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<b>Agenda Item:</b>	5.3
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<b>Site:</b>	Smithy Farm, Mill Lane, Gratwich
<b>Proposal:</b>	Continued use of part of farmyard for dog breeding (Class Sui Generis), retention of kennels and erection of a whelping shed and store and proposed provision of an acoustic fence enclosure along with associated vehicular access and parking facilities

### Report of Head of Service (Section 151 Officer)

This report has been checked on behalf of Legal Services by Sherrie Grant

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### [Hyperlink to Application Details](#)

<b>Application Number:</b>	P/2019/01342	
<b>Planning Officer:</b>	Emma Carrington	
<b>Type of Application:</b>	Detailed Planning Application	
<b>Impact on Heritage Assets under S66(1) and S72</b>	No material impact	
<b>Applicant:</b>	Mr and Mrs Emery	
<b>Ward:</b>	Kingstone	
<b>Ward Member (s):</b>	Councillor Greg Hall	
<b>Date Registered:</b>	12 November 2019	
<b>Date Expires:</b>	Original expiry date <b>9 January 2020</b> ; with the determination date extended to 28 August 2020 provided for the submission of revised and additional information (and associated re-consultation processes) and reporting the application to Planning Committee.	
<b>Reason for reporting application to committee</b>	The level of local interest in the application	
<b>Recommendation</b>	<b>Grant permission subject to conditions</b>	

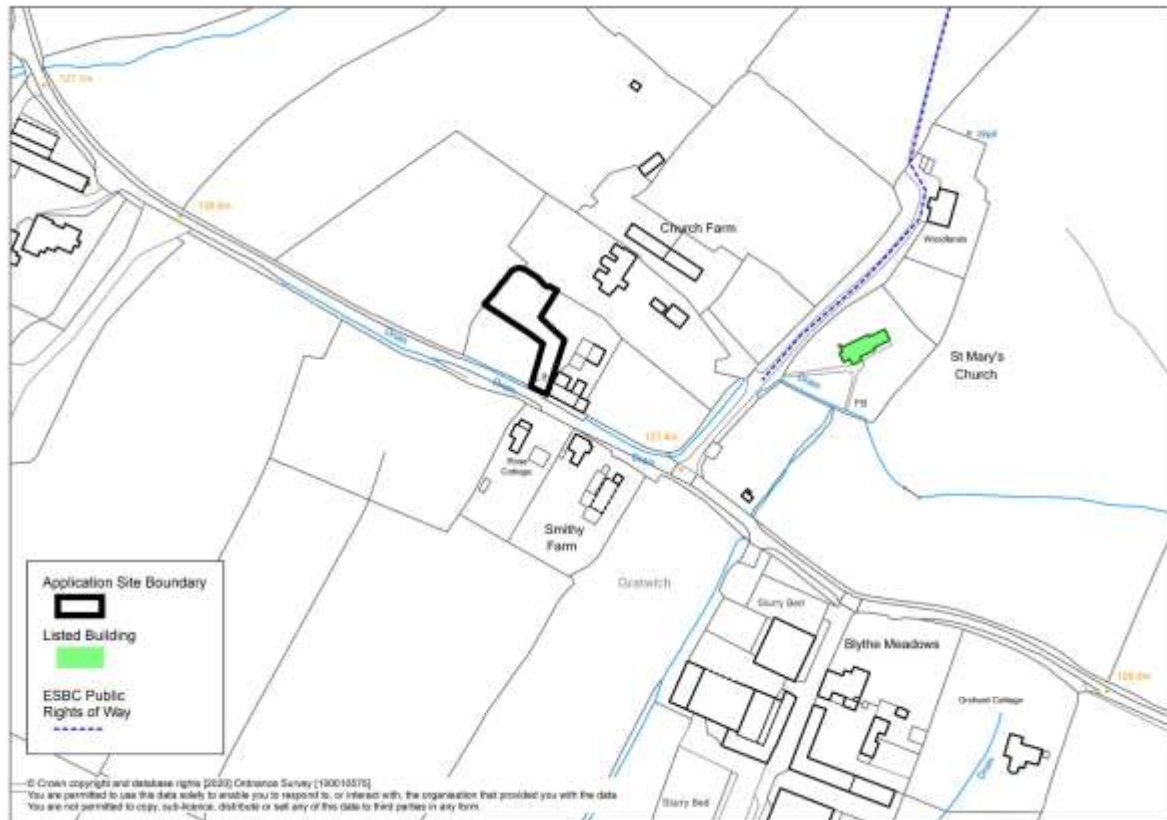
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## 1. Executive Summary

- 1.1 The application site at Smithy Farm is located on the northern side of Mill Lane at the western edge of the dispersed hamlet of Gratwich in the Kingston Parish. The land is part of a smallholding of some 21 acres.
- 1.2 The site is adjoined immediately to the north by Church Farm Cottage. To the south-east on the opposite side of Mill Lane is Rose Cottage and Smithy Farm (house); with the latter being in the ownership of a member of the applicants family. There are other dwellings in proximity to the site to the north, north-east, south west and south-east. The Grade II listed Church of St Marys lies to the east on Church Lane.
- 1.3 The application scheme is a full submission which seeks approval for the continued use of part of the farmyard for dog breeding (a Sui Generis use), the retention of kennels and proposed erection of a whelping shed and store. During the course of the application the scheme has been amended and now also provides for an acoustic fence screen around the kennels/whelping shed. A new vehicular access along with car parking and associated turning facilities are also proposed. The original application referred to dog training activities but this has now been omitted from the scheme.
- 1.4 Statutory consultees have raised no objections that cannot be addressed by the imposition of planning conditions. Kingstone Parish Council in their most recent response have re-confirmed as per their original comments that they believe that the application should be refused as there is overwhelming local opposition to the planning application on the basis of noise impact, dog fouling and the loss of amenity/enjoyment to the amenities of local residents. The Chairman of the Parish Council in a response to the (first) additional/revised details also pointed that as well as being *against the application itself parishioners feel in particular aggrieved that ESBC have allowed a planning application to be progressed with erroneous ownership details, and less than satisfied to the response to same*” (see paragraph 1.6 below and more fully in paragraph 4.9 of this report).
- 1.5 Representations have been received during the application process from a total of 12 No. local residents/interested parties (at 10 No. addresses); one representation being in support as having no material impacts on the residents concerned; and the remaining raising objections on grounds of noise, disturbance and pollution, highway safety and drainage implications and animal welfare (including impacts of enclosure fencing) as well as questioning the validity of the application having regard to the ownership certificate submissions. The documentation submissions have been substantive and are summarised in section 6 below. One of the local MPs has also written directly to point out that one of his constituents has written directly to raise their concerns about the proposal on the basis that it was being progressed by East Staffordshire despite being invalid.
- 1.6 Insofar as the validation of the application is concerned this has been verified by the Council’s Solicitors further to legal documentation being provided by the applicants Solicitors. The document confirms as per the Certificate B submission - provided a revision during the application process - that the site at Smithy Farm is owned by a member of the applicants family.

The application as originally submitted incorrectly indicated the site was owned by the applicants themselves. The correction of such ownership certificates during the application process is a legitimate procedure provided the rights of the landowners concerned have not been compromised and that more than 21 days have elapsed since the serving of the requisite notice. In this case, with the owner being a member of the applicant's family and the notice having been served in mid/late February 2020 due processes have been followed.

- 1.7 With regard to the planning merits of the case it is considered that on balance the scheme in principle represents sustainable development and fits the overall aims of the Development Plan; in particular Policies SP1, SP8 and SP14 as the use is one that would be reasonably located in a rural locality subject to material planning impacts being successfully addressed.
- 1.8 In terms of their physical impacts, it is considered that neither the unauthorised kennels, nor the proposed whelping shed and the proposed associated acoustic fencing enclosure are of a scale that would be significantly detrimental to residential amenities in terms of having any significant overbearing or overshadowing impacts. The proposal as revised will also not have an unacceptably adverse impact on the existing highway network and would provide appropriate access, parking and turning facilities to serve the development. It is also concluded that the scheme will not impact negatively on the biodiversity of its environs and that it could provide for appropriate drainage facilities. The scheme would not significantly detract from the visual amenities of the locality as the buildings and associated fencing are of scale and appearance that could reasonably form part of a farmyard area in a rural locality.
- 1.9 With regard to the use of the dog kennels and the associated activities being undertaken at the site, including traffic and people movements, it is considered that subject to the provision of necessary and commensurate mitigation measures (to be secured by conditions) as have been prepared in conjunction with the Borough Councils Environmental Health Section that the development would not have a sufficiently adverse impact on the amenities of surrounding and nearby residents to warrant a refusal of planning permission
- 1.10 In light of the above conclusions on the planning merits of the case the application is recommended for approval subject to conditions.
- 1.11 **Members are advised that the above is a brief summary of the proposals and key issues contained in the main report below which provides full details of all consultation responses, planning policies and the Officer's assessment, and Members are advised that this summary should be read in conjunction with the detailed report.**

Map of site**2. The site description**

- 2.1 The application site comprises part of the farm yard area to the farm/smallholding at Smithy Farm in Gratwich within a predominantly rural area in the parish of Kingstone. The site lies on the northern side of Mill Lane, a narrow lane, from which it takes its vehicular access. There are mature hedgerows to the frontage of the site in its western area as a continuation of those to the fields running alongside Mill Lane. The western boundary itself is more open.
- 2.2 The application site comprises an area of some 0.2 ha with the ground levels being relatively flat within the site itself. There are mature brick built outbuildings occupying the south-eastern area of the yard area and which front onto Mill Lane. Behind these outbuilding are a series of ramshackle structures which occupy the eastern area of the site.
- 2.3 The recently constructed kennels (the subject of this retrospective application) are situated in the north-western area of the site. The farmyard area is in a relatively untidy state and the access into the site is unmade. There are various vehicle body parts and piles of rubble etc. in the western area.
- 2.4 Immediately to the north of the site is Church Farm Cottage, and to the south-east on the opposite side of Mill Lane is the mature two storey

dwelling at Rose Cottage. Smithy Farm (house) – which is presently vacant - lies immediately to the east of Rose Cottage and is in the ownership of a member of the applicants family (whereas Rose Cottage is in separate ownership).

