

Agenda Item	Committee Date	Application Number
A6	22 June 2020	20/00371/VCN

Application Site	Proposal
B & Q Superstore 48 Aldcliffe Road Lancaster Lancashire	Relevant Demolition of existing retail building (A1) and associated water tank and enclosure, and the erection of a food store (A1) with associated car parking, external plant and enclosure, servicing areas and hard and soft landscaping (pursuant to the variation of condition 2 on planning application 18/01100/FUL to amend the location of plant equipment and details of the external plant enclosure and acoustic fencing)

Name of Applicant	Name of Agent
Mr Adam Robson	Miss Emily Roberts

Decision Target Date	Reason For Delay
3 July 2020	N/A

<b>Case Officer</b>	Mrs Jennifer Rehman
<b>Departure</b>	No
<b>Summary of Recommendation</b>	Approve

## 1.0 The Site and its Surroundings

- 1.1 The application site relates to a 0.59 hectare brownfield site located approximately 120 metres southwest of the city centre (and its primary shopping area), occupying an edge of centre location. Surrounding development is largely residential with some nearby commercial uses located along Queen Street and Aldcliffe Square. The rears of 25 – 49 Portland Street and the side of 50 Aldcliffe Road flank the western boundary of the site. 23 Portland Street and its rear garden, Speights warehouse (food suppliers) and 24 Queen Street and its garden border the northern boundary. Queen Street borders the north eastern corner of the site with Aldcliffe Road running along the south eastern boundary of the site.
- 1.2 Access/egress into the site is taken off Aldcliffe Road around 35m north east of the junction with Queen Street. The site has a triangular form and previously accommodated a B&Q DIY retail unit with associated car parking, serving and storage areas, water tank and landscaping. A small sub-station is located on the southern boundary. The building occupied most of the northern half of the site with the car parking dominating the southern part of the site. This former B&Q store and its associated external storage compound and garden centre enclosure have all been demolished. The site is currently under construction with the superstructure to the permitted foodstore building now erected on site.
- 1.3 The topography of the site is relatively flat with an elevation of approximately 22m Above Ordnance Datum (AOD), with a slight fall towards the southern western corner. The site sits marginally higher than Aldcliffe Road and Queen Street. Neighbouring properties on Portland Street are elevated above the site and separated by a wooded embankment that has been retained as part of the site's redevelopment.
- 1.4 The site is situated within Lancaster Conservation Area (High Street Character Area), immediately adjacent to the Aldcliffe Road Conservation Area. There are a number of Listed buildings in relatively close proximity to the site (e.g. 20-22 Queen Street and the Aldcliffe Yard buildings associated with Lancaster Canal basin), with a number of non-designated heritage assets of local importance situated immediately adjacent to the site (e.g. Portland Street/Speights Warehouse building). Trees within the site not subject to individual Tree Preservation Orders but are protected by virtue of the Conservation Area designation.

1.5 The site is outside a flood risk area (i.e. within flood zone 1) or critical drainage area. The northern boundary of the site is subject to surface water flooding (1 in 100yr and 1 in 1000yr). The city's Air Quality Management Area (AQMA) is located approximately 160m east of the centre of the site. Lancaster Canal is a Biological Heritage Site and in the saved Local Plan enjoys 'Green Corridor' and 'Informal Recreational Area' allocations.

## **2.0 The Proposal**

2.1 Planning permission was granted on the 9<sup>th</sup> July 2020 for the relevant demolition of the existing retail building, water tank and enclosure, and the erection of a new foodstore building with associated parking, external plant, enclosures, service areas and landscaping.

2.2 The applicant has implemented this planning permission and now seeks to vary the planning permission under the provisions of Section 73 of the Town and County Planning Act 1990 (herein referred to as the Act).

2.3 Section 73 of the Act relates to the determination of applications to develop land without compliance with conditions previously attached. One of the uses of a section 73 application is to seek a minor material amendment, where there is a relevant condition that can be varied. The local planning authority (LPA) must consider only the question of the conditions subject to the application. Should the LPA decide to grant permission, it can do so either unconditionally or subject to amended conditions. Should the LPA decide the permission should be granted subject to the same conditions as those subject to which the previous planning permission was granted, the LPA should refuse the application.

