

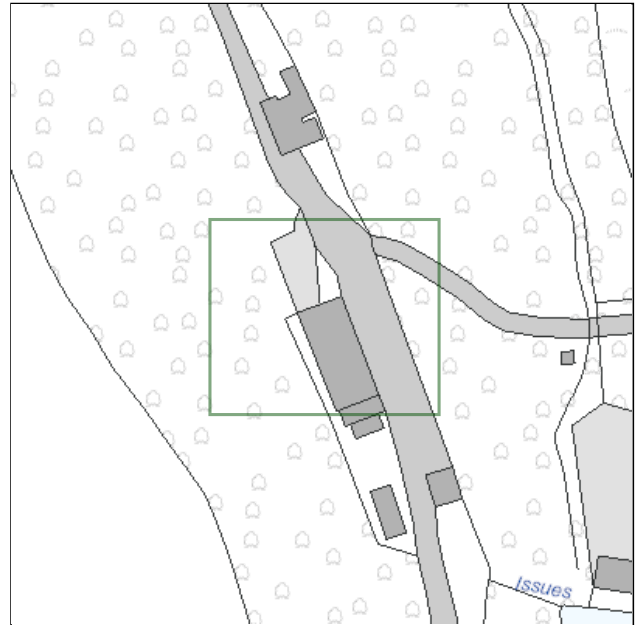
Ward Trinity

Reference 21/3255/FUL

Applicant Mr Mark Perry

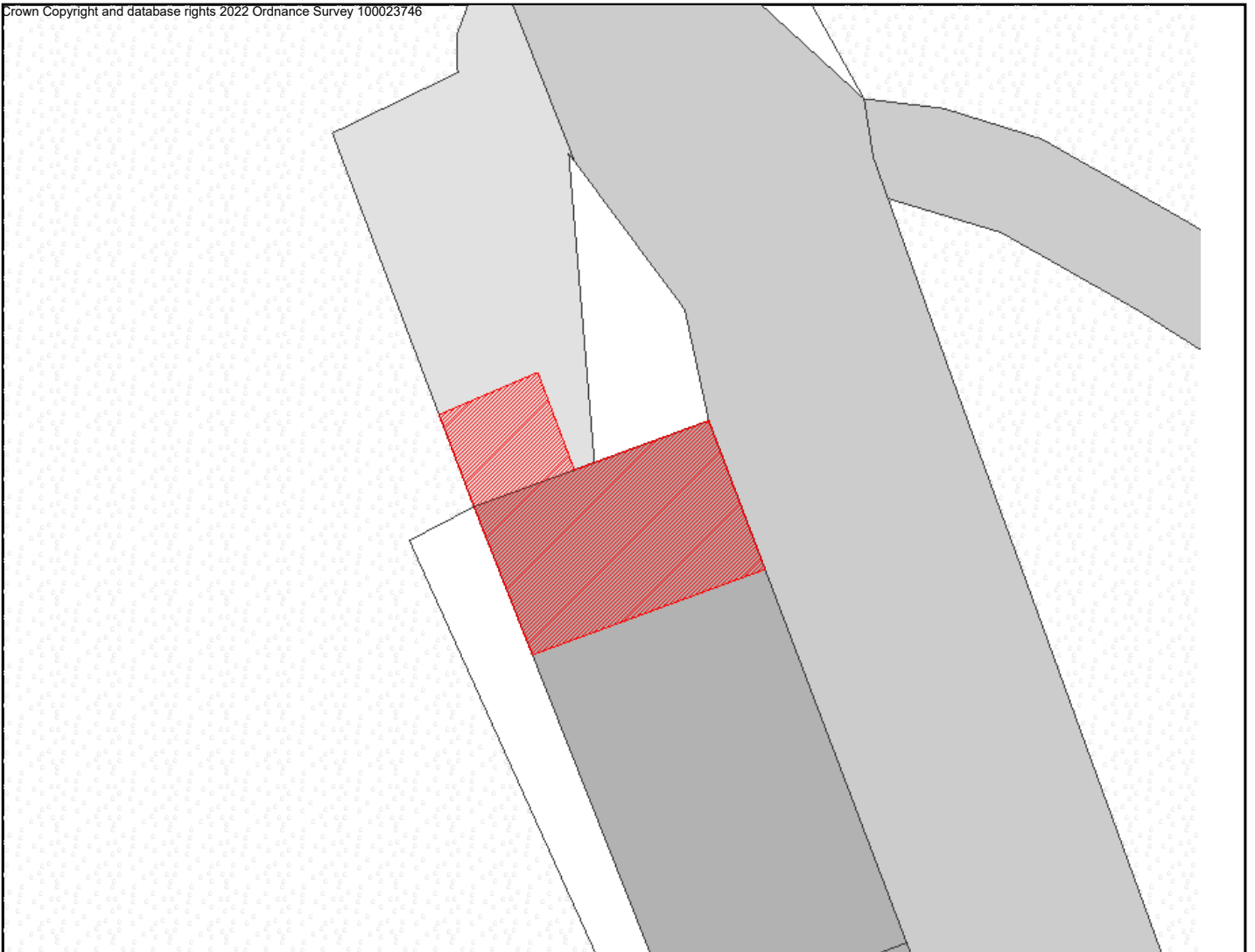
Location Building North Of Harbour Close Combyne
EX13 8SX

Proposal Change of use of part of building to B2 use and
retention of single storey side extension.



RECOMMENDATION: Retrospective Approval (conditions)

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		Committee Date: 16th March 2022
Trinity (Compyne Rousdon)	21/3255/FUL	Target Date: 10.02.2022
Applicant:	Mr Mark Perry	
Location:	Building North Of Harbour Close Compyne	
Proposal:	Change of use of part of building to B2 use and retention of single storey side extension.	

RECOMMENDATION: Retrospective Approval (conditions)

UPDATE REPORT

This application was considered at the virtual consultative Planning Committee on the 16th February 2022 where Members recommended to Senior Officers that planning permission be refused. The original report is attached for ease of reference.

Following the decision of the Council in December 2021 to continue with virtual meetings until May this year, in order for the recommendation from the Planning Committee to be made into a formal decision, it requires the recommendation to be agreed and signed-off by a Senior Officer. In this instance, there is concern among the relevant Senior Officer's that the decision from Committee is not supported by the evidence and that pursuing this case through the appeal will put the Council at risk of an award of costs

The application is therefore being returned to Committee for further consideration with this addendum report so that Members can review the wording of the proposed reason for refusal and consider the risks of proceeding with this decision. Senior Officer's can then be assured that the decision is made on a sound basis and that Members are content for the appeal to proceed on the basis of the reason set out.

