



**PLANNING APPEAL BY
HEALEY DEVELOPMENT SOLUTIONS (HAYES) LTD
IN RELATION TO REFUSAL OF PLANNING
PERMISSION FOR DEVELOPMENT AT
STANFORD HOUSE
9 NESTLES AVENUE, UB3 4SA**

**PLANNING INSPECTORATE REF:
APP/R5510/W/19/3230503**

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

SUPPLEMENTARY PROOF OF EVIDENCE (NOISE)

PAUL GRAY BSc(Hons), MIOA

DECEMBER 2019



the journey is the reward

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Planning Appeal by Healey Development Solutions (Hayes) Limited
Refusal of Planning Permission by London Borough of Hillingdon District Council
Supplementary Proof of Evidence - Noise

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Qualifications and Experience

PAUL GRAY will say:

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 Acoustic Consultancy Team.

I have over thirty 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. London Boroughs for whom I have acted as an expert witness include the City of Westminster, Royal Borough of Kensington and Chelsea and the London Borough of Haringey.

Statements of fact within this expert report 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 my report 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).

My evidence is confined to the potential noise impacts of the scheme and relevant noise related planning policy.

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 (LBH ref. 51175/APP/2018/4260).
- 1.2. The planning application was appealed for 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. In mid-July 2019, I prepared a “Public Hearing Statement - Noise” which reviewed the reasonableness of the recommendation given to members; the content of the Officer's report and the reasonableness of the Member's resolution to refuse planning permission.
- 1.6. The hearing statement concluded that Reason for Refusal 5 was not justified.
- 1.7. The reasoning supporting that judgement was:
 - The Officer Report incorrectly asserted that the noise impact of the existing use of land to the west of the site had not been assessed;

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- The reasons for refusal was not supported by any technical evidence or other concern raised by the Council’s specialist noise officer’s when consulted on the scheme; and
 - The reason for refusal appeared to be based on a planning judgement made by officers. However, the basis of that judgement appeared to be fundamentally flawed in that it (a) did not consider the existing lawful use of the adjoining land, (b) appeared to be based on a hypothetical future speculative use of the adjoining land, and (c) assumed that any impact will have a “*significant adverse effect*”, without considering whether such effects could be adequately mitigated.
- 1.8. Following consideration of my “*Public Hearing Statement - Noise*”, LBH provided the following advice¹
- “Our noise specialist has reviewed the technical note by Mayer Brown, which seeks to overcome refusal reason 5. The following points remain contentious or have not been addressed.*
- *The measurement of noise from the Squirrels Trading Estate took place on one day between 12:00 and 13:45 and as such would not have captured noise levels from episodic events from the car body shops and furniture manufacturers on the trading estate*
 - *No discussion of character penalties of the existing commercial/industrial noise is made*
 - *Without this it is uncertain what the effect is from the existing operations.”*
- 1.9. The email also highlighted changes made to the government’s Planning Practice Guidance on 22 July 2019, which included updated guidance in relation to the assessment of noise from commercial/industrial premises.
- 1.10. I therefore prepared a response to the queries raised by LBH. These are set out in my “*Response to LPA Comments on Noise*” (RLCN) dated September 2019. I understand that LBH advised the Appellant that they considered the scheme “*Remains contentious due in the main to lack of BS4142 assessment. The case for the Council will now be set out in our statement of case.*”
- 1.11. On 2 October 2019, PINS forwarded to the Appellant a copy of LBH’s “*Statement of Case*”. (SoC)

¹ Email from Stephen Volley (LBH) to Charles Mills (Daniel Watney) dated 30 July 2019 – See Appendix PG1.

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1.12. Part 5 of the SoC (*“Stanford House, Hayes – Noise, Statement of Case”*) was prepared by Anderson Acoustics (AA) on behalf of LBH. The introduction of the SoC outlines the following structure:

- *“Section 2 presents a description of the site;*
- *Section 3 presents the Meyer [sic] Brown Ltd (MB) survey, assessment and findings;*
- *Section 4 presents review of the MB Noise and Vibration Assessment (MVA) [sic]² and additional information provided in the MB Response to LPA Comments (RLCN) ;*
- *Section 5 presents the reason for refusal*
- *Section 6 presents the response to statements made in the RLCN; and*
- *Section 7 presents the conclusions.”*

1.13. Whilst much of the commentary in AA’s SoC is uncontentious and essentially constitute statements of fact extracted from Mayer Brown’s own reporting and highlights areas of common ground (e.g. that the building implements *“good acoustic design”*³; that *“With standard thermal double glazing and acoustically rated ventilation it is agreed that internal noise levels are likely to be within the BS8233:2014 criteria”*⁴; etc.). However, the SoC asserts that the technical noise and vibration evidence submitted with the application/appeal, fails to appropriately consider the cumulative noise impacts of existing, neighbouring (industrial/commercial) land uses and that there is uncertainty as to whether the development requires mitigation to avoid future residents being exposed to a significant adverse noise impact and what extent of mitigation may be necessary.

1.14. Having reviewed AA’s SoC, I note:

- (a) There are a number of statements that are factually incorrect;
- (b) AA has mis-interpreted some technical matters;
- (c) AA’s assessment does not take on board the full requirements of the industry standard design guidance to which it refers; and

² References to both MVA and NVA are used throughout the report. For the purpose of this evidence, I have assumed they are intended to have the same meaning.

³ 1st Bullet Point, Section 7.1, Page 16 of AA SoC.

⁴ 1st Paragraph below Table 10.2 on Page 12 of AA SoC.

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(c) AA's assessment does not give appropriate consideration to governmental planning policy and supporting practice guidance.

1.15. This Supplementary Proof of Evidence seeks to help clarify the above matters and provide additional information to support the reasoning for the professional judgment I have made in relation to the development proposals.

2. Preliminary Matters

- 2.1. AA's SoC places particular reliance on the assessment methodology set out in British Standard BS 4142: 2014: *"Methods for Rating and Assessing Industrial and Commercial Sound"*. This standard is also referenced in my own reporting for the application. It should be noted that whilst this standard was current at the time of the planning submission, the standard was withdrawn and replaced by BS 4142: 2014 + A1: 2019 *"Method for Rating and Assessing Industrial and Commercial Sound"* in June 2019. For the avoidance of doubt, the comments and any references to BS 4142 made in this Supplementary Proof of Evidence refer to the contemporary (2019) version of this standard.
- 2.2. Prior to dealing with specific comments made in the SoC, I would draw the Inspector's attention to the fact that the SoC does not make any *'first hand'* observations regarding the site, neighbouring land uses or present any measurement data from survey work undertaken independently by AA to inform the reasonableness of our assessment or indeed provide their own independent opinion relating to the suitability of the site for the proposed development. This leads me to a conclusion that, at the time of preparing the SoC, AA may not have attended site. This is not intended as an overt criticism of AA's reporting and presumably simply reflects the terms of instruction given to them by LBH.
- 2.3. First-hand experience of a site is clearly critical in understanding the *'context'* of a site, particularly in relation to industrial/commercial uses. Indeed, the standard to which AA has repeatedly referred within the SoC (BS 4142) enshrines the importance of considering context. For example, the Foreword to this standard carefully explains:
- "Response to sound can be subjective and is affected by many factors, both acoustic and non-acoustic. The significance of its impact, for example, can depend on such factors as the margin by which a sound exceeds the background sound level, its absolute level, time of day and change in the acoustic environment, as well as local attitudes to the source of the sound and the character of the neighbourhood. **This edition of the standard recognizes the importance of the context in which a sound occurs.**" (My emphasis added).*
- 2.4. This is further reinforced by Section 11 of BS 4142: 2014 + A1: 2019 which states:

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*“The significance of sound of an industrial and/or commercial nature depends upon both the margin by which the rating level of the specific sound source exceeds the background sound level and the context in which the sound occurs. An effective assessment cannot be conducted without an understanding of the reason(s) for the assessment and the context in which the sound occurs/will occur. When making assessments and arriving at decisions, therefore, **it is essential to place the sound in context.**” (My emphasis added).*

- 2.5. The need to consider context is also very clearly directed in governmental planning practice guidance. In that regard, I would draw the Inspector’s attention to paragraph 002 (Reference ID: 30-002-20190722) of PPG which states:

Can noise override other planning concerns?

*It can, where justified, although **it is important to look at noise in the context of the wider characteristics of a development proposal,** its likely users and **its surroundings,** as these can have an important effect on whether noise is likely to pose a concern.* (My emphasis added).

- 2.6. In addition to the above, it is critical to note that the “agent of change” principle embodied in paragraph 182 of the National Planning Policy Framework (NPPF) is specifically constructed to avoid the potential for existing businesses having a “significant adverse effect” on new development. In essence, noise at a “Significant Observed Adverse Effect Level” (SOEAL) would be considered a ‘nuisance’,⁵ and thus create the risk of statutory or private action which could place unreasonable restrictions (i.e. work/costs necessary to abate the nuisance) on the existing business.

- 2.7. ‘Context’ is again a critical part of determining whether noise causes ‘nuisance’. This is clearly set out in Paragraph 017, Reference ID: 30-017-20190722 of the government’s PPG which states:

“When assessing whether a statutory nuisance exists, local authorities will consider a number of relevant factors, including the noise level, its duration, how often it occurs, the time of day or night that it occurs and the ‘character of the locality’. The factors influencing the ‘character of the locality’ may include long-established sources of noise in the vicinity – for example, church bells, industrial

⁵ See Paragraph 009, Reference ID 30-009-20190722 of Planning Practice Guidance at <https://www.gov.uk/guidance/noise--2>

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premises, music venues, public houses or airfields, and whether they are constant or intermittent.”

