

**TOWN AND COUNTRY PLANNING ACT 1990 SECTION 78 APPEAL AT
LODGE FARM, OFF BORRAS ROAD, COMMONWOOD, WREXHAM**

COUNCILS STATEMENT OF CASE

**PLANNING REF: P/2019/0046 AND P/2018/0776
PINS REF: H6955/A/19/3241654
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1.0 THE SITE

- 1.1 The Appeal site is located at Lodge Farm, off Borrass Road, Commonwood, Wrexham, LL13 9TE

2.0 PROPOSALS

- 2.1 Planning permission (Ref: P/2018/0776) for the 'Change of use of land from agriculture to a mixed use for agriculture and practice rifle firing range in association with field and falcon gun shop and gunsmiths (in retrospect)' was refused on 03.06.2019 for the following reasons:

2.1.1 The frequency of gunshots at the proposed rifle firing range in terms of noise and sudden impact would be a constant source of irritation and disturbance to neighbouring noise sensitive properties, detrimental to their amenity. To allow the proposed development would be contrary to Wrexham Unitary Development Plan policy GDP1 (f).

2.1.2 The proposed development has the potential to increase traffic through a substandard vehicular access. Visibility in the easterly direction is impeded and falls significantly short of the prescribed standards set out in Welsh government TAN 18. To allow the development would be contrary to Wrexham Unitary Development Plan policy GDP1 (d).

- 2.2 Planning permission (Ref: P/2019/0046) for the 'Change of use of land from agricultural to use for clay pigeon shooting range in association with field and falcon gun shop and gunsmiths (in retrospect)' was refused on 25.05.2020 for the following reason:

2.2.1 By virtue of the noise levels, non-continuous sources of noise, the number of noise events, the frequency and pattern of occurrence of the noise, and the general character of the noise associated with the use, it is highly likely that complaints that the activity represents a noise nuisance to the detriment of local residential amenity would be justified, and the proposal is therefore contrary to Policy GDP1 a) and e) (*sic*) of the Wrexham Unitary Development Plan and the advice contained within Planning Policy Wales, Edition 10.

- 2.3 The Council draws the Inspector's attention to a typo in the reason for refusal (repeated above at 2.2.1) where GDP1 e) has been quoted in error. GDP1 f) relating to noise is the correct Policy reference in respect of this appeal.

3.0 RELEVANT PLANNING HISTORY

- 3.1 P/2007/0336 Erection of steel framed shed for general engineering business and stationing of static security caravan (in retrospect). Refused 04/06/2007.

- 3.2 P/2014/0244 Change of use of mezzanine floor space (B2) to shop (A1) selling firearms and associated country, outdoor, sporting and agricultural goods (in retrospect). Granted 01/09/2014.

4.0 PLANNING CONTEXT

- 4.1 The relevant Development Plan is the Wrexham Unitary Development Plan (UDP) 2005. Policy GDP1 (a) (d) and (f) of that document is relevant to this Appeal. Copies of the relevant UDP Policy can be found within the questionnaire.
- 4.2 Technical Advice Note (TAN) 18: Transport March 2007 and Manual for Streets 2 (urban and rural streets) May 2019 are also relevant.

5.0 THE COUNCIL'S CASE

- 5.1 Rifle Shooting Range - A complaint was received by the Council in July 2018 in relation to an unauthorised rifle shooting range. This triggered the submission of retrospective planning application Ref: P/2018/0776, now subject of this appeal. A noise complaint received at the same time was investigated by the Council's Environmental Health Officer (EHO). Sound recording equipment was installed at the complainant's property for 1 week. The noise recorded during this period was not found to be at a level or frequency that would result in a statutory nuisance and no abatement notice was served. It was noted at that time that this did not mean that the proposal does not have the potential to cause disturbance to neighbouring noise sensitive properties (houses) if the use was allowed to continue.
- 5.2 A noise assessment was prepared by a qualified acoustic consultant (clement acoustic dated 16/01/2019) and submitted in support of the 2018 Rifle Range application. The results of the assessment were considered by the EHO who confirmed that the noise levels were within the realms of acceptability, being less than 55dB(A) which is the level at which annoyance is less likely to occur.
- 5.3 Based upon the information before the Council at that time, the case officer was satisfied that the submitted noise report had demonstrated that the use is unlikely to result in a noise nuisance to the nearby properties. However, as the shooting range had not at that stage been used to its full potential, recommended to the planning committee that only a temporary permission be granted for a period of 12 months to allow any negative impacts in terms of noise or highway safety to be properly monitored.
- 5.4 Permission was subsequently refused in June 2019 and since that time, the Council has received a number of complaints relating to noise nuisance coming for the rifle range such that, had a temporary permission been granted, it is unlikely that a further permission would

