



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

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