The opportunity is also being taken to address in a bit more detail some of the questions that arose at the Committee meeting.

At the 16th February Committee, Members voted to recommend refusal of planning permission for the following reason:

'Members considered that noise from the proposed use, including noise from additional traffic would result in an inappropriate and harmful use to the amenity of local residents and tranquillity of the AONB contrary to Strategy 46 and Policies D1 and EN14 of the Local Plan and paragraph 185 of the NPPF.'

From this recommendation, officers have drafted the following reason for refusal:

'The site is located in a relatively tranquil part of the East Devon Area of Outstanding Natural Beauty which is sensitive to changes in the acoustic environment. In addition there are numerous residential properties within earshot of the site. The proposed development, which has already commenced, is for an industrial activity which has introduced a type of noise that is harmful to the tranquillity of the area and the health and quality of life of nearby residents. Whilst acoustic insulation has been introduced which effectively limits the volume of noise emitted to acceptable levels, the type of noise emitted from the shot blasting enclosure is uncharacteristic of the sounds of the natural environment in this area which form a peaceful and harmonious acoustic environment in which residents live. The low-level industrial noise emitted from the shot blasting enclosure is harmful to the tranquillity of the AONB and is a type of noise which sounds intrusive to local residents owing to it being discordant with the prevailing acoustic environment. In addition, the development generates extra traffic movements which further erode the tranquillity of the area. The proposal is therefore contrary to Strategy 46 - Landscape Conservation and Enhancement and AONBs and Policies D1 - Design and Local Distinctiveness and EN14 - Control of Pollution of the East Devon Local Plan 2013-2031, paragraphs 176 and 185 of the National Planning Policy Framework 2021 and Planning Practice Guidance.'

Officers are concerned that they will not be able to defend this reason for refusal due to a lack of hard evidence to justify that noise from the shot blasting will harm the amenity of nearby neighbours or the tranquillity of the AONB within which the site sits.

In order to defend the inevitable appeal, officers need to provide evidence to justify that the proposal causes harm by way of noise to nearby residents and on the AONB.

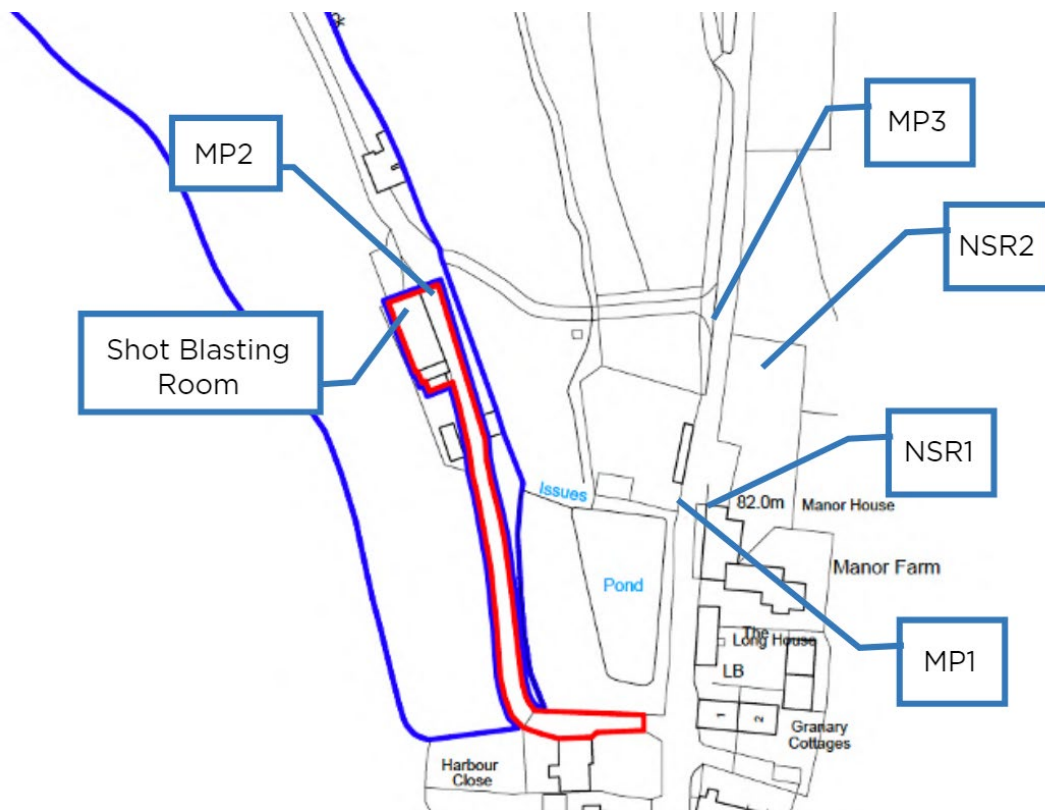
Whilst there is evidence in the form of objections from nearby residents, this is not considered to hold the same weight or provide sufficient detail or evidence to outweigh the evidence from the applicant's expert noise consultant, considering that this evidence is also supported by evidence from the Council's own noise expert from Environmental Health who raises no objection to the application following a full assessment of the situation and the taking of their own noise readings on site.

In the absence of any expert evidence in relation to harm from noise, it is likely that any appeal will be allowed. There is also a significant risk that an award of costs would be granted by an Inspector for an unreasonable refusal of planning permission based on the reason given by Members.

Members will recall that the two local residents at the Committee meeting confirmed that the noise mitigation provided by the applicant had reduced noise levels and that they had made no subsequent complaints to Environmental Health. In addition, Members will recall that there are lawful activities at the site at present that can generate noise and that a condition was proposed to restrict the use of the shot blasting

to between 9am to 12 noon Monday to Friday alongside conditioning the retention of the noise mitigation measures.

At the Committee meeting Members stated that they would have preferred the noise levels to have been stated in table form for ease of understanding. In light of this, the following tables have been produced detailing the noise levels in two public locations closest to residents (MP1 and MP3) as detailed in the following plan taken from the applicant's noise report:



MP1 is the reading location which is representative of the closest residential dwelling.