be granted at the end of the temporary period. The reason being that the frequency of gunshots at the proposed rifle firing range in terms of noise and sudden impact would be a constant source of irritation and disturbance to neighbouring noise sensitive properties, detrimental to their amenity. The proposed use would not accord with the character of the farm and to allow the proposed development would be contrary to Wrexham Unitary Development Plan Policy GDP1 (a) and (f).

- 5.5 Clay Shooting Range – In making a site visit to assess the merits of the 2018 Rifle Range application, it was noted that there was a Clay Shooting Range on the land which also did not have the benefit of planning permission. This triggered the submission of retrospective planning application Ref: P/2019/0046, now also subject of this appeal.

- 5.6 Noise monitoring of the clay shooting range was carried out by the EHO for 2 weeks, between 10th April and 24th April 2019. During this time period noise of shooting was recorded on three separate occasions, over two days. These are summarised below and can be heard on Sound Files at Appendix 2 as witnessed at Appendix 3:

Date	Time period	Number of shots heard
12/04/19	11:47 – 11:51	8 shots
13/04/19	10:11 – 11:00	84 shots
13/04/19	16:41 – 16:59	45 shots

- 5.7 These shots are all shotgun sounds, presumed to be from the clay shooting range. There is some significant variation in the volume of the shots heard, from being an 'audible' shot, to being 'significant' in volume. Classified 'significant' is any shot which comes in over the pre-shot background level at 10dB or more. In some cases the difference is over 20dB. This makes these shots significantly audible, very noticeable in the environment, and intrusive at the monitoring property. Over half the total shots recorded (51%) achieve this level.

- 5.8 There is a significant difference in volume between shotgun sounds. Some of the shots are noticeably louder; these are likely the sound of a 12 bore shotgun. A 12 bore shotgun was not fired during the noise impact assessment that was carried out in support of the application.

- 5.9 The submitted noise report recorded maximum noise level of a shot recorded at this location as 46.3dB. The Council's monitoring has many individual shot levels above 60dB (see below and Disk ref: Appendix 2). Many of these are around 20dB above the pre-shot background level. This would throw doubt on the validity of the report (although environmental factors such as wind speed and direction might have affected both sets of measurement):

16.44.05 - 59.6dB
 16.44.10 - 68.8dB
 16.44.38 - 61.2dB
 16:45:13 - 66.5dB
 16:45:43 - 62.5dB