2.4 The applicant seeks planning permission to vary the approved plans pursuant to condition 2, specifically to amend the layout of the plant equipment, the external plant area and its enclosure. The applicant now proposes to house some of the plant equipment inside the building on a mezzanine as well as retaining some plant equipment externally.

2.5 The external plant enclosure measures 11.5m by 4.5m situated between the rear elevation of the new building and the northern stone wall boundary. The dimensions and the position of the enclosure within the site remains largely as approved. It remains approximately 9.5m from the north western corner of the new building and approximately 11.5m from the retaining wall that sits along the western boundary. The main changes relate to the finished slab level of the plant enclosure. Unlike the approved scheme where the enclosure was anticipated to be over one external level (22.2m AOD), the proposed enclosure is now over two external levels (21.9m AOD and 22.7m AOD). The external plant equipment will be positioned at the lower of the two levels. This has resulted in the need to accommodate some plant equipment internally (on a mezzanine). The enclosure shall be set in from the party wall by approximately 0.5m. The details of the enclosure fence form part of this application and comprise a 3.2m to 4m high timber acoustic fence to the north and western boundaries of the enclosure with a 3m high galvanised palisade fence to the eastern boundary.

## **3.0 Site History**

3.1 The most relevant planning history is set out in the table below. This Section 73 application relates to planning permission reference 18/01100/FUL. The relevant pre-commencement conditions have been complied with under a number of discharge of condition applications.

<b>Application Number</b>	<b>Proposal</b>	<b>Decision</b>
19/00125/DIS	Discharge of conditions 6, 7, 8, 10, 12, 13, 14, 15, 16 and 18 on approved application 18/01100/FUL	Approved (safe for details of the enclosure fence)
19/00147/DIS	Discharge of conditions 17 and 20 on approved application 18/01100/FUL	Approved
19/00157/DIS	Discharge of conditions 3, 5 and 11 on approved application 18/01100/FUL	Approved
19/00166/DIS	Discharge of condition 9 on approved application 18/01100/FUL	Approved

19/00200/DIS	Discharge of condition 4 on approved application 18/01100/FUL	Approved
19/01357/ADV	Advertisement application for the display of 2 externally illuminated fascia signs, 1 non-illuminated totem sign and 1 non-illuminated window sign	Approved
19/01577/NMA	Non material amendment to planning permission 18/01100/FUL to reduce the size of the external plant enclosure	Withdrawn
18/01100/FUL	Relevant Demolition of existing retail building (A1) and associated water tank and enclosure and erection of a food store (A1) with associated external plant and enclosure, car parking, servicing areas with hard and soft landscaping	Approved and implemented
12/00917/PLDC	Lawful development certificate for proposed use as a food store	Certificate granted for unrestricted retail use.
99/00668/FUL	Erection of a 3.6 metre high galvanised weld mesh fence to form secure compound - Approved	Approved
82/01247	DIY store with car parking (Reserved Matters)	Approved
81/1196	Erection of a DIY retail unit with associated parking	Allowed at Appeal

#### 4.0 Consultation Responses

4.1 The following responses have been received from statutory and non-statutory consultees:

Consultee	Response
<b>Environmental Health Service</b>	<p><b>No objection</b> to the amended plant configuration and plant enclosure.</p> <p>Additional comments provided:</p> <ul style="list-style-type: none"> <li>The amendments and supporting noise statement demonstrate that rated noise levels will meet those cited within condition 26 of the planning permission.</li> <li>No concerns about noise impacts from the plant inside the building, as the fabric of the building will provide higher levels of attenuation than the proposed acoustic enclosure.</li> <li>No need to acoustically treat all sides of the enclosure as the current mitigation sufficiently demonstrates that the noise rating levels cited within condition 26 of the planning permission can be met.</li> <li>Noise monitoring is not justified as the requirements of condition 26 will ensure that sound levels will be at 'no' or 'lowest' observed effect levels.</li> </ul>
<b>Conservation Officer</b>	<p><b>No objection</b> noting that the proposed works will not change the level of impact to the Conservation Area.</p>

