

DATED: 21 NOVEMBER 2019

TOWN AND COUNTRY PLANNING ACT 1990

**APPEALS AGAINST REFUSAL OF WREXHAM COUNTY BOROUGH COUNCIL TO GRANT
PLANNING PERMISSION:**

**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
(LPA Ref: P/2018/0776)**

and

**CHANGE OF USE OF LAND TO USE FOR CLAY PIGEON RANGE IN ASSOCIATION WITH FIELD
AND FALCON GUN SHOP (LPA Ref: P2019/0046)**

AT

LODGE FARM, COMMONWOOD, HOLT, WREXHAM (LPA Ref: P2018/0776)

APPELLANT: MR J F TOMLINSON

COMBINED STATEMENT OF CASE

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Ref: SRT/TOM231/5

- 1 **Introduction.** Retrospective application was made for planning permission for the change of use of agricultural land to a mixed use including practice rifle firing range on 12 September 2018 under Local Authority Reference P2018/0776 (“**the Rifle Application**”) and on 18 January 2019 for the change of use of agricultural land to create a clay pigeon range associated with the Field and Falcon Gun Shop under Local Authority Reference P2019/0046 (“**the Clay Application**”) each on separate parcels of land at Lodge Farm, Commonwood, Holt, Wrexham (“**the Property**”) on behalf of Mr Jonathan Tomlinson (“**the Appellant**”). The Local Authority issued its decision refusing to grant planning permission in relation to the Clay Application on 22 May 2019, and in relation to the Rifle Application on 3 June 2019.
- 2 The Clay Application was decided under delegated authority, giving a single reason for refusal:

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) of the Wrexham Unitary Development Plan and the advice contained within Planning Policy Wales, Edition 10.
- 3 The Rifle Application was referred to the Planning Committee for decision, who gave two reasons for refusal:
 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. *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)*
- 4 The Appellant is appealing against the refusal of both the Rifle Application and the Clay Application, and, given that the two activities are broadly similar in nature and relate to the same Appellant at the same Property (albeit different locations within the Property), for ease and simplicity, this Combined Statement of Case sets out the Appellant’s case in relation to both appeals concurrently.

- 5 **Background.** The Appellant's case as to the proposed development and its acceptability in planning terms is set out in detail in the Supporting Submission submitted with each of the Rifle and Clay Applications and it is not therefore proposed to repeat that detail here. In summary, both activities are proposed in association with the existing Field and Falcon Gun Shop and Gunsmiths, which not only sells items associated with shooting activities (including guns, ammunition, clothing and accessories), but offers a gunsmiths service, providing for the repair and maintenance of firearms, and which necessitates the testing of such firearms prior to returning them to customers; this activity is carried out in both the Clay ground and the Rifle range (depending on the type of firearm). Both areas are also used for tuition, and the Rifle range is also used to enable customers to zero and practice using their own firearms safely.
- 6 The key differences between the two activities are that customers are not permitted to use the clay pigeon range unless under tuition – it is used by the Appellant and his employees for testing associated with the gunsmiths, and by customers under tuition only. The Rifle range is also used for testing and zeroing by the gunsmiths, and for tuition, but in addition, it is available for use by customers without tuition (where they have proven their competence). Whilst this may seem counter-intuitive, any person using a rifle is required to have the necessary licence, which is only issued if they are shown to be fit and competent, and the Appellant undertakes their own competency checks also; accordingly, the use of the rifle range is by a different category of customer.
- 7 Typically, a session of tuition at the Clay range would be between 40 minutes and one hour, but 20-30 minutes of that is taken up within preliminary health and safety and 'gun fit' sessions, so that the usual duration of firing is around 30 minutes.. Whilst there are three shooting positions in the clay range, only one person is tutored at any one time. This is very different to a 'standard' clay pigeon range where one person might easily shoot 100 shots in an hour, with multiple shooters at any one time. In relation to the Rifle Range, customers can book the range for slots of 1-2 hours, (though rarely does a session continue for a full 2-hours).
- 8 Notwithstanding those differences, the activities are broadly similar in nature, and it is therefore proposed that the appeals be linked and the issues considered together; albeit that the Inspector is nonetheless invited to consider the merits of each activity separately.
- 9 It is submitted that both activities are compliant with Local Plan policy, are acceptable in planning terms, are appropriate in this rural location, and that both appeals should

be allowed and permission should be granted. Consideration is given herein to appropriate conditions which might be attached to such permissions and which will be detailed further below.