- 5.10 These noise levels have also witnessed first-hand by the Council's EHO officer. Whilst he did not have a sound level meter at the time to record or measure the level of noise, he can testify that the noise witnessed was of the same type, nature and volume as that recorded, and that it was coming from the direction of the Lodge Farm clay shooting range.
- 5.11 On this basis, if permission had been granted to allow the clay pigeon shooting range to operate unrestricted for up to 8 hours per day Monday to Friday (09:00-17:00), and for 5 hours on Saturdays (09:00-14:00), as proposed at the time of the application, it is the Council's opinion that it is highly likely that justified complaints that the activity was causing a statutory noise nuisance and/or affecting the amenity of the neighbourhood would be received, and the proposed development would have a significant detrimental impact upon residential amenity contrary to UDP Policy GDP1 a) and f)
- 5.12 In total, 5 complaints have been received about noise from the activities. The last of these was received in August 2019. The complaints have been made against both the rifle and clay ranges. Following investigation by the Council it has been established that the complainants are affected in different ways by each shooting range – ranging from the sound of gunshot being 'audible' (but not intrusive), to the noise causing significant interference to the occupiers' enjoyment of their property. The main variable for differences in audibility are environmental - namely weather and wind direction. This means that neighbouring properties can be affected by noise for variable lengths of time, further compounding the likelihood of nuisance being caused. Whilst the initial complaint received concerned noise from the rifle range at the site, since then, and following the refusals of the planning permission, complaints have been made concerning the use of both the clay and the rifle shooting ranges as are the subject of this Appeal.
- 5.13 Highway Safety - Parking and turning provision at the site for the existing Field and Falcon Shop and practice firing range accords with LPGN 16 'Parking Standards'. The proposed development site is accessed off Borrás Road which is a classified road subject to a 60mph speed limit. The main access serving the development site is approximately 22 meters wide and is paved with hard bound materials. Any proposed / existing access in this location would normally be required to provide visibility splays of 2.4 x 215m in both directions measured to the nearside edge of the adjoining highway in accordance with TAN 18.
- 5.14 At the time that the application was determined, whilst visibility from the existing access is adequate in the westerly direction, visibility in the easterly direction is inadequate providing a splay of approximately 2.4 x 100m measured to the nearside edge of the adjoining highway. Visibility is impeded in this direction by the existing boundary hedge /

wall / pillars fronting Smithy Lodge and the hedgerow fronting the field to the east of Smithy Lodge.

- 5.15 The highway authority has confirmed that it does not wish to support any proposed development that is likely to result in a significant increase in vehicle movements through a sub-standard access. As the proposed uses have the potential to significantly increase traffic movements through a substandard vehicular access, to allow retention of the Clay and Rifle Ranges would be contrary to Wrexham Unitary Development Plan policy GDP1 (d).

6.0 GROUNDS OF APPEAL

- 6.1 In response to the Grounds of Appeal Points 12 -19 – The Council wishes to rely upon the advice contained within the Highway Authority Consultation Response Dated 16/01/2020, given at Appendix 1 to the Council's Statement.
- 6.2 In response to the Grounds of Appeal Point 22 – Section 79 and 80 of the *Environmental Protection Act 1990* empowers the Council to investigate and resolve issues of noise nuisance. An assessment was carried out by the Council following a complaint by a local resident that noise from shooting at Lodge Farm was causing a nuisance to them in their property. The Council has a standard procedure for dealing with complaints made about noise nuisance, and the investigation was carried in accordance with this procedure.
- 6.2 It is in the opinion of an authorised officer of this Council (i.e. a suitably trained and qualified EHO) whether a statutory nuisance may be judged to exist, or be likely to exist, from an activity. In this case the investigating EHO judged that, whilst isolated incidents might not be a nuisance, if shooting was allowed to occur over the periods of time proposed by the planning application, then a statutory nuisance was likely to be caused.
- 6.3 Noise recordings were made using a Bruel and Kjaer Manually Activated Timed Recording of Noise (MATRON) noise investigation/recording system. Such systems are widely and acceptably used for noise investigations, and recordings and data gathered are recognised by a court of law, as evidence. With such a system the complainant controls the audio recording of the noise by making a recording each time the noise they allege is causing them a nuisance occurs. A MATRON would typically be left in a complainant's property over a period of time – usually one week. This then gives an accurate recording of what the noise sounds like at the complainants' property, and also shows how frequently it occurs over time.
- 6.4 Data is also provided in the form of a dB readout/graph, to allow for analysis of actual dB levels. The system is calibrated for use. Recordings are used to assess whether or not a noise unreasonably

and substantially interferes with a person's use or enjoyment of their property. This is the basic test for establishing if a statutory nuisance exists or is likely to exist from the activity.

