



## PLANNING COMMITTEE

**Meeting: Tuesday, 6th September 2022 at 6.00 pm  
in North Warehouse, The Docks, Gloucester, GL1 2EP**

### ADDENDUM

The following item/s although provided for on the agenda front sheet was/were not available at the time of dispatch:

<b>4.</b>	<b>LATE MATERIAL (PAGES 5 - 16)</b>  Please note that any late material in respect of the applications detailed below will be published as a supplement on the Council's website in the late afternoon of the day before the meeting. Additional late material will be uploaded as a supplement on the Council's website on the day of the meeting, should further relevant representations be received thereafter.
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Yours sincerely

**Jon McGinty**  
**Managing Director**

## NOTES

### Disclosable Pecuniary Interests

The duties to register, disclose and not to participate in respect of any matter in which a member has a Disclosable Pecuniary Interest are set out in Chapter 7 of the Localism Act 2011.

Disclosable pecuniary interests are defined in the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 as follows –

<u>Interest</u>	<u>Prescribed description</u>
Employment, office, trade, profession or vocation	Any employment, office, trade, profession or vocation carried on for profit or gain.
Sponsorship	Any payment or provision of any other financial benefit (other than from the Council) made or provided within the previous 12 months (up to and including the date of notification of the interest) in respect of any expenses incurred by you carrying out duties as a member, or towards your election expenses. This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992.
Contracts	Any contract which is made between you, your spouse or civil partner or person with whom you are living as a spouse or civil partner (or a body in which you or they have a beneficial interest) and the Council (a) under which goods or services are to be provided or works are to be executed; and (b) which has not been fully discharged
Land	Any beneficial interest in land which is within the Council's area.  For this purpose "land" includes an easement, servitude, interest or right in or over land which does not carry with it a right for you, your spouse, civil partner or person with whom you are living as a spouse or civil partner (alone or jointly with another) to occupy the land or to receive income.
Licences	Any licence (alone or jointly with others) to occupy land in the Council's area for a month or longer.
Corporate tenancies	Any tenancy where (to your knowledge) – (a) the landlord is the Council; and (b) the tenant is a body in which you, your spouse or civil partner or a person you are living with as a spouse or civil partner has a beneficial interest
Securities	Any beneficial interest in securities of a body where – (a) that body (to your knowledge) has a place of business or land in the Council's area and

(b) either –

- i. The total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or
- ii. If the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which you, your spouse or civil partner or person with whom you are living as a spouse or civil partner has a beneficial interest exceeds one hundredth of the total issued share capital of that class.

For this purpose, “securities” means shares, debentures, debenture stock, loan stock, bonds, units of a collective investment scheme within the meaning of the Financial Services and Markets Act 2000 and other securities of any description, other than money deposited with a building society.

NOTE: the requirements in respect of the registration and disclosure of Disclosable Pecuniary Interests and withdrawing from participating in respect of any matter where you have a Disclosable Pecuniary Interest apply to your interests and those of your spouse or civil partner or person with whom you are living as a spouse or civil partner where you are aware of their interest.

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For further details and enquiries about this meeting please contact Tanya Davies, 01452 396125, [tanya.davies@gloucester.gov.uk](mailto:tanya.davies@gloucester.gov.uk).

For general enquiries about Gloucester City Council’s meetings please contact Democratic Services, 01452 396126, [democratic.services@gloucester.gov.uk](mailto:democratic.services@gloucester.gov.uk).

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- You should proceed calmly; do not run and do not use the lifts;
- Do not stop to collect personal belongings;
- Once you are outside, please do not wait immediately next to the building; gather at the assembly point in the car park and await further instructions;
- Do not re-enter the building until told by a member of staff or the fire brigade that it is safe to do so.