- 10 It is the Appellant's case, as evidenced by the responses of the Statutory Consultees in relation to both applications, and the case officer's comments in the report to Committee as to the Rifle application and delegated report as to the Clay Application, that there are no issues arising with either application in connection with:

10.1 Archaeology, such that the relevant parts of UDP policy EC11 – Archaeology and TAN24 are met;

10.2 Ecology and biodiversity, such that the relevant parts of UDP policies PS2 - Development and the Environment and EC4 – Hedgerows Trees and Woodland and EC6 – Biodiversity and Conservation and LDP policy NE3 – Trees, Woodlands and Hedgerows and TAN5 are met;

10.3 Drainage and Flooding, such that the relevant parts of UDP policies EC12 - Development and Flood Risk and EC13 – Surface Water Run-off and LDP policy DM1 and TAN15 are met;

10.4 Public Rights of Way;

10.5 Heritage, such that the relevant parts of UDP policy PS2 and LDP policy SP13 and TAN24 are met;

10.6 Parking, such that the relevant parts of UDP policy T8 – Parking, Local Planning Guidance Note 16 – Parking and LDP policy T1 are met; and

10.7 Layout, appearance and landscaping, such that the relevant parts of UDP policy GDP1 and LDP policy DM1.

- 11 Accordingly, the only points at issue relate to highway safety and noise.

Highway Safety.

- 12 Neither the Officer's Report nor the decision notice relating to the Clay Application raise any concerns as to highway safety.

- 13 The report to the Planning Committee in relation to the Rifle Application states that any proposed/existing access in this location would normally be required to provide visibility splays of 2.4m x 215m in both directions measured to the nearside edge of the adjoining highway. The report acknowledges that the visibility splay to the west provides such a splay, but highlights that in the officer's opinion, the splay in the easterly direction allowed only 100m measured to the nearside edge, being impeded by the boundary hedge and pillars fronting Smithy Lodge. Notwithstanding that, the case officer was of the view that there would be no significant impact upon highway

safety arising from the proposed rifle range activity. The Planning Committee nonetheless decided to include highway safety as a reason for refusal.

- 14 It is the Appellant's case that the proposed activities would not have presented any issue as to highway safety. The splay required in guidance is advisory and must sometimes yield to a professional assessment as to safety. In this instance, it is also considered that the Council officers were wrong to apply TAN18 requirements. Reference is made in this regard to the Access Assessment by Sumner Consultancy Limited, which finds that it is appropriate to apply the visibility splay requirements derived from Manual For Streets (MfS) by Dorset County Council (rather than the more onerous requirements of TAN18), such that the splay provided to the East, (based on 2.4m x 1m from the road channel) is 123m, being only 4m less than the MfS requirement of 127m, which in the expert's professional opinion was acceptable.
- 15 Change in Circumstances following issue of decisions. Since the issue of the refusals, the Appellant has secured alterations at the site access to provide an extended visibility splay in the easterly direction. The brick pillars and hedgerow that were previously impeding views to the East have been altered, such that there is now enhanced visibility within the splay referred to. Photographic evidence of the splay are annexed at **Appendix 1** hereto. The Highway Authority have been invited to inspect the splay following the work undertaken, and have assessed the splay as providing 2.4m x 135m measured to a position 1m in from the white line (please refer to the email annexed at **Appendix 6**). These measurements (which do not accord with the Appellant's own assessment) were provided to the Appellant on 21 November (the date hereof), the Appellant has not therefore yet had the opportunity to instruct an expert to assess and verify them. The Appellant does propose to instruct an expert in this regard, and a further report will be submitted in response to the Local Authority's assertions as soon as possible. Notwithstanding that the Appellant does not concur with the Local Authority's assessment, even based on their measurements, the splay now offered to the east clearly exceeds the MfS requirement for 127m.
- 16 It should be noted in this context that the refusal reason attached to the Rifle Application referring to highway safety, complained that the splay in the easterly direction fell 'significantly short' of the prescribed standards in TAN18; as noted above, it is asserted that the standard extrapolated from MfS is appropriate in this case, and that the difference then was not significant by reference to that standard, and following the work carried out subsequently, now exceeds that standard. Further following the works undertaken, it is submitted that it cannot be said that the splay provided falls

'significantly short' of the 2.4m x 162m splay required by TAN 18 either. Further evidence will be submitted in this regard.

