

**STATUTORY PLANNING APPEAL PURSUANT TO SECTION 78 OF THE TOWN
AND COUNTRY PLANNING ACT 1990**

APPEAL BY ACCRUE (FORUM) 1 LLP

SITE AT THE FORMER B&Q, GREATSTONE ROAD, TRAFFORD M32 0YP

Inquiry opened 11 January 2022

APPEAL REFERENCE: APP/Q4245/W/20/3258552

**OPENING SUBMISSIONS ON BEHALF OF
LANCASHIRE COUNTY CRICKET CLUB**

1. These are the opening submissions on behalf of Lancashire County Cricket Club ('LCCC'), who attend this inquiry as a Rule 6 Party to object to the appeal proposal. LCCC's principal objective is to highlight that the Appellant has failed to address the effects of noise from activities at the cricket ground upon residents of the appeal proposal and as a consequence, the appeal ought to be dismissed.
2. Sir, you have previously been provided with LCCC's Statement of Case, which addressed a number of issues. LCCC still maintain all of those points through its statement of case. However, for the purposes of this inquiry, LCCC attend the inquiry solely to address the issue of noise.
3. LCCC was founded 157 years ago. It is common ground that it is an internationally significant sporting/visitor attraction and the most significant cricket venue in the

North West of England.¹ It is an essential part of the UK's sporting infrastructure and hosts international cricket matches/events, including five day test matches, limited over and T20 matches as well as the Hundred and county cricket matches. Further, it hosts large concerts for internationally renowned artists, with it having a licence to hold up to 7 music concerts each year (with soundchecks occurring on other days).

4. These activities generate noise, which will have an impact on the residents of the appeal proposal, were permission to be granted. This invokes the agent of change principle.
5. The 'agent of change principle' encapsulates the position that any person or business, which introduces a new land use, is responsible for managing the impact of that change. The practical issue that has arisen on occasion is that in circumstances where occupants of newly built homes move into an area with a pre-existing source of noise (ie. noise from a cricket ground), this can result in those new residents making complaints about these noise sources. That has resulted, on occasion, in local authorities using their statutory powers to restrict the pre-existing activity, whether by imposing additional licensing restrictions or raising the issue of statutory nuisance in respect to these pre-existing businesses. Such a reactive approach is obviously deeply unsatisfactory when the role of the planning system is to determine the acceptability of proposed land uses having regard to the pre-existing baseline position.
6. This was specifically recognised in the updates to the National Planning Policy Framework on 24 July 2018, which introduced the agent of change policy – ie. what

¹ SoCG para 2.1.18

was then paragraph 185 of that iteration of the NPPF. The current version of national policy includes the agent of change principle at paragraph 187. It makes it clear that it applies to planning decisions affecting music venues and sports clubs (with my ***emphasis***):

*Planning policies and **decisions** should ensure that new development can be integrated effectively with existing businesses and community facilities (such as places of worship, pubs, **music venues and sports clubs**). Existing businesses and facilities should not have unreasonable restrictions placed on them as a result of development permitted after they were established. Where the operation of an existing business or community facility could have a significant adverse effect on new development (including changes of use) in its vicinity, the applicant (or 'agent of change') should be required to provide suitable mitigation before the development has been completed.*

7. In this instance, the Appellant has underestimated the impact the appeal proposal will have on LCCC's operations. Indeed, the Appellant's original noise survey resulted in the Council not introducing a putative reason for refusal. However, through LCCC providing their own survey information, the Council rightfully recognised that the Appellant's evidence was flawed and that a reason for refusal in respect to noise was warranted. This is entirely understandable. The planning system relies on applicants for planning permission submitting accurate survey information – which did not occur in this instance.

8. As will be demonstrated through the evidence, the Appellant's survey information for concerts was conducted in a flawed manner and this has led to a number of errors in their approach.
9. The other significant error in the Appellant's case is their approach to mitigation. The Appellant has sought to address concerns with noise through arguing that: this can be dealt with at a later stage – what they refer to as 'the detailed design phase'; it can be dealt with through windows needing to be kept closed; and finally that a deed of easement can resolve the issue.
10. As regards the 'detailed design phase', it is unclear what the Appellant is referring to here. Whilst this is an outline planning application, LCCC's understanding is that only landscape has been reserved and thus it is unclear what this detailed design phase is as far as noise mitigation is concerned. However, in light of paragraph 187 of the NPPF, LCCC submit that it is incumbent upon this planning decision to determine this matter and not leave this to some other unknown stage in the process.
11. As regards keeping windows closed, this does not actually resolve all the noise impacts. However, the Appellant submits that this suggestion has been poorly conceived, given that considerations of ventilation and overheating have not been addressed. Further, it is an unacceptable form of mitigation for residents of the proposed development in any event.
12. As regards the deed of easement, LCCC's position is that this is not a lawful legal instrument. Indeed, this deed seeks to have a developer require future tenants of the

proposed development to essentially sign away their rights against a statutory nuisance. There is no legal precedent for such an approach as far as LCCC is aware, nor can this be appropriate.

13. The reality is that if the appeal proposal were to proceed, this would result in future residents of the proposed development experiencing unacceptable noise impacts from the cricket ground. Those residents would naturally complain and, irrespective of any deed of easement, the Council would be under a statutory obligation to take appropriate action to ensure that there are proper environmental health controls. The effect of this would be to curtail LCCC's activities, both as a music venue and a cricket ground. This outcome is plainly contrary to paragraph 187 of the NPPF and thus permission ought to be refused on this basis alone.

Killian Garvey

Kings Chambers

11 January 2022