MP3 is the reading location which is representative of the closest residential garden.

MP2 is at the application site.

Given the lack of any nearby public rights of way or footpaths, these locations were considered to be the most sensitive in terms of residential amenity and impact upon the AONB. The recordings were taken adjoining public areas.

Please note that the sound levels after mitigation are those from the Council's Environmental Health Officer and whilst very close in location, they were not taken exactly at points MP1 and MP3.

MP1 (representative of closest residential dwelling)	Sound Level (dB) on 01/07/2020 (before mitigation)	Sound Level (dB) (after mitigation)
Specific Sound Level	48	38
Rating Penalty	+3	0
Measurement Uncertainty	0	0
Rating Sound Level	51	38
Daytime Background Sound Level	43	43 (applicant's reading) 39 (our reading at the Manor House)
Excess of Rating over Background Sound Level During Operational Hours 09:00am - 12:00pm	+8	-1 from our reading -5 from the applicant's reading
Notes	Shot blasting was representative of operating for 40 minutes of the hour assessment period.	Shot blasting was representative of operating for 40 minutes of the hour assessment period. Noise arising from the shot blasting activities was barely audible at this location and was almost entirely masked by the residual acoustic environment.
Assessment	Adverse Impact	Low Impact
Assessment using terminology from Planning Practice Guidance	Lowest Observed Adverse Effect Level (LOAEL)	Between No Observed Effect Level (NOEL) and No Observed Adverse Effect Level (NOAEL)
Action	Mitigate and reduce to a minimum	No specific measures required

The table above shows that at position MP1 (representative of the closest residential dwelling) prior to the provision of the sound mitigation to the building, the noise level was +8dB above the background level representing an adverse impact.

Following the provision of the mitigation, the noise level dropped below the background noise level meaning that the activity was at such a low level that it was barely audible.

British Standard 4142:2014 is the method used for rating and assessing industrial and commercial sound and this is the standard that has been correctly used by the applicant. Within this standard certain acoustic features of the noise can cause

significant impact over the background sound level. Where such features are present a character correction to the noise level can be added to the rating level given to the noise. Where the specific sound features characteristics that are neither tonal nor impulsive, nor intermittent, though otherwise are readily distinctive against the residual acoustic environment (as in this case a rural area), a penalty of 3dB can be applied. In this case a +3dB penalty rating was added to the applicant's reading to take into account the fact that the type of noise from the shot blasting was intermittent and not the type or frequency common in this area. As the noise is not characteristic of the rural area. The lower the rating level is relative to the measured background sound level, the less likely it is that the specific sound source (the shot blasting) will have an adverse impact or a significant adverse impact. Where the rating level does not exceed the background sound level, this is an indication of the specific sound source having a low impact.

This penalty is not applied to the reading by the Council's Environmental Health Officer (EHO) as such penalties are not applied in relation to statutory nuisance investigations as in these type of cases the noise from the shot blasting is measured against the background sound level.

The second noise reading showed that the noise from the shot blasting operation on its own, had been mitigated so successfully that its noise level of 38dB was below the recorded background noise level of 39dB. Again, where the rating level does not exceed the background sound level, this is an indication of the specific sound source having a low impact.

In noise assessment terms this is a low impact with no adverse noise. The noise mitigation has reduced to a minimum any potential noise levels generated from the site. This ties in with national planning guidance as detailed within the Noise Policy Statement for England. Using the Noise Policy:

- There would be No Observed Adverse Effect within the amenity areas of any noise sensitive properties. However, this does mean that in certain situations noise could well be heard in the background, but this does not cause any change in behaviour or attitude of local residents. This can slightly affect the acoustic character of the area but not such that there is a perceived change in the quality of life of local residents. In order to ensure that the acoustic character of the area is not changed and to further protect the AONB it has been recommended that the shot blasting activity hours of operation are restricted.
- There would be No Observed Effect within noise sensitive properties themselves. This is the level below which no effect from the noise can be detected. In simple terms, there should be no detectable effect on health and quality of life due to the noise.

MP3 (representative of closest residential garden)	Sound Level (dB) on 01/07/2020 (before mitigation)	Sound Level (dB) (after mitigation)
Specific Sound Level	No measurements taken	39
Rating Penalty		0
Measurement Uncertainty		0
Rating Sound Level		39
Daytime Background Sound Level		39 (applicant's reading and our reading at the Manor House)
Excess of Rating over Background Sound Level During Operational Hours 09:00am - 12:00pm		0
Notes		Shot blasting was operational for 40 minutes of the hour assessment period. Noise arising from the shot blasting activities was barely audible at this location and was almost entirely masked by the residual acoustic environment.
Assessment		Low Impact
Assessment using terminology from Planning Practice Guidance		Between No Observed Effect Level (NOEL) and No Observed Adverse Effect Level (NOAEL)
Action		No specific measures required

This table shows that the noise reading from the Council's EHO taken at position MP3 (representative of the closest residential garden) showed a background noise reading of 39dB and that noise from the facility was 39dB after mitigation.

Again, this shows that in this position, the noise impact is low with no adverse effect.

In light of this evidence and the comments from the Council's EHO, officers are concerned about defending the reason for refusal put forward by Members at the last Committee.

If the noise levels from the operation of the shot blasting are no higher than the background noise levels, then there is no planning harm to neighbouring residents or to the tranquillity of the AONB as the noise would not be perceived. To address the fact that some noise may be heard on occasions (noise that is not harmful), a condition is proposed to limit the shot blasting use to 9am to 12noon Monday to Friday. This will protect both amenity and the tranquillity of the AONB. These may be better restrictions

and controls than may be required by a Planning Inspector if consent were granted on appeal.

At the Committee in February Members raised concerns regarding noise from vehicles associated with the shot blasting use. However, the wider site has a lawful use with no control over vehicle movements and it is not considered that additional traffic from this small shot blasting use/area (restricted to 15 hours a week), could be considered unreasonable or harmful to neighbours or to the tranquillity of the AONB. As such, there is a lack of evidence to put before an Inspector to demonstrate that a few extra vehicle movements is harmful.