- 17 Accordingly, it is submitted that the Local Members' concerns as to highway safety are answered such that impact on highway safety can no longer form a reason to refuse the grant of permission in relation to either the Rifle or Clay Applications (noting that highway safety was not a refusal reason attached to the Clay Application in any event).
- 18 If the Inspector considered it necessary and appropriate to do so, it would be open to them to impose a condition on the grant of permission for either or both of the Rifle and Clay activities, as to the retention of the visibility splay, and to assist the Inspector we respectfully set out a proposed form of words for such a condition at **Appendix 2** hereto.
- 19 No other highway safety concerns were raised by the Highways team in their consultation response, nor by the case officer nor the Planning Committee.

Noise.

- 20 The other concern raised by the Local Authority in relation to both the Rifle Application and the Clay Application, is that of noise, where the only policy stipulation that is relevant is one element of UDP Policy GDP1(f): *Ensure the safety and amenity of the public and **safeguard the environment from the adverse effects of pollution of water, land or air, hazards from industry and quarrying, and associated noise, odour or vibration arising from development.*** (The refusal reason attached to the Clay Application recites GDP1(a) and (e), neither of which are relevant to the issue of noise complained of in the refusal reason and, it is submitted, are incorrectly referenced).
- 21 The consultation response of the Public Protection Team in connection with the Rifle Application, dated 8 October 2018, advised that a noise assessment be carried out by the Applicant, in consultation with the Public Protection department, so as to assess the impact of noise from the proposed activity. The Applicant duly commissioned such an assessment, by Clement Acoustics, which was conducted in collaboration with the Public Protection Team as to the receptors which they required measurements to be taken from and the Clement Acoustics Noise Impact Assessment dated 16 January 2019 ("the First Noise Report") was submitted in connection with both the Rifle and Clay Applications.
- 22 The Local Authority conducted its own noise measurements, following complaints from a local resident. It is understood that the noise measurements taken by the Local Authority were taken using a device installed at the residential property of one of the complainants, described as being a noise receptor 1km from the Property; the report

does not specify the exact location. The Local Authority's findings are set out in (**Appendix 3**); it is clear that the measurements were not taken using the proper methodology enabling a noise impact assessment of the kind conducted by Clement Acoustics. Part A sets out recordings made whilst no personnel from the Local Authority were present – the recording device was left in situ for 1 week. It is submitted therefore that there is no means by which the Local Authority can have identified the source of the noise recorded, neither in terms of the location nor the means by which it was generated. Similarly, whilst the notes in Part B to the report were made by the Environmental Health Officer whilst he was attendant in person, at the complainants property, it remains the case that it would not have been possible for them to have identified the source of the noise, and no proper methodology was adopted.

- 23 In contrast, the approach taken by Clement Acoustics on behalf of the Appellant, was an assessment in accordance with the methodology specified in the guidance 'Clay Target Shooting: Guidance on the Control of Noise' ("the Guidance"). The acoustic experts have confirmed that this is the only available guidance that is appropriate in these circumstances, both for the clay and rifle activities, even though the Guidance itself seeks to limit its application to just clay pigeon shooting (we are advised by Clement Acoustics that this methodology is generally applied to assess the impact of noise of all kinds, including, for example, dog barking, it is therefore considered to be sensibly applied to both the clay and rifle shooting activities). The testing undertaken assessed the specific noise generated by specified firearms/ammunition used at each of the rifle and clay ranges, as received at two residential receptors, being those identified by the Council's Environmental Health team as being the most appropriate locations at which they required the noise measurements to be carried out, and which are the two locations as identified on plan 14301-SP1 to the First Noise Report.. Personnel were present at the relevant receptor and at the Property, as each shot was taken, and the shots and recordings were appropriately timed so as to be undertaken at the optimum time when there was as little other noise being generated from other sources as possible (as is required by the Guidance). Accordingly, the noise source was known in each case, and the methodology applied accords with the appropriate guidance, such that the results of the Clement Acoustics report should be preferred over the Local Authority's recordings.
- 24 Following the refusal of permission, the Applicant has commissioned a further report from professional acoustics experts Clement Acoustics (Clement Acoustics Noise Impact Assessment dated 20 November 2019 ("the Second Noise Report"), submitted as **Appendix 4**.