#### 5.0 Neighbour Representations

5.1 At the time of compiling this report four letters of objection have been received. A summary of the main reasons for opposition are set out below:

- The external plant has been installed ahead of the determination of the application and that Aldi are operating in breach of their planning permission. Comments received stress that the proposals should not be allowed to go ahead as a 'fait accompli'. Little confidence that residents' interests will be taken onboard by Aldi once the store is up and running.
- Concerns that approval of this will pave the way for further incremental infringements and erosion of residential rights, amenities and living conditions.
- Further noise mitigation detail to secure the approved Rating level has not been submitted and agreed before the building is brought into use or the equipment is operational.
- Lack of commitment or detail to monitor noise levels once the plant is operational.
- Concerns over the validity of the noise report and questions posed in relation to the need for all boundaries of the enclosure to be acoustically treated.
- Impossible to know the level of noise from the internal refrigeration units.
- Impact on residential amenity by virtue of loss of outlook and loss of light due to the height of the acoustic fence, which will impede light through the transparent elements of the existing boundary (trellis fencing) and will visually dominate the boundary and make the garden feel "boxed in".
- The details relating to the height of the acoustic fence relative to the party boundary is vague. In particular, the party trellis fencing varies in height along the boundary, so reference to the new acoustic fencing being "equal height to the trellis" is unclear.
- The acoustic fence will put the garden into shade and alter the wind direction and turbulence affecting the growth of vegetation and climbing shrubs, which in turn will expose the barrier and its visual impact. Change to air flow will increase noise.
- The new building and the increased fence height will alter the aerodynamics around the building exacerbating noise.
- Noise from rainwater running off the roof into the guttering.
- Potential structural impacts on retaining wall from the enclosure.

## **6.0 Principal National and Development Plan Policies**

### **6.1 National Planning Policy**

Section 2 – Achieving sustainable development

Section 4 – Decision making

Section 12 – Achieving well designed places

Section 14 – Meeting the challenge of climate change, flooding and coastal change

Section 15 – Conserving and enhancing the natural environment

Section 16 – Conserving and enhancing the historic environment

### **6.2 Local Planning Policy Overview – Current Position**

On 15 May 2018, and in accordance with the Town and Country Planning (Local Planning) (England) Regulations 2012 (as amended), Lancaster City Council submitted the following documents to the Secretary of State (Planning Inspectorate) for examination:

The Strategic Policies and Land Allocations DPD and (A Review of) The Development Management DPD.

The Examination Hearing Sessions took place between the 9 April 2019 and the 1 May 2019. The Council has published the proposed Main Modifications to the Local Plan. An eight-week consultation into the modifications was undertaken and expired on 7 October 2019.

The Strategic Policies and Land Allocations DPD will replace the remaining policies of the Lancaster District Core Strategy (2008) and the residual 'saved' land allocation policies from the 2004 District Local Plan.

The Review of the Development Management DPD updates the policies that are contained within the current document, which was adopted in December 2014. As it is part of the development plan the current document is already material in terms of decision-making.

Given the current stage of both DPDs, it is considered that some weight can be attributed to the policies contained therein subject to the extent to which there are unresolved objections to the relevant policies and their consistency with the National Planning Policy Framework.

### 6.3 Lancaster District Core Strategy (Adopted July 2008)

SC1 – Sustainable Development

### 6.4 Development Management DPD

DM31 – Development affecting Conservation Areas

DM35 – Key Design Principles

### 6.5 Other Material Considerations

Noise Policy Statement for England (NPSE) March 2010

BS 8233:2014: Guidance on Sound Insulation and Noise reduction for Buildings

BS 4142:2014 Methods for Rating and Assessing Industrial and Commercial Sound

World Health Organisation (WHO) 1999: Guidelines for Community Noise

## 7.0 **Comment and Analysis**

7.1 There are three main issues to consider in relation to this application:

- 1) Noise considerations, specifically that the changes to the development would avoid noise giving rise to significant adverse impacts and that the development could continue to be carried out and operated in accordance with condition 26 of the original planning permission controlling noise levels.
- 2) Residential amenity, specifically in relation to the height and appearance of the acoustic fencing along the boundary of the neighbouring property.
- 3) Heritage consideration, specifically whether the height and appearance of the acoustic fencing would have harmful effects on the character and appearance of the Conservation Area.