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31 August 2022

Dear Councillor,

**Planning Committee Reconsideration: Application Reference 22/00293/FUL – Erection of 43 dwellings, comprising 13 houses and 30 flats, together with associated parking and landscaping on land at Bristol Road, Gloucester**

I refer to the above and I write to you on behalf of Avon Metals. I also refer to my email to you dated 16 August 2022 and to the 'letter before claim' produced by Avon Metals' lawyers, Charles Russell Speechlys, (the legal letter), that was included with it. I also refer to the revised report to committee, which is to take place on 6 September 2022.

Avon Metals is a multi award-winning, privately-owned, UK-based manufacturer of primary and secondary based Aluminium Casting Alloys and Master Alloys. It is also an international trader of non-ferrous scrap metals. It has a long heritage in its industry, being established over 60 years ago, with an excellent reputation and recognition of its role within this sector.

Its Gloucester operating premises, which include modern furnaces and metal reprocessing facilities, are located at Ashville Road. These operations are critical to the wider business and, locally, employ some 59 permanent staff, most of whom live in Gloucester and the surrounding area. At present, due to a range of factors, including the effects of the pandemic, Brexit and the war in Ukraine, the business is running at about two thirds of normal full capacity. There is a rolling capital investment programme in place, with 2 new furnaces now installed and another scheduled for installation later this year. Once complete, full production levels, and associated noise, will resume during the day and night.

Avon Metals is an ethically sound and socially responsible company. It carries out its business in a professional and thoroughly responsible manner. However, there is no escaping the fact that it operates a B2 general industrial use. It is a 24 hour/day 7 day operation that creates noise, emissions and commercial activity that mean that it is not a compatible neighbour for residential properties. Since 2014, it has been making representations to your officers with regard to these sensitivities and tensions, and the serious implications arising, from new residential proposals creeping ever closer to its lawful industrial activities.

Avon Metals objects vigorously to the above application and has submitted a series of representations setting out its concerns. Despite those very real concerns, I am afraid that it has always felt to us that officers had made their minds up and decided that they would approve housing on the current application site, no matter what evidence we presented.

Avon Metals' serious concerns about the current proposals are not based on subjective opinion. They are based on evidenced fact and supported by the

views of experts in the field. Avon Metals' concerns are also shared by the Council's own consultee expert/regulator on these matters (Mr. Williams at WRS), although it is clear that he wishes to avoid getting drawn into a planning battle and taking sides. He states (see paras 4.14 and 4.15 of the updated report) that "the future development / evolution of the Avon Metals site may be restricted and / or the amenity of future residents may be compromised". We believe that your officers are being rather creative in interpreting his consultation response, which confirms concerns about placing sensitive housing on this site close to significant noise sources. We strongly recommend that you arrange for him to attend the committee meeting to answer your questions.

Contrary to the claims in the reports presented to you, the true evidential picture includes a history of 'new' residents' complaints about operational noise emanating from the Avon Metals site, which started when The Anchorage development was built and occupied. Complaints first arose in the early summer of 2009 and tailed off in late 2016.

As a result of those complaints, Avon Metals spent an estimated £0.35million on consultants' technical support, noise mitigation and shift practice changes. It did so because it seeks to be a good neighbour and to act responsibly. Under its Permit to Operate issued by the Council, the company works to 'Best Available Techniques' (BAT). However, these measures and practices have their limits and it remains the case that the lawful industrial use is still noisy and unneighbourly, especially at night-time. It is an inescapable and inevitable effect of the lawful use. It underpins the importance of making evidence-led planning decisions to ensure that lawful land uses can operate without environmental conflict and future complaints.