2.8. The assessment of the potential noise nuisance caused by commercial/industrial premises should not therefore simply be approached as a ‘*numbers game*’, it is quite clearly equally reliant on context.

2.9. I do not consider that AA’s SoC appropriately addresses this. This is perhaps most acutely demonstrated in bullet point (d) in Section 6.1 of the SoC. Their comment responds to the statement made in our RLCN that:

“The LPA’s conclusion relating to potential harm to neighbouring uses does not appear to take account of the context of the site”

2.10. AA’s response to this is:

“The meaning of this statement is not clear. The context of the development is introducing noise sensitive residential receptors into proximity to existing noise sources, including industrial/commercial noise from adjacent land uses.”

2.11. AA’s response simply affirms that the existing industrial uses could have an impact on the proposed residential development. Such a response does not assist in understanding how the context of the site (including such matters as existing and future neighbouring land uses; hours of operation; etc.) might influence the determination of whether industrial/commercial uses might create a situation that creates nuisance (and thus the attendant risk of unreasonable restrictions being imposed on the business).

2.12. I believe the importance of context is clearly expressed in my own assessment of the application.

2.13. For example, I would draw the Inspector’s attention to paragraph 5.7 of my RLCN which sets out my professional opinion that:

*“....whilst noise associated with the existing industrial activities is audible (e.g. operation of mechanical plant, noise “break-out” from units, etc.) such noise is not considered to be dominant in the **context** of the otherwise prevailing noise climate”.*

2.14. To paragraph 5.10, which states:

*“However, when viewed **in context**, the extent, character and sources of noise do not fall into the realm of “nuisance” noise.”*

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2.15. To paragraph 5.11 which states:

“Whether a proposed development creates a risk of “unreasonable restrictions” must also be considered in the context of the wide locality of the site and other existing land uses”.

2.16. With regard to this latter point, I would highlight that I drew specific attention to land immediately adjoining the industrial area now used to sustain LBH’s reason for refusal on noise, which is currently being developed for residential use. I included photographic and planning record information to explain why I considered such permitted residential use provided important context for the appeal site.

2.17. The need to consider context is also very clearly directed in governmental planning practice guidance, as noted at my paragraph 2.5 above which references Paragraph 002 (Reference ID: 30-002-20190722).

2.18. In light of the above and as noted earlier, I am surprised by AA’s comment suggesting that the meaning of context is “*unclear*”.

2.19. Given the acknowledged importance of context in relation to British Standard guidance, Planning Practice Guidance and common law nuisance principles, I am also surprised that AA’s SoC does not make any attempt to consider context. Indeed, if the SoC is searched for the word “*context*”, it can be seen that the term is primarily found when quoting from my own reporting and that their only substantive use of the word occurs in relation to bullet point (d) of Section 2.1 (as reported above) (when they suggest that my assertion that context needs to be considered is “*unclear*”).

2.20. In my view, AA’s failure to consider context constitutes a fundamental limitation of their SoC to provide an appropriately balanced judgement of the appeal scheme’s compliance with local, city wide and national planning policy objectives relating to noise.

2.21. My more detailed comments on AA’s SoC are presented in the following sections. For ease of reference, each section of the report deals with each section of AA’s SoC.

3. Section 1 - “Introduction”

- 3.1. The comments set out in the “Introduction” section of AA’s SoC are largely uncontentious and essentially outline: the nature of the proposed development subject of the appeal; client details; date of instruction; author of the report and a description of the report structure.
- 3.2. Notwithstanding the above, it is noted that the introduction does not include any commentary relating to LBH’s determination of the application, in particular in relation to the view’s expressed by the Council’s officers that were material considerations at the time of determining the application.
- 3.3. In that regard, I would highlight that Mayer Brown’s “Noise and Vibration Assessment” report was reviewed by the Council’s ASB and Environment Team and their formal consultation response is recorded in an email from Monica Mulowoza to Zenab Haji-Ismail dated 30 April 2019 which concluded:

“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....”,

- 3.4. The conditions referenced in the above email related to (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.
- 3.5. It is therefore clear that the ASB and Environment Team (as the Council’s noise experts) did not ‘object’ to the principle of the proposed use and that they were satisfied that the proposed development would provide acceptable “external surrounding amenity”.
- 3.6. The planning application was appealed against non-determination on 7 June 2019.
- 3.7. The planning application was subsequently presented to Members of LBH’s Major Application Planning Committee on 19 June 2019. In line with the recommendation set out in the Officer Report for the application, Members resolved to refuse planning permission citing eleven reasons for refusal – reason for refusal 5 related to noise and states:

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“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).”

- 3.8. Whilst the above reason for refusal is reproduced at paragraph 5.1 of AA's SoC, I note that AA do not present any supporting analysis of how the scheme *'fails'* to comply with the local and city wide planning policies cited. Furthermore, I note that AA do not consider or seek to be informed by LBH's own technical noise standards set out in their adopted *“Supplementary Planning Document”* relating to noise. Indeed, it can be seen that AA's SoC simply seeks to criticise that no *'numerical'* assessment of the impact of neighbouring industrial/commercial uses has been undertaken in accordance with BS 4142: 2014, importing that there is insufficient evidence for LBH to make an appropriate decision relating to the potential noise impacts of the scheme (and despite the Council's ASB and Environment Team having given their professional judgement that noise levels in external amenity areas were acceptable).
- 3.9. Setting aside the fact that LBH had already received advice from its own internal noise experts that the principle of the proposed development was acceptable, the conclusions of the external advice subsequently procured by the Council from AA (following the determination of the application and commencement of appeal proceedings) are inconclusive and do not provide LBH with any evidence that a *“significant adverse effect”* (i.e. the *'test'* that needs to be applied by paragraph 182 of the NPPF) will or is likely to occur.
- 3.10. Indeed, if the conclusions presented in Section 7 of AA's SoC are reviewed, it can be seen that:
- It is acknowledged that *“good acoustic design has been followed”*;
 - It is suggested that noise from the existing B2 use of Nestles Avenue *“may or may not cause a significant effect”*

[Note: See later comments regarding the mis-interpretation of data upon which AA's statement is founded];

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- It is concluded that noise for the Squirrels Trading Estate “*may, or may not, cause an [sic] significant adverse effect in external amenity areas*”;
[Note: This is a view imported by AA post-dating the determination of the application and reason for refusal. The reason for refusal specifically cites a failure “to provide sufficient separation from the western boundary of the site” not Squirrels Trading Estate].
 - “*The cumulative effect of the industrial/commercial noise sources has not been assessed*”.
Note: The reason for refusal does not cite “cumulative impacts” - it specifically relates to a failure to consider the noise impact of land uses on the western boundary of the site.
 - It is stated that “*With an apparent indication of an adverse effect from the existing lawful B2 use of 7 Nestles Avenue and uncertainty of the significance of the effect from industrial/commercial noise is uncertain. If there is an unacceptable co-location of uses, which would result in a significant adverse noise impact on the proposed development requiring additional mitigation to discharge “Agent of Change” obligations imposed by paragraph 182 of the NPPF*”. [Sic]
Note: This paragraph appears to be a little ‘confused’, is speculative and does not provide any evidential basis which supports LBH’s reason for refusal.
 - “*The extent and design of mitigation required would need to be informed by a BS 4142: 2014 assessment of the industrial/commercial noise sources*”.
Note: I reject the proposition that BS4142 provides a sole reference point for determining the need for or detail of mitigation to protect new dwellings from existing sources of industrial /commercial noise.
- 3.11. In view of the above comments, I do not consider that AA’s SoC presents a full and balanced judgement which appropriately takes into account material considerations relevant to the proper determination of whether the development would be subject to “nuisance” levels of noise from existing industrial and commercial uses.
- 3.12. My more detailed reasoning for supporting that judgement is set out in the following sections of this supplementary evidence.

4. Section 2 – “Site Description”

- 4.1. The content of this section is largely uncontroversial and appears to be broadly based on the site description set out in Mayer Brown’s own description of the site, as presented in its “*Noise and Vibration Assessment*” which accompanied the application.
- 4.2. The SoC also reproduces an aerial image of the site which was presented in Mayer Brown’s own report to assist the reader in understanding the location of the site and neighbouring land uses.
- 4.3. However, I would draw to the Inspector’s attention that the description provided in AA’s SoC does not fully reflect the matters to which my own reporting has drawn attention and which I consider constitute material considerations relating to the character of the area within which the site is located.
- 4.4. First, I note that AA’s SoC does not acknowledge that the site forms part of a wider site allocation promoted for residential led, mixed use development as set out in draft Policy SA5 of the London Borough Of Hillingdon’s emerging Local Plan Part 2 (as reported at paragraph 2.8 of our Noise and Vibration Assessment accompanying the application).
- 4.5. Second, I note that whilst attention is drawn to permitted mixed use development on the former Nestles site to the east, no information (or indeed any reference at all) is made to the detail of those development proposals, most particularly in relation to the “approved” juxtaposition of the noise sensitive uses that would be created by that development with the existing industrial/commercial uses at the Squirrels Trading Estate.
- 4.6. In my view, and as explained in my RLCN, the nature of the development on the former Nestles site adds important context to the character of the locality and is critical in providing a balanced judgement regarding the likelihood of the appeal development imposing “*unreasonable restrictions*” on existing businesses within the Squirrels Trading Estate.
- 4.7. To emphasise my own views regarding the importance of this, I would highlight that in my RLCN, I include a number of figures which show the detailed nature of the development permitted for the former Nestles site, including a photograph showing the construction progress of the development and the relationship of balconies with the Squirrels Trading Estate.

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- 4.8. I present an additional photograph in **Figure 4.1** below, which presents an additional contextual view of the Nestle development and trading estate (taken in September 2019):



Figure 4.1: Context of Squirrels Trading Estate and Former Nestles Site

- 4.9. As stated earlier, AA's SoC does not respond to the matters I have highlighted or consideration of the context that this progressing development brings to the character of the locality.

