



Dr. South's C.E. Primary School
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Faith, Hope and Love

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From the Governors

Tuesday 7th October 2014

Linda Griffiths
Senior Planner
Cherwell District Council
Bodicote House
Bodicote
Banbury OX15 4AA

Dear Ms.Griffiths,

Planning Application Ref. 14/00204/DISC

We are writing to object to Network Rail's application for the discharge of the planning condition (number 19) relating to section E of the Bicester to Oxford Rail Improvement. We do not believe that the basis for action set out in their application is complete and that there are relevant factors (set out below) which the planning authority should take account of before considering discharging the condition.

We believe that the analytical basis for Network Rail's proposed mitigation scheme is potentially flawed and requires further independent scrutiny. Network Rail have submitted the same basis for analysis to Oxford City Council (OCC) in respect of the discharge of condition 19 with regard to other sections of the line. OCC did not consider it adequate as a basis for their determination of the application and has commissioned further research. In light of this, any decision reached by Cherwell District Council (CDC) to discharge this condition for section E would be made on the basis of evidence that OCC has already clearly indicated was insufficient.

We are very concerned that inadequate attention has been paid to the potential impact on children's learning at Dr. South's School (which abuts the railway) from increased noise and vibration from the railway. We are not satisfied that the statutory requirements on noise relating to educational establishments have been explored. We do not believe the grounds for excluding the school from the mitigation scheme are valid.

As Governors of Dr. South's School, we have a duty (section 21(2) of the 2002 Education Act) 'to conduct the school with a view to promoting high standards of educational achievement at the school'. Naturally, this extends to the learning environment and to supporting the Head Teacher and Staff in ensuring this is as conducive as possible to the educational achievement of our pupils.

We have therefore been following with interest and growing concern the redevelopment of the railway line through Islip ('The Bicester to Oxford Collaboration'). The railway abuts the school grounds, passing within metres of a classroom. Consequently, we have, from an early stage been concerned to understand the projected impacts of noise and vibration on the school from the projected significant increase in speeds and numbers of services along the line. In this, we are mindful of evidence gathered over many years of the

significant impact that noise can have on learning environments. As an example, Branzaft and McCarthy¹ found that, in New York city schools adjacent to railway lines, the impact of frequent noisy train services were pronounced. Pupils in classes adjacent to the railway tended to make progress in reading ability that lagged three to four months behind that of their peers in classes on the other side of the school, over a ten month school year.

We were pleased to note in the Inspector's report on the project that planning condition 19 placed significant duties on the proposers of the scheme to conduct analyses of the noise and vibration impacts of each section of the scheme. Condition 19.2 states "Development shall not commence **within each Individual Section**, until a **detailed scheme of assessment** of predicted noise impacts during operation of Phase 1 and 2A of the railway works, predicted vibration effects of the railway with Phases 1, 2A and 2B and details of proposed monitoring and mitigation measures, has been submitted to and approved by the local planning authority." This position was upheld in the Minded Views Decision Letter issued by the Secretary of State. She stated "In particular, conditions 19.9 and 19.10 will require Chiltern to submit to the local planning authority **detailed schemes of assessment** showing how the performance standards set out in the Noise and Vibration Mitigation Policy (NVMP) will be achieved." (emphasis added)

Over some months, we have corresponded by email with representatives of Network Rail responsible for the management of the project. At the point of our last correspondence with them and their representatives in July, we were informed that they were about to submit their acoustic analysis of section E of the project (relating to Islip). We recently learnt that it had now been submitted to CDC. Given the fact that the school is adjacent to the railway, we are surprised that neither the proposers nor CDC consulted us, as governors of the school, nor informed us of the application for discharge. We fear that this may have been due to a failure of administration by CDC since the planning application appears to have been incorrectly logged as relating to Bicester East ward and to Bicester parish. This is evidenced on the CDC website, where the "Further Information" tab for application 14/00204/DISC states these details and the "Contacts" tab gives the names of the councillors for Bicester East, not that of Cllr. Hallchurch. Although the application refers to "Buckingham Road Bicester", Section E is solely concerned with Islip. Consequently, this is a significant error of assignment and may call into question the validity of the public consultation.