For reasons that are more fully set out in the legal letter, Avon Metals is extremely concerned to be placed in an invidious position by the actions, inactions and deeply flawed advice from your planning officers. Whilst we would normally default to a position of professional respect for council planning officers in reaching a different view to ours, we are unable to do so in this case. **Your officers have failed on numerous counts and, in our view, have created a very unsatisfactory situation and one that the Council should be rightly embarrassed by. The effect of these failings and errors are that councillors were materially misled at the August Planning Committee and the revised (September) report continues to mislead.**

The most significant serious failings are summarised below, together with our reasons as to why planning permission should not be granted pursuant to this application:

- i. **Failing to notify an interested party (Avon Metals)** of the August Planning Committee, leading to Avon Metals being unable to attend the committee and address councillors, despite repeated requests and indications that Avon Metals would wish to do so. This was a clear breach of Council policy, since acknowledged by officers. Whilst officers' apologies are noted, this is gross maladministration.

In light of Avon Metals' position and concerns, it is extremely surprising that officers failed to identify the error and allowed the committee to consider the application, without the full third-party contributions that due process requires. Even when the omission was drawn to officers'

attention, officers originally indicated that the matter would not be reported back to committee and that the decision notice would be issued, which has led to Avon Metals' incurring legal costs.

- ii. **Failing to publish the committee report** ahead of the meeting on the planning committee webpage. This, along with failing (i) above, means that the committee meeting, to all intents and purposes, was conducted in secret, with Avon Metals excluded.
- iii. **Failing to report Avon Metals' representations fully and fairly.** Six written submissions, spanning over 2 years and including detailed expert reports on noise, were condensed into a few lines (para 5.2 of the August report). This gross failing is not addressed in the revised report. It simply tells us that this is "*normal practise*" [sic] (paragraph 6.48) and that providing further information on Avon Metals' substantive concerns would not be of "sufficient benefit" to you, as the decision maker.

We consider that officers are wrong and they appear to be preventing you from seeing the full facts. We have made repeated requests that our full representations be reported, as they include clear expert evidence on the inadequacy of the noise assessments undertaken. We request that members obtain copies of the representations and read them in full prior to making a decision. Avon Metals is happy to provide further information as necessary. If this necessitates a further deferral, so be it, as a sound decision, informed by the evidence, is the most important outcome for the committee.

- iv. **Misleading councillors** by stating (para 6.35 of the report) that the Council did not know whether Avon Metals was a 24-hour operation. The Council's own records, and the Council's own expert noise adviser (Mr. S Williams at WRS), confirm that it is (and always has been), a 24 hour and 7 day a week operation.

That error remains in the revised report (paragraph 6.35), despite our further representations on this specific point, which suggests that your officers are ignoring key facts that do not support their (flawed) analysis. **It is lawful for Avon Metals to operate on a 24 hour/7 day week basis** and the planning assessment must be undertaken on that understanding. The continued failure of the revised report to acknowledge the contribution of Avon Metals to the noise environment at the application site is deeply disappointing and concerning.

- v. **Grossly misleading the committee concerning historic nuisance complaints** (para 6.36 and 6.44 of even the revised report). Officers stated that there have been no complaints, but this is completely untrue. There is, in fact, a long history of complaints about noise and at various times, including day, night, weekends and bank holidays. These arose as new housing development has crept closer to Avon Metals' operations.

Notably, multiple complaints from residents at The Anchorage to the west (and beyond the Bristol Road noise corridor) were relayed by the Council (as the regulator) to Avon Metals in the period 2009 to 2016. Rather than present the facts to the committee, officers failed to check their own records. This is a gross and serious failing.

The reason for the cessation of the noise complaints was the material investment, operational changes and goodwill of Avon Metals. However, as noted above, noise has not and will not cease. Allowing residential development in sensitive locations, where noise exposure is unavoidable, will inevitably lead to a new spate of complaints.

