend to Members that the application fails to comply with adopted local policy and the “*Agent of Change*” obligations set out in draft Policy D12 of the emerging draft London Plan. The following section provides my own professional views on the recommendations made to Members and the resolution reached by the Committee.

## 3 Discussion

- 3.1 As noted earlier (and referenced in the Officer Report), the planning application was accompanied by a detailed “Noise and Vibration Assessment” I approved on behalf of Mayer Brown Limited. The conclusions of this report are summarised below:

### “Existing Noise Environment

*Detailed noise monitoring has been undertaken to determine the existing environmental noise climate at the site. The site is characterised by local and distant road traffic noise and noise from the railway to the north of the site. Noise from existing industrial uses does not form a dominant feature of the existing noise climate.*

### Planning Policy Context and Design Guidance

*The requirements of national, regional and local planning policy relevant to the proposed scheme are discussed. Reference has also been made to industry standard design guidance, in particular ProPG: Planning and Noise, recently published by the Institute of Acoustic, Association of Noise Consultants and Chartered Institute of Environmental Health.*

### Site Suitability – ProPG Stage 1 Initial Noise Risk Assessment

*The potential risk of the site for residential development has been assessed in line with Stage 1 of ProPG guidance. This concludes that the site would be classified as having a “low” to “medium” noise risk. As such, the site is considered suitable for residential development subject to adherence to a good acoustic design process.*

### Mitigation

*The proposed massing of the scheme (i.e. north south orientation, with increased height to the northern side of the site) will help minimise incident noise levels associated with train movements on the railway to the north, including the minimisation of noise levels in proposed external amenity spaces.*

*Internal noise levels can be adequately controlled in accordance with industry standard good practice through the appropriate specification of glazing and alternative means of ventilation.*

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[Vibration](#)

*Environmental vibration measurements at the site indicate that the site is not exposed to significant levels of groundborne vibration and estimated daytime and night-time vibration dose values indicate that adverse comments would not be expected, even allowing for significant amplification of measured groundborne levels.*

[Mixed Use Development](#)

*The development will need to implement appropriate mitigation to ensure the satisfactory co-location of residential and industrial uses within the building. An assessment of the sound insulation requirements between the employment and residential areas of the development has been undertaken which demonstrates the feasibility of co-location. Outline guidance for a noise management plan is also presented.*

[Development of Neighbouring Land](#)

*The site forms part of a former industrial area which is allocated for residential led, mixed use regeneration in the LPA's emerging Local Plan. A review of existing and future adjoining land uses has been undertaken. This concludes that the proposed development can be effectively integrated with existing businesses, and discharges "agent of change" obligations imposed by Paragraph 182 of the NPPF.*

[Plant Noise Emissions](#)

*An assessment of noise emission from proposed heat pump units to be installed in a dedicated roof top plant compound has been undertake. It is concluded that noise emissions from the proposed plant should not have any adverse noise impact on existing or proposed dwellings in the vicinity of the site and that the installation of such plant is therefore compliant with national, city-wide and local planning policy objectives*

[Conclusion](#)

*Based on the assessments outlined above, there are not considered to be any site specific or technological constraints that would prevent the sustainable developments of the site for residential use and enable its satisfactory co-location with proposed commercial/industrial uses on the ground floor of the development and with future neighbouring land uses.*

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**Statutory Consultation**

- 3.2 The Noise and Vibration Report was reviewed by the Council's ASB and Environment Team. Their formal consultation response (email from Monica Mulowoza to Zenab Haji-Ismail on 30 April 2019) concludes:

*"I have read through the acoustic report and the applicant has demonstrated sufficiently how the internal noise levels and external surrounding amenity will achieve standards contained within BS 8233 2014. Kindly consider adding the following noise conditions...."*

**Officer Report**

- 3.3 The Officer Report acknowledges the ASB and Environment Team's advice and recommends the imposition of planning conditions to control (a) noise and vibration from plant and equipment, (b) sound insulation between differing use classes within the building and (c) a requirement to submit details of a final scheme of sound insulation for the external fabric of the building.
- 3.4 The Officer Report therefore correctly identifies that the internal noise environment provided for future occupants can be adequately controlled.
- 3.5 It is, however, incorrect for the Officer Report to then assert that the report *"fails to consider the site to the west (No. 7 Nestles Avenue) which is an allocated industrial site"*. There are a number of reasons why this statement is unsatisfactory.
- 3.6 First, the statement is factually incorrect – the *"Noise and Vibration Assessment"* actually provides a full analysis of the potential impacts of the scheme on existing commercial and industrial uses in the vicinity of the site, including uses to the west of the site. The report also provides clear commentary of the need for such assessment to be provided - in recognition of the Agent of Change principles set out in Paragraph 182 of the NPPF and in emerging city-wide policy (Draft Policy D12 of the new London Plan).
- 3.7 The assessment of such impacts is contained within a dedicated section (Section 11) of the Noise and Vibration Assessment, headed *"Development of the Area"*.
- 3.8 I would draw the Inspectors attention to Paragraphs 11.11. and 11.12 which specifically deal with land to the west of the site and state:

*"To the west the site adjoins 7 Nestles Avenue. The property is understood to have D1 use (following a change of use from B8 permitted by on appeal – Planning Inspectorate ref. APP/R5510/A/12/2176941). The permission granted includes a*

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*condition (Condition 5) which restricts the use of the premises for use as a higher educational college only.*

*Other conditions restrict the house of use of the premises:*

- *Condition 7 restricts deliveries to between 08.00 to 19.00 hours Monday to Friday; 10.00 to 16.00 hours on Saturdays, with no deliveries permitted at any time on Sundays, Bank or Public Holidays;*
- *Condition 8 restricts the use of the premises to between 08.00 to 19.00 hours Monday to Friday; 10.00 to 16.00 hours on Saturdays, with no use on Sundays, Bank or Public Holidays;*

*Given the permitted use of the adjoining building and imposed planning conditions, the proposed development should not experience any significant adverse noise impact from this existing use that would create a need for additional noise mitigation.”*

- 3.9 It is therefore clear that the potential noise impact of the proposed scheme on existing neighbouring commercial/industrial land uses was appropriately “tested” in the Noise and Vibration Assessment and that no conflict was determined to exist. It is also critical to note that such a conclusion is not challenged in the ASB and Environment Team’s consultation response, nor does the Team raise any other concerns relating to the integration of the proposed development with any existing uses.