### 7.2 Noise Considerations

7.2.1 Consideration of likely noise impacts emanating from the development and the relationship of such on neighbouring residential development was a key issue during the consideration of the original planning application. The main noise sources related to the general use and operation of the foodstore, deliveries and servicing, and noise emitting from the external fixed plant. After lengthy negotiation, the original planning permission was granted subject to several planning conditions controlling the use and operation of the foodstore and its associated infrastructure to minimise the noise effects on neighbouring residents. These conditions included the requirement for a Service Delivery Plan (condition 18), opening times and delivery hours (conditions 23 and 24) and a condition limiting the noise from external plant equipment (condition 26). This application does not seek to amend or modify any of the above conditions.

7.2.2 The proposed amendments relate solely to the housing of the plant equipment, the layout and details of the external plant area and details of the associated plant enclosure. The application seeks to modify the approved plans pursuant to condition 2 to account for these changes.

7.2.3 New issues can arise after planning permission has been granted, which requires the modifications of the approved proposals. This is not an uncommon scenario. Planning legislation and guidance recognises this with several planning mechanisms available to applicants to try and to secure amendments to existing planning permissions. Section 73 of the Act deals with modifications to a

scheme that are more than non-material but not fundamentally or substantially different from the approved scheme.

- 7.2.4 The changes have arisen because of the need to avoid altering the existing levels around the party stone boundary wall and ventilation requirements of the fixed plant (as a consequence of the changes to the slab levels). To address this the applicant proposes changes to the locations of the fixed plant, alterations to the levels of the external plant area and an increase to the height to the fixed plant enclosure.
- 7.2.5 One item of fixed plant shall be relocated inside the building on a new mezzanine. The remaining fixed plant shall remain outside abutted up against the rear elevation of the building. The slab level for the plant is narrower than the approved enclosure due to the land levels rising towards the party wall. Changes have also arisen following officer concerns (during the consideration of a recent discharge of condition application) in relation to the acoustic qualities of the originally proposed acoustic fence. Originally (within the Discharge of Condition application) the applicant proposed a mesh panel at the bottom of the proposed enclosure to provide enough air flow for the fixed plant. Officers challenged the implications of this and the effects this may have on meeting the noise limits set out in condition 26.
- 7.2.6 Before examining the modifications in more detail, it is useful at this juncture to note what the requirements of the approved noise mitigation and the requirements of the original planning permission. Condition 26 requires the development to be carried out in accordance with the noise mitigation set out in the final approved noise report. The mitigation is as follows:
- The enclosure shall extend to a height of at least 0.5m above the height of the tallest item of plant;
  - The enclosure fencing shall be solid (i.e. imperforate);
  - The enclosure shall be formed of a homogenous material with a superficial mass of at least 15kg/m<sup>2</sup>;
  - Any penetrations, junctions or doors shall be treated such that the acoustic integrity of the enclosure is maintained.
- 7.2.7 This level of mitigation demonstrated that the noise rating level (34dB) from the development should result in a 'no observed effect level' (NOEL). This is a level of noise exposure below which no effect at all on health or quality of life can be detected (i.e. no adverse noise impacts). This does not mean that the noise would not affect the acoustic character of an area but not to the extent there is a change in the quality of life. Condition 26 requires the development to comply with this noise mitigation and specifically limits the external fixed plant to a rating level of no more than 34dB within the external amenity area at the nearest residential receptor (to achieve a NOEL).
- 7.2.8 The siting of fixed plant on a new internal mezzanine raises no significant concerns. It will not be visible, and the fabric of the building will exceed the acoustic qualities of the external plant enclosure. Consequently, there are unlikely to be any significant noise impacts deriving from this change to the scheme. The changes to the external plant and the acoustic qualities, scale and appearance of the enclosure are more notable.
- 7.2.9 The remaining fixed plant shall be sited in an external enclosure to the rear of the building in the same location as previously approved. The changes to the levels within the enclosure and the effect this has on the noise emanating from the fixed plant has been remodelled. An updated Noise Statement has been provided with the application. The objective of the noise assessment, re-design of the plant and noise mitigation is to adhere to the noise limit set by condition 26 of the original planning permission.
- 7.2.10 The fixed external plant has a sound pressure of 33dB at 10m. As the neighbouring garden is closer than 10m this has been corrected resulting in a specific noise level of 35dB. In line with the original noise assessment, a further 6dB has been added to account for reflections off the façade of the store and other characteristics. This results in a rating level of the fixed plant of 41dB. This clearly identifies that noise mitigation is required to avoid adverse noise impacts on the neighbouring residents and compliance with the noise condition. The screening effect of a fence relative to the height of the existing wall would not provide enough mitigation (offering a reduction of only 5dB). The proposal now incorporates an acoustic fence measuring 3.2m from the higher of the two enclosure levels (m AOD) and 4m from the lower level. The submitted details indicate that this is just below the height of the trellis fence erected above the stone wall. It is noted that the trellis fence does not extend the full length of the northern boundary.

