

Addendum 3

LA01/2015/0459/F

1.0 Update

1.1 Following on from email correspondence dated 8th February 2019 with Environmental Health a further consideration of the Fens Tiger case law has been provided. This specifically relates to informative 7 of the Planning Committee report and paragraph 8.26 of the Planning Committee report. Following a Northern Ireland Pollution Group meeting in January 2019 it was the consensus that a legal opinion concerning the Fens Tiger ruling should be sought through the Heads of Service Group. It was suggested at the meeting that the wording of informative 7 in its current form shall cease to be used until the legal opinion has been obtained. Although there was no formal minute of the meeting it is Environmental Health's view that that given the uncertainty concerning the implications of the ruling in relation to Statutory Nuisance, at this juncture the absence of a legal opinion, that informative 7 should be withdrawn in its current form. The Planning Authority has been advised that the wording of informative 7 should be changed to remove reference to the nuisance action element of the informative.

1.2 On this advice the wording of informative 7 which currently reads,

“The applicant should be aware that the proposed development is located in close proximity to Barry’s Amusements. Such activities may give rise to offensive conditions and a resulting impact upon the amenity enjoyed by the proposed development due to elevated levels of distinctive noise. The applicant should be advised that nuisance action cannot be used to subsequently address these prevailing conditions and that only future increases or intensification of adverse impacts may be considered in the determination of nuisance.”

Will be changed to read,

“The applicant/future occupiers should be aware that the proposed development is located in close proximity to an existing amusement business, and as such associated levels of noise may be anticipated.”

- 1.3 The proposal description as shown on page 1 of the Planning Committee report currently reads,

“Development of one detached house, 12 semi-detached houses and 8 apartments with associated landscaping and site works.”

This was incorrect on the Planning Committee report. This description has been amended and should read,

“Development of 10 semi-detached houses and 11 apartments (in one block of 8 and one block of 3).”

2.0 Recommendation

- 2.1 That the Committee notes the contents of the Addendum and agrees with the recommendation to approve, as set out in paragraph 9.1 of the Planning Committee Report.