- 25 Noting that there were a number of local objectors referring to noise, the Second Report includes an additional receptor, being a further residential dwelling to the east of the Property, identified as location 3 on Plan 14301-SP2. This Second Noise report therefore provides a more extensive assessment than that requested by the Local Authority.
- 26 In undertaking the testing for the Second Noise Report, the professional acoustic experts expanded the tests to include moderated and unmoderated rifles, and to include a range of cartridges for the shotguns (for the clay activity the key variable is the ammunition rather than the type of shotgun).
- 27 The Second Noise Report concludes (as did the First Noise Report) that both activities are acceptable in terms of noise generation, and the Report proposes a series of noise management conditions which are recommended to reduce the any negative impact on residential receivers; these include limiting the shooting hours to 0900-1700 Monday-Friday, and 1000-1600 on Saturdays, as well as stipulating particular restrictions as to the larger ammunition (maximum 0.223 for the rifle range with moderators to be used on a Saturday; and no 'A' shell ammunition for the clay activity on a Saturday).
- 28 As referenced in the Second Noise report, it is notable that the Guidance makes clear that restricting the times of operation of the shoot is a useful control but one which should only be used with justification, taking into account the likelihood of excessive noise at noise sensitive premises. The restrictions proposed in the Second Noise Report go further than those indicated in the Guidance as being appropriate controls, with a view to further mitigating the impact.
- 29 In relation to the Clay range, it is clear from the Second Noise Report that the noise measured at Receptor 2 is below the 55dB(A) threshold for all cartridge types, such that the mean shooting noise level (SNL) is categorised as below the level at which annoyance is less likely to occur. The Guidance (quoting the BRE work undertaken in 1997 as reference therein) indicates that *'At shooting noise levels below the mid 50's dB(A) there is little evidence of significant levels of annoyance at any site'*. It is acknowledged by the Appellant that some of the mean SNLs recorded at Receptors 1 and 3 are higher, but they nonetheless remain below 65dB(A) (being the level above which annoyance is highly likely to occur), with the exception of the A shell at Receptor 1.
- 30 The conclusion of the expert assessment is that the clay activity is acceptable; as indicated above, a series of limiting conditions are proposed as a noise management plan, with a view to reducing any negative impact that may arise to the residential

receptors. Notwithstanding that the expert assessment is that the noise levels, are acceptable, and, in particular where mitigated by the proposed conditions, the Appellant proposes yet more restrictive conditions with a view to limiting yet further any negative impact on the residential receptors. The proposal is to limit the shooting hours yet further, as follows:

1000-1600 Mondays to Fridays

1000-1400 on Saturdays

No shooting on Sundays

The Inspector is respectfully referred to the proposed conditions at **Appendix 2** in this regard.

- 31 In addition, it is proposed that only 'H shell' ammunition be used on clay range (an appropriate condition in this regard is set out at **Appendix 2**). It is clear from the SNL results as set out in the Second Noise Report that this type of ammunition generates lower SNL values than the other types: H shell ammunition is subsonic ammunition (designed to operate at speeds below the speed of sound, thus avoiding the supersonic shockwave or "crack" of a supersonic bullet, which influences the loudness of the shot). The H shell cartridges generated a mean SNL of 56.7 dB(A) at Receiver 1, 50.2 dB(A) at Receiver 2 and 54.7 dB(A) at receiver 3. The noise levels are therefore below the 55 dB(A) threshold at both receivers 2 and 3, and only marginally above that level at receiver 1; it is submitted that this, together with the other conditions proposed to limit the impact, renders the clay activity acceptable in terms of noise impact.
- 32 In relation to the Rifle range, it is accepted that the mean SNL levels recorded are generally higher than that of the clay shooting activity. However, reference is made to the graphs annexed to the Second Noise Report which identify the peaks in noise levels associated with each shot, but also other very prominent peaks associated with other noise sources. The acoustic experts have confirmed that the other peaks in sound levels were generally associated with traffic noise, either from vehicles using the local road network, or agricultural vehicles in and around the Property. By way of example, the series of peaks at the start of the graph for Receiver 1, show a level of noise which is significantly higher than that generated by the majority of the shots recorded, from all rifle types and whether moderated or unmoderated; similarly, there are consistently peaks of sound at receiver 2, which are significantly louder than the shot noises recorded. At receiver 3, the non-shot noises recorded are less frequent during the test period, but just as significant by comparison with the shot noise recorded. The experts that attended site indicated that they took care to wait for a lull