- 7.2.11 The proposed acoustic fence should offer a reduction of 10dB bringing it below the noise rating level specified in the noise condition. On this basis, there should be no adverse noise impacts associated with the modifications to the external plant enclosure. This also demonstrates that the noise criteria detailed in the noise condition should be achieved. The Council's Environmental Health Officer has reviewed the submission and the concerns raised by residents and raises no objections to the amendments.
- 7.2.12 Neighbouring residents are naturally concerned about the proposed modifications to the development and the effects the changes may have on noise and residential amenity. This is particularly pertinent to the residents of 23 Portland Street who are most affected by the changes, as the plant enclosure sits alongside the southern boundary of their rear garden. The position of the external plant enclosure remains similar to the approved position, though the enclosure will now be set in from the boundary by approximately 0.5 metre. Residents' concerns relate mainly to the validity and accuracy of the noise assessment, concerns over the lack of commitment to noise monitoring and the fact the developer has already commenced the works which they seek permission for via this application. Aside from the noise likely to be generated from the external plant equipment, concerns have also been raised in connection with aerodynamic effects of the building itself and the acoustic fence, which may exacerbate noise further. Similar concerns have been raised in relation to the noise from rainwater running off the new roof into the guttering.
- 7.2.13 Firstly, the methodology adopted in the noise assessment follows best practice guidance having regard to planning policy and guidance and the relevant British Standards. Wind speeds are accounted for in such assessments. The original noise assessment was scrutinised extensively during the consideration of the original application. The noise statement provided with this application has adopted the same approach to the finally approved noise assessment which was accepted by the Council's Environmental Health Officer (as our expert in this field). Subsequently, there are no substantive grounds to resist the proposal because of an inadequate assessment of noise. Secondly, the effects of noise from the development on windier days is not likely to be a concern as the wind itself is more likely to drown out the noise from the plant (which incidentally would not be harmful with the mitigation in place). Finally, it is accepted that in certain circumstances the design and layout of a development may alter the atmospheric considerations around it, such as aerodynamics. In this case, however, the effects of the scale and form of the new building (a matter that is not the subject of this application) should be an improvement to the former B&Q building, which stood taller to the rear than the approved (and now constructed) building.
- 7.2.14 With regard to noise monitoring, the evidence submitted with the application demonstrates that with mitigation the noise emanating from the external fixed plant should not have an adverse impact. Condition 26 sets a noise rating limit for the plant (not to exceed at 34dB). The requirements of this condition are enough to control noise levels and ensure the development does not adversely impact residents. It is not possible (nor reasonable) to impose additional requirements, such as noise monitoring, unless such meets the six tests for imposing conditions. The proposed noise mitigation demonstrates there would be at 'lowest' or 'no' observed effect level. As such imposing noise monitoring would not be reasonable or necessary. The Council's Environmental Health Officer's comments echo this point. It is well rehearsed that planning should not duplicate controls which are the statutory responsibility of other bodies. However, it is also recognised that an integrated approach helps achieve more sustainable outcomes. The point here is that the development has been designed to avoid adverse noise impacts on surrounding residential development and that such is already controlled by the planning permission. Should the local authority receive justifiable complaints about unreasonable noise levels or that noise levels were giving rise to adverse impacts, the Council's Environmental Protection team would investigate as part of their statutory function.
- 7.2.15 Having regard to the details of the submission, planning policy and guidance and the comments raised by neighbouring residents, on balance the proposed amendments and noise mitigation are considered acceptable and do not conflict with the requirements of paragraphs 127 and 180 of the National Planning Policy Framework and DM35 of the DM DPD, which seeks to avoid adverse noise impacts and to secure an acceptable standard of amenity for all. The Council's Environmental Health Officer has reviewed the submission and the concerns raised by residents and raises no objections to the proposals from a noise perspective.