- 6.5 There is no prescribed methodology for determining statutory nuisance, other than that described above. Conclusions are primarily subjective and officers often use a mix of evidence and guidance to substantiate their opinion. Recordings are usually supported by an officer's first hand witnessing of the event/activity. In this way any questions of where a noise is coming from can be answered. In the case of Lodge Farm, the investigating EHO was present during the first assessment made by Clement Acoustics, and therefore was able to determine where the noise originated from, and confirm subsequently that it was Lodge Farm.
- 6.6 All complainants have identified noise from Lodge Farm as being the reason for their complaints. They have also acknowledged that there are other shooting activities in the area and that these disturb them less as they are invariably not as frequent, or as loud (often being transient in nature), and so do not cause the same level of disturbance.
- 6.7 With regard to the statement that the Council "does not specify the exact location" of their monitoring exercise – the report does specify the exact location, at Appendix 4 of the Appellant's Statement of Case. Recordings provided also state where they have been made. MATRON noise recordings were made inside the property, and the investigating EHO witnessed the noise on separate occasions from outside the property. The equipment cannot be left in situ outside and so the complainant was asked to open a window to make recordings, to simulate the recordings being made outside. They were also asked to make recordings with the window ajar, and closed. In this way an assessment could be made of how audible the noise was both inside and outside the property.
- 6.8 In response to the Grounds of Appeal Point 23 – Clement Acoustics appear to have carried out assessments in accordance with the document '*Clay Target Shooting: Guidance on the control of Noise*', ("the Guidance"). To the best knowledge of the Council, the Guidance for clay shooting is not used for assessment of any other noise. The Council acknowledges that this is the most appropriate guidance to use for such situations. However, it is *guidance*, and as such any findings cannot always be taken with certainty, they merely provide a guide towards identifying and addressing potential problems. In its introduction the guidance itself states that "...following the Guidance cannot confer immunity from legal proceedings". The guidance is general, not specific. The Guidance also infers that *The Environmental Protection Act 1990*, and statutory nuisance, can be applied regardless of any other assessment carried out. Chapter 2, *Planning and Nuisance Legislation*, page 8, states "The Environmental Protection Act

1990 is the principal Act under which noise control will be applied to a shoot”.

- 6.9 The statement that “Personnel were present at the relevant receptor and at the property” (where “the property” is defined as Lodge Farm), is incorrect. During the first noise assessment, carried out 10th December 2018, the investigating EHO was with the noise consultant during part of the assessment. The consultant was asked if there was another noise consultant or independent person with the guns being fired. The answer to this was that the only person present with the guns was the applicant – Mr Tomlinson. Mr Tomlinson was informing the consultant what calibre gun was being fired each time. However with no independent person present on site to confirm this, question can be raised that what was being fired might not have been as stated. Therefore, the noise source **was not** known in each case, contrary to the statement made. This would cast some doubt on the accuracy of the results. For these reasons the results of the Clement Acoustics report **should not** be preferred over the Local Authority’s findings, as stated.
- 6.10 In response to the Grounds of Appeal Point 27 – There is a discrepancy between the Noise Reports which states that shooting on Saturdays would be between 1000-1400, and this statement that shooting would be on Saturdays 1000-1600. The Councils assume this is just drafting error.
- 6.11 In response to the Grounds of Appeal Point 29 – The assessment of statutory nuisance was carried out by the EHO at Receptor 2. At the time of the officers monitoring visit the noise from shooting at the clay site was significantly audible. As has already been explained, this result was reached by a subjective assessment. Whilst individual, or isolated outbreaks of gunshots might not be judged to be a nuisance on their own, the cumulative effect over a period of time can make even the quietest of noises to be a nuisance. One major factor in the audibility of any noise in an external environment is the weather – particularly wind speed and direction. This means that different days will give different levels of noise audibility at every noise sensitive property around Lodge Farm.
- 6.12 In response to the Grounds of Appeal Point 30 – The assessment does indicate that the clay activity is acceptable, however as previously discussed, the methodology used is only guidance. The Council’s own assessment of the noise indicates that a statutory nuisance is likely to be caused from the activity. The guidance states that statutory nuisance is the principle legislation used to control noise from a shooting range.
- 6.13 In response to the Grounds of Appeal Point 32 – The Council disputes the proposition that the area is not inherently peaceful. Some affected areas/properties are along very minor lanes, and during the monitoring

carried out by the investigating officer there was very little passing traffic. It is agreed that noise from agricultural works and vehicles is acceptable and reasonable for the area, however the nature of farm work means that these might be considered as intermittent and/or not continuous, and rarely would they occur in the same area for the duration proposed by the applicant for either shooting range. This makes shooting the dominant noise in the area as and when it is occurring.