With regard to concerns raised at the Committee regarding this industrial use being unacceptable in principle in the AONB, neither Strategy 46 of the Local Plan, nor the NPPF, prevent industrial or B2 uses in the AONB. The Local Plan and NPPF seek to ensure that developments conserve and enhance the landscape character of the AONB and given that the application proposes retention of a very small extension with a very limited visual impact, with noise levels at or below the background noise level, there is no evidence of harm to the AONB and as such it is considered by officer's to conserve the landscape character of the area. Whilst the proposal cannot be considered to enhance the AONB, it is considered that a Planning Inspector is unlikely to refuse planning permission given the lack of identified harm.

In relation to the existing appeal against the previous refusal of planning permission pre-mitigation, the Planning Inspectorate have again held the appeal in abeyance pending the outcome from this Committee meeting.

Finally, there was a question from the Ward Members at the Committee meeting relating to why this second application was entertained following the refusal of the first application. Whilst there is legislation (Section 70A of the Town and Country Planning Act 1990) that gives discretion to a local planning authority to decline to determine a subsequent application, this is where within a two year period an appeal for a similar application has been dismissed. In this case, there is no dismissed appeal. In addition, as this second application includes noise mitigation, the application is not similar and as such can be entertained. In addition, officers have accepted the application as it was clear that the mitigation measures were going to be put in front of the Planning Inspector as part of the current appeal and officers wanted an opportunity to assess this in public rather than running the risk of the information being submitted as part of the appeal without further consultation.

CONCLUSION

In light of the above, and the contents of the attached Committee Report, Members are asked to give further consideration to this issue and the concerns of officers.

With a lack of evidenced harm, any appeal is likely to be successful with a significant risk of costs being awarded against the council for unreasonable behaviour.

Should Members determine that they still wish to refuse planning permission, before doing so, officers would strongly recommend a site inspection so that Members can see the proposal for themselves and hear the shot blasting in operation.

RECOMMENDATION

APPROVE subject to the following conditions:

1. The development hereby permitted shall be carried out in accordance with the approved plans listed at the end of this decision notice.
(Reason - For the avoidance of doubt.)
2. The use hereby permitted shall be limited to use for shot blasting and for no other purpose (including any other purpose in Class B2 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended), or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification).
(Reason - To protect adjoining occupiers from noise and disturbance in accordance with the requirements of Policy EN14 - Control of Pollution of the East Devon Local Plan 2013-2031.)
3. The use hereby permitted shall not take place outside the hours of 9am to 12pm Monday to Friday, with no shot blasting activities taking place on Saturdays, Sundays or Bank or Public Holidays.
(Reason - To protect adjoining occupiers from noise and disturbance in accordance with the requirements of Policy EN14 - Control of Pollution of the East Devon Local Plan 2013-2031.)
4. The noise mitigation measures described in the Noise Assessment prepared by inacoustic (project number 20-141, dated 24 June 2021) shall be maintained throughout the operational lifetime of the use hereby permitted such that the Rating Level of any noise generated on the site shall not exceed 39dB(LAeq 60min) when measured or determined at the boundary of any noise sensitive property. Any measurements and calculations shall be carried out in accordance with 'BS4142+2014 Methods for Rating and Assessing Industrial and Commercial Sound' or any equivalent replacement standard.
(Reason - To protect adjoining occupiers from noise and disturbance in accordance with the requirements of Policy EN14 - Control of Pollution of the East Devon Local Plan 2013-2031.)

NOTE FOR APPLICANT

Informative: Confirmation - No CIL Liability

This Informative confirms that this development is not liable to a CIL charge.

Any queries regarding CIL, please telephone 01395 571585 or email cil@eastdevon.gov.uk.

Plans relating to this application:

Location Plan

16.12.21

03	Proposed Elevation	16.12.21
04	Proposed Floor Plans	16.12.21

List of Background Papers

Application file, consultations and policy documents referred to in the report.

		Committee Date: 16th February 2022
Trinity (Compyne Rousdon)	21/3255/FUL	Target Date: 10.02.2022
Applicant:	Mr Mark Perry	
Location:	Building North Of Harbour Close Compyne	
Proposal:	Change of use of part of building to B2 use and retention of single storey side extension.	

RECOMMENDATION: Retrospective Approval (conditions)

EXECUTIVE SUMMARY

This application is before the Committee because the recommendation is contrary to the views of the Ward Member.

The proposal is for a small expansion and diversification of an established business in a rural area. In this case it is principally to allow shot blasting to take place within in an existing building. Such development is supported in principle by Policy E5 subject to consideration of any impacts on its surroundings. These include impacts on neighbours and, in this case, any impact on the AONB.

Shot blasting can be a noisy activity but an insulated enclosure has been constructed in accordance with advice from an acoustic consultant. This has effectively contained the noise such that it does not adversely affect local residents or the relative tranquillity of the AONB.

Associated with the shot blasting there are a small number of additional vehicle movements and material handling which may generate some noise. This must be considered in the context of the lawful use of the site and its location within a settlement which itself generates a certain amount of noise. Relative to the established noise environment, the proposed development would generate little change. It would therefore have no material impact on local residents or the relative tranquillity of the AONB.

Subject to conditions limiting the nature and scale of the development the proposal is acceptable.

CONSULTATIONS

Local Consultations

Trinity - Cllr Ian Thomas

The property lies near in the small village of Combpyne, within the East Devon AONB. The proposal relates to the B2 activity of shot blasting on a site where this activity has historically drawn several complaints from nearby properties.

The application appears similar to previous application 20/115/COU, where I commented on 14th August 2020. That application was subsequently refused, a decision subsequently upheld at appeal.

I note Environmental Health is recommending approval, with conditions. However, the application is not supported by either the Parish Council or East Devon AONB.

Despite a view from EH that noise levels can be mitigated, I do not believe that this carries significant weight, in the context that a B2 use, such as shot blasting, is fundamentally unsuitable and incongruous within a quiet village location such as Combpyne, itself within such a highly valued protected landscape as the East Devon AONB.

I concur with the view expressed by Combpyne-Rousdon Parish Council that the application should be REFUSED.

Parish/Town Council

The Parish Council objects to the application on the following grounds:-

We maintain that any industrial process that requires B2 use is fundamentally inappropriate for this location. If the noise levels on the site are as low as the applicant's noise assessment report suggests, then B1 use, which is classified as Uses which can be carried out in a residential area without detriment to its amenity should be sufficient. To allow use of the site for B2 (General Industrial) will inevitably result in a detrimental impact to the amenity of the neighbouring properties who continue to experience and report to the Parish Council adverse noise from the shot blasting process, in addition to increased heavy traffic (often at unsociable hours) and waste from the shot blasting process. The Council are concerned that should B2 use be granted with noise conditions attached, it will not be sufficiently policed to protect the amenity of the local residence from noise. The Council has grave doubts that if permission is given adequate policing will occur.