### 7.3 Residential Amenity

- 7.3.1 Policy DM35 states that the Council will expect development to have no significant detrimental impact on amenity in relation to overshadowing, visual amenity, privacy, overlooking, massing and pollution. Securing a high standard of amenity for existing and future users is also a requirement of the NPF (Section 12). The previously approved plant enclosure assumed a slab level of 22metres Above Ordnance Datum (AOD) abutting the stone boundary wall. In front of this existing stone wall a 3.2m high fence was proposed, which was originally designed to sit no higher than the top of the stone wall. The outlook for this neighbour was previously considered acceptable, subject to conditions controlling the precise position, appearance and design of the enclosure.
- 7.3.2 There is approximately 8 metres between the furthest rear elevation of the neighbouring property to the closest part of the enclosure. The enclosure extends 11.5m along the side of the neighbouring garden. The neighbouring property is positioned higher than the proposed site, although their garden level falls slightly to the east. The neighbouring property has a set of French doors (habitable window) overlooking their garden immediately adjacent to the site boundary. As noted earlier the party boundary comprises a historic stone wall with trellis fencing erected above on the neighbour's side. The full extent of the northern party boundary does vary with trellis in some sections and not in others. The amount of trellis exposed above the stone wall varies along the boundary too. There is also domestic planting along the boundary that is more established along certain sections of the wall than others.
- 7.3.3 From within the garden the outlook and light differs along the boundary as a consequence of the coverage of vegetation and the extent of transparent trellis fencing. The main concerns raised relate to the loss of outlook and light because of the acoustic fence now sitting at a height equivalent to the top of the trellis opposed to the top of the wall, thus blocking light and views through the trellis fencing. To be clear, the acoustic fence will be 3.2m tall (from the higher of the two slab levels of the enclosure). It will be visible from the neighbour's garden and property. The first circa 8m of the party boundary from the rear of the property to the enclosure will remain open (this is the section of the boundary with the most trellis). From there the boundary mainly consists of the stone wall and mature domestic planting, which currently overhangs the boundary (in parts). Along some sections of the boundary the existing garden vegetation may screen the acoustic fence. It is noted that the neighbour has concerns that the acoustic fence will threaten the growing conditions of existing plants potentially reducing any screening potential of the garden plants. There is no dispute that the acoustic enclosure fence will be visible from the rear of the property and from the garden and that the outlook will be different from what was originally approved. The issue is whether such would significantly adversely affect the residential amenity of the adjoining property.
- 7.3.4 Whilst the acoustic fence is taller than originally envisaged and will now be visible above the stone wall, the height is not such that it would have a significantly overbearing effect or result in a significant loss of light. The acoustic fence, which shall be set away from the stone wall by approximately 0.5m, will extend above the stone wall by between 0.6 and 0.8m (it will vary along the boundary). It will also be screened by some existing vegetation (on the neighbour's side) and is of a design and appearance that is judged relatively sympathetic against the backdrop of the new, lower building (compared to the height of the former B&Q building).
- 7.3.5 The acoustic fence is set around 8m from the rear elevation of the house and therefore leaves a suitable degree of openness between the neighbouring dwelling and the external plant enclosure. The fence would not adversely affect light to the rear habitable room of the dwellinghouse. The fact the property is elevated assists in this regard.
- 7.3.6 In terms of outlook, the neighbour will experience a change in their outlook as a consequence of the taller acoustic fence. It is accepted this is a backward step from what was originally envisaged when assessing the earlier application. However, the outlook from the property was and remains onto a large retail site with a single large building sitting alongside the property boundary. The provision of the acoustic fence, despite sitting closer to the party boundary than the building, will not exceed the tallest (and transparent) sections of the existing boundary treatment to have a significantly overbearing impact to render the property unsuitable for habitation or such that the garden area would be unusable. Having obtained measurements from the neighbour (due to Officers being unable to enter property during the pandemic), the height of the existing boundary stone wall ranges between 1.4m and 1.55m and 2.09m and 2.3m including the trellis above (taken from their garden levels). The transparent element of the boundary ranges between 0.6m and 0.8m above the stone wall. The acoustic fence would block the transparent sections of the boundary treatment for 11.5m of the boundary (albeit set away by 0.5m).