- 6.14 In response to the Grounds of Appeal Point 38 – The Council's assessment was carried out as a statutory nuisance investigation. Statutory nuisance overrides any other guidance or permission that might be granted. The reference to noise being significant 10dB(A) or more above background level, is taken from the British Standard *BS4142: Methods for Rating and Assessing Industrial and Commercial Sound*. Whilst it is accepted that this methodology may not be specifically applied to shooting grounds, it does provide a useful reference level within it of what type of level is likely to have an adverse effect on nearby residential properties:

“11 Assessment of the impacts

The significance of sound of an industrial and/or commercial nature depends upon both the margin by which the rating level of the specific sound source exceeds the background sound level and the context in which the sound occurs.

.....b) A difference of around +10dB or more is likely to be an indication of a significant adverse impact...”

- 6.15 In response to the Grounds of Appeal Point 41 – The Council acknowledges that the shots recorded might not be definable as coming from Lodge Farm. However, the complainant/witness within whose property the noise recording equipment was installed was requested to record shooting only from Lodge Farm. With regard to there being other sources of gunshot noises in the area, if the shots witnessed or recorded during monitoring periods were not coming from Lodge Farm then concern must be raised that there is already a significant amount of shooting happening in the area which is already unreasonably affecting residents. It is known that the noise of shooting from Lodge Farm can have a significant effect on local residents. This would further support an argument that shooting from the Lodge Farm shooting ranges should not be allowed particularly in terms of its cumulative effect.
- 6.16 In response to the Grounds of Appeal Point 42 – ‘pay and play’ was a terminology used by the applicant with in the application submission. At the time when planning permission was refused there were a total of 3 no. clay shooting stands in situ and the Council questions the need for this number of stands when the application is for a single shooter.
- 6.17 In response to the Grounds of Appeal Point 45 – Any support given to the original application for the rifle range was based upon the one

complaint that had been made at that time, along with monitoring/recorded evidence gathered during investigation. Since refusal of permission, the continued use of the rifle range has generated further complaints about noise from residents in other areas around the sites, and the Council is aware that third party representations will be made directly to the Inspector in further evidence of this.

- 6.18 In response to the Grounds of Appeal Point 52 – The Council agrees with the Appellant that within the reasons for refusal, Policy GDP1 (e) has been quoted in error and should read GDP1 (f) in relation to noise. However, the Council is not mistaken in citing Policy GDP1 (a) with regards to ensuring that development accords with the character of the site, in this case as a Farm close to residential properties, to which the proposed development does not accord / is incompatible.

7.0 CONCLUSION

- 7.1 Both the Rifle and Clay Shooting Ranges are unacceptable as having a significant detrimental impact upon the residential amenities of the occupiers of the nearby dwellings by way of being a constant source of irritation, disturbance and noise nuisance. The use of the land for the purposes does not accord with the rural and residential character of the area and is incompatible with the nearby noise sensitive land uses. The increased use of the substandard vehicular access would pose a significant risk to highway safety and the Inspector is therefore respectfully requested to dismiss this Appeal.

8.0 CONDITIONS

- 8.1 Should the Appeal be allowed, imposition of the following planning conditions is suggested:

8.2 P/2018/0776 – Rifle Shooting Range

8.2.1 - The Rifle Shooting Range shall only be used for the purposes of supervised tuition and for the safety testing of rifles following service / repair at the associated Field and Falcon Gun Shop.

Reason – To ensure that use remains within the scope of the planning permission.