**Lawful Use of 7 Nestles Avenue**

- 3.10 In addition to the Officer Report misleading Members in relation to an alleged “omission” of assessment on adjoining property to the west, it is, in my view, also misleading for the Officer Report to describe 7 Nestles Avenue as “an allocated industrial site”, when that does not reflect the extant lawful use of the site.
- 3.11 To amplify on the above, I am advised of the following planning history relating to the use of 7 Nestles Avenue
- A planning application 49059/APP/2011/2790 was submitted on 16th November 2011 for the “*part retrospective change of use from Class B8 (Storage and Distribution) to use as a higher educational college*”. The application related to the retrospective change of use of the majority of the building, explicitly implying that the building was in such use at the time of application. The application was refused by LBH on 22 May 2012, before being appealed by the Applicant on 26 June 2012. The appeal was allowed on 12th December 2012.

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- A further planning application was submitted on 27 March 2017 for the *“variation of condition 5 (no other use including within Class D1) of planning permission ref: 49059/APP/2011/2790 dated 29-05-2012 (use as higher education college) to allow for use of building for primary education”*. This was refused by LB Hillingdon on 8 August 2017 on the grounds that the use as a nursery and primary school would not provide adequate on-site pick up and drop off facilities. The Officer’s report for this application considered that *“the unit, in its current status, provides the opportunity for valuable social infrastructure in the form of a higher education college and, as such, any refusal for its use as a primary school would not have a negative impact on social infrastructure provisions within the surrounding area”*.
- Planning permission was originally granted at appeal, for the retrospective change of use of the majority of 7 Nestles Avenue, from Class B8 to a higher educational college. The retrospective nature of the change of use implies that the building was already in such use, and therefore the appeal confirmed the lawful use of the building to be D1. An application has subsequently been refused to vary the condition which allows only a higher educational college on the site.
- There have been no subsequent applications to vary the use of 7 Nestles Avenue and therefore it can only be considered that the lawful D1 use remains for the majority of the building.

3.12 I believe that the above planning history demonstrates the lawful extant use of 7 Nestles Avenue as D1 (higher educational college) and that the co-location of the proposed development with this existing use was appropriately tested in Mayer Brown Limited “Noise and Vibration Assessment” and found to be satisfactory.

3.13 This also re-affirms my professional view that there is no unacceptable conflict between the proposed development at 9 Nestles Avenue and the existing lawful use of 7 Nestles Avenue.

**“Future” Impact**

3.14 It is also critical to note that the adverse impact that the Officer Report asserts could occur is based on an assumption that *“Should this [site] come forward in the future with noise generating uses...”*.

3.15 In my view, such speculation is not in accordance with the governmental guidance in relation to the consideration of agent of change principles which clearly seek to provide protection to existing businesses. This can be clearly seen in Paragraph 182 of the NPPF reproduced below:

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“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.” ***(My emphasis added)***.

- 3.16 The reason for refusal given by the LPA is not therefore consistent with the aims of the NPPF since it does not seek to assess policy compliance in relation to existing uses, but seeks to base its judgment of the speculative principle of a new “*noise generating use*” occupying the land.
- 3.17 Whilst, in my view, that judgment is flawed in its own right, it is clear that paragraph 182 does not actually seek to prevent new noise sensitive development adjacent to existing (noisy) businesses, but identifies that appropriate mitigation should be implemented where it is likely that a “*significant adverse effect*” would be experienced.
- 3.18 It is unclear from the officer report, how the impact of future uses has been concluded to result in a “*significant adverse effect*”. As noted earlier, there is no technical evidence from the Council’s specialist noise officers that support such a conclusion. Furthermore, even if a “significant adverse effect” was deemed likely to occur, the officer report does not properly apply the full policy set out in the NPPF, i.e. it does not consider whether noise impacts could be satisfactorily mitigated.

## 4 Conclusions

- 4.1 In light of the above considerations, I concluded that Reason for Refusal 5 is not justified.
- 4.2 The Officer Report incorrectly asserts that the noise impact of the existing use of land to the west of the site has not been assessed, when that is clearly not the case – the integration of the proposed development within the locality is fully assessed in the “Noise and Vibration Assessment” which accompanied the application.
- 4.3 The reasons for refusal is also not supported by any technical evidence or other concern raised by the Council’s specialist noise officer’s when consulted on the scheme.
- 4.4 The reason for refusal therefore appears to be based on a planning judgement made by officers. However, the basis of that judgement appears to be fundamentally flawed in that it (a) does not consider the existing lawful use of the adjoining land, (b) appears to be based on a hypothetical future speculative use of the adjoining land, and (c) assumes that any impact will have a “*significant adverse effect*” without considering whether such effects could be adequately mitigated.
- 4.5 Neither the Noise Policy Statement for England or National Planning Policy Framework expects noise to be considered in isolation, and separately from the economic, social and other environmental dimensions of proposed development. However, in order to inform that planning balance, my assessment above leads me to conclude that the fifth reason for refusal cited in the Decision Notice is not justified and that there is no reason on noise grounds to refuse permission.