in the background noise before undertaking the shot tests, as that is what the Guidance stipulates should be done, but in their experience the frequency of traffic and other noise events was significant, and demonstrates that the general sound profile at the property is not that of the peaceful rural idyll that the objectors claim, but it is a busy farmyard, with large vehicles moving, and the receptors experience noise from adjacent roads which can exceed that of the shooting activity and would prevent the shots from being audible. The test results presented by the Second Noise Report therefore represent a very bare assessment i.e. the 'worst case'.

- 33 The Guidance indicates that where a mean SNL falls within the 55dB(A) and 65dB(A) bracket, that the extent of the annoyance will vary from site to site, such that a level of 60dB(A) may be acceptable in one site but not another, and that the level of background noise levels is one factor to be taken into account when assessing the mean SNL which would be acceptable for any one site. Other factors to be considered include which days of the week and times of the day the shooting occurs. It is in that context that Clement Acoustic conclude that the rifle activity is acceptable with the recommended conditions as to opening times and rifle type as noted above.
- 34 Notwithstanding that conclusion, it is the Appellant's intention to limit the activity yet further, beyond the recommendations of Clement Acoustics (which themselves exceed the recommendations in the Guidance), with a view to reducing further the any negative impact on the residential receivers, and proposes the following additional limitations:
- a. use only of moderated rifles;
 - b. limit the operational hours of the rifle range to
 - i. 1000-1600 Mondays to Fridays
 - ii. 1000-1400 on Saturdays
 - iii. no shooting on Sundays
 - c. no rifle above .223 shall be used on a Saturday
- 35 It is clear from the test results that excluding the use of unmoderated rifles will reduce the impact significantly: at receiver 2, this would give rise to noise levels below, or only marginally in excess of the 55dB(A) threshold; at receiver 1, the mean SNL sits around 60dB(A), thus within the middle of the 55-65dB(A) bracket (within which the background noise levels are an important factor to take into account when assessing the level of a potential annoyance, and where it is appropriate to use conditions to regulate the activity), and similarly, the .223 moderated rifle at receiver 3 gave a result of 60.6dB(A); the .308 moderated rifle recorded at receiver 3, is therefore an outlier in that group, generating a mean SNL of 68.5dB(A) which only very slightly exceeds the

65dB(A) threshold. Again, the non-shooting noise events recorded at the property are an important consideration in that regard, and, as indicated above, the Appellant proposes to restrict the rifles to a maximum of 0.223 on Saturdays, being the most sensitive time.

- 36 The Local Authority's assessment of the noise issue differed in relation to the Rifle and Clay activities. In relation to the Rifle activity, the Environmental Health Officer (EHO) simply set out a series of conditions seeking to regulate the activity in the context of managing the noise impact. The case officer's report to the Planning Committee in relation to noise and residential amenity refers to the noise recordings taken at a complainant's property which was found not to have constituted a noise nuisance. The report indicates that the First Noise Report was considered by the EHO, who confirmed that *"the noise levels are within the realms of acceptability, being less than 55dB(A) which is the level at which annoyance is less likely to occur"*. In addition, reference is made to the noise management plan, the provisions of which would be secured by way of conditions, to include a restriction on the number of shooters to 3 at any one time. On that basis, and notwithstanding that other complaints had been received as to noise, the officer concluded that it had been *"demonstrated that the use would be unlikely to result in a noise nuisance to the nearby properties"*. A temporary permission for 2 months was proposed as it was considered that the rifle range had not at that time been used to its full potential. It is clear however that the level of use to which the rifle range was being put at that time was not considered to be a concern warranting the refusal of planning permission.
- 37 It is clear therefore that some use of the rifle range is deemed acceptable by the Local Authority's experienced officers, to include the EHO; the concern that arose therefore was as to the potential increase in the use, which, as indicated above, in the event that the Inspector considers it necessary and appropriate, can be limited by condition – it is proposed to limit the use of the rifle range to a level which would reduce the potential for a negative impact arising, by imposing the conditions referred to above requiring adherence to the noise management plan, by limiting the number of sessions/hours of use in any one day (to be calculated as an average on a weekly basis). The Inspector is respectfully referred to **Appendix 2** where a series of conditions are proposed which would regulate the activity in this regard.
- 38 In relation to the clay activity, the Local Authority's approach to the assessment of the noise impact differed. The EHO proposed conditions to regulate the use, in a similar way and in a similar vein to those proposed for the rifle range. However, the case officer's report took a wholly different, and, it is submitted, inappropriate, stance in