- 2.5 There are other residential properties in proximity to the site within the dispersed hamlet. To the south-east are Blythe Meadows Farm and Orchard Cottage; and further on eastwards from those is The Old Rectory. To the west and south-west are intervening field areas until the large farm complex is reached at Brookhouse Farm and a dwelling known as River View.
- 2.6 The Grade II listed St Marys Church lies some 125 metres from the site on the eastern side of Church Lane. The dwelling at the Woodlands lies to the north of the church and the dwellings at Swallow Barn and Church View Barn lie opposite the Church (and immediately to the north of Church Farm Cottage).
- 2.7 The application site lies outside settlement boundaries as defined in the adopted Local Plan; as does the whole hamlet of Gratwich which is considered to be countryside for the purposes of Local Plan policies.

### **3. Relevant planning history**

- 3.1 In October 1985 an application (ref: PA/03741/03) for the siting of a mobile home at the site was refused on the grounds that there was agricultural justification for the unit and it would be detrimental to the appearance and character of the surrounding rural area.

### **4. The Proposal**

- 4.1 The application is a full submission which seeks approval for the continued use of part of the farmyard for dog breeding (a Sui Generis use), the retention of kennels and the proposed erection of a whelping shed and store along with the provision of new access, car parking and turning area. The scheme was amended during the application process to omit a dog training element.
- 4.2 The dog breeding kennels - as proposed to be retained - are located in the north-western area of the site and are constructed of painted blockwork with a shallow pitched roof (with a maximum height of 2.7 metres). The building measures approx. 6.0 m in width x 4.6 m in depth.
- 4.3 The proposed whelping shed/store is also proposed to be located in the north-western area of the site; being some 5.0 metres from the kennels (to the east). The structure, which is to be constructed of painted blockwork and has a shallow lean to roof (max height of 2.3 metres), would measure approx. 5.0 m in width x 5.0 m in depth.
- 4.4 The scheme proposes that a 2 metre high acoustic fence be erected to enclose the existing kennels and proposed whelping shed/store.
- 4.5 A new access is proposed to serve the development along with 2 No. car parking spaces and a turning area within the site (to the south of the

kennels/whelping shed). The gates to the site access are to be set back from the back of the public highway by some 5.0 metres. The access and car parking areas are to be hard surfaced.

### **List of supporting documentation**

- 4.6 The following documents have been provided as part of the application:
- Application Forms (including Ownership Certificate A at point of validation) and in turn 'Certificate B' and associated documentation once it was established the site was owned by a member of the applicant's family.
  - Location Plan.
  - Proposed Site Layout Plan including drainage details (Original and Revised versions)
  - Proposed Building Elevations and Floor plans with acoustic fencing elevations
  - Acoustic fencing specification sheet.
  - Planning Statement (and supplementary submissions including likely traffic generation and access arrangements)
  - Noise report (Original and Revised submissions)
  - Site Management Plan
- 4.7 The revised layout plans were submitted in response to the comments of the County Highway Authority. The Noise Assessment was requested further to the original submission of the application and in turn there have been supplementary submissions at the request of the ESBC Environmental Protection Officers. The revised version of the Noise Assessment was also accompanied by a Site Management Plan. Officers have provided guidance to the applicant's agents in terms of the level and quality of information required to be submitted to seek to provide that the Local Planning Authority can make a fully informed assessment of the scheme.
- 4.8 The assessment findings of all the current application documents are dealt with in section 8 onwards below.
- 4.9 Also during the application process, and in response to concerns being raised in the initial public consultation exercise that the applicants were not the actual owners of the application site having regard to the Land Registry records, the applicants served a Certificate B which indicated that the land was actually owned by another family member. This clarification came at the same time as the original noise report and revised highway plans submission and was followed up with a letter and documentation from the applicant's solicitor (as the Land Registry indicated ownership being in the name of another (deceased) family member). This ownership information - although it has continued to be challenged by interested parties - has been verified by the Councils Solicitors who are content that the application with the Certificate B as served (and completed) represents a valid submission to be determined by this Authority under the Planning Acts.
- 4.10 It is also pointed out that the Borough Council's Environmental Protection Officers have concurrently been considering an application for a dog

breeding licence. Such a licence cannot be issued until such time as any site has the benefit of a planning permission.

## 5. Consultation responses and representations

5.1 A summary of the consultation responses on the original submissions and the revised and additional submissions are set out below:

ORIGINAL Nov 2019		
Statutory and non statutory consultee		Response
5.2	Kingstone Parish Council	<p>The Parish Clerk stated that:-</p> <p><i>“At an EGM convened on 12<sup>th</sup> December 2019, Kingstone Parish Council resolved to recommend that the above planning should not be granted.</i></p> <p><i>This position was reached following demonstration by parishioners from Gratwich that there is overwhelming local opposition to the planning application, for the following reasons: -</i></p> <p><b>Noise</b> <i>There is reportedly constant barking from the site, which is not occupied and attended to once daily by the breeder</i></p> <p><b>Fouling</b> <i>Dog fouling has increased in the area surrounding the property and has been linked to this operation.</i></p> <p><b>Loss Of Amenity / Enjoyment</b> <i>The above coupled with dogs being walked off leads, and the anti-social hours at which the proprietor tends to the animals has led to other residents suffering loss of amenity from their properties.</i></p> <p><i>I trust that the above comments will be taken into account and that we as various tiers of local government can demonstrate that we really do take local concerns into account when considering planning applications.”</i></p>
5.3	SCC Highways	<p>Raised objection on the basis the scheme as detailed did not demonstrate the development would be acceptable but set out the information required for a fuller assessment to be made on highway safety grounds.</p>
5.4	ESBC Environmental Health	<p>Requested a noise assessment and site management plan to enable a final consultation response to be provided.</p>
REVISED February 2020		(inc. Original Noise Assessment submission)

Statutory and non statutory consultee		Response
5.5	Kingstone Parish Council	<p>The Chairman of the Parish Council commented that:</p> <p><i>“Kingstone Parish Council remain unanimous in their opposition to this planning application based on the grounds I outlined in my previous email that I copy below.</i></p> <p><i>Feeling among our parishioners is very strong, not only against the application itself but, dare I say, the way it has been handled by ESBC. They feel in particular aggrieved that ESBC have allowed a planning application to be progressed with erroneous ownership details, and less than satisfied to the response to same. “</i></p>
5.6	SCC Highways	<p>Required that the applicants clarify the visibility splays and provide additional information on the use of the site to aid the assessment of highway safety.</p>
5.7	ESBC Environmental Protection	<p>(In summary) commented in respect of the (original) submitted noise report that having regard to surrounding properties – and taking into account factors at the site - that the worst-case NSR is Rose Cottage (to the south west of the site), where the noise levels at the receptor were calculated as; Daytime Noise – Dog Facility = 44.6dB(A); Whelping Shed = 48.5dB(A); and the Nighttime Noise – Dog Facility = 33.0dB(A); Whelping Shed = 36.9.dB(A).</p> <p>The assessment went on to advise that <i>“with regards to internal noise levels, the report refers to 10-15dB being the typical sound reduction afforded by the building envelope with windows partially open. This affords attenuation, and suggests internal amenity levels are met (when compared with a criteria based on a steady noise level). External amenity noise criteria for a steady noise source were also deemed to have been met.”</i></p> <p>Environmental Health also concluded, however, that the submitted report did not provide sufficient data, appropriate comparisons or sufficient clarification of activities on the application site for a full assessment of the impact of the scheme on surrounding residential properties to be considered. The Environmental Health Section thus stated that a bespoke assessment that incorporates the appropriate elements of standards is required and that these should (in summary) address the following :-</p> <ul style="list-style-type: none"> <li>• Details of any dog training activities</li> <li>• Confirmation as to whether the kennels facility was at full occupancy during noise measurement period</li> </ul>