The Council is disappointed that EDDC have now declined to undertake an additional noise assessment, despite this previously being recommended by Environmental Health. They are also concerned as to the reason why Environmental Health are now content to rely on the applicant's sound data when a) there was no independent body there to witness the collection of the data and b) the data was not collected from the worst affected location within the valley and c) on 11 January 2022 they commented that they believe the acoustic report was being very liberal with the background sound

measurements for the area. Surely this is reason enough to undertake an additional noise assessment given the longstanding implications to the surrounding properties of allowing B2 use. In addition, the recent recommendations from Environmental Health outlined in their comments 14 January 2022 do not take into account the location of the proposed B2 site, which is within a rural, residential AONB area.

The Council is concerned that this application appears to be fundamentally the same as application 20/1115/COU which has already been refused by EDDC. This application being fundamentally the same should, we submit, be dismissed under section 70b of The Town and Country Planning Act 1990, section 70b (3 and 4).

Technical Consultations

East Devon AONB

We refer to our previous response on this proposal, edited below. Please note these comments in the context of NPPF which calls for valued landscapes to be protected and enhanced (NPPF 174a) with great weight being given to conserving landscape and scenic beauty in National Parks and Areas of Outstanding Natural Beauty (AONBs) which have the highest status of protection in relation to these issues. (NPPF 176). There is a presumption against major development in protected landscapes (NPPF 177). The NCA and district level LCA's reinforce the need to protect the tranquil character of the AONB.

Combpyne is a small hamlet situated in the eastern part of the AONB, nestled in an intimate and very tranquil location. It sits on the boundary between Landscape Character Type 3A: Upper farmed and wooded valley slopes and Type 1B: Open Coastal Plateau and the land falls away to the northern part of the hamlet into Landscape Character Type 3B: Lower rolling farmed and settled valley slopes. This proximity of boundary in three LCTs creates a dynamic landform land change from the plateau at around 150m to 82m at road level; the result being a landscape character change that creates an intimate setting and a great sense of tranquillity and rurality.

The key characteristics of LCT 3A include :

- o Very winding narrow lanes, many sunken with high banks and flower-rich verges.
- o An intimate and intricate landscape with wider views often confined by vegetation. Where
- o views occur, they contain distinctive patchwork patterns of fields.
- o Relatively remote and tranquil with little obvious modern development.

The Landscape Aims for LCT 3A refer to the need to identify and protect areas of tranquillity.

The application site is located close within the centre of the hamlet area and walking around the area, it is immediately apparent that even the natural sounds of flowing water from the ram pond or the wind through the trees is magnified by the natural landform. It would seem likely therefore that any noise above normal background will be magnified in this location. Without technical details regarding the potential noise impact at the site from the proposal operations and what is regarded as an acceptable

level in such a location, it is not possible to comment specifically on the proposed change of use operation at the site. It would seem logical however, that unless the operation can be extremely well sound-proofed to the satisfaction of the environmental health department and local community, it is likely to have a negative impact on the tranquillity of the hamlet. In addition to the LCA, this factor should be one of the key determinants in the acceptability of the proposal in this location, given its landscape character.

East Devon AONB Partnership

Environmental Health

24/12/2021 - Further information is required before any recommendation can be made:

A noise assessment has been included with the application by the applicant. This assessment has detailed a background sound level of 43 dB (LA90) at the nearest noise sensitive dwelling. However, a background sound level of 43 dB (LA90) is not deemed to be representative of the surrounding rural acoustic environment (as confirmed by a number of sound recordings made by Environmental Health). Determining the typical background sound level is important to ensure that values are reliable and correctly represent the acoustic environment of the locality.

Therefore, in order to obtain a representative background sound level a further noise assessment is required. This assessment should be carried out covering the period of interest (09.00-12.00), over a number of days. This will give a far more representative mean averaged background sound level for the surrounding acoustic environment. Care must be taken to ensure that any industrial/commercial sounds aren't allowed to influence the background sound level. Due to the rural setting of this location it's not deemed necessary to have other forms of industrial/commercial sounds in quantifying what is the typical background sound level.

Further comments 11/01/2021:

I've had another look at this and whilst I still believe that the acoustic report is being very liberal with the background sound measurement for the area, a way around requiring a further noise assessment could be the proposing a noise condition 5dB below the suggested background level. This is what I was thinking of recommending:

In order to ensure that the noise climate of the surrounding area will be protected the following noise condition is recommended:

A noise mitigation scheme shall be designed and implemented in full throughout the operational lifetime of the B2 site. The noise mitigation scheme shall be sufficient to ensure that the Rating Level of any noise generated on the site shall not exceed:

- o 39dB(LAeq 60min) 5dB below the day-time (07:00 until 23:00) background noise level of 44dB(A) when measured or determined at the boundary of any noise sensitive property. Any measurements and calculations shall be carried out in accordance with 'BS4142+2014 Methods for Rating and Assessing Industrial and Commercial Sound'.

Reason: To protect the amenity of local residents from noise.

I think this condition would offer sufficient protection for the AONB & residents during daytime operations from the site.

Further comments 14/01/2022:

The application is recommended for approval with conditions attached. In order to ensure that the noise climate of the surrounding area is protected the following noise condition should be attached:

The applicants proposed noise mitigation scheme shall be implemented and maintained throughout the operational lifetime of the B2 site. The noise mitigation scheme shall be sufficient to ensure that the Rating Level of any noise generated on the site shall not exceed:

o 39dB(LAeq 60min) when measured or determined at the boundary of any noise sensitive property. Any measurements and calculations shall be carried out in accordance with 'BS4142+2014 Methods for Rating and Assessing Industrial and Commercial Sound'.

The carrying out of any shot blasting activities should be restricted to the following hours:

o 9am to 12pm Monday to Friday with no shot blasting activities on taking place on Saturdays, Sundays or Bank Holidays.