connection with the issue of noise. The report notes that over a 2-week period noise monitoring was carried out, during which time only 3 instances of noise generation were recorded. The Authority has no evidence of what activity generated the noise, nor what type of firearm. The Local Authority nonetheless sought to contest the expert data submitted for the Applicant, based on their own limited recordings. They refer to a 'significant' noise event being 10dB(A) or more above the pre-shot background; Clement Acoustics have indicated that this is not a formal method of assessing noise impact known to them.

- 39 On the basis of 3 instances of noise generation, it was concluded by the Local Authority that if permission were to be granted to allow unrestricted operation 8 hours per day Monday-Friday and for 5 hours on Saturdays, then it was believed that a noise nuisance might arise. The Local Authority did not offer the Appellant any opportunity to comment on the noise recordings taken, nor on the assumptions made as to the potential regularity of use of the range; they simply issued a refusal notice. In fact, as has been identified above, and as is evidenced in the Second Noise Report, the Clay activity is demonstrably within the category of 'less likely' to give rise to annoyance, and generates less noise than the rifle activity (which the Authority had considered acceptable). The Local Authority indicate that the maximum recording for the clay activity at their location was cited in the First Noise Report as 46.3 dB(A) (which identifies the location of their recordings as being receiver 2 on Plan 14301-SP1). The test results set out in the Second Noise Report for receiver 2 make clear that the recordings of the clay activity at that receiver for all shell types, were below the 55dB(A) threshold, such that the Council's outright refusal of the clay activity, placing reliance on their inadequate noise recordings, was unjustified.
- 40 It was open to the Council to consider further limitations on the use, as to the number of sessions/hours use in any one day; and, as for the rifle range, a temporary permission could have been considered to enable monitoring over a more prolonged period. Set out in **Appendix 2** are a series of conditions which the Inspector is invited to consider in this context. It is submitted that the Local Authority failed to properly assess the noise levels in any scientific way, and the reach a conclusion based on the limited recordings and their own assumptions as to frequency is unjustified.
- 41 It is notable in this context that there are a number of other sources of gunshot noise in the locality around the Property, including Commonwood Fisheries clay ground, to the south-west of the Property; and a regular pheasant and duck shoot which often takes place in the woodland to the north-west of the rifle range; in this rural area there are also many farmers who shoot pests within their own land. The noise recordings taken

by the Local Authority would not have been able to distinguish which noise source gave rise to the sounds recorded.

- 42 Further, it is the Appellant's view that the Council's officers misunderstood the concepts of the activities proposed in each case. Reference was made to 'pay and play', in connection with the Clay Activity, and it is understood that the concerns as to the potential volume of usage as a consequence of that concept was what gave rise to the difference in the assessment of the clay activity (which was refused at delegated level on the basis of noise) as compared with the rifle activity (which the Officers were minded to support, as is evident in the recommendation to grant a temporary permission as indicated in the Report to the Planning Committee). As indicated above, the use of the Clay range by customers would be one shooter at a time, under tuition only, meaning that there would be far fewer shots than a 'standard' clay pigeon shooting activity; the Appellant does not propose to operate a 'standard' clay pigeon shooting practice range, and the facility is not large enough to do so in any event.
- 43 As indicated above, the use of the Clay range is naturally limited by the fact that only a single shooter will be using the range at any one time. The tuition could be further limited, as described, by the use of conditions.
- 44 The use of the rifle range is proposed to include customers not requiring tuition (although there would be supervision), but the nature of that activity is such that the customer numbers would be self-limiting, as the number of persons holding licences for rifles is much lower, and again, the restriction as to the hours of operation proposed herein go beyond that recommended by the Guidance. During the discussions by the Local Members of the Planning Committee, it was not considered appropriate to regulate the rifle activity through the use of conditions, because of the Council's poor record of enforcement. It is submitted that the inadequacies of the Local Authority in relation to enforcement, should not present a reason to refuse planning permission in circumstances where appropriately worded conditions would be appropriate to regulate the proposed activity such that compliance with such conditions would render the activity acceptable in planning terms. The conditions as set out in Appendix 2 would be enforceable, as they are capable of objective assessment as to compliance.
- 45 It is clear from the Officer's report that the use of the rifle range that had continued up until that point, was considered acceptable in planning terms, the reason for the proposed temporary condition was to allow monitoring of the use to assess the impact of the potential intensification of that use. The conditions as proposed herein would serve to protect against undue intensification.