		<p>and if necessary scaled up to reflect a worst-case scenario.</p> <ul style="list-style-type: none"> <li>• The consideration of site background in the absence of the dog facilities (although the report makes reference to the fact that the site is very rural, without significant influence from traffic) As such it was pointed out that <i>“the use of a surrogate background level, in order to be able to compare the total impact of the dog facilities against a typical background level, should be included within the assessment, and this should be related to the likelihood of nuisance to be caused (incorporating character penalties where appropriate) as described in BS4142.”</i></li> <li>• The use of shorter assessment periods (where noise is not ‘smoothed out’ over 16 or 8 hours) would be preferable.</li> </ul> <p>Environmental Health also commented that :-</p> <p><i>“The report conclusion refers once again to BS8233, with the target noise levels related to steady external noise sources. The report acknowledges that the noise from the dog facility “will be anything but steady....” and I agree with this statement, but the second half of this sentence states “thereby having a reduced impact”. I do not support the latter half of the sentence, as a non-steady noise source with the same acoustic energy as, for example 48.5dB(A), will have loud and quiet sections, with the potential to cause greater annoyance. It is acknowledged that the daytime LAeqs were measured as a 1 minute duration, these are averaged out over either 16 or 8 hours in the assessment, and does therefore not take sufficient account of the impulsive nature of the noise. There is no consideration of LAFmax at the site. The method chosen in the report, uses BS8233 to ‘smooth out’ the effect of the barking over 16 hours, effectively presenting the average sound energy as the level experienced by the NSRs, and then goes on to counter-intuitively suggest that the variability within the measurement period means it has less impact. I do not consider the BS8233 method to be appropriate for assessing noise from the dog facilities. A preferable method would be to incorporate LAFmax into the assessment, and be more reflective of the range of noises experienced at the NSRs.”</i></p>
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<b>SECOND REVISED June 2020</b>	<b>(inc. Revised Noise Assessment submission and site management)</b>
<b>Statutory and non</b>	<b>Response</b>

statutory consultee		
5.8	Kingstone Parish Council	Comments that <i>“(it) maintains their position as given in their letter on 13th December 2019 (namely in relation to the original application submission and set out above at paragraph 5.2). They do not find that the installation of 2m sound barriers as described make the application any more tenable and indeed when considering loss of amenity and visual impact, even less so.”</i>
5.9	SCC Highways	<p>Consider that on balance the level of traffic likely to be generated by the development, even on the substandard roads leading to the site, would not decrease road safety to such an extent so as to warrant a refusal of planning permission.</p> <p>The County Highway Authority therefore recommended that if the application is to be approved it should be subject to conditions requiring that the access gate being set back from the public highway and the parking and turning area facilities being provided as per the submitted plans.</p>
5.10	ESBC Environmental Protection	<p>Comment that :-</p> <p><i>“After careful consideration of the information submitted by all stakeholders as part of this application, this Department is of the opinion that the proposal will not have a significant adverse noise impact, provided that the acoustic fencing is in place and the noise management plan is reasonably adhered to.</i></p> <p><i>We are of the opinion that the acoustic fencing will provide sufficient noise mitigation to ensure the relevant standards are met, including peak/max levels, at the nearest properties.</i></p> <p><i>Although no specific formal guidance exists for predicting kennel noise, this department is satisfied that both the existing kennel and the whelping shed have been adequately assessed.</i></p> <p><i>In our view and experience, the puppies in the whelping shed will not cause a significant noise issue and in addition, the number of litters will be restricted through the Breeding Licence.</i></p> <p><i>From an environmental health perspective, the acoustic fencing will meet the welfare standards in terms of access to the natural light requirements of the licensing legislation and we will be requiring additional extended exercise periods for the dogs as part of any Breeding Licence conditions.</i></p>

		<p><i>The Department has issued a number of Breeding Licences for premises of a similar scale, including in residential areas and we have not needed to take formal action in relation to noise. Although recent noise complaints have been received for this particular site, this Department has not witnessed evidence of a statutory nuisance.</i></p> <p><i>We accept the human response to dog barking is subjective and there will be some audible barking on occasions. Whilst there can never be complete certainty regarding impact, we feel on balance that this will be acceptable and it would be unreasonable to refuse this application.</i></p> <p><i>Should there be any unreasonable noise impact in the future associated with the proposal however, additional controls and measures exist to address this through both licensing and statutory nuisance legislation covered by the Environmental Health Department.”</i></p> <p><b>Detailed information in relation to this Environmental Health summary can be found in Appendix 1 of this report.</b></p>
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## 6. Neighbour responses

- 6.1 The residents of the adjoining properties were formally notified on the original consultation and a site notice posted close to the entrance to the site on Mill Lane.
- 6.2 During the application process, which as noted above has involved three separate consultation exercises, at total of 12 No different local residents (in 10 No. properties) have submitted representations in respect of the application scheme. The various representations have - in support of points being made - included photographs, extracts from legislation from central government - and - other websites, local newspaper articles, academic research information and land registry extracts.
- 6.3 One letter of support was received (at the first re-consultation stage) stating that there were no issues with the application as it does not affect the sleep of the residents concerned and the noise is very limited; being nothing that you would not expect from living in the country . It is also pointed out that the dogs are well cared for and are walked daily.
- 6.4 The other representations received have all raised objections to the scheme. The most recent responses (further to the second re-consultation – with its revised noise report and the site management plan) – of which

there were 8 No. - emphasised that the residents believe that their submissions on the previous submissions on this application remain wholly relevant as the applicants had failed to address them. The objectors emphasise that those submissions should continue to be considered as part of the application determination process.

- 6.5 The objections to the scheme raised by the local residents over the course of the application are summarised below and in doing so it is pointed out the documentation received has been substantive (for example in the relation to the most recent consultation the letter received from the residents ran to some 15 typed pages along with 21 pages of supporting documentation including photographs of the applicants activities, land registry information (also previously forwarded) and an academic paper on tonal noise).

**Summary Table of Objections to the Scheme (across all three neighbour consultations exercises of November 2019, February 2020 and June 2020.**

<b>Summary Table of Objections to the Scheme (across all three neighbour consultations exercises of November 2019, February 2020 and June 2020.</b>	
<b>Highways</b>	<ul style="list-style-type: none"> <li>• The applicants presently use the passing bay on the narrow lane when they park up to visit the site making it difficult and hazardous for other traffic using the lane.</li> <li>• It is questioned as to whether the parking provision is sufficient to accommodate the applicants and visitors parking as the applicants tend to visit in different cars.</li> <li>• It is questioned as to whether the parking and turning facilities will be able to be physically provided on the site as the yard area is presently untidy.</li> </ul>
<b>Residential amenities (Noise)</b>	<ul style="list-style-type: none"> <li>• The noise generated by dogs barking is detrimental to residential amenities by reason of times it occurs (in particular the early hours).</li> <li>• If an acoustic fence is required it demonstrates that the site is not suitable for the dog kennel use.</li> <li>• It is questioned how can it be ensured that the specified acoustic fencing will actually be installed as proposed and then retained.</li> <li>• It is questioned whether the fence is effective in use and not just in laboratory conditions. What will happen if the fence does not work ?</li> <li>• In addition to the dogs in the kennels the subject of this application the applicants keep 4 No. dogs at Smithy Farm (house) which also give rise to unreasonable noise impacts on local residents.</li> <li>• The applicants do not live in Gratwich and the times of their visits in the morning cause the dogs to bark with the arrival of their cars which also cause noise and disturbance.</li> <li>• The absence of the owners at the site exacerbates the noise nuisance.</li> </ul>

	<ul style="list-style-type: none"> <li>• The applicants do not attend the site at the times as has been set out in the application documentation; in particular activities differ noticeably at weekends.</li> <li>• It is questioned as to why the applicants cannot attend to the dogs at 7.30am rather than as early as 4.30am. Such early visits cause the dogs to bark exacerbating disturbance to local residents.</li> <li>• Early visits would also make it difficult for the Council to monitor any noise management plan. It is considered that dogs should be walked more reasonably at 7.30am than as early as 4.30am.</li> <li>• It is also pointed out that the visits to the site by the applicants are more irregular than suggested in the application document and appear to be irrational which causes unnecessary additional noise and disturbance to local resident in terms of barking and associated activities of the applicants.</li> <li>• The contents of the noise assessment are challenged on a number of ‘grounds of fact’ including in terms of the number and types of dogs present, whether the impact of the maximum number of dogs has been addressed, failure to address tonal noise impact, no comparison has been made with an urban area and whether the maximum noise levels have been factored in. These flaws means that the report does not reflect the true representative noise impact of barking dogs on local residents.</li> <li>• The noise report does not reflect real life experiences and had not provided meaningful conclusions other than highlighting is quiet rural area and without traffic noise</li> <li>• The report has not addressed the ESBC issues about the nature of the impact of barking which is considered to relate to tonal noise.</li> <li>• It is questioned whether the noise report has covered all relevant legislation and it is requested the ESBC Environmental Heath confirm that is the case.</li> <li>• The report only identifies three nearby properties (Rose Cottage, Church Farm and Smithy Farm) and thus omits 8 other properties as so paints an inaccurate picture in terms of the number of properties affected by the scheme. Further it is questioned whether the existing piles of rubble and rubbish within the site have some absorbance qualities which when removed have not been accounted for in the submissions.</li> <li>• It is questioned what contingency plans the applicants have in place for a business that is all year round to provide of animal welfare; for example to address weather conditions, illness, Covid 19, the future motivation of the applicants, holiday etc..</li> </ul>
<b>Visual</b>	<ul style="list-style-type: none"> <li>• The wooden acoustic fencing would be out of keeping</li> </ul>