- 7.3.7 The neighbour's boundary treatment (including trellis) sits just above 2m high from their own garden levels. A 2m high boundary treatment to a domestic property is typical and is usually a solid 1.8 to 2m high fence/boundary. Solid 2m high fences/boundary treatments are (subject to some exemptions) permitted development suggesting such a height is not likely to be harmful. Whilst the impact of the fence has not improved as a consequence of the proposed modifications and the neighbour will be affected by the solid fence sitting behind the transparent sections of their boundary treatment, the height of the acoustic fence is judged not to significantly adversely affect residential amenity.
- 7.3.8 Officers recognise that the proposed change to the plant enclosure is not ideal and that the earlier proposals would have been preferable. Unfortunately, the changes have arisen because of the need to secure suitable noise mitigation to protect the same neighbours against noise from the external plant. Officers have asked if there is flexibility to lower the proposed fence given the anticipated rating level from the plant (with mitigation) is 31dB (3dB lower than the noise limit set out in the condition). Unfortunately, there is very little head room. Small incremental changes to the height of the acoustic fence make a big difference in the amount of attenuation afforded to the barrier. A very marginal lowering of the fence would have to be balanced against increased noise. Any marginal drop is not going to be to the extent originally envisaged during the determination of the original planning permission and therefore the same visual effects of the acoustic fence would remain. On balance, it is contended that securing the highest level of mitigation against noise outweighs the change in outlook and the visual impacts the barrier will have when viewed from the neighbouring property. Overall, the amendments are considered acceptable and would conform with policy DM35 of the DM DPD and the NPPF.

#### 7.4 Heritage Considerations

- 7.4.1 DM31 emphasises that development should preserve or enhance the character and appearance of the Conservation Area. To achieve this, proposals should respect the character of the surrounding built form and its wider setting and should not result in the loss or alterations of features which contribute to the special character of a building or area. The proposed changes to the scheme do not affect the quality of the design and appearance of the development. The enclosure position remains unaffected (i.e. as previously approved) with the only major modifications relating to the height of the acoustic fence.
- 7.4.2 Whilst this has an effect on neighbouring residential amenity, the modifications would have a neutral impact on the character and appearance of the Conservation Area. The rear of the building and the proposed enclosure will not be highly visible from within the wider Conservation Area. The proposed materials and design of the acoustic fence is complementary to the design of the building. The Council's Conservation Officer has considered the proposals and has raised no objections. The proposal does not conflict with the statutory duty of the Planning (Listed Buildings and Conservation Areas) Act 1990 (to give special attention to the desirability of preserving and enhancing the character of the Conservation Area) or DM31 of the DM DPD or Section 16 of the NPPF.