5. Section 3 – “Mayer Brown Environmental Noise and Vibration Assessment Report”

5.1. This section of AA’s SoC provides commentary on environmental noise survey work undertaken by Mayer Brown Limited, as presented in the “Noise and Vibration Assessment” which accompanied the application.

5.2. Whilst much of the commentary simply restates elements of the survey procedure adopted and site observations, some critical comments are made to which I would provide the following clarification comments:

5.3. On page 7, AA’s SoC states:

“The MB NVA does not provide information on the personnel (or their competency for the measurement of environmental noise).”

5.4. The site survey work was presented in our report was undertaken by Raquel Villasante and Harry Russell-Lees. Both hold the Institute of Acoustics “Diploma in Acoustics and Noise Control” and have respectively three and four year’s practical acoustic consultancy experience. Both hold appropriate professional qualifications (Tech IOA and AMIOA respectively) consistent with their experience. The survey work was undertaken in accordance with Mayer Brown Limited’s standard operating procedures and under my direct supervision. I have also personally attended site in order that I am familiar and have first-hand knowledge of the site to inform the judgements made in our reporting.

5.5. On Page 8, AA’s SoC states:

“The time history $L_{Aeq,1min}$ and $L_{AFMax,1min}$ are presented for the M2 measurement location but the $L_{A90,T}$ is not presented so the background sound level is not indicated. Noise events in the time history are neither identified as being industrial/commercial or characterised”.

5.6. AA’s statement is incorrect. The reporting for Position M2 is presented in terms of **1 second** time histories to assist in providing a detailed visual representation showing the temporal characteristics of the noise levels at this location. This is clearly expressed at paragraph 11.15 of our Noise and Vibration Assessment which states:

“As noted earlier, noise levels were monitored at the rear of 9 Nestles Avenue directly overlooking the parking forecourt to the Trading Estate (Position M2 on

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Figure 5.2 presented earlier in this report). Figures 11.5 and 11.6 below show detailed (1 second) time history profiles showing ambient noise levels characterising this location”.

5.7. It is accepted that the $L_{A90,T}$ noise index is not presented on the graph. This is not an “omission” (as might implied by AA’s comment), but simply reflects the fact that presenting an $L_{A90,T}$ value for 1 second reference periods is not informative (it would simply represent the sound level exceeded for 90% of each 1 second measurement period, which has no ‘*meaning*’ in the context of relevant standards or guidance). The purpose of the high resolution datalogging presented was to assist in demonstrating how noise levels characterising the locality varied with time.

5.8. Whilst noise events are not expressly identified on the graphs, a clear subjective characterisation of the noise environment is presented at paragraph 11.16 of our Noise and Vibration Assessment, which states:

“As noted earlier, noise levels at this location were characterised by an underlying level of distant traffic noise with transient noise from train pass-bys. As also noted earlier, whilst occasional noise associated with the adjoining commercial units was audible, this was not dominant in the context of the ambient noise environment.”

5.9. The above is further supported by the detailed technical analysis of train movements undertaken and summarised in Table 5.9 of our Noise and Vibration Assessment which reports that the maximum sound levels caused by train movements are in the order of 57-67dB $L_{Amax,fast}$, which is entirely consistent with the sound level fluctuations shown on the time history graphs.

5.10. As set out in the Noise and Vibration Assessment, whilst noise from some industrial activities at the site was audible, the professional judgement formed was that such noise was not ‘*dominant*’ in the context of the otherwise prevailing noise environment (i.e. distant traffic noise, train pass-bys, etc.). Our Noise and Vibration Assessment and RLCN also note the variety of neighbouring land uses, however, site observations again concluded that no individual unit had a dominant influence on the overall ambient noise environment. These observations informed my judgement that whilst industrial noise was present, it could reasonably be considered not to be a dominant characteristic of the site.

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5.11. The clear judgment being made in relation to such a complex noise environment is that the locality is affected by ‘*mixed sources*’, i.e. a site that is characterised by a combination of road, rail and industrial sources. Whilst AA’s review of Mayer Brown’s “*Noise and Vibration Assessment*” appears reluctant to accept the concept of a site being characterised as a “*mixed source*” site, I would draw the Inspector’s attention to the fact that such a site characterisation is included within the Council’s “*Noise - Supplementary Planning Document*” (NSPD) adopted in 2006. Relevant sections of the NSPD are reproduced in paragraphs 4.22 to 4.25 of MB’s “*Noise and Vibration Assessment*”.

5.12. For ease of reference, paragraph 4.9 of the NSPD states:

“The noise exposure categories values for mixed sources refer to where there is no dominant noise source. Noise effects from mixed sources could combine in a way that increases their overall effect. Sites adversely affected by a number of sources will need an assessment of combined impacts. Specific advice should be sought from the Council’s Environmental Protection Unit. If the site is affected by industrial noise or noise with particularly annoying features and characteristics then special considerations will apply. Regard should be given to the characteristics of the noise source involved in each case. Further guidance is given in Key Point 6.”

5.13. Key Point 6 makes specific reference to BS4142: 1997, however, it is clear from preceding commentary that the need for assessment in accordance with BS 4142 relates to situations where there is “*industrial noise or noise with particularly annoying features and characteristics*”.

5.14. The guidance presented in the NSPD is based on the government’s former planning policy guidance PPG24 (“*Planning Practice Guidance 24: Noise*”). This guidance provided the following additional clarity in relation to mixed sources:

- In relation to the definition of Noise Exposure Categories (which are replicated in the NSPD), the guidance states “*Mixed sources: this refers to any combination of road, rail, air and industrial noise sources. The “mixed source” values are based on the lowest numerical values of the single source limits in the table. The “mixed source” NECs should only be used where no individual noise source is dominant.*”
- With regard to “complex” noise environments where the contribution of individual noise sources cannot be determined by measurement or calculation, the PPG

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states “If the contribution of the individual noise sources to the overall noise level cannot be determined by measurement and/or calculation, then the overall measured level should be used and the site assessed against the NECs for “mixed sources”.

- 5.15. The implication of the above is that where a site is exposed to “mixed sources”, it is appropriate to consider the “total” ambient noise environment of the site without any particular characterisation of the industrial/commercial noise component. This is precisely the approach that was followed in our Noise and Vibration Assessment and amplified in my RCLN.
- 5.16. Whilst PPG24 was withdrawn in 2012 (following the publication of the National Planning Policy Framework), the concept of sites being classified as having ‘mixed source’ characteristics, remains in contemporary industry standard design guidance.
- 5.17. To illustrate this, I would draw the Inspector’s attention to Section 8.5 of BS 4142: 2014 + A1: 2019 which states:

“Where a new noise-sensitive receptor is introduced and there is extant industrial and/or commercial sound, it should be recognized that the industrial and/or commercial sound forms a component of the acoustic environment. In such circumstances other guidance and criteria in addition to or alternative to this standard can also inform the appropriateness of both introducing a new noise-sensitive receptor and the extent of required noise mitigation.”

- 5.18. As noted earlier, the judgement made in this situation is that industrial/commercial noise characterising the site was not “dominant” and that the alternative guidance was appropriate. For this site, our Noise and Vibration Assessment alternatively referred to *“ProPG: Planning and Noise – Professional Practice Guidance on Planning and Noise”* jointly published by the Institute of Acoustics, Association of Noise Consultants and Chartered Institute of Environmental Health. I clarify the detailed approach promoted in this guidance later in this evidence.

- 5.19. Page 9 of AA’s SoC states:

“No monitoring was conducted at the boundary with the B2 use for vehicle repair and MOT testing at 7 Nestle Avenue”.

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5.20. This is incorrect. We would refer the Inspector to my RCLN which provides the results of detailed noise monitoring undertaken over a four day period in August 2019 at the western boundary of the site, immediately adjacent to the B2 use identified by AA.

5.21. Section 3.3 of AA's SoC states:

"The baseline noise surveys have been combined road and rail noise model has been produced using the Cadna noise modelling software. The model does not include industrial commercial noise."

5.22. As noted earlier, noise levels at the site are dominated by distant road and rail traffic movements. It is also clearly acknowledged in our Noise and Vibration Assessment that noise levels on the upper levels of the proposed development would increase compared with measurements made at ground/1st floor level (due to an increased line of sight to the railway, etc). The primary purpose of the noise modelling was therefore to assess the potential significance of such effects. As clearly set out in the Noise and Vibration Assessment, noise levels associated with neighbouring industrial/commercial uses were not dominant in the context of the otherwise prevailing noise climate and would not therefore materially 'add' to the output of the noise modelling, particular in relation to the upper levels of the development. Additional evidence supporting that judgement is given later in this evidence.

5.23. Paragraph 3.4 of AA's SoC again criticises the lack of assessment in line with the methodology of BS 4142. As highlighted earlier, professional opinion indicated that industrial noise was not dominant and the site has been approached on the basis of the total ambient noise climate as a mixed source site.

6. Section 4 – “Assessment of MB NVA and RLCN”

- 6.1. This section of AA’s SoC purports to give consideration to both the “*Noise and Vibration Assessment*” submitted with the application and the “*Response to LPA Comments on Noise*” document issued in September 2019.
- 6.2. As a preliminary matter with regard to this latter document and to add some initial background on matters to which AA have commented, I would draw the Inspector’s attention to the fact that this document includes the results of additional noise monitoring of the site in August 2019, which sought to directly respond to concerns raised by LBH that adequate attention has not been given to noise associated with existing land uses to the west of the site (7 Nestles Avenue). For clarity, the additional noise monitoring was undertaken at the western boundary of the site, directly adjoining 7 Nestles Avenue and overlooking Squirrels Industrial Estate. For ease of reference, **Figure 6.1** below reproduces the photographic record showing the adopted location of the noise monitoring equipment.