- vi. **Misleading councillors about the distance between the application site and Avon Metals premises.** The distance is approximately 135 metres, not the 175 metres stated in the report and retained in the revised report (paragraphs 6.31 and 6.35), despite the then later inconsistent references to 135 to 150 metres (paragraph 6.62). The true distance (135 metres) is a short distance in noise terms, especially with the type of industrial noise involved and the prevailing south-westerly wind blowing from the Avon Metals site directly towards the application site.
- vii. **Failing to address the methodological weaknesses, missing evidence, and outdatedness of the applicant's noise reports,** and employing a highly partisan and deeply flawed assessment of noise matters. In brief, the applicant's evidence is fundamentally flawed because:
- a) All noise sources at Avon Metals have not been accounted for.
  - b) Future noise sources at Avon Metals have not been assessed.
  - c) Other commercial noise sources close to the site have not been properly considered.
  - d) The assessment methodology does not comply with BS4142:2014+A1:2019 *Methods for rating and assessing industrial and commercial sound*.

These flaws are significant and mean that the applicant has failed to demonstrate that the proposal is acceptable in noise terms.

- viii. **Misleading the committee about the suitability of the applicant's offered mitigation measures** (para 6.38).
- a) From paragraph 6.9 onwards of the revised report on "design, layout and landscaping", there is no mention of the noisy environment. "Residential amenity" is addressed at paragraph 6.25 onwards. Paragraphs 6.30 and 6.38 fail to explain that the mitigation, through window design and mechanical ventilation, only offers some benefit when all windows are kept permanently closed. It does not identify that there is no noise mitigation if the windows are opened. Nor is this addressed in paragraph 6.53. If the applicant and officers cannot explain how the mitigation will be secured, how can members properly understand and assess the impact of the noisy environment on residential amenity during the day and at night and the residual risk of complaints?
  - b) The report still fails to address impacts on outdoor amenity areas. Again, how can members properly understand and assess residential amenity and the residual risk of complaints?

- c) It also fails to address Government Guidance which recommends information packs for purchasers/occupiers of homes that are subject to noise. Purchasers/occupiers should be aware that their future amenity may be limited and that they are acquiring homes in a noisy environment. This is not addressed in the revised report and there is no proposal to secure it by a planning condition or an undertaking under S.106.
- ix. **Misrepresenting and misunderstanding the 'agent of change' policy requirements and associated Guidance.** The report (paras 6.33 and 6.34) implies to members that this is all about entertainment venues. It is not. The policy applies to 'existing businesses' and requires new development to integrate effectively with them and not result in those businesses having unreasonable restrictions placed upon them, i.e., it is specifically intended to protect businesses such as Avon Metals. It is disappointing that, in paragraph 6.56 of the revised report, officers still appear to suggest that this policy can be put to one side, as the National Planning Policy Framework (NPPF) does not specifically reference industrial sites. Avon Metals is an "existing business" and the policy clearly applies. National policy cannot be disregarded as officers suggest.
- x. **Failing to follow Government Guidance.** The Guidance makes clear that this must take into account not only the current activities that may cause a nuisance, but also those activities that businesses are permitted to carry out, even if they are not occurring at the time of the application being made. Such an assessment, in line with the Guidance, has not been carried out.

**These 10 major failings, individually and collectively, mean that the August Planning Committee was materially misled and it, inadvertently, reached an unsound planning resolution.** The blame for this does not lie with the committee members. Councillors were presented with a report which erroneously explained that noise was not a big issue, Avon Metals' submissions and expert evidence had been kept out of sight, and there was nobody at the meeting to contest the officer/applicant view. Moreover, the officer report was littered with fundamental errors and omissions. These failings infect the officer's analysis and recommendations. These failings are not addressed in the revised report.

We urge the Planning Committee to reject this application. All of the available evidence points clearly to a fundamental incompatibility of placing sensitive housing on this site, given the proximity of lawful industrial uses, which play a key part in the local economy and support 59 local families. It should also be remembered that this is not an allocated housing site and was originally approved for employment use, which would not have the same sensitivities.

Details of the proposed mitigation are simply not available to members. Even with all possible mitigation measures (high performance windows, permanent mechanical ventilation, information packs to residents etc.), the proposal cannot achieve the high standard of amenity for future residents that is required by national policy (NPPF para 130).