#### 7.5 Planning conditions

- 7.5.1 An approval under Section 73 of the Act effectively results in the grant of a new stand-alone planning permission. Therefore, all the original planning conditions have been reviewed to ensure they remain necessary and relevant. Where such conditions continue to meet the tests for imposing conditions, the conditions will be replicated. Following the grant of planning permission, the applicant has submitted various discharge of condition applications to satisfy those conditions requiring details to be agreed ahead of certain triggers throughout the development phases. Condition 1 of the original planning permission relates to the time limit to which the development must commence. Condition 4 (archaeological investigation) has been fully discharged in consultation with the County Archaeologist. These conditions have been satisfactorily met and do not need to be re-imposed should this proposal be accepted. Conditions 3, 5 to 18 and 20 of the original approval shall be retained but reworded to reflect the details agreed by condition. Conditions 19 and 21 to 28 shall remain as originally drafted.

### 8.0 Planning Obligations

- 8.1 There are no planning obligations to consider as part of this application.

### 9.0 Conclusions

- 9.1 The proposed modifications to the plant enclosure were not anticipated and to a certain extent are unfortunate. However, the applicant has demonstrated that the changes would not compromise the ability to comply with the noise condition, which is the forefront of the planning considerations. The amendments to the plant layout and enclosure, together with the mitigation, would provide mitigation to secure no adverse noise impacts from the development. The unfortunate knock-on effect has been the visual effects from the taller acoustic enclosure that would sit alongside the garden boundary of the neighbouring property. Whilst the taller fence is not as preferable to the earlier enclosure detail, it would not significantly adversely affect the residential amenity (outlook, loss of light) of the neighbouring property to substantiate a refusal of this application. Its design and appearance is sympathetic and complementary to the new building, which will form the main view from the neighbouring dwelling and garden. On balance, the proposal is considered compliant with the Development Plan and the NPPF and can therefore be supported.

### **Recommendation**

That Planning Permission **BE GRANTED** subject to the following conditions:

1. Approved plans list (amended to reflect the proposed modifications)
2. Implementation of Tree Protection Plan and Arboricultural Method Statement
3. Implementation of approved Employment Skills Plan
4. Implementation of approved site access and off-site highway improvement scheme
5. Land contamination remediation
6. Implementation of approved drainage scheme
7. Surface water maintenance plan
8. Implementation of approved ventilation/ducts details
9. Implementation of approved recommendations set out in original ecological appraisal
10. Construct development in accordance with approved material, architectural detailing, surfacing and boundary details
11. Construct development in accordance with approved lighting and security scheme
12. Construct development in accordance with approved refuse provision
13. Implementation of approved electric charging facilities and cycle storage
14. Implementation of approved habitat creation
15. Implementation of approved car parking management strategy
16. Implementation of approved service delivery and waste management strategy
17. Provision of parking
18. Implementation of approved Travel Plan
19. Separate drainage systems
20. Net sales shall not exceed 1,300 sqm. No more than 20% of the net sales floorspace shall be used for the display and sale of comparison goods
21. Hours of operation limited to 08:00 – 22:00 Monday – Saturday and 09:00 – 17:00 Sundays and Bank Holidays
22. Hours of deliveries limited to 07:00 – 22:00 Monday – Saturday and 09:00 – 17:00 Sundays and Bank Holidays
23. Landscaping condition to be implemented and maintained
24. Noise mitigation and noise levels for plant to be secured and maintained

### **Article 35, Town and Country Planning (Development Management Procedure) (England) Order 2015**

In accordance with the above legislation, Lancaster City Council has made the recommendation in a positive and proactive way to foster the delivery of sustainable development, working proactively with the applicant to secure development that improves the economic, social and environmental conditions of the area. The recommendation has been made having had regard to the impact of development, and in particular to the relevant policies contained in the Development Plan, as presented in full in the officer report, and to all relevant material planning considerations, including the National Planning Policy Framework, National Planning Practice Guidance and relevant Supplementary Planning Documents/ Guidance.

### **Background Papers**

None