Figure 6.1: Noise Survey Location Adopted for Additional Noise Monitoring

Section 4.2 – “MB Survey”

- 6.3. AA’s SoC states:

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“The measurements and findings of the MB survey have been considered. The noise levels from industrial/commercial are not defined, the duration and frequency of such events are not defined, character features of the commercial/industrial noise are not defined, and the background sound level is not summarised”

6.4. AA’s comments are not accepted. As noted earlier, the RLCN includes additional detailed noise monitoring work to assist in quantifying the significance of industrial noise. The measurement data has been annotated to show dominant sources of noise. It should be noted that such dominant sources do not include industrial/commercial activities associated with 7 Nestles Avenue or Squirrels Trading Estate. This supports our view that it is entirely appropriate to consider the site as a climate characterised by mixed sources.

6.5. I would also highlight that contrary to AA’s statement that background sound level data has not been presented, the noise monitoring results presented in **Appendix A** of the RLCN include full profiling of $L_{A90,15\text{minute}}$ values. The reported values show good correlation with the background noise levels measured during our original noise survey work in July 2018 and reported in the “*Noise and Vibration Assessment*” accompanying the planning application. I will comment further on AA’s interpretation of background noise levels later in this supplementary proof.

6.6. AA’s SoC states:

“The RLCN discusses the potential noise emission from the lawful B2 use as a vehicle repair workshop and MOT test centre at the northern end of 7 Nestles Avenue and additional technical evidence to support the judgement, through calculation of a “worst case” specific noise level of around 44dB $L_{Aeq,1\text{hour}}$ at receptor locations. No measurements of the noise from the vehicle repair workshop appear to have been made at this location and the character of the noise has not been discussed.”

6.7. The SoC incorrectly states that “No measurement of noise from the vehicle repair workshop appear to been made at this location....”. As highlighted earlier, noise monitoring has, in fact, been undertaken immediately adjacent to the rear of 7 Nestles Avenue over a four day period in August 2019 and the results of such monitoring are included in the noise levels reported in Appendix A of the RLCN. Based on observations during site attendances noise associated with the use of the garage could not be

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specifically determined within the general prevailing ambient noise levels characterising the site and again lead me to my conclusion that the site can be reasonably and appropriately assessed as a “mixed source” site which does not have dominant industrial characteristics.

- 6.8. The complexity of the noise environment also means that it is extremely difficult to “separate” out noise associated with the use of B2 unit from other noise sources. In light of this, my RLCN sought to present an *“initial screening assessment”* to inform the judgement I had made regarding the (non) significance of noise associated with the use of 7 Nestles Avenue.
- 6.9. The assessment I presented was based on “worst case” noise data for a busy vehicle repair workshop (taken from ‘real life’ measurements Mayer Brown had conducted) and made a “conservative” assumption regarding the sound reduction that would be provided by the structure of the existing building.
- 6.10. This assessment predicated a “worst case” sound level of 44dB $L_{Aeq,1hour}$, upon which I stated my professional opinion that noise “break-out” from the vehicle repair workshop/MOT centre would not have a significant adverse noise impact on the proposed dwellings (in the context of the existing ambient noise climate).
- 6.11. To add further support to that judgement, I would highlight that MB’s *“Noise and Vibration Assessment”* indicates that the ambient daytime sound level characterising the western boundary of the site is around 52dB $L_{Aeq,16hour}$ (at ground/first floor level), but is likely to increase to around 59dB $L_{Aeq,16hour}$ on the upper levels of the proposed building. This again demonstrates the reasonableness of the judgement that I have made regarding the *“non-dominance”* of industrial noise from the existing uses adjoining the western boundary of the site.
- 6.12. To assist the Inspector further in this matter, I would highlight that if the B2 workshop generated a sound level of 44dB(A) (throughout the 16 hour daytime period), this would contribute less than 1dB(A) to the sound levels characterising the ground/first floor of the proposed development and would not contribute at all on the upper levels. I would also reiterate that the assessment I have made of noise break-out from the B2 use assumes a *“worst case”* internal sound level. For much of the time, the sound level would be lower and thus insignificant in the context of the existing noise environment. My professional judgement that noise characterising the site can be reasonably considered to be one of “mixed sources” is therefore again fully supported.

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- 6.13. To add some policy context to the above, I would draw the Inspector's attention to the "Noise Exposure Hierarchy Table" presented at Paragraph 005, Reference ID: 30-005-20190722 of the Government's "Planning Practice Guidance"⁶. This guidance indicates that noise at a "Significant Observed Adverse Effect Level" (SOEAL) (which is the test applied in paragraph 182 of the NPPF) would be perceived as being "present and disruptive", with typical outcomes whereby:

"The noise causes a material change in behaviour, attitude or other physiological response, e.g. avoiding certain activities during periods of intrusion; where there is no alternative ventilation, having to keep windows closed most of the time because of the noise. Potential for sleep disturbance resulting in difficulty in getting to sleep, premature awakening and difficulty in getting back to sleep. Quality of life diminished due to change in acoustic character of the area."

- 6.14. Given the mixed source nature of the site, it is my professional opinion that existing industrial noise characterising the site is not consistent with the definition of SOAEL (i.e. present and disruptive) nor is it consistent with the expected outcomes of noise at such a level, i.e.:

- The proposed flats embed mitigation (including alternative means of ventilation) so that windows can be closed as desired;
- Planning restrictions prevent the B2 use operating during the evening, at night or the early morning, thus there is no potential for sleep disturbance effects; and
- There is no change in the acoustic character of the area – i.e. it needs to be recognised that any extant industrial/commercial noise forms a component of the existing noise climate, in line with the guidance of BS 4142.

- 6.15. In light of the above, I am satisfied that the approach presented in Mayer Brown's "Noise and Vibration Assessment" and my RLCN (i.e. which conclude that industrial noise is not dominant and can be considered as part of the total noise environment) is entirely appropriate and proportionate to the subjective observations during site attendances.

[4.3 MB Methodology](#)

- 6.16. AA's SoC states:

⁶ <https://www.gov.uk/guidance/noise--2>

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“Neither the survey, the Stage 1 or Stage 2 assessment in the NVA discuss the commercial/industrial noise features. It is therefore not known (from the NVA and RLCN) if the industrial/commercial noise is “dominant” or not.”

- 6.17. In support of this statement, the SoC draws attention to paragraphs 2.40 and 2.41 of ProPG guidance which states:

“2.40 To be clear, where industrial and/or commercial noise is present on the site and is considered to be “dominant” (i.e. where the impact would be rated as adverse or greater (subject to context)) then this is outside the scope of this ProPG and regard should be had to the guidance in BS4142:2014.

2.41 In the special case where industrial and/or commercial noise is present on the site but is “not dominant” (i.e. where the impact would be rated as lower than adverse (subject to context) if a BS4142:2014 assessment was to be carried out), its contribution may be included in the noise level used to establish the degree of risk in Stage 1 and may also be included in the consideration of Stage 2 Element 2 Internal Noise Level Guidelines (and if included, this should be clearly stated).”

- 6.18. As noted earlier, I have concluded that industrial noise at this site is not dominant based on subjective assessments during site attendances and I consider this to be an appropriate categorisation of this “mixed source” site. Given that the industrial element of noise also arises from a number of differing uses, the complexity of the noise environment does not readily enable the contribution of “individual” noise sources to be measured/calculated.
- 6.19. Notwithstanding the above, my RLCN sought to establish the potential impact of the B2 automotive workshop/MOT test centre immediately adjoining the site to the west (as cited in the Council’s reason for refusal).
- 6.20. As reported above, this assessment concluded that the closest residential amenity space could experience a sound level of 44dB $L_{Aeq,1hour}$ (as an “absolute” worst case value). Automotive workshops are normally characterised by some degree of “impulsivity” (e.g. due to the use of hand tools, wheel nut wrenches, etc.). However, such activities are intermittent (rather than continuous) and, as such, the overall perception of noise over a one hour period is likely to be more reasonably judged as having “just perceptible” impulsivity. A penalty correction of +3 dB would therefore be

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required. A further correction of 3dB would then also be appropriate to account for the intermittency of the activities.

- 6.21. If the above corrections are applied to the predicted specific sound level of 44dB $L_{Aeq,1hour}$, this would yield a rating level of 50dB $L_{A,r}$.
- 6.22. The existing daytime background noise level characterising the site is around 47dB $L_{A90,15mins}$. (I will support the derivation of this value later in this evidence).
- 6.23. Based on the above, it can be concluded that subject to context, the existing use of 7 Nestles Avenue would yield a rating level of +3dB, which would be assessed to be lower than an “adverse” impact (in accordance with the assessment methodology of BS 4142). The above assessment and ProPG guidance therefore supports the reasonableness of my judgement that such noise is not dominant in the context of the existing ambient noise environment.
- 6.24. Later in Section 4.3 of their SoC, AA draw attention to Paragraphs 2.42 to 2.44 of ProPG, suggesting that this guidance adds additional context in circumstances where industrial and commercial noise is present but “not dominant”, which I reproduce below.

*“2.42 However, great care should be taken when considering using the noise level guidelines in **Figure 2** in circumstances where industrial and/or commercial noise is present but “not dominant”. Issues that may arise include:*

- Are there particular acoustic features (tones, impulses etc.) in the industrial and/or commercial noise that may increase its effect compared to sounds without such features? Are there any non-acoustic features that may also have an effect?*
- Will the time averaging over the 16 hour day or 8 hour night intervals used in Figure 2 lead to underestimation of the impacts of industrial and/or commercial noise that may occur for shorter but still substantial periods at a higher level?*

2.43 Professional judgement will have to be exercised in addressing these sorts of issues. One possible approach may be to apply BS4142:2014 character corrections to the noise level guideline values in order to derive suitable effect thresholds and/or mitigation design targets and to use the same reference time periods recommended in the standard.