<b>Amenities</b>	<p>with the locality</p> <ul style="list-style-type: none"> <li>• The existing farmyard area within which the kennels are located is used as a dumping ground for vehicle bodies, old camper van, skips, piles of rubble/rubbish etc. which is unsightly on the approach to Gratwich.</li> </ul>
<b>Pollution</b>	<ul style="list-style-type: none"> <li>• There is no reference to waste disposal</li> <li>• It is necessary for proper septic tank/waste management scheme to be put in place to deal with dog waste, chemical/medical waste, the materials used for washing down the kennels etc.</li> <li>• It is questioned whether the ESBC Environmental Health section have addressed pollution matters.</li> </ul>
<b>Surface Water Drainage</b>	<ul style="list-style-type: none"> <li>• The drainage submissions are vague – with them being merely notes on the drawings – whereas without adequate drainage this development with its hard surfacing would impact negatively on local drainage facilities which are already at capacity.</li> <li>• These drainage concerns have not been addressed despite being previously pointed out by local residents.</li> </ul>
<b>Other Matters</b>	<ul style="list-style-type: none"> <li>• It is questioned as whether the use of the field areas at Smithy Farm for exercising the dogs at the kennels represents a change of use of the land for which planning permission is required.</li> <li>• The use of the field areas means that dog fouling is likely on those areas.</li> <li>• Dog fouling frequently left in the land and outside properties.</li> <li>• Dogs are not walked on a lead and are out of control.</li> <li>• Not all dogs are regularly exercised or socialised</li> <li>• Cats are breeding out of control and two horses are not attended to.</li> <li>• It is questioned whether the erection of the acoustic fencing would meet animal welfare standards and thus whether the RSPCA and Trading Standards have approved it.</li> <li>• The application submissions incorrectly suggest there have been no concerns raised in the last 20 years the applicants have been breeding/looking after dogs. There have been long held concerns in relation to this matter</li> <li>• It is contended that dogs bred in Gratwich have been sold from an address in Uttoxeter.</li> <li>• The applicants started the present dog breeding before securing a licence and planning approval and therefore before consultation with local residents. The kennels were built without approval in 2018.</li> <li>• The ESBC offer to install noise monitoring at neighbours properties (to collect data for use with the application) would not give a fair reading as the site is not operating at the capacity set out as being possible</li> </ul>

	<p>by the applicants in their application. It is pointed out that by comparison during the summer of 2019 very considerable noise was experienced by local residents. Noise monitoring equipment would also not capture the impacts of tonal noise.</p> <ul style="list-style-type: none"> <li>• It is considered that the public cannot fully interrogate the applicant's submissions without being aware of all correspondence involving the Council and the applicants/applicants representatives (including correspondence between Council sections).</li> <li>• The applicants noise statement advises there is no information on training and thus it is queried what question was asked by the Council on the matter.</li> <li>• The applicants indicate that they will be occupying Smithy Farm (house) but there are no guarantees that will happen.</li> <li>• It is incorrectly stated that farm dogs are breed at the site.</li> <li>• This retrospective planning application offers the opportunity for local residents to work with other council sections (environment) and external agencies to address wider concerns surrounding the site.</li> </ul>
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6.6 A letter was received from a local MP (Michael Fabricant) drawing the Councils attention to the fact that he had received a letter from a constituent raising objections to the scheme, with particular reference to the scheme being 'unlawful' and 'retrospective'. The objector concerned was one of those parties that has raised objections directly with the local planning authority and thus those objections are set out in the summary table above. Michael Fabricant made no comments in relation to the issue raised, but asked to be kept up to date with the situation.

## 7. Policy Framework

### National Policy

- National Planning Policy Framework (NPPF)
- National Planning Policy Guidance

### Local Plan

- Principle 1: Presumption in Favour of Sustainable Development
- SP1: East Staffordshire Approach to Sustainable Development
- SP8 Development Outside Settlement Boundaries
- SP14 Rural Economy
- SP24 High Quality Design
- SP25 Protecting the Historic Environment: All Heritage Assets
- SP27 Climate Change, Water Body Management and Flooding
- SP29 Biodiversity and Geodiversity
- SP30 Locally Significant Landscape

- SP35 Accessibility and Sustainable Transport
- DP1 Design of New Development
- DP5 Historic Environment
- DP7 Pollution and Contamination

## 8. Assessment

8.1 The main issues in the determination of this application are considered to be as follows :-

- Principle of the development;
- Impacts on visual amenities;
- Impacts on residential amenities;
- Highway safety
- Flooding and Drainage implications;
- Impacts on biodiversity;
- Impacts on heritage assets.

## 9. Principle of the Development

9.1 The NPPF states that at the heart of the National Planning Policy Framework is a presumption in favour of sustainable development, which should be seen as a golden thread running through both plan-making and decision-taking. Paragraph 11 of the NPPF states that for decision-taking this means:

- approving development proposals that accord with an up to date development plan without delay; and
- where there are no relevant development plan policies, or the policies which are most important for determining the application are out of date, granting permission unless:
- the application of policies in the Framework that protect areas of assets of particular importance provides a clear reasons for refusing the development proposed; or
- any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.

9.2 Annex 1 of the NPPF states that 'existing policies should not be considered out of date simply because they were adopted or made prior to the publication of the Framework. Due weight should be given to them, according their degree of consistency with the NPPF. The closer the policies in the plan to policies in the framework, the greater the weight that may be given'

## 10. Local Plan Policies

10.1 The policies in the Local Plan provide a clear framework to guide sustainable growth and the management of change, thereby following the Government's presumption in favour of sustainable development.

10.2 Strategic Policy 1 sets out the East Staffordshire Approach to Sustainable Development. Principles listed in the policy include social, environmental



and economic considerations to be taken into account in all decision making where relevant. The principles are:

- located on, or with good links to, the strategic highway network, and should not result in vehicles harming residential amenity, causing highway safety issues or harming the character of open countryside;
- it is convenient and safe to walk, cycle and travel by public transport between (and for larger sites, around) the site and existing homes, workplaces, shops, education, health, recreation, leisure, and community facilities and between any new on-site provision;
- retains, enhances, expands and connects existing green infrastructure assets into networks within the site and within the wider landscape;
- re-uses existing buildings where this is practicable and desirable in terms of the contribution the buildings make to their setting
- integrated with the character of the landscape and townscape, provides for archaeological investigation where this is appropriate and conserves and enhances buildings of heritage importance, setting and historic landscape character;
- designed to protect the amenity of the occupiers of residential properties nearby, and any future occupiers of the development through good design and landscaping;
- high quality design which incorporates energy efficient considerations and renewable energy technologies;
- developed without incurring unacceptable flood risk or drainage problems and uses Sustainable Drainage Systems (SUDS) where appropriate;
- does not harm biodiversity, but rather enhances it wherever possible, including increasing tree-cover, especially as part of the National Forest;
- creates well designed and located publicly accessible open space;
- would demonstrably help to support the viability of local facilities, businesses and the local community or where new development attracts new businesses and facilities to an area this does not harm the viability of existing local facilities or businesses;
- would contribute towards the creation of sustainable communities through the provision of a mix of housing types and tenures;
- uses locally sourced, sustainable or recycled construction materials (including wood products from the National Forest where this is appropriate), sustainable waste management practices and minimises construction waste;
- safeguards the long term capability of best and most versatile agricultural land (Grade 1, 2 and 3a in the Agricultural Land Classification) as a resource for the future; and
- would result in the removal of contamination and other environmental problems associated with the site.

10.3 Strategic Policy 8 provides guidance and criteria on how to deal with development in the countryside and is relevant in this case. This policy states that outside development boundaries planning permission will not be granted unless:

- essential to the support and viability of an existing lawful business or the relation of a new business appropriate in the countryside in terms of type

- of operation, size and impact and supported by relevant justification for a rural location; or
- providing facilities for the use of the general public or local community close to an existing settlement which is reasonably accessible on foot, by bicycles or by public transport; or
- in accordance with a ‘made’ Neighbourhood Plan; or
- development under the Rural Exception Sites policy
- Appropriate re-use of Rural Buildings following guidance set out in the Rural Buildings SPD; or
- Infrastructure development where an overriding need for the development to be located in the countryside can be demonstrated; or
- Development necessary to secure a significant improvement to the landscape or the conservation of a feature of acknowledged importance; or
- Provision for renewable energy generation, of a scale and design appropriate to its location
- Otherwise appropriate in the countryside

(Where a scheme meets these criteria Policy SP8 goes on to list a number of other impact criteria which addressed further below in this assessment).

10.4 Strategic Policy 14 of the Local Plan in terms of the rural economy states:

***“Rural Economy***

***New provision***

*Within the Tier 1 and 2 settlement boundaries and rural industrial estate boundaries, employment development, including extensions to existing premises, mixed use development which would allow for an element of home working and change of use to employment development will be approved if the development:*

*(i) does not unduly affect the character of the settlement, amenity of neighbouring properties and will not detract from the environment; and*

*(ii) is in accordance with other Development Plan policies. Permission will be given for new employment development outside strategic or local service villages and rural industrial estates if it meets the criteria of Strategic Policy 8, or there are exceptional reasons why it cannot be located in these villages or in established urban employment locations.*

*Before new buildings are proposed, applicants should investigate the viability and suitability of re-using redundant buildings on-site (see ‘Re-use of Redundant Rural Buildings SPD’) and demonstrate to the Council that none were viable or suitable.*

*Farm diversification proposals will be supported where they can make a long-term contribution to sustaining the agricultural enterprise as a whole and where the proposal is consistent with its rural location in terms of use, setting and scale. Within the National Forest as shown on the Policies Map, development directly related to the woodland economy will be considered favourably where it is of a scale and environmental impact that is compatible with the character of its rural location.*

### **Assessment**

10.5 The proposed development is located within an existing farmyard area on a farm/smallholding comprising a total of some 20 acres. The dog kennel use therefore occupies land whereby animals, albeit livestock, would not unusually be expected to be housed and whilst the existing (unauthorised) and proposed associated structures are new buildings it is considered that in overall terms the proposed development would in principle comply with the aims of Policies SP1, SP8 and SP14 of the Local Plan. It is nevertheless necessary to take into account the technical impacts also outlined in these policies and this detailed evaluation is set out below.