The application to CDC only came to our attention late last week and we have been seeking to understand the basis for the request to discharge condition 19. Our concerns focus on two areas: apparent grounds for concern over the validity of the methodology adopted by Network Rail for calculating noise and vibration impacts of the railway; and the apparent failure to treat Dr. South's School as a 'sensitive receptor' in the terms of the noise and vibration mitigation policy put forward by the proposers.

We understand that the proposers of the scheme have also made applications to Oxford City Council for the discharge of condition 19 for the sections falling within OCC's boundaries, based on their analysis of the noise and vibration impacts. We have seen an expert review of this analysis prepared by Professor Paul Buckley (Emeritus Professor of Engineering Science at Oxford University, Chartered Engineer and Fellow of the Institution of Mechanical Engineers), which is highly critical of the methodology deployed by the proposers. A specific concern is that the Network Rail analysis may be based on generalisations on the impact of the improved railway based on observations at a single (or very small number of) observable point(s) where the underlying geology may be quite different to that at Islip. Since the determining local factors in vibration are track bed and quality and local geology, we would request that you establish from Network Rail what track bed is proposed and whether there have been any vibration measurements made in Islip.

We understand that, as a consequence of issues raised in Professor Buckley's assessment, Oxford City Council commissioned a further independent assessment of the proposers' methodology and approach by the international engineering firm, Arup. This analysis – which is available at <http://oxfordtobicestrailwayline.net/the-arup-report.php> – raises concerns about aspects of the proposers'

¹ Bronzaft, Arline L.; McCarthy, Dennis P., *The effect of elevated train noise on reading ability*. Environment and Behavior, Vol 7(4), Dec 1975, 517-527

approach and notes that some of their assumptions are “incautious”. In the worst case, Arup identifies that the vibrations caused by the new line may be up to four times those estimated by the proposers’ model. We believe that this analysis, which relates in part to the basis for the Network Rail scheme for section E, is relevant to your determination of the application and should be taken into consideration. This is consistent with the Tameside principle, in so far as the planning authority is here acting to assess an application to discharge conditions laid down by the Secretary of State in her planning order². Furthermore, we believe that, to the extent the scope of the Arup analysis was determined by OCC’s area of responsibility, the concerns that triggered it and which it, to some degree, upholds, should be independently assessed by CDC before reaching a determination on this application.

We have now had the opportunity to review the materials submitted by Network Rail to support its application for the discharge of condition 19 relating to section E. We note in the ‘Noise Scheme of Assessment’ that the applicant has commissioned ERM to produce a map of the noise and vibration impacts in Section E (page 21 of this report). This shows that the contours for a residual impact of $L_{Aeq,10dB}$ and a free field max level of L_{Amax} 82dB(A) fall within the boundary of the school. On the basis that these contours miss a classroom by a matter of centimetres we understand that Network Rail propose no noise mitigation for the school.

We believe there are two critical flaws in the Network Rail approach. First, we see no reflection in it of the building guidelines relating to educational establishments. The relevant statutory duty derives from Requirement E4 from Part E of Schedule 1 to the Building Regulations 2010 (as amended by SI 2002/2871). The Government’s guidelines are elaborated in the Department for Education and Skills’ *Building Bulletin 93 – Acoustic Design of Schools* stipulates that the upper limit for the indoor ambient noise level in Primary School classrooms should be 35 dB LAeq, 30 min and that teaching can be disrupted by individual noisy events such as aircraft flyovers (and, by analogy, trains passing by), even where the noise level is below this. It goes on to state “For new schools, 60 dB LAeq, 30 min should be regarded as an upper limit for external noise at the boundary of external premises used for formal and informal teaching, and recreational areas.” Since Network Rail’s own analysis shows that the maximum (free field) noise level could be LAmax,s of 82dB(A) in recreational areas, this suggests that the impact of the railway (without mitigation) would be to render the existing school grounds in contravention of the government’s own guidelines for the building of new schools. As governors, a specific concern we have here is that high noise levels in the playground may make teachers’ safety instructions to children inaudible.