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2.44 It should also be noted that the presence of industrial and/or commercial noise on the site, even if it is “not dominant”, may also raise wider issues that should be addressed under the other elements of Stage 2.

6.25. I would respectfully point out that the guidance to which AA has drawn attention does not provide any guidance in relation to the assessment of external noise levels. Indeed, if reference is made to the first part of paragraph 2.42, it can be seen that the quoted paragraph makes specific reference to “Figure 2” of the ProPG guidance. This figure specifically provides guidance in relation to the assessment of **internal** noise levels (indeed, the figure is clearly titled “Figure 2. ProPG Internal Noise Level Guidelines (additions to BS8233:2014 shown in blue)”. LBH has accepted that the proposed development does not raise any concerns in relation to internal noise (which can be mitigated through the provision of appropriately specified glazing and alternative means of ventilation) and this does not constitute part of the reason for refusal (which more specifically relates to an alleged failure to provide “sufficient separation from the western boundary of the site”).

6.26. In addition to this, I would also draw the Inspector’s attention to page 12 of AA SoC, which states:

“The Stage 2 assessment of the NVA considers that “standard” thermal double glazing and acoustically rated ventilation will allow the development to be effectively integrated with the existing land uses to the north of the site. With standard thermal double glazing and acoustically rated ventilation it is agreed that internal noise levels are likely to be within the BS8233:2014 criteria.”

6.27. AA’s SoC criticises the NVA and RLCN because no assessment has been undertaken in accordance with BS 4142. As noted earlier, Section 8.5 of BS 4142 states:

“Where a new noise-sensitive receptor is introduced and there is extant industrial and/or commercial sound, it should be recognized that the industrial and/or commercial sound forms a component of the acoustic environment. In such circumstances other guidance and criteria in addition to or alternative to this standard can also inform the appropriateness of both introducing a new noise-sensitive receptor and the extent of required noise mitigation.”

6.28. Having considered the “mixed source” character of the site, our reporting clearly highlights that the alternative guidance set out in ProPG (i.e. that the industrial noise can be included as part of the overall ambient noise environment) has been followed.

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6.29. Having considered this, I conclude that industrial noise would not have a significant adverse effect and thus no additional mitigation to protect these external amenity spaces would be required.

6.30. AA's SoC states:

"The WHO guideline for community noise state: "...the guidelines do not explicitly consider industrial noise as an environmental noise source, affecting people living in the vicinities of industrial sites. This is mainly due to the large heterogeneity and specific features of industrial noise, and the fact that exposure to industrial noise has a very localized character in the urban population".

6.31. This quotation is unreferenced, but is not a quotation from the World Health Organisation's "Guidelines for Community Noise" (CGN). The CGN actually provides a contrary statement to that reported by AA, with the "Introduction" stating:

"Community noise (also called environmental noise, residential noise or domestic noise) is defined as noise emitted from all sources, except noise at the industrial workplace. Main sources of community noise include road, rail and air traffic, industries, construction and public work, and the neighbourhood. Typical neighbourhood noise comes from premises and installations related to the catering trade (restaurant, cafeterias, discotheques, etc.); from live or recorded music; from sporting events including motor sports; from playgrounds and car parks; and from domestic animals such as barking dogs. The main indoor sources are ventilation systems, office machines, home appliances and neighbours."

4.4 Assessment

6.32. AA's SoC states:

"The figures in the MVA [sic] showing the measured noise levels at M2 (representative of the boundary with the squirrels Trading Estate) do not show the $L_{A90, T}$ background sound level. A tabular summary of the noise metrics such as $L_{A90, T}$ is not given for measurement location M2, yet is presented for M1 and M3. The background sound level assumed for the area is not given through the plant noise assessment contains the statement: "In light of this, it is considered desirable and practicable to seek to operate and maintain any new plant installation so that the rating level L_{Ar} of the fixed installation in normal operation

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at the worst case affected residential receptor, minus the background level ($L_{A90,T}$) is not more than 5dB, determined in accordance with BS 4142: 2014”.

- 6.33. I can clarify that the background sound levels used to establish the plant noise emission targets recommended in the Noise and Vibration Assessment have been determined from the long term noise monitoring dataset obtained at Position A1 following survey work in July 2018. The full results of this monitoring are presented on Time History Graph A1 attached at Appendix B of the “Noise and Vibration Assessment” which accompanied the application, as reproduced below as **Figure 6.2**:

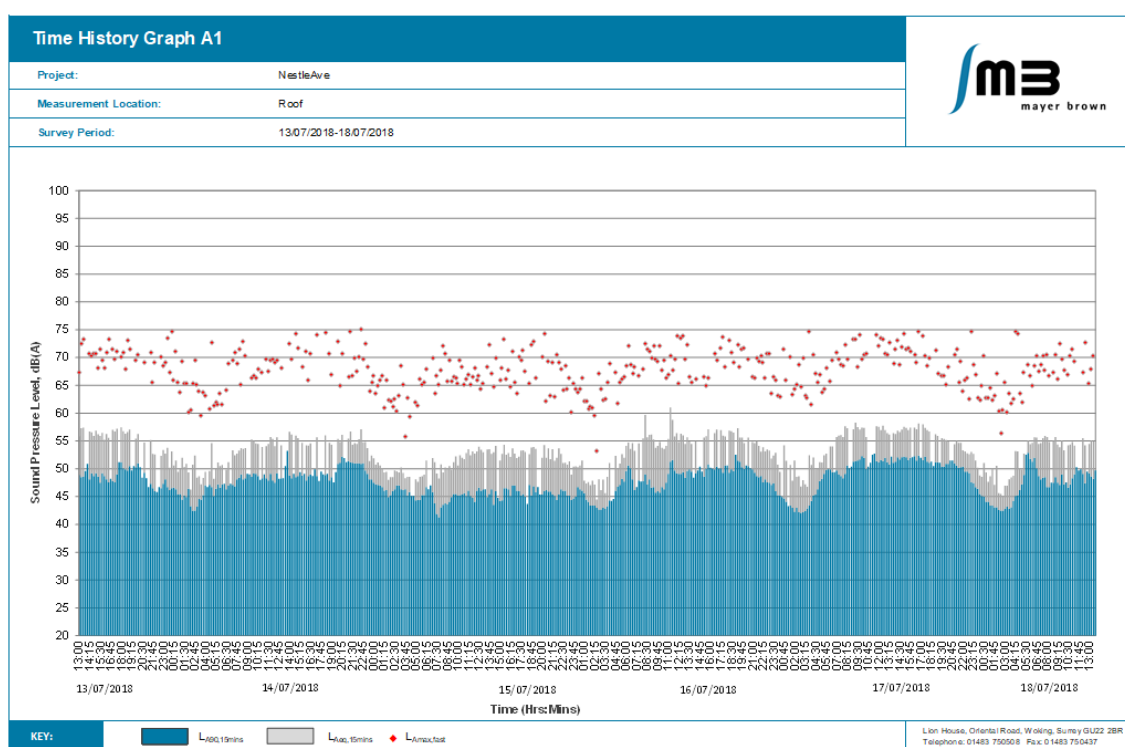


Figure 6.2: Results of Long Term Monitoring Reported in NVA

- 6.34. Based on the above data, a representative daytime background sound level of 47dB $L_{A90,15mins}$ was been determined (as referenced at paragraph 6.22 above).
- 6.35. As noted earlier, additional long term noise monitoring has also been undertaken at the western boundary of the site adjoining 7 Nestles Avenue in August 2019 and the results are presented at Appendix A of my RLCN. As noted in the commentary in the RLCN, daytime noise levels were adversely influenced by noise from a temporary generator set and construction noise associated with development of the former Nestle site. However, the data does again indicate that a background level of 47 dB $L_{A90,15mins}$ is a reasonable (if not pessimistic) representation of the background noise level in that locality. To demonstrate this, I present in **Figure 6.3** below a summary graph of the

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measurement data, on which I have indicated a daytime (07.00 – 19.00 hours) background level of 47dB $L_{A90,15mins}$.