Other Representations

6 objections have been received raising the following concerns:

- Noise is unacceptable
- The use is inappropriate in an AONB
- Increased traffic
- Damage to roads
- Pollution of the watercourse
- Visually unacceptable and untidy
- Effect on the setting of listed buildings
- It would set a precedent

2 comments in support and 1 representation offer the following comments:

- Shot blasting cannot be heard
- The compressor has been used for decades
- No effluent is generated
- Vehicles do not cause issues
- There is no visual impact
- The plant hire use is well established
- Businesses cannot be excluded from the countryside

Reason: To protect the amenity of local residents from noise.

PLANNING HISTORY

Reference	Description	Decision	Date
94/P1834	Use Of Land For Storage Of Plant	Withdrawn	28.06.1995
97/P1245	Demolish Existing Buildings And Erect Store For Hay/straw And Agricultural Plant	Approval with conditions	25.09.1997
20/0287/CPE	Certificate of existing lawfulness to establish a mixed use of land & buildings for B1, B2 & B8 uses.	CPE Approved	26.05.2020
20/1115/COU	Proposed change of use of 1 no existing structure from agricultural to B1 and B2 use	Refusal – Appeal being considered	26.02.2021
21/2259/CPE	Certificate of existing lawfulness of part of building for part office, workshop and storage use.	CPE Approved	12.11.2021

POLICIES

Adopted East Devon Local Plan 2013-2031 Policies

Strategy 7 (Development in the Countryside)

Strategy 46 (Landscape Conservation and Enhancement and AONBs)

D1 (Design and Local Distinctiveness)

EN4 (Protection of Local Nature Reserves, County Wildlife Sites and County Geological Sites)

EN9 (Development Affecting a Designated Heritage Asset)

EN14 (Control of Pollution)

E5 (Small Scale Economic Development in Rural Areas)

Government Planning Documents

NPPF (National Planning Policy Framework 2021)

National Planning Practice Guidance

Site Location and Description

The site is located at Combpyne, a small settlement located a short distance north of the A3052 roughly midway between Colyford and Lyme Regis.

The application building sits in a yard within an elongated parcel of land slightly divorced from the nearest houses but still within the settlement. Access is via an unmade track passing to the north of 'Harbour Close'.

The site is within the East Devon AONB and there is a County Wildlife Site immediately to the east.

The nearest residential properties are to the south and south east and some are listed grade II. Further to the south is a grade I listed church.

ANALYSIS

This application is partly to allow shot blasting to continue within an existing building and partly for the retention of an attached structure which houses an air compressor used in association with the shot blasting and to operate other equipment.

Background

The land was originally used for agricultural purposes but the evidence indicates that by 1994 the use of the land for the storage of plant had become lawful.

The earliest application on the site (94/P1834) was withdrawn and the documentary evidence indicates that this was because a lawful development certificate had been granted for the same use, namely use of the land for storage of plant. It appears that parallel LDC and planning applications were submitted but neither the applicant or his agent nor the planning, land charges and legal departments of the Council have been able to trace a record of the decision, other than a reference to it in the planning application. The report on the planning application explains:

"the use [was] regarded as lawful within the meaning of the Act, subject to it being restricted to the storage and maintenance of plant limited to 2 x JCB type diggers, one mini digger and one tractor and trailer, together with the storage of fuel and spare parts used in connection with the plant hire business."

In 1997 the building within which the shot blasting now takes place was granted planning permission. This was subject to the following condition:

The building hereby permitted shall be used only for purposes in connection with the use of the adjoining land for the purposes of agriculture and the plant hire business operated from this site.

(Reason - In order to retain control over the scale of the use in the interests of the amenities of the area and highway safety).

This appears to confirm that the use of the land for a plant hire business was considered to be lawful by that time.

A 2020 application for a lawful development certificate resulted in a certificate being issued for the B8 use of two small buildings within the site but insufficient evidence was provided to demonstrate a B1 and B2 use of the building which is the subject of the current application.

This certificate was followed by a planning application for the B1 and B2 (shot blasting) use of the building but this was refused for the following reason:

"The noise from the shot blasting operations of the B2 use would result in significant observed adverse effects. The noise levels created would be harmful to both the living conditions of the nearby occupiers of adjacent properties and to the identified tranquillity of the wider designated Area of Outstanding Natural Beauty. The mitigation measures proposed are not considered sufficient to contain the noise to an appropriate level. As such the proposal would conflict with policies D1 (Design and Local Distinctiveness), EN14 (Control of Pollution) and strategy 46 (Landscape Conservation and Enhancement and AONBs) of the adopted East Devon Local Plan, and guidance contained within the National Planning Policy Framework and the National Planning Policy Guidance."

In the absence of a lawful development certificate or planning permission for shot blasting, an enforcement notice was issued requiring the shot blasting to cease.

Both the refusal of planning permission and the enforcement notice have been appealed by the applicant but both appeals are currently in abeyance pending the outcome of this application.

In response to the LDC failing to confirm a lawful use for the building and following the refusal of planning permission for a B1 and B2 use, further evidence was provided in 2021 and a certificate was granted for the use of part of the building as an office, workshop and store incidental to the use of the site for plant hire (a sui generis use). This certificate excluded the part of the building used for shot blasting because the use was relatively new and had not become lawful.

The current application therefore seeks to address the only unresolved issue, namely the planning status of the remaining part of the building and the compressor housing.

Principle of the development

The starting point for the consideration of this application is that the land has had a lawful use for over twenty five years for storage of plant for hire. Furthermore, associated with this lawful use is a building which is lawfully used for incidental purposes that include administrative work and plant repair and maintenance. Such maintenance activities include the use of a compressor which, until recently, was not housed in an acoustic enclosure.

It is important to note that this forms the baseline in terms of characterising the area and the lawful uses cannot be taken away from the applicant.

Combpyne is otherwise residential in character and set within rolling farm land in a landscape which is designated as an AONB. Although it is less than a mile from the

A3052 it is relatively undisturbed by traffic other than that which is attracted to the settlement and some through traffic, including farm traffic.

The application building is about 80m from the nearest dwelling and although there is open ground and trees between the site and the building, the application site is considered to lie within the settlement, not least because it is accessed from a driveway close to the houses.

The building housing the shot blasting benefits from planning permission and therefore its continued physical presence is not in question when considering the visual impact of the development. In addition, the compressor housing is modest in size and has no visual impact beyond the site boundaries. The visual effects of the development on the AONB are therefore acceptable. Likewise, there would be no harm to the setting of the grade 1 and II listed buildings located to the south east of the site.