8.2.2 - No use of the Rifle Shooting Range shall be made before 1000 hours or after 1600 hours Monday to Friday, before 1000 hours or after 1400 hours on a Saturday, or at any time on a Sunday or Bank Holiday.

Reason - To protect the amenities of the occupiers of nearby properties in accordance with Policy GDP1 of the Wrexham Unitary Development Plan.

8.2.3 - During the hours of use permitted by condition no. 2, the Rifle Shooting Range shall not be used for more than three 1 hour long sessions in any one day. For each hour of use there shall immediately follow 1 hour where the Rifle Shooting Range is not used.

Reason - To protect the amenities of the occupiers of nearby properties in accordance with Policy GDP1 of the Wrexham Unitary Development Plan.

8.2.4 - Rifle shooting shall only take place within the hide shown on the approved plans and there shall be no more than 3 persons firing from the hide at any time.

Reason - To protect the amenities of the occupiers of nearby properties in accordance with Policy GDP1 of the Wrexham Unitary Development Plan.

8.2.5 - The Rifle Shooting Range shall not be used at any time during the same day as the adjacent Clay Shooting Range is, or has, been in use.

Reason - To protect the amenities of the occupiers of nearby properties in accordance with Policy GDP1 of the Wrexham Unitary Development Plan.

8.2.6 - Any use of rifles of .223 calibre or more shall only be with the use of double baffle boxes.

Reason - To protect the amenities of the occupiers of nearby properties in accordance with Policy GDP1 of the Wrexham Unitary Development Plan.

8.2.7 - Within one month of the date of this permission a scheme of signage along the nearby public footpaths shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall be fully implemented in all respects within one month of its approval and shall thereafter be retained in situ for the life of the development.

Reason - To ensure that users of the footpaths do not stray into private areas.

8.3 P/2019/0046– Clay Shooting Range

8.3.1 - The Clay Shooting Range shall only be used for the purposes of supervised tuition and for the safety testing of rifles following service / repair at the associated Field and Falcon Gun Shop.

Reason – To ensure that use remains within the scope of the planning permission.

8.3.2 - No use of the Clay Shooting Range shall be made before 1000 hours or after 1600 hours Monday to Friday, before 1000 hours or after 1400 hours on a Saturday, or at any time on a Sunday or Bank Holiday.

Reason - To protect the amenities of the occupiers of nearby properties in accordance with Policy GDP1 of the Wrexham Unitary Development Plan.

8.3.3 - During the hours of use permitted by condition no. 2, the Clay Shooting Range shall not be used for more than three 1 hour long sessions in any one day. For each hour of use there shall immediately follow 1 hour where the range is not used.

Reason - To protect the amenities of the occupiers of nearby properties in accordance with Policy GDP1 of the Wrexham Unitary Development Plan.

8.3.4 - There shall be no more than 1 person firing from the Clay Shooting Range at any time.

Reason – To ensure that use remains within the scope of the planning permission.

8.3.5 - The Clay Shooting Range shall not be used at any time during the same day as the adjacent Rifle Shooting Range is, or has, been in use.

Reason - To protect the amenities of the occupiers of nearby properties in accordance with Policy GDP1 of the Wrexham Unitary Development Plan.

8.3.6 - Within one month of the date of this decision, the number of clay shooting stands shall be permanently reduced in number to a maximum of 1 no.

Reason – To ensure that use remains within the scope of the planning permission.

8.3.7 - Within one month of the date of this permission a scheme of signage along the nearby public footpaths shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall be fully implemented in all respects within one month of its approval and shall thereafter be retained in situ for the life of the development.

Reason - To ensure that users of the footpaths do not stray into private areas.

APPENDICIES

Appendix 1 – Highway Authority Consultation Response Dated 16/01/2020.

Appendix 2 – Sound file references SR0.wav to SR10.wav - noise recordings obtained on 12/04/2019 and 13/04/2019.

Appendix 3 – Local Authority EHO Evidence constant source of irritation and disturbance to neighbouring noise sensitive properties, detrimental to their amenity.