There is a further respect in which we believe that a decision to discharge needs to take account of relevant factors not apparently yet considered. The planning inspector’s report and the subsequent orders by the Secretary of State address concerns raised by a piano teacher living at 45 Lakeside, adjacent to the track. The Secretary of State’s Minded Decision Letter states “The schemes of assessment of the predicted noise impacts of Phase 1 and 2A and of Phase 2B on the Individual Section or Sections that abut 45 Lakeside shall also identify measures that shall be taken to ensure that the noise caused by passing trains in the Studio at 45, Lakeside does not exceed 35dB LAeq, 30 min and 55dB LA1, 30 min, the standards to be met by music teaching rooms as defined in Building Bulletin 93, Acoustic Design of Schools (Table 1.1).” We submit that the standards of Building Bulletin 93, if applicable to the music studio at 45 Lakeside, should also be applied to the primary school accommodation at Dr. South’s School.

Second, we are very concerned that Network Rail have failed to take account of the fact that the school building is, in fact, an educational establishment. The map provided by Network Rail in their ‘Noise Scheme of Assessment for Section E’ is totally misleading on this point. The map carries the legend ‘Dr South’s Voluntary Aided Primary School’ in a field well to the east of the actual school site, with no line or indication of where the school is, in fact, located (in the triangle between the railway and the Kidlington and Bletchington Roads). Furthermore, Network Rail’s Noise and Vibration Mitigation Policy paragraph 2.2 states ‘*The Promoter is committed to using the Best Practicable Means (1) to design the railway so as to*

² *Secretary of State for Education and Science v. Tameside MBC [1977] AC 1014* where Lord Diplock considered that the question for the court was whether the Secretary of State had asked himself the right question and had taken reasonable steps to acquaint himself with the relevant information to enable him to answer it correctly.

avoid significant noise and vibration impacts at existing sensitive receptors (e.g. residential properties, educational buildings and places of worship). We would take from this that Dr. South's is an existing sensitive receptor, given it is an educational building adjacent to the railway. However, Network Rail have not treated the school as such in their analysis. The Policy continues at para 2.3: *'The Promoter will consult with landowners and occupiers who may be affected by noise and vibration to explain the mitigation measures that are proposed.'* We have not been consulted.

To conclude, given the reasons for concern over the validity of the Chiltern methodology and the fact that even these findings show there is a significant impact on the school grounds and within centimetres of a classroom, we are very concerned. We wish to bring our concerns to your attention and request that you do not discharge this condition without first engaging with the local community and, specifically, with our Governing Body, given the potential impacts on the educational achievement of the children in our care.

Specifically, we request the following:

1. That CDC consults with the governors of Dr. South's School before making a determination on the application made by Network Rail, particularly in light of the failure to notify the governors of the planning application.
2. That CDC, like OCC, commissions a truly independent assessment of the noise and vibration impacts of the scheme. This would provide officers with an impartial basis on which to assess the mitigation scheme proposed by Network Rail.
3. That CDC pays particular attention to increased noise and vibration to the playground and classrooms of Dr. South's School (as a sensitive receptor) and adopts a precautionary approach to the mandation of mitigation measures in this area. Given the clear evidence of the damaging impact of increased rail noise on the attainment of children, we believe condition 19 should not be discharged until CDC is satisfied that appropriate measures are in place to avoid a deterioration in the learning environment as a consequence of the rail improvement project.
4. That, if, after taking steps 1-3, CDC is minded to discharge condition 19, it places a duty on Network Rail/ Chiltern Railways to monitor the actual impact of the scheme on noise and vibration in Dr. South's School after the introduction of services on the line and, if this observed impact exceeds that forecast in the assessment, appropriate mitigation measures should be retrospectively installed. (This is consistent with paragraph 2.11 of the Noise and Vibration Mitigation Policy published by the proposers.)

We should appreciate your response to these four points. If you do not propose to pursue what we feel are reasonable requests given the circumstances, we would ask you to explain to us the reasons for your decision, in particular why the view of CDC is that the evidence provided by the proposers is a sufficient basis for that decision, given that it has already been called into question by OCC.

You will appreciate that, given our statutory responsibilities for the educational achievement of the school, this is a matter of serious concern to us. I am therefore copying this letter to John Howell M.P., Councillor Timothy Hallchurch M.B.E., Jim Lievers (Director of Children, Education and Families Directorate, Oxfordshire County Council), to Anne Davey (Director of Education, Oxford Diocesan Board of Education) and to Rob Mole (Network Rail).

Yours sincerely,

[signed]

Calum Miller

Chair of the Finance, Premises and Personnel Committee
(on behalf of the Governors)