Policy E5 of the Local Plan supports the use of existing buildings for business purposes in the countryside and also the development of new buildings on previously developed land. This support is subject to consideration of various environmental factors but in principle the development proposed is compatible with the employment policies of the Local Plan.

In light of this the main issues are whether the continued use of the building for shot blasting is appropriate in this location with particular regard to noise impacts on residential amenity and the effect on the AONB.

Noise and residential amenity

The shot blasting takes place in an enclosure within the building which is accessed from a door in the north elevation. The compressor is housed in a lean-to roofed enclosure also on the north elevation.

At the time of the last planning application the walls and roof of the enclosure were constructed as follows:

- INSIDE
- 100mm timber stud/ rafters
- 100mm PIR insulation in the void
- Corrugated metal sheet
- OUTSIDE

The acoustic report proposed the following enhancement to the wall and roof construction:

- INSIDE
- 18mm OSB Board
- 100mm timber stud/rafters
- 100mm Rockwool insulation min 33 kg/m³
- Corrugated metal sheet
- OUTSIDE

alongside the following measures:

- sealing any air gaps with expanding foam or non-hardening mastic;
- closing the hole in the door which is used to operate the latch;
- installing a heavy duty door seal to the bottom of the door;
- sealing the other edges of the door with draft excluder or rubber seal if possible;
- moving the ventilation opening away from the 'noise sensitive receptors';

These enhancements have now been implemented and in addition to these an acoustic enclosure has been constructed for the compressor. Following this work a new noise assessment was undertaken as detailed in the submitted report from the applicant's consultant.

For comparison, background noise levels and operational noise levels were measured on 1 July 2020 and 22 June 2021, pre- and post- mitigation.

Readings were taken within the site but also close to the nearest noise sensitive receptor, Manor House and its garden. Because the latter is a private property the readings were taken from representative points nearby which were slightly closer to the application site than the house and its garden.

In 2020 a background noise level of 43dB was measured at a point about 4m away from the windows of Manor House (location MP1). The same noise level of 43dB was recorded when the background noise level was measured in 2021. In addition to this, in 2021 a recording was taken from a second location adjacent to the garden of Manor House (location MP3) at which a background noise level of 39dB was recorded.

On both occasions the noise levels were also recorded when the shot blasting was taking place, in other words, before mitigation in 2020 and after mitigation in 2021.

Before mitigation the 'specific sound level' at MP1 when shot blasting was taking place was 48dB. On top of this a rating penalty of 3dB was applied, giving a 'rating sound level' of 51dB. This represents an uplift of 8dB above background noise level recorded at MP1. According to BS4142 this is indicative of an adverse impact or, with reference to Planning Practice Guidance, a Lowest Observed Adverse Effect Level.

After mitigation the 'specific sound level' at MP1 when shot blasting was taking place was 38dB. No rating penalty was applied because no intermittency was detectable to a material degree and therefore the 'rating sound level' was also 38dB. This is 5dB lower than background noise level recorded at MP1.

Similarly, after mitigation the 'specific sound level' at MP3 when shot blasting was taking place was 39dB. No rating penalty was applied because no intermittency was detectable to a material degree and therefore the 'rating sound level' was also 39dB. This is the same level as the background noise level recorded at MP3.

Therefore, at both MP1 and MP3 the post-mitigation noise levels are indicative of a 'low impact', according to BS4142.

Section 9.3 of the noise report concludes that these results mean that:

"the development will give rise to noise impacts that would be categorised as between No Observed Effect Level (NOEL) and No Observed Adverse Effect Level (NOAEL) within the PPG Noise guidance, depending on the context."

In such circumstances no specific mitigation measures are required beyond those already identified. It is noted, however, that the applicant is willing to restrict shot blasting to the hours of 9am-12pm Monday to Friday. This can be secured by condition along with retention and maintenance of the mitigation measures, as suggested by the Environmental Health Officer. It is also noted that the tree screening is already protected by a condition on planning permission 97/P1245 so this adds a further degree of mitigation.

Notwithstanding the conclusion in the noise report that the shot blasting is virtually inaudible off site, the following comments have been received from local residents:

"We write this at 8am on a Tuesday morning when the sound of a compressor, along with the loud clank of metal being moved, can be clearly heard across the valley. Its like living next to a permanent building site, operating 7 days a week, which is intolerable and as such we strongly object to the above planning application."

"My wife and I have become aware of increasing noise from the site since the applicant began using the site for shot blasting in about 2018."

"As far as noise pollution is concerned his activities are clearly heard from our house and we are further way than some others. In winter there are no tree leaves to mute the sound. "

"It is also the constant nature of the noise and the way it reflects in the step sided valley which is the centre of the village and the location of the site in question."

"At the time of writing, my wife and I still must live with a noisy compressor, shot-blasting and excessive commercial vehicle movement."

Some, if not most of the noise highlighted by these residents may be attributed to the lawful use of the site. Furthermore, the evidence of the noise consultant indicates that shot blasting itself is not a cause of adverse noise following mitigation. It is accepted, however, that metal is moved into and out of the shot blasting room and a small number of additional vehicle movements may be attributed to the activity. Whilst it is possible to control the use of the shot blasting room, it is not so simple to control the incidental activities such as receiving items for shot blasting or sending them away once processed.

There has been no specific assessment of the noise associated with these incidental activities, or at least if it did form a component of the noise assessment, it is not specifically addressed in the report. However, such noise would be brief in duration and infrequent given the small scale of the operation. It would also take place in the

context of a lawful use which generates similar noise. In this context the proposed development would only represent a minor intensification of activity giving rise to little to no change in noise output.

Having regard to the evidence provided it is concluded that noise from the development would not have an adverse impact on the health and quality of life of the occupants of surrounding buildings.

Impact on the AONB

Whilst the effect on residential amenity is a question of health and quality of life, the effect on the AONB is a question of character and relative tranquillity.

To put this issue in context, The Countryside and Rights of Way Act 2000 says that a local planning authority must "have regard to the purpose of conserving and enhancing the natural beauty of the area of outstanding natural beauty."

Paragraph 176 of the NPPF also says: "Great weight should be given to conserving and enhancing landscape and scenic beauty in National Parks, the Broads and Areas of Outstanding Natural Beauty which have the highest status of protection in relation to these issues."