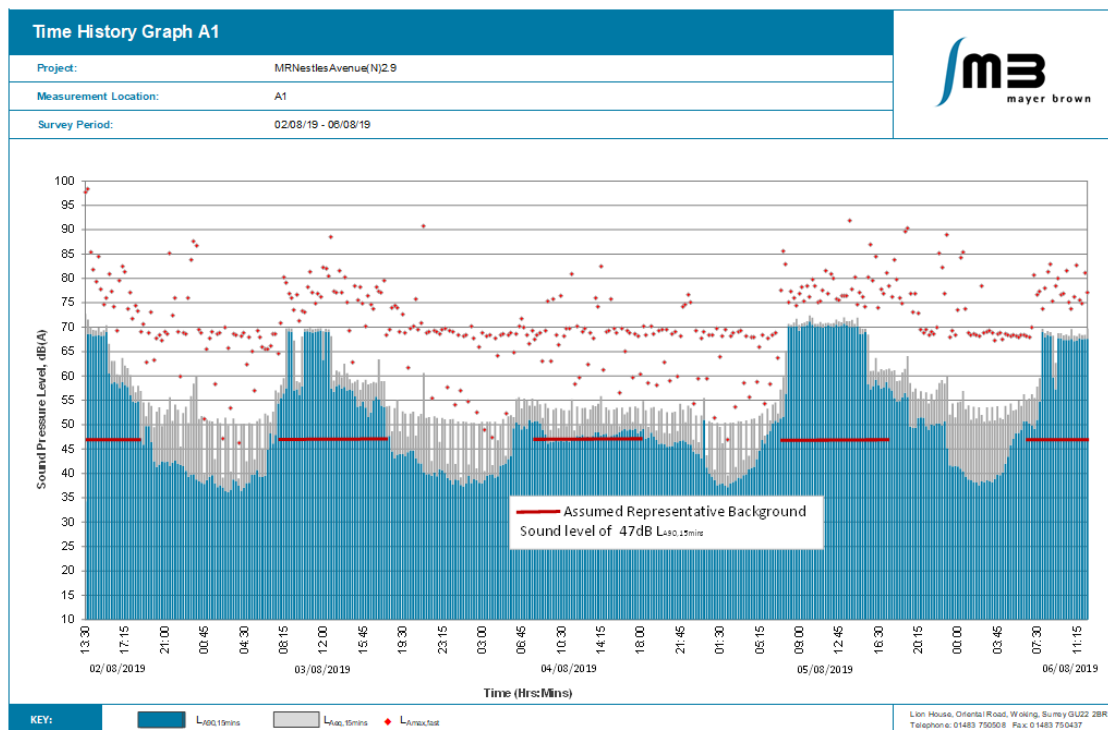


Figure 6.3: Results of Long Term Monitoring Reported in RLCN

6.36. In light of the long term noise monitoring data, it is clear that AA's own interpretation of background noise characterising the area is misleading. To help explain this, I note that section 4.4 of AA SoC states:

"From this and the values presented in Table 4.1 it can be assumed the background sound level is 37dB $L_{A90,T}$ but this is not clear and the $L_{A90,T}$ may be higher"

6.37. The above statement is followed by a snapshot of Table 10.2 of our Noise and Vibration Assessment, as below:

Rating Level, $L_{Ar,T}$ dB	
Daytime (07.00 – 23.00)	Night (23.00 – 07.00)
42	38

Table 10.2: Recommend Rating Level ($L_{Ar,T}$) for Process/Fixed Plant

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6.38. For clarity, I can confirm that the acoustic design targets set out in Table 10.2 have been set to be 5dB(A) **lower** than the representative daytime/night-time sound levels determined from our survey work. As such, the representative daytime background sound level characterising this locality is taken to be 47dB $L_{A90,15mins}$ (as I have reported earlier in this section).

6.39. Whilst AA's SoC suggests that the background level may be higher than the 37dB $L_{A90,15mins}$ they have assumed, it can be seen that the relevant value is actually substantially (10dB) higher than their assumption.

6.40. AA's SoC comments:

"The RLCN does not present a BS4142: 2014 assessment of the existing commercial/industrial noise and the character of the noise is not described or character corrections given so the effect of the noise in external amenity areas is not known"

6.41. As explained earlier, it is my professional judgment that an alternative approach to assessment than that prescribed in BS 4142: is appropriate for this site given its "mixed source" nature of the site and my subjective assessment (supported by the additional objective assessment presented in the evidence) that indicates that industrial noise is not dominant.

6.42. AA SoC's states:

"The specific sound level of 44dB $L_{Aeq, hour}$ is above the rating level recommended for the design of plant in the NVA assessment and 7dB above the assumed background sound level, from the fixed plant noise assessment. This is also prior to the consideration of character corrections for the specific sound. As such an adverse effect may be indicated to the present though the significance of the effect is not certain. With character corrections applied there may be a significant adverse effect in external amenity areas.

As such the significance of the effect of the noise from neighbouring land uses has not been established and a significant adverse effect may or may not be present as assessment of the character corrected noise has not been made to inform the statement of the significance of the effect".

6.43. AA's statement that the specific sound level associated the existing use of 7 Nestles Avenue is predicated on the assumption that the representative background sound

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level is 37dB $L_{A90,15mins}$. As noted earlier, this assumption is incorrect and the representative background sound level is 10dB(A) higher than assumed, as explained above.

- 6.44. As such, AA's suggestion that the specific sound level will be 7dB above the background sound level is not accepted. The predicted specific sound level is in fact 3dB **below** the daytime background sound level of 47dB $L_{A90, T}$.
- 6.45. If I apply character corrections of 3dB for both intermittency and impulsivity (as discussed earlier) this would increase the rating level to 50 dB, $L_{Ar, 1hour}$.
- 6.46. It follows that if an assessment in line with BS 4142 guidance was undertaken, this would conclude that the predicted sound level associated with the use of 7 Nestles Avenue would be above a level consistent with a "low impact", but below a level that would be a likely indication of an "adverse impact".
- 6.47. If the outcome of the BS 4142 assessment is aligned with the government's Planning Practice Guidance, such a conclusion would indicate that noise levels at the site would be above a "Lowest Observed Adverse Effect Level" (LOAEL) but below a "Significant Observed Adverse Effect Level" (SOAEL). In terms of noise effects, this would mean noise would be above a level that was "present and intrusive" but below a level that would be "present and disruptive".
- 6.48. Notwithstanding the above, it is equally critical to note that BS4142 clearly stresses that the outcome of any numerical assessment should also take into account "context". Indeed, the commentary at Section 11 of BS 4142 states:

*"The significance of sound of an industrial and/or commercial nature depends upon both the margin by which the rating level of the specific sound source exceeds the background sound level and the **context** in which the sound occurs. An effective assessment cannot be conducted without an understanding of the reason(s) for the assessment and the **context** in which the sound occurs/will occur. When making assessments and arriving at decisions, therefore, it is essential to place the sound in **context**" (My Emphasis Added).*

- 6.49. The importance of context when considering the impact of a noise source is also clearly expressed in the Standard:

"Typically, the greater this difference, the greater the magnitude of the impact.

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*A difference of around +10 dB or more is likely to be an indication of a significant adverse impact, **depending on the context**.*

*A difference of around +5 dB is likely to be an indication of an adverse impact, **depending on the context**.*

*The lower the rating level is relative to the measured background sound level, the less likely it is that the specific sound source will have an adverse impact or a significant adverse impact. Where the rating level does not exceed the background sound level, this is an indication of the specific sound source having a low impact, **depending on the context**.” (My Emphasis Added)*

6.50. With regard to the meaning of context, BS4142 provides the following advice:

“The absolute level of sound. For a given difference between the rating level and the background sound level, the magnitude of the overall impact might be greater for an acoustic environment where the residual sound level is high than for an acoustic environment where the residual sound level is low. Where background sound levels and rating levels are low, absolute levels might be as, or more, relevant than the margin by which the rating level exceeds the background. This is especially true at night.

Where residual sound levels are very high, the residual sound might itself result in adverse impacts or significant adverse impacts, and the margin by which the rating level exceeds the background might simply be an indication of the extent to which the specific sound source is likely to make those impacts worse.

The character and level of the residual sound compared to the character and level of the specific sound. Consider whether it would be beneficial to compare the frequency spectrum and temporal variation of the specific sound with that of the ambient or residual sound, to assess the degree to which the specific sound source is likely to be distinguishable and will represent an incongruous sound by comparison to the acoustic environment that would occur in the absence of the specific sound. Any sound parameters, sampling periods and averaging time periods used to undertake character comparisons should reflect the way in which sound of an industrial and/or commercial nature is likely to be perceived and how people react to it.

NOTE 3 Consideration ought to be given to evidence on human response to sound and, in particular, industrial and/or commercial sound where it is available.

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A number of studies are listed in the “Effects on humans of industrial and commercial sound” portion of the “Further reading” list in the Bibliography.

The sensitivity of the receptor and whether dwellings or other premises used for residential purposes will already incorporate design measures that secure good internal and/or outdoor acoustic conditions, such as:

- i) facade insulation treatment;*
- ii) ventilation and/or cooling that will reduce the need to have windows open so as to provide rapid or purge ventilation; and*
- iii) acoustic screening.*

6.51. If my assessment of operational noise from 7 Nestles Avenue is considered in the context of the above guidance, it can be seen that:

- 1) **Absolute level of sound** – The rated noise level of 50 dB $L_{Ar, 1\text{hour}}$ is modest and as evidenced in the MB Noise Assessment would be lower than the typical daytime $L_{Aeq, 16\text{hr}}$ value and would also comply with the WHO guidelines lower limit value for outdoor amenity space of 50 dB L_{Aeq} ;
- 2) **The character and level of residual sound compared to the character and level of the specific sound** – The character of the residual noise includes distant road traffic noise and frequent transient noise events from rail traffic throughout the day and night-time period. Operational noise associated with the existing B2 use could have impulsive characteristics, as noted earlier, however, such activity would tend to be of limited duration and not be the longer term character of the use. Appropriate corrections have been applied to account for such possible characteristics.

In terms of the impact of the noise on residents, I also consider it material to note that the usage of 7 Nestles Avenue has various restrictions imposed on it, including (a) restricting external working/storage; (b) limiting the hours of operation; and (c) restricting the authorised use of the premises.

- 3) **The sensitivity of the receptor and whether dwellings or other premises used for residential purposes will already incorporate design measures that secure good internal and/or outdoor acoustic conditions** – The introduction of new noise sensitive dwellings into an existing industrial/commercial noise source will not result in any undue sensitivity. The development proposals have also been developed in accordance with good acoustic design principles, including a blank

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northern elevation which means that no residents face directly onto the industrial area; and (b) all dwellings are provided with appropriate double glazing and alternative means of ventilation (MVHR) to avoid a need for residents to open windows to ventilate their properties.

Both of the above contextual matters are consistent with Paragraph 009 (Ref ID. 30-009-20190722) of the government's planning practice guidance which states:

“How can the risk of conflict between new development and existing businesses or facilities be addressed?”