Public Right of Way and public safety.

- 46 Neither of the decision notices and neither of the officer reports raise public safety or the impact on the nearby public footpath as being a concern. The report to the Planning Committee in relation to the Rifle Application specifically highlights that safety concerns are outside the remit of planning control.
- 47 The Definitive Map Officer nonetheless commented in connection with the Rifle Application as to signage, way-marking and gates along the public right of way, and the case officer included a proposed condition as to the provision of signage in connection with the Rifle Application. To the extent that the Inspector considers it necessary and appropriate, the wording for a suitable condition is provided at **Appendix 2**.
- 48 The Appellant has systems in place to ensure the safety of use of the clay and rifle ranges, which accord with those set out in the Guidance. Annexed at **Appendix 5** are a series of procedural documents utilised by the Appellant in relation to the use of the Rifle Range. Every shooter must produce their licence and insurance before they are allowed to shoot on the rifle range, and each person is assessed as to their competency before first being allowed to use the rifle range.
- 49 Customers are only permitted to use the Clay range under tuition.
- 50 The Appellant is insured in relation to both activities.

Policy.

- 51 Submissions were made as to compliance with the Development Plan and national policy and guidance in the Supporting Submissions accompanying the applications and it is not proposed to repeat those submissions, save to reiterate that it is considered that the proposed activities are compliant with the development plan.
- 52 The Local Authority refusal reasons make specific reference to GDP1 (a) and (e) in connection with the Clay Application (as to the noise issue); and for the Rifle Application, to GDP1(f) in connection with the noise issue and GDP1 (d) in connection with the highway safety issue. (It should be noted here that GDP1 (a) and (e) are not relevant to the issue of noise and are incorrectly referenced in the decision notice for the Clay Application ((a) relates to scale, design, layout, character and appearance etc. and (e) relates to accessibility to transport facilities).
- 53 It is submitted that the visibility at the access was acceptable (pursuant to Sumner Consultancy report submitted in support of the application), and the works to extend the splay in the easterly direction mean that there is no conflict arising in connection with UDP Policy GDP1(d).

54 TAN11 deals with noise. At Annex A to TAN18, the approach to assessing acceptable noise levels when considering new residential development proposals adjacent to existing noise sources is given. It sets out noise exposure categories in relation to specific noise sources (road, rail and aircraft and mixed); it does not specifically cater for firing ranges, but it is clear that, in general, where noise levels are <55dB(A) – i.e. ‘Noise Exposure Category A’ - *‘noise need not be considered as a determining factor in granting planning permission, although the noise level at the high end of the category should not be regarded as desirable’*. And where noise levels are between 55 dB(A) and 63 dB(A) (66 dB(A) in the case of rail and air traffic), i.e. Noise Category B - *‘Noise should be taken into account when determining planning applications and, where appropriate, conditions imposed to ensure an adequate level of protection.’* This accords with the approach taken in the Guidance, and in the Second Noise Report, from which it is clear that this is one such case where appropriate conditions (as put forward in the Second Noise Report but as further enhanced by the proposals herein, notwithstanding that the expert considers the activities to be acceptable) can be used to regulate the noise levels such that planning permission may be granted for the two proposals.

Summary.

55 Clay. The refusal reason given by the Local Authority hangs the decision on the *‘noise levels, non-continuous sources of noise, the number of noise events, the frequency and pattern of occurrence of the noise and general character of the noise associated with the use’* which in their view mean that it is highly likely that complaints as to noise nuisance would be received. It is clear that the Council based its assessment upon inaccurate assumptions as to the expected frequency of noise events, and on flawed noise recordings which failed to adopt any methodical approach to noise impact assessment, and they discounted the test results and expert opinion presented by Clement Acoustics, whose report assessed the noise impact in accordance with the accepted guidance, at the receptors identified by the Local Authority. Contrary to the Council’s conclusions, the expert noise report assesses the clay activity to be in the category of ‘less likely’ to cause annoyance, which TAN111 categorises as a level which need not be considered as a determining factor in granting planning permission. The Local Authority decision was therefore flawed and unjustified.