We do not believe that the Planning Committee would endorse building sub-standard homes where windows could not be opened, ventilation is permanently mechanized, and outdoor spaces cannot be enjoyed. We also do not believe that the Planning Committee would wish to create a situation where future noise complaints are likely and where Avon Metals' future operations, which support many local families and businesses, are compromised and threatened.

Building homes on this site, in the light of the clear evidence, is simply a step too far. Housing is simply incompatible with the nearby lawful industrial uses. Allowing homes in this location would be a very bad planning decision and would fly in the face of the evidence.

**We urge the Committee to reject this application due to the clear policy conflicts with the NPPF paras 130 and 187 and Joint Core Strategy policy SD14.**

Yours sincerely,

*Philip Staddon*

Philip Staddon BSc, Dip, MBA (Distinction), MRTPI

Director – PJS Development Solutions Ltd

**PLANNING COMMITTEE MEETING – Tuesday 6<sup>th</sup> September 2022**

**LATE REPRESENTATION REPORT**

<b>Purpose of report</b>	<b>Officer response to late representation by Avon Metals (received by the local planning authority on 31<sup>st</sup> August 2022)</b>
<b>Application Number:</b>	<b>22/00239/FUL</b>
<b>Site address:</b>	<b>Land at Bristol Road (former Contract Chemicals site), Podsmead, Gloucester</b>

The objector (Avon Metals) have submitted a late representation raising a number of matters they consider to be failures of the local planning authority. A copy of Avon Metal’s full correspondence is attached as Appendix 1.

The matters raised have been address by the LPA as follows:

**i. Failing to notify an interested party (Avon Metals)**

Following the August committee meeting officers acknowledged the failure to directly notify the objector and the decision was made to take the application back to a subsequent Planning Committee meeting to ensure the objector was given their chance to speak.

The objector was notified of the current committee meeting agenda on 30<sup>th</sup> August 2022 and has registered to speak against the officer recommendation.

**ii. Failing to publish the committee report**

The committee report was published and was publicly available on the council’s website at <https://www.gloucester.gov.uk/about-the-council/committees-and-meetings/meetings-minutes-and-agendas/>

**iii. Failing to report Avon Metals’ representations fully and fairly**

Officers summarised the representations made by Avon Metals in relation to this planning application (it is not due process to report representations in full).

Officers were in receipt of Avon Metals representations when undertaking assessment of the relevant aspects of the proposed development and sought advice from the Noise Consultant at Worcestershire Regulatory Services (WRS), who considered Avon Metals representations against the applicant’s own submissions. The technical advice of WRS has been considered by officers against the relevant planning policies and it has been concluded that planning permission should be granted as the development complies with the relevant technical guidance and planning policies. Avon Metals representations do not provide any compelling evidence to the contrary.

**iv. Misleading councillors**

Councillors were not misled.

The applicant’s noise assessment included assessment of noise generated by Avon Metals over a 24hr period, including monitoring of noise within the most exposed area of the application site. The assessment considered all noise associated with Avon Metals (and other industrial sources) included and verified based on site-specific noise measurements

undertaken near to Avon Metals site and surrounding units. These assessments have been included within the verified noise models as continuous area sources, point sources, vertical area sources and line sources. WRS has reviewed the applicant's noise survey and subsequent additional information submitted and is satisfied that it represents an accurate view of the noise environment within and surrounding the application site. The historic (and more recent) representations made by Avon Metals have not changed WRS' consideration of the applicant's noise survey or proposed noise mitigation measures.