The agent of change will also need to define clearly the mitigation being proposed to address any potential significant adverse effects that are identified. Adopting this approach may not prevent all complaints from the new residents/users about noise or other effects, but can help to achieve a satisfactory living or working environment, and help to mitigate the risk of a statutory nuisance being found if the new development is used as designed (for example, keeping windows closed and using alternative ventilation systems when the noise or other effects are occurring).”

- 6.52. In light of the above considerations, I consider that the above considerations relating to site context further reinforce my own professional opinion that the proposed development would not experience a significant adverse effect from the existing (and future) use of 7 Nestles Avenue.

[4.5 Agent of Change](#)

- 6.53. AA SoC states;

“Without the character considered for the industrial/commercial noise or a BS4142 assessment of the existing industrial/commercial noise it is uncertain if there is a significant adverse effect of (sic) not. It is therefore uncertain if there is an unacceptable co-location of uses, which would result in a significant adverse noise impact on the proposed development requiring additional mitigation to discharge ‘Agent of Change’ obligations imposed by paragraph 182 of the NPPF”

- 6.54. The additional assessments presented in the preceding sections of this evidence set out my clear conclusion that existing (and future) industrial uses would not have a significant adverse effect on the future occupants of the proposed development. In line

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with such a conclusion, no mitigation is required to discharge the “Agent of Change” obligation imposed by paragraph 182 of the NPPF.

- 6.55. However, in my view, it is equally important to acknowledge the over-riding intent of paragraph 182 – i.e. the need to ensure that new development does not place unreasonable restrictions on existing businesses. In considering whether new development could impose “*unreasonable restrictions*” it is clearly material to consider the full context of the existing industrial/commercial uses and whether the proposed development will create a significant change to the character of the locality which could give an increased risk of existing businesses creating “nuisance” to new development.
- 6.56. My own views on this are set out in our Noise and Vibration Assessment and my RLCN which draw attention to the long-term, strategic planning objectives for the area and committed development in the area already under construction. With regard to the latter, I have drawn particular attention to the residential development of the former Nestles factory site which adjoins the appeal site to the east and shares a substantial boundary to the existing industrial/commercial units occupying the Squirrels Trading Estate and properties in Viveash Close.
- 6.57. Whilst I have included extensive evidence in my RLCN to support my own judgement in this matter, I note that AA SoC’s does not provide any commentary or opinion expressing their own view on how such permitted development integrates with the existing industrial/commercial uses.

[4.6 Mitigation](#)

- 6.58. Section 4.6 of the SoC, states:

“With suitable mitigation (if required) in place significant adverse effects can be avoided. Without the character correct (sic) industrial/commercial noise assessment or BS4142:2014 assessment the need for, or extent of, the mitigation is not known”

- 6.59. In the preceding sections, I have explained why I consider an alternative approach to assessment than that prescribed in BS 4142 appropriate for this mixed source site, but have provided additional clarification (including my views regarding character correction) to support my judgement that the existing use of 7 Nestles Avenue would not have a significant adverse effect on the future occupants of the proposed development and why I do not consider that additional mitigation to address noise levels

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in external amenity space (beyond that already recommended, i.e. the use of “solid” balustrades and acoustically absorptive balcony soffit linings) is not required.

7. Section 5 – “Reason for Refusal”

7.1. Section 5.1 re-states LBH’s reason for refusal (as included at my paragraph 1.4 above.

7.2. I would draw the Inspector’s attention to the following matters:

- The reason for refusal specifically states that the *“development fails to provide a sufficient separation from the boundary of the site to mitigate against a potential noise generating use of the neighbouring site....”*. However, AA’s SoC also asserts that the proposed development may also experience adverse noise impacts from existing businesses operating from the Squirrels Trading Estate (to the north of the site). Whilst detailed information was provided in my RLCN to support my opinion that the proposed development would not impose unreasonable restrictions on these existing businesses, AA’s SoC does not provide any commentary or opinion expressing their own view on how the context of other permitted development to which I have drawn attention might influence the likelihood of the redevelopment of Stanford House creating imposing unreasonable restrictions on existing, neighbouring businesses.
- The reason for refusal makes specific reference to Policies BE1 of the Local Plan (Part One); Policy OE1 of the London Plan (Part Two); London Plan policy 7.15 and paragraph 182 of the NPPF. AA’s SoC does not explain why it is considered that there is non-compliance with these policies. In my view, AA has also not appropriately weighed other material considerations including the guidance set out in LBH’s adopted SPD on noise and governmental Planning Practice Guidance.

7.3. The reasoning set out in Section 5.2 of AA’s SoC states:

“No measurement of noise has been made at the western boundary....”

7.4. This is clearly incorrect. The RLCN specifically includes the results of continuous noise monitoring (undertaken in August 2019) specifically undertaken at the western boundary of the site adjoining 7 Nestles Avenue and directly overlooking Squirrels Trading Estate (see paragraph 6.2 above with supporting photographic evidence in **Figure 6.1**).

7.5. AA also state:

“The Stage 1 and Stage 2 Detailed Assessment in the NVA do not consider the industrial/commercial noise and so the effect of industrial/commercial noise

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sources to the west is unknown and mitigation of this noise was not discussed or applied in the application or supporting information.”

- 7.6. In addition to the noise monitoring presented in the RLCN, this response to the Council also sought to provide an additional desk top assessment of operational noise likely to be associated with the use of 7 Nestles Avenue and which clearly concluded that such noise would not have a significant adverse effect on the proposed dwellings.

8. Section 6 – “Response to LPA Comments”

Bullet Point (a)

- 8.1. In my RLCN I comment that:

“No technical evidence is presented by the LPA which indicates what noise levels external amenity spaces are alleged to be exposed to”.

- 8.2. AA’s response to this comment is:

“It is the role of the applicant to measure and assess the commercial/industrial noise levels to appropriate guidance, to inform the determination of the planning application”.

- 8.3. I consider that adequate technical information and judgement was expressed within the original NVA to support our opinion that noise associated with existing industrial uses was not “dominant” and that mitigation was not required. The difference of opinion here appears to more fundamentally relate to a difference of opinion regarding the appropriateness of a ‘rigid’ BS 4142 assessment for this mixed use site. As discussed in detail above, AA appear to be firmly fixated with the opinion that the adjoining industrial area should be assessed in strict compliance with the methodology of BS 4142. I have set out my own reasoning why I consider an alternative approach is appropriate.

Bullet Point (b)

- 8.4. In my RLCN I comment that:

“Whilst asserting that noise levels will be “above guidance values”, the LPA has not set out what “guidance values” have been adopted in reaching that conclusion”

- 8.5. AA’s response to this comment is:

“The guidance values are those presented in section 4.37 and 7.42 of the NVA. There is not an assertion that rating levels are above the criteria for a significant adverse impact but there is indication of a potential exceedance of the section 4.37 criteria presented in the RLCN for noise from the lawful D2 use as vehicle repair and MOT testing facility and uncertainty compliance with the 4.37 criteria from noise from Squirrels Trading Estate. Section 7.44 of the NVA discusses

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compliance with the WHO guideline values for external amenity areas and states that achieving compliance may be difficult and as such MVA have presented technical evidence that guidance values have been exceeded”

- 8.6. Paragraph 4.37 of our Noise and Vibration Assessment sets out the guidance of BS 4142 for assessing the potential significance of noise impacts from industrial and commercial noise sources. However, as indicated in the NVA, RLCN and amplified in this evidence, I do not consider that the methodology of BS 4142 is the most appropriate for this “mixed source” site (where industrial noise is not dominant) and that it is entirely appropriate to consider the potential suitability of the site for residential development in the context of the total ambient noise climate.
- 8.7. Notwithstanding this view, I do not consider that AA’s comments such as “*exceedance of the section 4.37 criteria*” and “*uncertainty compliance with the 4.37 criteria*” are appropriate. To explain this, I would highlight that BS 4142 seeks to provide guidance to assist in determining a likely degree of impact – it does not provide rigid “criteria”. However, perhaps more importantly, the numerical guidance given in BS 4142 is clearly caveated that the assessment is “*subject to context*”. I do not consider that AA’s SoC includes appropriate consideration of such context and therefore disagree with the approach they advocate.
- 8.8. As highlighted at my paragraphs 6.44 to 6.48 above, the numerical assessment considered by AA is based on an incorrect assumption relating to the representative daytime background noise level (the value they have assumed is 10dB lower than the correct value) and thereby leads to a highly pessimistic assessment of the assumed impact.
- 8.9. The “criteria” being referenced in Paragraph 7.42 of our Noise and Vibration Assessment is the guidance for external amenity areas derived from the World Health Organisation’s “*Guidelines for Community Noise*”. AA correctly state that our Noise and Vibration Assessment does indicate that the suggested noise level may be exceeded. However, there are a number of important considerations in relation to this conclusion.
- 8.10. First, is that this conclusion is reached on the basis of the total ambient noise level (i.e. including noise contributions from road and rail traffic). As such, it is incorrect to imply that the exceedance evolves from noise associated with the adjoining industrial areas.
- 8.11. Second, this section of AA’s SoC does not draw attention to the fact that in order to address the predicted exceedance, mitigation is recommended in the form of solid

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balustrades (which will assist in providing some degree of acoustic screening) and acoustically absorptive soffit treatments (which will minimise sound reflections from the underside of projecting balconies).