Paragraph 185 adds:

"Planning policies and decisions should also ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment, as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development. In doing so they should:

(a) mitigate and reduce to a minimum potential adverse impacts resulting from noise from new development - and avoid noise giving rise to significant adverse impacts on health and the quality of life;

(b) identify and protect tranquil areas which have remained relatively undisturbed by noise and are prized for their recreational and amenity value for this reason; and

(c) limit the impact of light pollution from artificial light on local amenity, intrinsically dark landscapes and nature conservation."

The key issue therefore is whether the development would adversely affect the relative tranquillity of the area.

It is important to highlight the term 'relative' because this is not an area which is devoid of man-made noise. Whilst some arises from the application site, there are also 30-40 dwellings in Combyne giving rise to some level of noise and activity, as well as farming activity.

It has already been found that the shot blasting has been mitigated to the extent that it has a negligible impact outside the site. This leaves the incidental activities that take place outside the shot blasting enclosure or when the door is open.

The amount and type of traffic associated with the shot blasting must be viewed in the context of the lawful use of the site and the amount and type of traffic already using the roads through Combyne. In terms of amount, any increase would be very modest as the shot blasting process is not conducive to a high throughput of material, particularly if it is limited to three hours per day. In terms of the type of traffic, it would be similar to that which is already generated by the site and similar also to the delivery vehicles and farm traffic that serve the settlement and surrounding countryside. It is therefore concluded that the traffic impacts of the development would not adversely affect the relative tranquillity of the area.

The other main noise generating incidental activity is the moving of metal around the site. As already noted, there are 30-40 dwellings in Combyne and at any time there may be gardening or building works going on that would generate unwelcome noise. However such noise is characteristic of a residential area and the most intrusive types of noise arising from building works are likely to occur infrequently. In contrast, moving metal for shot blasting would occur several times a week, if not daily.

To a large degree the amount of noise generated when moving metal around the site is a consequence of how carefully it is handled. This cannot be controlled by means of a planning condition but there would inevitably be a certain level of economy of movement for reasons of physical ease and efficiency. It is also likely that care would be taken to avoid damage to material being processed for customers. Factoring in the time limits on shot blasting it is likely that noise generated by moving metal around would be occasional rather than frequent or continuous. In relative terms therefore, it is unlikely to be significant.

The comments of the AONB Partnership caution that great care must be taken to avoid a negative impact on tranquillity. In this case the development would take place in the context of an established noise generating business and would not change the character of the activities carried out in terms of noise. Whilst it is true that there would be occasional noise, that is also true of the lawful use. Given the small scale of the development any change would be modest and in the context of other noise in the local environment would not be significant. It is therefore concluded that the relative tranquillity of the area would be conserved.

Other matters

It has been suggested that this application should have been turned away using powers under Section 70A of the Town and Country Planning Act 1990. These powers establish that an application may be turned away if a 'similar application' is under consideration on appeal. Whilst there is an outstanding appeal, the two applications are not regarded as similar because mitigation measures have since been undertaken in an effort to overcome the reason for refusal. Those measures are worthy of consideration and without prejudice to the planning process it was reasonable to conclude that a different outcome might result. In such circumstances it would have been unreasonable to turn the application away.

Some comments have suggested that a B2 use is fundamentally inappropriate for this area. However, the proposal is for a specific B2 use which is capable of being controlled by conditions and therefore granting permission would not allow other B2 uses to take place.

Concern has been raised about pollution of watercourses but the shot blasting process does not give rise to effluent that escapes into the surrounding environment.

The nearby County Wildlife Site is described as "Wet woodland and dry woodland with areas of swamp and mire". As noted above, the proposal would not give rise to pollution of the local environment.

CONCLUSION

The proposal is for a small expansion and diversification of an established business in a rural area. Such development is supported in principle by Policy E5 subject to consideration of any impacts on its surroundings. These include impacts on neighbours and, in this case, any impact on the AONB.

Shot blasting can be a noisy activity but an insulated enclosure has been constructed in accordance with advice from an acoustic consultant. This has effectively contained the noise such that it does not adversely affect local residents or the relative tranquillity of the AONB.

Associated with the shot blasting there are a small number of additional vehicle movements and material handling which may generate some noise. This must be considered in the context of the lawful use of the site and its location within a settlement which itself generates a certain amount of noise. Relative to the established noise environment, the proposed development would generate little change. It would therefore have no material impact on local residents or the relative tranquillity of the AONB.

Subject to conditions limiting the nature and scale of the development the proposal is acceptable.

RECOMMENDATION

APPROVE subject to the following conditions:

1. The development hereby permitted shall be carried out in accordance with the approved plans listed at the end of this decision notice.
(Reason - For the avoidance of doubt.)
2. The use hereby permitted shall be limited to use for shot blasting and for no other purpose (including any other purpose in Class B2 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended), or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification).

(Reason - To protect adjoining occupiers from noise and disturbance in accordance with the requirements of Policy EN14 - Control of Pollution of the East Devon Local Plan 2013-2031.)

3. The use hereby permitted shall not take place outside the hours of 9am to 12pm Monday to Friday, with no shot blasting activities taking place on Saturdays, Sundays or Bank or Public Holidays.

(Reason - To protect adjoining occupiers from noise and disturbance in accordance with the requirements of Policy EN14 - Control of Pollution of the East Devon Local Plan 2013-2031.)

4. The noise mitigation measures described in the Noise Assessment prepared by inacoustic (project number 20-141, dated 24 June 2021) shall be maintained throughout the operational lifetime of the use hereby permitted such that the Rating Level of any noise generated on the site shall not exceed 39dB(LAeq 60min) when measured or determined at the boundary of any noise sensitive property. Any measurements and calculations shall be carried out in accordance with 'BS4142+2014 Methods for Rating and Assessing Industrial and Commercial Sound'.

(Reason - To protect adjoining occupiers from noise and disturbance in accordance with the requirements of Policy EN14 - Control of Pollution of the East Devon Local Plan 2013-2031.)

NOTE FOR APPLICANT

Informative: Confirmation - No CIL Liability

This Informative confirms that this development is not liable to a CIL charge.

Any queries regarding CIL, please telephone 01395 571585 or email cil@eastdevon.gov.uk.

Plans relating to this application:

	Location Plan	16.12.21
03	Proposed Elevation	16.12.21
04	Proposed Floor Plans	16.12.21

List of Background Papers

Application file, consultations and policy documents referred to in the report.