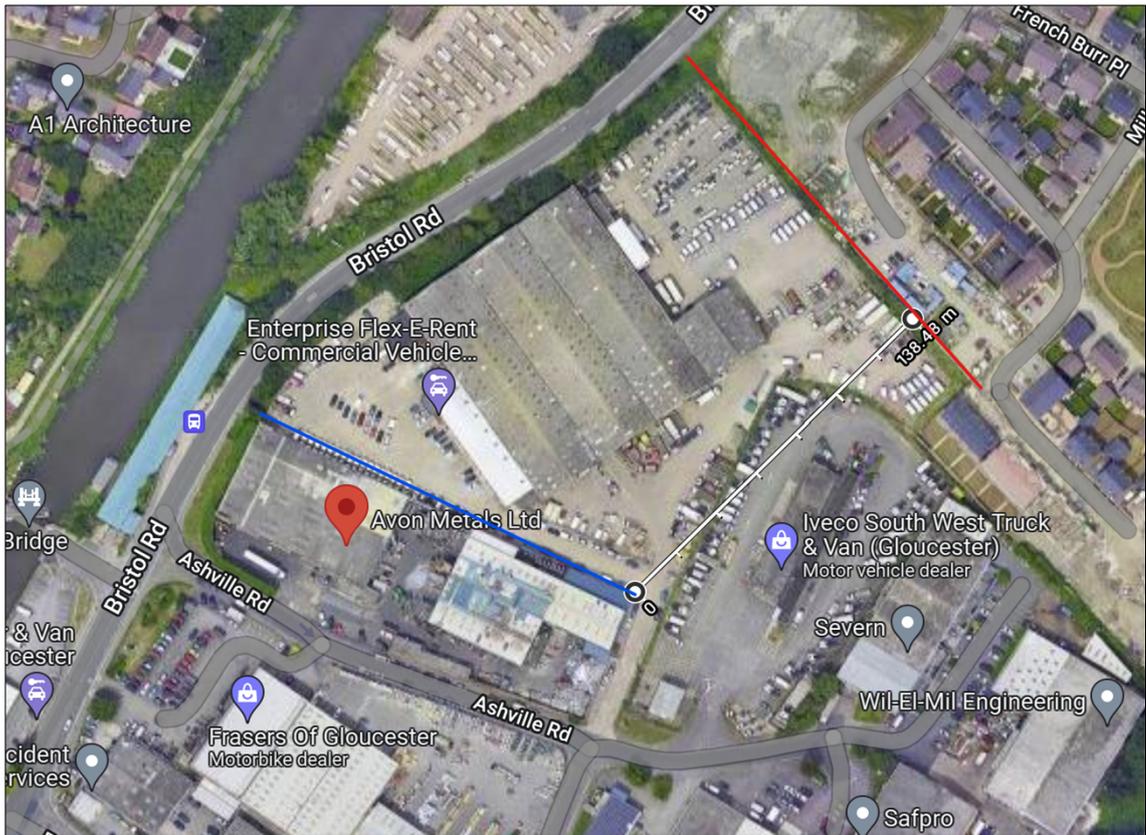
**v. Grossly misleading the committee concerning historic nuisance complaints**

Paragraphs 6.36 and 6.44 did state that 'no complaints' had been received. What should have been reported is that no 'recent complaints' (within the last 5 years) have been received. Avon Metal's assertion that complaints ceased after 2016 is correct.

Officers have re-confirmed with WRS that no noise complaints at all have been received since 2016 (following Avon Metals implementation of a scheme of noise mitigation). (see also response to point ix below).

**vi. Misleading councillors about the distance between the application site and Avon Metals premises**

The boundaries of each site are not parallel. Distances between the Avon metals site and application site range between 200 metres (north-westernmost boundaries) and approximately 140 metres (south-easternmost boundaries). The distance reported within committee report paragraphs 6.31 and 6.35 is a mean distance. The distance report later in paragraph 6.62 relates to the area of the application site potentially most exposed to noise from Avon Metals (see below aerial image – application boundary in red & Avon Metals boundary in blue).