## **11. Impact on Visual Amenities**

11.1 The NPPF attaches great importance to the design of the built environment. Good design is a key aspect of sustainable development, is indivisible from good planning, and should contribute positively to making places better for people. The NPPF states that permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions.

11.2 Strategic Policies 1 and 24, along with the supplementary paragraphs to Policy SP8, indicate that development proposals must contribute positively to the area in which they are proposed. The policy lists a number of criteria developments are expected to achieve including creating a sense of place, reinforcing character, reflecting densities and where possible minimise the production of carbon through sustainable construction. Strategic Policy 30 states that development proposals will be expected to demonstrate that they have taken into account the Landscape Character Assessment for Staffordshire and consist of a scheme which reflects the landscape character and where possible enhances the landscape quality

11.3 Policy DP1 of the Local Plan re-iterates the design principles set by Policy SP24 stating that development must respond positively to the context of the surrounding area, exhibit a high quality of design and be compliant with the East Staffordshire Design Guide.

11.4 The East Staffordshire Design Guide requires the design of development to demonstrate a strong, considered and sensitive response to its context. Design which is relevant to the site and wider context will be important, as this can support local distinctiveness.

11.5 Local Plan Policy SP8 of the East Staffordshire Local Plan seeks amongst other things to ensure that development is appropriate in terms of scale, massing and design and would not have an adverse impact upon the character of the area (including design, materials and landscaping being appropriate and not introducing considerable urban form).

### **Assessment**

11.6 The existing kennel building and proposed whelping shed, are in their scale, relatively modest structures – with maximum heights of 2.7 and 2.3

metres in height respectively and will be enclosed by a 2.0 metre high timber boarded acoustic fence. The structures will be accommodated within an existing farmyard area and are set some 5.0 metres back from the road frontage and having regard to this visual context it is not considered that the development as proposed would significantly detract from the character of this locality.

11.7 As such it is therefore considered that the scheme complies with the provisions of Local Plan Policies SP1, SP8, SP24, SP30 and DP1.

## **12. Impact on Heritage Assets**

12.1 Paragraph 184 of the NPPF states that Local Planning Authorities should recognise that heritage assets are an irreplaceable resource and conserve them in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of existing and future generations.

12.2 Section 66 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 provides that in considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority or, as the case may be, the Secretary of State shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. Again, as for the Section 72 duty referred to above, case law has established that this means that considerable importance and weight has to be given to that statutory duty when balancing the proposal against other material considerations.

12.3 Strategic Policy 25 states that Development proposals should protect, conserve and enhance heritage assets and their settings, taking into account their significance, as well as the distinctive character of the Borough's townscapes and landscapes. Detailed Policy 5 goes into more detail regarding Historic Assets, Listed Buildings, Conservation Areas and Archaeology.

### **Assessment**

12.4 The Grade II listed St Marys Church lies some 125 metres from the site on the western side of Church Lane. The Church occupies a discrete position within a small triangular churchyard and the development scheme at Smithy Farm would not materially impact on the setting of the Church.

12.5 As such Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 has been engaged by this scheme and has been satisfied. The scheme would not materially impact on any archaeological interest.

12.6 The application scheme would therefore be in line with Policies SP25 and DP5 of the Local Plan.

## **13. Impacts on Residential Amenities**

- 13.1 The National Planning Policy Framework and Policies DP1, DP3 and DP7 of the Local Plan seeks to ensure new development will not have an adverse impact on the amenities of new or existing residents by way of loss of light, overlooking or overbearing, or by unacceptable levels of noise or disturbance. Local Plan Policy SP8 seeks *inter alia* to ensure that development would not have an adverse impact upon the amenities enjoyed by the occupiers of nearby properties.

### **Assessment**

- 13.2 The existing kennel building and proposed whelping, and associated fencing, are, in their scale, modest structures and given their siting and the separation distances to surrounding properties the buildings are not considered to have significant overbearing and overshadowing impacts on any adjoining properties. The use of the land and the buildings within the site are also not considered to have any overlooking impacts that would give to a loss of privacy to surrounding residents.
- 13.3 With regard to the impact of the use on surrounding residents, one of the main issues raised is in relation to noise. Concern has been expressed about the impact that noise from barking dogs has on the amenities of nearby residents and that the current management of the site exacerbates the situation, due to comings and goings at various times of the day, particularly in the very early hours of the morning. In addition, residents have commented that the information submitted in the noise assessment does not address the concerns raised and is technically incorrect. It has also been suggested that the mitigation measures put forward will not alleviate the problems.
- 13.4 The issue of noise has been thoroughly considered by the council's environmental health department. A Noise Assessment has been submitted with the application, together with a Noise Management report and details of an acoustic fence to be erected around the kennels and whelping shed are included with the application. The environmental health officer's final comments are summarised in the table above at para 5.10, with the full comments addressing the points raised by neighbours attached at the end of this report at **Appendix 1 below**. The environmental health officer is satisfied that the contents of the noise report and management plan demonstrate that the development will not lead to a significant reduction in the amenities of nearby residents due to noise disturbance, and that the findings of the noise report refer to the relevant standards and guidance and are therefore, technically competent. It is considered that together with the details contained in the noise management report, and the erection of the acoustic boundary fence, sufficient mitigation measures will be put in place to ensure that any noise generated by the use (particularly from barking dogs) will be at acceptable levels, not resulting in any statutory noise nuisance. In addition, recommended conditions include limits to the number of dogs and litters on the site, and that the management of the site shall be in accordance with the submitted details.
- 13.5 Neighbours have expressed concerns about the availability of adequate parking and access for the site. However, the proposal includes an annotated plan to show the provision of access, parking and visibility

splays, which the County Highways Authority is satisfied with. A condition requiring the setting out of these facilities in a timely manner is recommended.

- 13.6 The issue of impact on the character of the area has been raised, but as referred to above, it is considered that the siting, scale and design of the kennel building, proposed whelping shed and acoustic fence, are appropriate in this location, and being contained within the existing farm yard will not have a detrimental impact on the character or appearance of the open countryside, the area as a whole, or the site itself, which is a working farm yard. In addition, under normal circumstances, any means of enclosure (fence/wall) in this location would be permitted development up to a height of 2 metres, as it is not adjacent to a highway.
- 13.7 Concerns have been raised about potential pollution arising from waste materials from the kennels. Whilst it is not considered that the scale of the development would result in any significant harm to residential amenity in relation to any waste generated by the use, a condition has been recommended that requires a scheme for waste disposal to be submitted and agreed by the Local Authority.
- 13.8 The site is in a low flood risk area and there is no evidence of surface water drainage issues in the locality. However, neighbours have raised concerns about surface water drainage and the impact on local drainage systems. The applicant has indicated that the proposal will be served by a soakaway, and this is considered to be appropriate for such a small scale development, but for the avoidance of doubt and to ensure that the site can be adequately drained, a condition is recommended that requires the applicant to submit a surface water drainage scheme for approval.

#### **14. Highway Matters**

- 14.1 The NPPF sets out the role transport policies play in facilitating sustainable development which contributes to wider sustainability and health objectives. Decisions should ensure development proposals have taken the opportunities for sustainable transport modes, ensure safe and suitable access to the site can be achieved for all people and improvements can be undertaken within the transport network that cost effectively limit the significant impacts of the development. Development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe.
- 14.2 Policies SP1 and SP35 of the Local Plan aim to ensure development is located on sites with good links to the highway network, development is convenient and safe to walk, cycle and travel by public transport. Developments should not result in vehicles harming residential amenity, causing highway safety issues or harming the character of the open countryside. For those developments likely to have an impact on the wider highway infrastructure, proposals should be accompanied by a transport assessment clearly setting out how the likely impacts of the development will be addressed.

- 14.3 The Council's parking standards SPD sets out standards for different uses including space size, accessibility and the quantity of car parking spaces required for different uses.
- 14.4 The proposed development will be accessed using a new entrance and driveway leading from Mill Lane with two visitor car parking spaces and a turning facility provided within the site. The scheme provides for the gates to be set back from the public highway.