- 8.12. Third, AA's SoC does not give due consideration to the additional guidance given in Paragraph 7.7.3.2 of BS 8233: 2014: "*Guidance on Sound Insulation and Noise Reduction For Buildings*" (which is referenced at 7.43 of our Noise and Vibration Assessment) and which states:

*"For traditional external areas that are used for amenity space, such as gardens and patios, it is desirable that the external noise level does not exceed 50 dB $L_{Aeq,T}$, with an upper guideline value of 55 dB $L_{Aeq,T}$ which would be acceptable in noisier environments. However, it is also recognized that these guideline values are not achievable in all circumstances where development might be desirable. In higher noisy areas, such as city centres or urban areas adjoining the strategic transport network, a compromise between elevated noise levels and other factors, such as the convenience of living in these locations or making efficient use of land resources to ensure development needs can be met, might be warranted. In such a situation, **development should be designed to achieve the lowest practicable levels in these external amenity spaces, but should not be prohibited.**" (My Emphasis Added).*

- 8.13. As noted above, mitigation has been proposed to reduce noise levels to the lowest practicable levels.

[MB Comment: c\)](#)

- 8.14. In my RLCN I comment that:

"The LPA has not considered the 'significance' of the alleged exceedance (i.e. whether such noise is above a "Significant Observed Adverse Effect Level" (SOAEL))."

- 8.15. AA's response to this comment is:

"Without assessment of the character corrected noise, to the guidance in ProPG, it is uncertain to the effect from the noise from (sic) the existing uses and the significance of the effect is not known".

- 8.16. ProPG does not require consideration of the "*character corrected noise*" for external amenity areas in situations where the noise environment includes a contribution of

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industrial which is present but not dominant. My reasoning supporting this approach is set out in our Noise and Vibration Assessment, my RCLN and explained above. I have also undertaken an objective desk top assessment of noise associated with the extant use of 7 Nestles Avenue which supports that judgement. Furthermore, my judgement indicates that such industrial noise would not be of a magnitude at a “*Significant Observed Adverse Effect Level*”.

[MB Comment: d\)](#)

8.17. In my RLCN I comment that:

“The LPA’s conclusion relating to potential harm to neighbouring uses does not appear to take account of the context of the site.

8.18. AA’s response to this comment is:

“The meaning of this statement is not clear. The context of the development is introducing noise sensitive residential receptors into proximity to (sic) existing noise sources, including industrial/commercial noise from adjacent land uses.”

8.19. As noted earlier, I am rather surprised by AA’s response to this point as explained in Section 2 above and which highlights the importance of context not only in relation to the assessment methodology of BS 4142, but also by governmental planning practice guidance.

[MB Comment: e\)](#)

8.20. In my RLCN I comment that:

“It can therefore be seen that comments made by the Council’s Noise Specialist in relation to Squirrels Trading Estate actually relate to a matter that is not included within the reason for refusal (which specifically deals with alleged harm to the existing use of land to the west of the site)

8.21. AA’s response to this comment is:

“The matter of noise from the Squirrels Trading Estate was raised in additional (sic) to the LPA’s existing concerns, following review of the NVA and concerns over noise from the estate and the cumulative effect of the noise. It is further noted that with the blank northern façade of the proposed development the issues relating to industrial/commercial noise pertain to the west of the site which is the cumulative effect of the industrial/commercial noise from the B2 vehicle workshop

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at 7 Nestle Avenue and MOT testing station and the uses on the Squirrels Trading Estate. Both of which are overlooked by the west façade of the proposed development.”

8.22. This statement does little to explain the disparity between the Council’s reason for refusal and subsequent concerns over the Squirrels Trading Estate. To reiterate, the wording of the reason for refusal specifically identifies *“the development fails to provide **sufficient separation from the western boundary of the site to mitigate against potential noise generating uses on the neighbouring site**”*.

8.23. I also note that the reason for refusal is also expressed in more detail in the Officer Report presented to Committee which states:

“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).”

8.24. In light of the above, it is clear that concerns relating to the existing use of the Squirrels Trading Estate have been *“imported”* into LBH’s reasoning for defending their refusal of the application. However, it is, in my view, unreasonable that having imported such reasoning into its SoC prepared by AA, the SoC does not seek to respond to the additional information and opinion that was provided in relation to this in my RLCN.

9. Conclusions

- 9.1. I note that AA's SoC does not make any *'first hand'* observations regarding the site, neighbouring land uses or present any measurement data from survey work undertaken independently by AA to inform the reasonableness of our assessment or indeed provide their own independent opinion relating to the suitability of the site for the proposed development. This leads me to a conclusion that, at the time of preparing the SoC, AA may not have attended site.
- 9.2. First-hand experience of a site is clearly critical in understanding the *'context'* of a site, In terms of industrial/commercial use, the importance of *'context'* cannot be over-stated. The need to consider context is clearly set out in industry standard design guidance (BS 4142) and governmental planning practice guidance.
- 9.3. AA's SoC asserts that industrial noise must be assessed in accordance with BS 4142. I do not agree with that proposition. The results of our noise survey work and observations during site attendances indicate that the site is exposed to "mixed sources" and that industrial noise is not dominant. In such circumstances, I consider that it is appropriate to consider the "total" ambient noise environment of the site without any particular characterisation of the industrial/commercial noise component. Such an approach is also, in my view, supported by the guidance of BS 4142: 2014 (which clearly outlines that where there is extant industrial and/or commercial sound, it should be recognised that such sound forms part of the acoustic environment and other approaches to that prescribed in the standard may be appropriate); to ProPG guidance and the approaches set out in the government's Planning Practice Guidance.
- 9.4. Whilst I do not consider that AA's suggested "rigid" application of BS 4142 is appropriate, detailed information has been provided to LBH to assist a numerical quantification of industrial noise impacts, i.e. a desk top assessment of the potential impact of noise associated with the extant B2 use adjoining the western boundary of the site (as specifically identified in the reason for refusal). Such assessment re-affirms my professional opinion that operational noise is not dominant and would not have a *"Significant Observed Adverse Effect"* on future occupants of the proposed development.

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- 9.5. Whilst AA suggest that a significant impact may be indicated, I have explained that that judgment is based on an incorrect interpretation of the noise survey data provided to LBH. I have also highlighted other incorrect statements.
- 9.6. Whilst the reason for refusal makes reference to a number of local, city-wide and national planning policies, AA SoC's does not provide any detailed analysis to explain how the site fails to comply with these planning policy objectives, other than the statement made in Section 4.5 of the SoC that:
- "It is therefore uncertain if there is an unacceptable co-location of uses, which would result in a significant adverse noise impact on the proposed development requiring additional mitigation to discharge 'Agent of Change' obligations imposed by paragraph 182 of the NPPF."*
- 9.7. However, as noted earlier, the assessment undertaken which supports this statement does not take account of context and is based on an incorrect assumption which significantly overstate the significance of impact they have assumed.
- 9.8. It is critical to note that the *"agent of change"* principle embodied in paragraph 182 of the National Planning Policy Framework (NPPF) is specifically constructed to avoid the potential for existing businesses having a *"significant adverse effect"* on new development. In essence, noise at a *"significant adverse effect level"* would be considered a *'nuisance'*,⁷ and thus create the risk of statutory or private action which could place unreasonable restrictions (i.e. work/costs necessary to abate the nuisance) on the existing business.
- 9.9. Given the mixed source nature of the site, it is my professional opinion that existing industrial noise characterising the site is not consistent with the definition of SOAEL given in governmental planning practice guidance (i.e. present and disruptive) nor is it consistent with the expected outcomes of noise at such a level (e.g. noise causing a material change in behaviour; having to keep windows closed, where there is no alternative ventilation; sleep disturbance; and/or a change in the acoustic character of the area).
- 9.10. In light of the above, I do not accept that the proposed development fails to comply with paragraph 182 of the National Planning policy Framework, i.e. future occupants will be

⁷ See Paragraph 009, Reference ID 30-009-20190722 of Planning Practice Guidance at <https://www.gov.uk/guidance/noise--2>

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exposed to a significant adverse effect which requires the implementation of specific mitigation.

- 9.11. As explained above, I consider that noise levels characterising the site would be above a “*Lowest Observed Adverse Effect Level*” (LOAEL) and below a “*Significant Observed Adverse Effect Level*” (SOAEL). Planning practice guidance would describe such noise as “*Present and Intrusive*”. However, as noted earlier, it is critical to note that such judgement is reached on the basis of the total ambient noise environment.
- 9.12. Paragraph 180 of the NPPF requires that potential adverse impacts are mitigated and reduced to a minimum. The development responds to this policy through the implementation of the following mitigation:
- Adherence to a good acoustic design process (e.g. use of blank north elevation to avoid any direct overlooking of the Squirrels Trading Estate; orientation of the building in a north-south orientation to minimise the “line of sight” (and this noise levels experienced from the Great Western Mainline);
 - The provision of appropriately specified glazing (which will reduce internal noise levels in line with BS 8233/WHO/ProPG guidance and therefore secure internal condition below LOAEL);
 - The provision of alternative means of ventilation (MVHR) to ensure adequate ventilation is provided without the need for residents to open windows;
 - The provision of communal amenity areas at 4th, 5th and 7th floor level (locating these on the southern side of the building to minimise noise to the lowest practicable level); and
 - The use of glazed balustrades (to provide acoustic screening) and acoustically absorptive soffit linings (to reduce noise reflections) and minimise noise levels in external amenity spaces to the lowest practicable levels;
- 9.13. I therefore reaffirm my professional opinion that that extant land uses do not create an unacceptable co-location of uses, which would result in a significant adverse noise impact on the proposed development requiring mitigation to discharge ‘Agent of Change’ obligations imposed by paragraph 182 of the NPPF.
- 9.14. The permitted residential development currently at the former Nestle factory site also provides important context to the recent changes to the government’s Planning Practice Guidance. It is, for example, difficult to contend that new residential development may constrain the future activities of industry, when residential development with a similar

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or more direct exposure to the same sources of noise has already been permitted in similar proximity.

- 9.15. In light of the above comments, I do not consider that the Reason for Refusal 5 is reasonable or justified.