**vii. Failing to address the methodological weaknesses, missing evidence, and outdatedness of the applicant’s noise reports**

Avon Metal’s views on the applicant’s noise assessment have been reviewed by (and discussed with) the LPA’s Noise Consultant at WRS on several occasions (they have also been considered by the applicant’s Noise Consultant).

WRS remain of the opinion that the applicant has presented an accurate view of the noise environment within and surrounding the site (that has gone on to inform the layout of the scheme and noise mitigation details).

**viii. Misleading the committee about the suitability of the applicant’s offered mitigation measures**

See above with regards to the LPA’s technical advice received.

The mitigation measures proposed (the site layout and proposal for whole-house mechanical ventilation and acoustic glazing for certain, more noise sensitive, plots) are considered to be standard, proven technical solutions and there is no doubt that full technical details would be unable to be agreed at condition discharge stage. The planning condition recommended within the officer report (condition 9) is considered to offer sufficient protection to future occupiers of the site.

There are existing site boundary enclosures that would offer some screening from noise generated by the adjacent industrial estate. This has been factored into the applicant’s noise assessment that includes expected noise levels for both internal and external areas. It is the view of WRS that the stated levels are acceptable (subject to securing a scheme of noise

mitigation for the internal spaces of each plot). Information packs could be provided to future owners/occupiers of the new dwellings but, this is not considered to be a reasonable or necessary requirement in planning terms (for this site) so would not be required by any conditions of the permission.

The various representations submitted by Avon Metals offer no compelling evidence to the contrary.

**ix. Misrepresenting and misunderstanding the 'agent of change' policy requirements and associated Guidance**

Due consideration has been given to the 'agent of change' policy requirements and associated guidance (paragraph 187 of the National Planning Policy Framework and associated Planning Practice Guidance).

Based on the evidence available to the local planning authority (including the views of the LPA's Noise Consultant, applicant's noise assessment and Avon Metals representations) it is considered that future occupiers of the development would not be exposed to 'significant adverse effects' as a result of the site location. As such, no 'unreasonable restrictions' would be placed on the operations of Avon Metals (or any of the other adjacent land uses) as a result of a grant of planning permission.

Since 2016 (when the last known noise complaint was made) there have been no new noise complaints with regards to the operations at Avon Metals (or any other industrial units within the Ashville Estate) despite the completion of a high number of new dwellings in close proximity to the industrial estate (the wider Matthew Homes site known as Eden Park that surrounds the application site to the east and south). It is also of note that the majority of noise complaints made between 2009 and 2016 were from adjacent businesses and residents of The Anchorage (a residential site approximately 90 metres from Avon Metals to the north).

The officer's planning judgement is that no conflict with the aims of this policy would arise.

**x. Failing to follow Government Guidance**

As above, government guidance on noise matters in relation to planning assessments and the 'agent of change' principle has been reviewed in line with the submitted details and representations and the recommendation that planning permission should be granted in this instance is considered to be robust and in compliance with the Planning Practice Guidance, the relevant policies of the development plan (and emerging Gloucester City Plan).

**Final comments**

Officers have not failed to take into account the representations made by Avon Metals. The planning application has been assessed correctly against the relevant national and local planning policies and guidance, taking into consideration the views of the LPA's technical consultee on matters relating to noise. No compelling evidence has been found that would suggest a refusal of the planning application on noise grounds was justified.

It is not considered by officers that matters relating to noise are different to the situation as presented at the August 2<sup>nd</sup> Planning Committee meeting. Officers have decided to re-present the application to members to allow the objector (Avon Metals) the chance to speak against the officer recommendation. However, based on Avon Metals written representations officers do not consider they have a compelling case to argue against the officer recommendation.

It is also noted to members that matters relating to noise are only one aspect of the wider planning assessment. The application should be considered on its merits and it is not considered (by officers) that there are any matters that outweigh the merits of the proposed development in this case.

The officer recommendation remains that planning permission should be granted. Subject to the conditions detailed within Section 7 of the officer report.

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