### **Assessment**

- 14.5 The County Highway Authority has during the application process requested additional information and revised plans and has been re-consulted further to the provision of the revised scheme. As part of that final process the Authority were furnished with the objections raised by local residents (and summarised above in Section 5). The Highway Authority has in turn raised no objections in principle to the proposed development. Specifically, the Highway Authority comment that :-

*“The site is in open countryside, with no opportunities to travel by sustainable modes of transport and is served by narrow substandard roads which lack intervisible passing bays. This would make the site unsuitable for a development that would generate significant levels of traffic both vehicular and pedestrian/cycling.*

*It is therefore a judgement of the level of traffic likely to be associated with the proposed development and what impact that is likely to have when measured against the requirements of the NPPF.*

*The applicant suggests a maximum of two to three visits per day from customers. There is no data to support this assumption but from very limited research it appears that a dog could have a litter twice a year, but it is recommended for their health that it is only once. Depending on the breed of dog it appears that there could be around six pups per litter on average. The proposal includes kennels for five dogs. In terms of visitor traffic if we assume the five breeding dogs produce six pups each per year there would be thirty pups for sale each year. If we assume all the pups are sold from the site and that there on average three visits per purchase, there could be ninety trips to the site in a twelve-month period. Even if these trips are grouped around the availability of a litter, they could not be considered likely to have a “severe” impact on the capacity of the highway network.”*

*It is also estimated that there would be a further two to three visits (4 to 6 trips) per day to look after the dogs. It is considered that on balance this level of traffic, even on the substandard roads leading to the site, would not decrease road safety to such an extent so as to warrant a refusal of planning permission.”*

- 14.6 In light of the above, it is considered that there will be no adverse implications for highway safety as a result of the proposal. Further, in line with the recommendations of the County Highway Authority the conditions of any approval could provide for the delivery and retention of the access arrangements, visibility splays, car parking and turning facilities. A further

condition would require that no gates or other structures be erected to the vehicular access within 5 metres of the public highway to mitigate vehicles blocking the public highway.

## 15. Flood Risk and Drainage

15.1 The National Planning Policy Framework seeks to ensure that new development is not at risk from flooding, or does not increase flood risk elsewhere. It advocates the use of a sequential test with the aim of steering new developments to areas with the lowest probability of flooding. The Environment Agency produces flood risk maps which classifies land according to probability of flooding. The areas of highest risk are classified as Flood Zone 3, with a 1 in 100 or greater annual probability of flooding, and the areas of lowest risk are classified as Flood Zone 1, with a less than 1 in 1000 annual probability of flooding.

15.2 Strategic Policy 27 expects all new development to incorporate Sustainable Drainage Systems (SUDS). Systems will discharge clean roof water to ground via infiltration techniques, limit surface water discharge to the greenfield run-off rate and protect and enhance wildlife habitats, heritage assets, existing open space, amenity areas and landscape value.

### Assessment

15.3 The site lies entirely within Flood Zone 1 and as such is at a low risk from flooding. With regard to surface water drainage the scheme provides for appropriate facilities with such details to be secured by a condition of any approval. There would be no necessity for the provision of foul drainage, although dog waste collection/kennels cleaning regime could form part of the site management condition.

In light of the above, it is considered that the development can be implemented with appropriate drainage facilities.

## 16. Other Matters

16.1 There have been a number issues raised in association with the objections to the merits of the scheme. In relation to planning related issues it is pointed out that the training of dogs does not form part of the application for determination because it was omitted from the scheme during the application process.

16.2 In terms of the use of land for the exercising of the dogs it is considered that such activities in connection with five dogs would be akin to dog walkers using a public footpath to cross an agricultural field area. In those circumstances, and given it is understood that different field areas on the smallholdings may be used at any one time (depending on livestock placements), it is considered that such activities would not result in a material change of use of the lands.

16.3 With regard to treatment of individual animals at the site that is a matter that sits outside the planning acts; but rather under animal welfare



regulations. The issue of dog fouling outside the application also sits under other legislation.

## 17. Conclusions

17.1 Accordingly, having assessed and weighed in the balance the applicants and objectors submissions (including those of the parish council) and having taken account the schemes overall environmental, social and economic impacts it is considered having regard to the planning merits of the case set out in detail in the Assessment section of this report – and as summarised in the Executive Summary - the application is recommended for approval subject conditions.

### 17.2 PERMIT subject to the following conditions

#### **Condition 1: Time Limit - 3Yr Standard**

The development hereby permitted, with the exception of the existing dog kennel building, shall be begun before the expiration of three years from the date of this permission.

Reason: To conform with Section 91(1) of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

#### **Condition 2: Approved Plans**

The development hereby permitted shall be carried out in accordance with the following approved plans/documents subject to compliance with other conditions of this permission:

Drawing No A4333-001 P7 – 1:50 proposed and existing elevations, 1:500 proposed and existing site plan dated as received 6 August 2020

Drawing No 06 J7/01043 – 1:25 Acoustic fence specifications dated as received 9 May 2020

Kennel Noise Management Plan prepared by Aspen Environmental Ltd dated June 2020

Reason: For the avoidance of doubt to ensure the development will not adversely the character and appearance of the open countryside, the amenities of neighbouring properties, drainage interests or the safe and efficient use of the adjoining highway(s) in accordance with East Staffordshire Local Plan Policies SP1, SP8, SP14, SP24, SP27, SP29, SP30, SP35, DP1 and DP7, the East Staffordshire Design Guide, the East Staffordshire Revised Car Parking Standards Supplementary Planning Document and the National Planning Policy Framework.

#### **Condition 3: Materials**

All external materials used in the development shall be in accordance with the details submitted with the application, including the materials specified for the

acoustic fence, unless otherwise first agreed in writing with the Local Planning Authority.

Reason: To safeguard the character and appearance of the site and its surroundings in accordance with East Staffordshire Local Plan Policies SP1, SP8, SP24 and DP1, the East Staffordshire Design Guide and the National Planning Policy Framework.

**Condition 4: Bespoke- defining the permission**

This permission shall relate solely to the use of part of the farmyard and associated buildings identified on the submitted plans as being within the application site, for the breeding of dogs and for no other purpose whatsoever without the prior written approval of the Local Planning Authority.

Reason: For the avoidance of doubt and in the interests of the amenity of the occupiers of the surrounding dwellings in accordance with East Staffordshire Local Plan Policy DP7 and the National Planning Policy Framework.

**Condition 5: Site Management Scheme to be provided**

Within 56 days of the date of this permission a written scheme of site management shall be submitted for the written approval of the Local Planning Authority in respect of the disposal of dog waste and kennel bedding and the cleaning/washing down of kennels and associated surfaced areas. Upon its approval in writing by the Local Planning Authority the site management scheme shall be implemented and complied with at all times.

Reason: To mitigate pollution in accordance with Policy DP7 of the East Staffordshire Local Plan and the National Planning Policy Framework.

**Condition 6: Site Supervision Scheme to be provided**

Within 56 days of the date of this permission a written scheme of site supervision shall be submitted for the written approval of the Local Planning Authority. Upon its approval in writing by Local Planning Authority the site supervision scheme shall be implemented and complied with at all times.

Reason: In the interests of the amenity of the occupiers of the surrounding dwellings in accordance with East Staffordshire Local Plan Policy DP7 and the National Planning Policy Framework.

**Condition 7: Highways- Access condition**

Within 3 months of the date of this permission the vehicular access to the site hereby approved shall be laid out with a minimum width of 5 metres with 4.5metre radii on either side of the access and the entrance gate set back at least 5 metres from the back of the carriageway and opening inwards only. The area in front of the gate shall be hard surfaced and drained and thereafter kept free of obstruction at all times.

Reason: In the interest of highway safety in accordance with Policies SP1 and SP35 of the East Staffordshire Local Plan and the National Planning Policy Framework.

**Condition 8: Highways- Visibility Splays**

Within 3 months of the date of this permission the visibility splays shown on the approved drawings (as listed at condition 2 above) shall be laid out in accordance with those drawings and once constructed maintained as such thereafter for the lifetime of the development. No structure over 600 mm in height shall be erected or placed within the visibility splays at any time.

Reason: In the interest of highway safety in accordance with Policies SP1 and SP35 of the East Staffordshire Local Plan and the National Planning Policy Framework.

**Condition 9: No. of dogs at any one time**

No more than 5 No. dogs shall be kept on the application site at any one time and no more than 2 No. litters of puppies shall be raised at the site in any calendar year. (For the purposes of this condition, a dog is considered to be an animal that is 12 weeks or older).

Reason: In the interests of the amenity of the occupiers of the surrounding dwellings in accordance with East Staffordshire Local Plan Policy DP7 and the National Planning Policy Framework.

**Condition 10: Lighting Units**

No lighting units shall be installed at the site unless first approved in writing by the Local Planning Authority.

Reason: In the interests of the amenity of the occupiers of the surrounding dwellings and mitigating impacts on light pollution in accordance with East Staffordshire Local Plan Policy DP7 and the National Planning Policy Framework.

**Condition 11: Scheme of Surface Water Disposal**

Within 56 days of the date of this permission, a scheme for the disposal of surface water shall be submitted to and approved in writing by the Local Planning Authority. The drainage scheme shall be completed in accordance with the approved details prior to the proposed new whelping shed and store being first brought in to use, and shall be retained thereafter as approved.

Reason: To ensure adequate drainage facilities are provided to serve the development to reduce the risk of creating or exacerbating a flooding problem

and to minimise the risk of pollution in accordance with East Staffordshire Local Plan Policies SP27 and DP7 and the National Planning Policy Framework.

## Informatives

1. During the course of consideration of this proposal the Local Planning Authority has negotiated with the applicant to ensure the development complies with relevant development plan policies and material planning considerations including the National Planning Policy Framework. It is therefore considered that the Local Planning Authority has worked proactively with the applicant to secure a development that improves the economic, social and environmental conditions of the area in accordance with the requirements of paragraph 38 of the National Planning Policy Framework.
2. The County Highway Authority advise that the conditions requiring highway works shall require a Highway Works Agreement with Staffordshire County Council. The applicant is requested to contact Staffordshire County Council in order to secure the Agreement. The link below is to the Highway Works Information Pack including an application form.