56 Rifle. In refusing permission for the Rifle Application the Committee went against the recommendation of their professional officers. The refusal reason pertaining to noise refers to the frequency of gunshots as being of constant source of irritation; the

Committee in reaching this conclusion failed to have proper regard to the expert evidence submitted for the Applicant and failed to consider appropriate conditions that would mitigate the impact. Highway safety was not raised as a concern by the case officer, and to refuse on this basis was unjustified; the visibility splay to the east has nonetheless now been improved.

- 57 The provision of clay pigeon and rifle shooting facilities complements the existing Field and Falcon business operating at the Property, and are appropriate in this rural location. They will support the gunsmith activity, whilst also providing an outdoor recreation use for the local and wider community.
- 58 Rural diversification and outdoor recreation proposals are supported by Development Plan and national policy. The economic and social benefits of this proposal are clear, and the nature of this use means that there will be very limited impact on the locality, on landscape, and on local infrastructure. It is the Appellant's case that there were no issues as to highway safety, but to the extent that any did arise, they have been satisfied following the works undertaken, and compliance with the Noise Management Plan will mean that the concerns raised during the application process can be satisfactorily covered off by the use of appropriately worded conditions, such that the Inspector is respectfully invited to conclude that permission should be granted for both the Rifle and Clay proposals as described herein.

Suzanne Tucker
FBC Manby Bowdler LLP
21 November 2019

Appendix 1

Photographs of Visibility Splay in Easterly Direction

Some are taken through a spotting scope as the vehicle was not readily visible at 217mtrs (as seen from Fig 1).



Fig.1



Fig.2: Shows the location of the scope and how the scope was positioned to keep it steady to take pictures.



Fig 3: Taken from a location slightly closer to the road to enable the laser range finder to identify the van (217m distance).



Fig 4



Fig.5

Figs 4 & 5: Following work to remove brick pillars and part of hedgerow



Fig.6 The red vehicle is exiting Commonwealth Road which is 502 meters away.

Appendix 2

Proposed wording of Conditions

Visibility Splay – Rifle and Clay Applications

1. Visibility splays of 2.4 metres x [] metres shall be provided in both directions measured to the nearside edge of the adjoining highway. Within these splays there shall be no obstruction in excess of 1 metre in height above the level of the nearside edge of the adjoining carriageway. The splays shall be permanently retained clear of any such obstruction to visibility.

Noise – Rifle and Clay Applications

2. No use of the development 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

Noise – Rifle Application

3. The rifle range shall only be used for the purposes of tutoring, safety testing, practising and 'zeroing' of rifles.
4. Use of rifles of .223 calibre or more shall be with the use of the double baffle box referenced in the noise report submitted with the application.
5. Shooting shall only take place within the hide shown on the approved plans and there shall be no more than 3 shooters firing from the hide at any one time.
6. Only firing using moderated rifles shall be permitted.
7. No more than an average of [four] hours of tuition per day within any one week shall be permitted
8. Use of rifles of more than .223 calibre shall not be permitted on a Saturday

Noise – Clay Application

9. The clay pigeon range shall only be used for the purposes of supervised tuition, and for safety testing of shotguns following service/repair.
10. No more than [four] tuition sessions of up to [one hour] shall be permitted each day (Monday-Saturday)

11. Only firing using 'H shell' (subsonic) ammunition shall be permitted

Temporary Permission – Rifle and Clay Applications

12. Within 13 months a report shall be submitted to the Local Authority reviewing the use of the application site over the previous 12 months to enable the Local Authority to consider the acceptability of the continuation of the use in the context of noise and the use shall cease in the event that full planning permission (or a further temporary permission) has not been granted within 24 months of the date hereof.

Public Right of Way – Rifle Application

13. Within one month of the date of this permission a scheme of signage along the nearby public footpaths, to include timescales for the provision of such signage shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall be fully implemented in accordance with the approved scheme and retained in situ for the duration of the use hereby permitted.

Additional (separate) Appendices:

Appendix 3 – Local Authority Noise Recordings

Appendix 4 – Clement Acoustics Noise Impact Assessment NIA-02

Appendix 5 – Rifle Range Procedures

Appendix 6 – Local Authority Email re Visibility Splay