Please complete and send to the address indicated on the application Form or email to

[nmu@staffordshire.gov.uk](mailto:nmu@staffordshire.gov.uk)). The applicant is advised to begin this process well in advance of any works taking place in order to meet any potential timescales

<https://www.staffordshire.gov.uk/transport/staffshighways/highwayscontrol/HighwaysWorkAgreements.aspx>

3. The applicant/developer is reminded that this permission does not include dog training activities given that this element was omitted from the proposal during the application process. Any subsequent proposal to commence dog training activities will require the submission of a formal planning application.
4. The applicant/developer is advised that this permission relates solely to approval under the Planning Acts and you are reminded that this does not override or replace any requirements under other legislation for the breeding and keeping of dogs.

## 18. Background papers

18.1 The following papers were used in the preparation of this report:

- The Local and National Planning policies outlined above in section 7
- Papers on the Planning Application file reference: P/2019/01342

## 19. Human Rights Act 1998

19.1 There may be implications under Article 8 and Article 1 of the First Protocol regarding the right of respect for a person’s private and family life and home, and to the peaceful enjoyment of possessions. However, these potential issues are in this case amply covered by consideration of the environmental impact of the application under the policies of the development plan and other relevant policy guidance.

**20. Crime and Disorder Implications**

20.1 It is considered that the proposal does not raise any crime and disorder implications.

**21. Equalities Act 2010**

21.1 Due regard, where relevant, has been had to the East Staffordshire Borough Council’s equality duty as contained within the Equalities Act 2010.

For further information contact: Emma Carrington  
Telephone Number: 01283 508695  
Email: [dcsupport@eaststaffsbc.gov.uk](mailto:dcsupport@eaststaffsbc.gov.uk)

## **Appendix 1. Environmental Health Response**

### **Smithy Farm, Gratwich – resident consultation response** **DF comments 31/7/20**

***Page 3 of 46, para 2.***

***Responder: contends that kennels have not been running at full capacity since requirement for a planning application was in progress, and therefore a reduction in the noise of dogs and puppies at the time of monitoring, meaning that the monitoring is not a fair representation of the actual impact.***

In the submitted noise report, it states that the metal kennels were in full occupancy (5 dogs, one of which with a litter of 8 puppies), and with the presumption that the report writer wishes to maintain their professional integrity and competence, this statement was taken on face value/in good faith. Litters will be restricted by the breeding licence (this is covered further below).

***Responder: states that a noise monitor will not capture the impact of the tonal noise of dogs and puppies barking.***

This is not true. The type of monitor typically used in these assessments is capable of frequency analysis. Frequency data did not appear in the Aspen report, but that doesn't mean the Aspen report is in error. In the April 2020 version of the report, the writer considers tonality and how it is addressed under BS4142. Tonality is given an objective definition within that British Standard, and can result in a 'penalty' being applied to the 'rating' a noise source is given (up to 6dBA for extremely tonal – again defined by the BS). Whilst a BS4142 assessment has not been carried out (and again, this does not mean the report is deficient – see note below), the report makes the point that the 3dB penalty already allowed for the extra dogs within the block shed could be used to represent the tonal penalty instead, as it seems unlikely the noise from the whelping shed will equal the noise from the more open kennel. I agree with this approach, and consider it reasonably protective of an arguable/uncertain level of tonality.

**Note on BS4142** - No specific standard exists to measure kennel noise. BS4142 is used to assess the impact of industrial/manufacturing processes, fixed installations, loading/unloading, and the sounds of mobile plant intrinsic to

a premise or process. As a whole, the standard is not appropriate for the proposed development.

However, the consultant has (rightly) taken some aspects of BS4142 in order to take account of certain aspects of the noise assessment (such as tonality). We are happy with this approach.

**Page 4 of 46, para 1.**

**Responder: query on dog training**

I have no information on these activities, or the land on which they would take place. They are outside the scope of this application. It is our understanding that the training activity relates to the Applicants own dogs and will therefore not be significant.

**Page 5 of 46, para 1.**

**Responder: feels that addition dense acoustic fencing is unacceptable from an animal welfare point of view.**

Guidance notes on the Animal Welfare Licensing Regs 2018 do not give any minimum separation distances between kennels and boundaries. It does state that secure close-boarded fences are suitable for these uses. Officer experience suggests the animals will have a lower propensity to bark if their line of sight is screened from the nearby road, i.e. they will not be stimulated to bark by passing traffic/members of the public.

The dogs will get access to light and this department also intends to recommend conditions and standards relating to exercise duration and/or frequency as part of any licensing conditions, in order to ensure an appropriate amount of outside access. The noise impact of dog exercising is not considered to be significant in the context of the noise arising from the kennels.

**Page 15 of 46.**

**Point 1 mentions animal welfare also (Has the RSPCA and Trading Standards approved the use of acoustic fencing?)** – Comments as above.

**Point 2 (Is this the actual acoustic fence that will be used)** – Chosen specification would be enforced by condition on any granted permission, so yes.

**Point 3 (Enquiring about validity of acoustic fence specification in the real world)** – Rating of acoustic fencing has been carried out with reference to a British Standard. Case studies are not required if the effect of the acoustic fence is incorporated within a reasonable and robust calculation of noise impact at sensitive locations (i.e. the curtilage of residents houses), as has been done here.

**Point 4, part 1 (Concern that fence will not mitigate 80-90dB peak noise levels in the report)** – LA<sub>max</sub> of “80-90” are measurements ‘at source’. Calculations showing the level of peak noise (being of short duration) at sensitive locations has been modelled taking into account the barrier attenuation and distance. These details are in the Aspen report, with the results being between 48.4 and 24.7dB LA<sub>max</sub>; these are reasonable levels. Depending on the receptor, these events may still be heard, even with the mitigation in place, but do not amount to an unreasonable impact. Noise levels at the noise-sensitive receptors meet the relevant BS8233 standard (for both internal residential rooms and external amenity areas/gardens). The last table of the April 2020 report lists the resulting sound levels at the receptors after

correcting for distance and the acoustic fence. These LAeqs are derived by using the highest recorded hourly noise (as LAeq) throughout all the monitoring, i.e. it was the loudest hour out of all 71 hours for which monitoring was undertaken. This table is therefore based on the very much worst case noise values, which are then corrected for distance and the fence, resulting in the LAeqs at the listed receptors. These values show that, even at the worst case, the external LAeq is shown as being between 34dB and 10.3 (the latter being well below background level). BS8233 would recommend a level of no more than 50dB LAeq for external amenity areas, and so this standard is easily met. For internal areas, BS8233 states it to be desirable to not exceed 35dB during the day/evening (in living rooms and bedrooms), and not exceed 30dB in bedrooms during the night. Comparing these noise levels with the levels derived in the report, compliance is achieved, even before reducing external sound levels by 10 to 15dB (which accounts for the noise-attenuating effect of a building with open windows). Taking this into account (using a further worst case effect of just 10dB for the building), internal noise levels (as LAeq) would be between 24dB and 4dB. These levels are considered to be very low.

**Point 4, parts 2 – 4 (Concern relating to frequency spectrum of dog barking)** – Covered in comments above relating to the tonal character penalty that has been used.

**Point 5 (What happens if fence does not work?)** – As per point 4, noise will still be audible from time to time. Expectations should consider that the fence is not intended to block the sound completely. If the fencing is installed as recommended and as per the submitted specification, then there is no reason that it should not achieve the listed attenuation.

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**Point 3 – multiple litters were not present during time of noise survey, response alleges as many as 5 litters could be present.**

For the first 12 months of the Breeding Licence, the Applicant will be limited to 1 litter at a time. In subsequent years they will be limited to 2 litters. As any litters will be kept in the whelping shed they are not considered to represent a significant noise source due to the construction of the building and the attenuation thereby provided. Additionally, noise from puppies is considered to be less than that from older dogs, and it should also be noted that the frequency spectrum of puppy 'barks; tend toward high frequencies (which would be attenuated more by the surrounding enclosure than lower frequency noise).

#### **Pages 18-19**

Lots of concern regarding peak noise levels, but no consideration of the LAeq which has established low impact at the receptors assuming the barrier is in place.

Additionally, these comments are referring to noise levels at the measurement point. The noise levels experienced by receptors will be much lower due to the intervening distance and acoustic barrier provision. It is the sound levels at the receptors which have been considered within the report when assessing suitability. This is the correct approach.

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**Point 1 – Mention of a bioacoustics report relating to the annoying nature of barking dogs.** Reviewed below.



**Point 3 (wondering why all potential noise receptors have not been included)** – The report does not have to consider all potential receptors within a potential sphere of influence, but should consider the most sensitive receptors in the surroundings. The chosen receptors in the report are appropriate. They are essentially the nearest and if they are not affected significantly, properties further away will experience even less noise.

**Point 4, last sub-heading (query on effect of waste removal on transmitted noise)** – the removal of waste in the yard is unlikely to make a significant impact on noise from the kennels, as it is a permeable and incomplete barrier.

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**Point 1 - DF questions to Dr Buck unanswered**

**Sub-heading 2 – no reply on annoying nature of dogs barking.** I can confirm this is developed further by the discussion on tonality in the April version of the report. Also asks why Dr Buck hasn't provided information on bioacoustics. I would assume not referred to because he likely felt he didn't need to when a character correction was applied. See the discussion on the research paper below.

**Sub-heading 3 – DF requested comparison between Gratwich and a typical urban area, and the responder states this has not been provided.** This request and subsequent response are on the last page of the April 2020 report.

DF comments from 12/3/20: “A preferable method would be to incorporate LAFmax into the assessment, and be more reflective of the range of noises experienced at the NSRs.

Also, the report makes reference to the fact that the site is very rural, without significant influence from traffic. No consideration of site background in the absence of the dog facilities is detailed. The use of a surrogate background level, in order to be able to compare the total impact of the dog facilities against a typical background level, should be included within the assessment, and this should be related to the likelihood of nuisance to be caused (incorporating character penalties where appropriate) as described in BS4142. Note that whilst the assessment should include elements from BS4142, the use of shorter assessment periods (as described above, where noise is not ‘smoothed out’ over 16 or 8 hours) would be preferable. A bespoke assessment that incorporates the appropriate elements of the standards discussed is required.”

At no point did I ask for an urban background level. The best comparison would have been noise measurement data from a very similar setting without kennels. Whilst the amended report does not actually answer the point relating to the use of a surrogate background level, the rest of the suggested improvements were taken on board and acted upon within the amended report. The report was much improved by its amendment, and I did not feel that pressing the point on surrogate background levels was required.

There are national datasets which can be interrogated to produce road and rail noise maps. Planning guidance, in accordance with these maps, can be used to see what the background sound levels (from these sources) are at a potential development site. Gratwich is between two of the quietest noise level classifications (which is deemed to be 45dB LAeq,day and 35dB LAeq,night). All other things being equal, Gratwich could potentially therefore be assumed to be quieter than these bordering areas, but no more than 5 to 10dB for either day or night. This would be highly dependent on the level of agricultural

activities taking place in the area (which would push noise levels back up), and solid conclusions based on simply these numbers would not be recommended.

That said, all calculated daytime noise levels (L<sub>Aeq</sub>s, with kennels, shed and acoustic fence in place) at the noise sensitive receptors have been calculated to be below the lowest suggested surrogate level (i.e. less than 35dB). For night-time, noise from the kennels results in internal noise levels within the receptor dwellings being below the more stringent surrogate level of 25dB (due to the sound insulating effect of the building, with windows open). This is further detailed above in the section on BS8233 (**page 15 of 46, point 4, part 1**)



The webtool used here is found at <https://ssi.noiseconsultants.co.uk> (but is based on DEFRA data).

Site specific data is always better than larger and more generic datasets, but in any case I have no concerns with the lack of a surrogate background level due to a much improved site assessment in the form of the April 2020 report.

**Sub-heading 4 (“hearing protection is mandatory at 85dB(A), the maximum noise from the kennel is approximately 90dB(A)”) –** it is agreed that the sound level requiring mandatory hearing protection is 85dB(A). However, this number is the average level over an 8 hour shift (L<sub>Aeq</sub>). There is a workplace L<sub>Amax</sub> at which protection is mandatory, this is **137dB**, which is over 200 times the acoustic energy of 90dB L<sub>Amax</sub> (the value referred to in the response). The comparison is invalid as the L<sub>Amax</sub> measured on site is the level at the kennels, whereas the levels at the noise-sensitive receptors (for both L<sub>Aeq</sub> and L<sub>Amax</sub>) will be much lower, due to mitigation (the acoustic fence) and distance attenuation.

**Point 2 (Has the report covered all necessary legislation necessary for the public to be fully informed?) –** The report is for the Council, to aid in the consideration of whether or not to grant planning permission. Environmental

Health consider the April 2020 version to be appropriate to this purpose, having due regard to appropriate standards and the application of them.

**Pages 25-41 Extract from Bioacoustics journal**

**“A bark of its own kind – the acoustics of annoying dog barks suggests a specific attention-evoking effect for humans”; February 2019 research paper (although citation states 2020).**

Abstract makes the following summary – that residential area does not have an effect on annoyance ratings; young adults find high-pitched barks to be most annoying; the most annoying barks had specific structure (given as high pitch, low tonality); discusses evolution of the bark.

Abstract has seemingly little relevance to the matter at hand apart from “some dogs can sometimes be annoying when they bark”, a fact which is unlikely to be contested, but is of little help in making a case either for or against the planning application.

The body of the paper notes (amongst other things) that:

- A New Zealand study found that people living in rural environments were more tolerant of dog barking than people living in city flats.
- A prior study by the authors found that barking from distressed dogs increases the annoyance perceived by people. Specifically, where people perceive a distressed dog, but are unable to do anything to help, their annoyance is increased.

Sections of the paper highlighted by the responder, are in the most part, referencing the barking behaviour of dogs, i.e. they bark, rather than anything specific to be considered as part of this consultation, e.g. 30% of noise complaints concern barking dogs. Based on my experiences, this is frequently the case, but its value here is meaningless. It cannot be used as an objection to the specific kennel at Smithy Farm without also being applicable to all kennels. Such an aim is well outside the scope of this planning application, and well outside what is considered acceptable (i.e. kennels are not already banned everywhere, even though 30% of noise complaints are about dogs).

What is pertinent is the point that distressed dogs can be perceived by humans as more annoying. This point is not contested, and is part of the reason we are considering the animal welfare aspects of this planning application seriously, with reference to the relevant guidance.

It should be noted that the method of description of barks (e.g. harmonic to noise ratios and extensive use of frequency analysis) used within the paper does not appear in the standard noise assessment tools used within the planning system. The planning system and the submitted noise report are not deficient due to this absence. The authors of the paper have carried out a highly specialised study, for which a more detailed ‘language’ was required to describe the barks, which is not mandated or necessary for this, or any other, planning application.

With regards both the abstract and the conclusions of the paper, the report does not state that any specific breeds used the ‘specific structure more likely to cause annoyance’. The paper contends that all dogs *should* bark, or have

evolved barking, in similar ways. It should be noted that the paper only used barks from one specific breed (the Mudi, Hungarian herding dog), so the findings do not necessarily hold true (or as true) for all breeds of dog.

In summary, the main relevant point from this paper is one of animal welfare. Accordingly, the Council will act via both planning conditions and animal breeder licensing to ensure the needs of the animals within the kennels and whelping shed are adequately met.

**Page 43 raises similar points to page 17**, see above for response.

**Page 44, continuing paragraph on previous page, relating to timings and the Noise Management Plan.**

The Noise Management Plan is designed to direct the Applicant to consider how all the kennel related activities can have an impact and be controlled. We would expect this NMP to be in place and implemented but it would be impractical to expect it to be rigidly followed in terms of exact timings of activities. It is essentially a guide but we do expect the essence of the NMP to be met, namely it should prevent, as is reasonably practicable, unreasonable noise from the kennel activity from causing significant adverse noise effects on nearby properties.

**Point 1, subheading 1 (what will the difference in impact be in the summer when windows are open?)** - Modelled noise levels in the discussion and conclusion sections of the pre-addendum report were referred to, with the envelope of the building (with windows open) providing a further 10 to 15dBA reduction to the incoming sound.

In the addendum of the April report, the results displayed in the table immediately prior to the conclusions shows the **external sound level at the noise sensitive receptors with the acoustic fence in place** (final column). Whilst it is not referred to explicitly, any **internal levels will be reduced by a further 10 to 15dBA by the building envelope when windows are open**. Internal levels within the receptors will thereby be lower than those presented in the table, with corresponding LAeq values below what could be assumed to typical prevailing background levels in most, if not all, receptor locations.

Therefore, the noise assessment accounts for, by default and by design, the effect of having windows open during warmer months. This will mean that when windows are closed, internal noise levels will be even lower.

**Point 1, subheadings 2 and 3 (what will be the effect of wind and impact on upper floors of nearby residences?)** - The use of a 2m high acoustic fence close to the areas where dogs are kept will adequately control these points. Note that the reduction mentioned for subheading 1 (walls and windows) would be present also in the case of the impact on first floor rooms.

**Other points on this page, and the following page (no. 45), refer to licensing, welfare and bioacoustics aspects already discussed above.**

That said, the responder states that **they do not believe that the acoustic fence will reduce peak noise levels sufficiently to totally mitigate the noise of barking dogs**. As referred to above, this is correct. The aim of the

fence is to mitigate (or in this context, reduce) the noise from barking dogs to an acceptable level. There should not be an expectation of total silence from the activity, and that is not something that the site user, this Council, or indeed planning legislation, is trying to achieve. BS8233 does not provide targets for maximum noise levels; the numbers within it are either 16 hr LAeqs (day) or 8hr LAeqs (night). Therefore, it is not strictly proper to compare these with the effectively 'instant' maximum noise levels that correspond to only a small fraction of this duration.

Nevertheless, the noise assessment shows that the maximum noise levels used in the final calculation table are all below the 16 hr LAeq requirements of BS8233 for external amenity areas. Put another way, **this means that, for external noise, if the maximum measured sound were present for a full 16 hours, it would still comply with the requirements of BS8233.**

It is similar for internal noise levels. Taking into account the attenuation of a residential building (even at worse case 10dB), the maximum noise levels within dwellings would also be less than the BS8233 internal noise level LAeq requirements (except in Church Farm, where it would be slightly higher but a separate noise barrier is also intended there, so it likely balances out).

It should be stressed that comparing L<sub>Amax</sub> (instant) noise levels with LAeq (16 hour average) noise levels is not how noise assessments are normally carried out. The fact that the L<sub>Amax</sub> here is shown to be lower than required LAeqs in this study indicates that modelled noise levels will not be significant.

BS8233 itself is explored further above in the section relating to **page 15 of 46, point 4, part 1.**

