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| Application 11/00995/F | No: | Ward: Bicester Town | Date Valid: 23/06/11 |
| Applicant: | Joblings Garage Ltd., Mr. Paul Jobling | | |
| Site Address: | Unit 3A, Bessemer Close, Bicester OX26 6QE | | |

Proposal: Retrospective – Change of Use from B8 to B2 and installation of roller-shutter door to side elevation and drainage to rear of unit (Re-submission of 11/00482/F)

1. Site Description and Proposal

- 1.1 Bessemer Close is a cul-de-sac occupied by a range of buildings that are or were in commercial use. At the entrance to Bessemer Close is Joblings Garage and the vacant Lear Corporation building. Behind Joblings Garage is a group of three buildings of which two are occupied by Space Module (storage rental facility) and the end building forming the application site.
- 1.2 The application site is a two storey building of brick construction under a pitched roof. The site has parking to the front and side of the building. To the north of the site lies a further building currently occupied by First Line (suppliers of automotive components) and a large hard surfaced/parking area associated with the building. To the west of the application site lies residential areas with properties along the eastern side of Fallowfields backing onto the site.
- 1.3 The application seeks to change the use of the building from B8 (storage or distribution) to B2 (general industrial). The application also seeks to regularise a roller shutter door installed on the north (side) elevation and drainage tanks to the west (rear) of the building.
- 1.4 The building is currently occupied by a company called 'The Granite House' who supply granite, quartz and marble to the trade and public. The material is cut/milled at the site using diamond cutting machines and other handheld tools. The drainage tanks to the rear of the unit are connected to cutting machines which uses water to reduce dust. The water is recycled within the tanks that are graduated to allow the sludge produced by the cutting to sink within the tank and collected periodically. The tanks are all sealed units.
- 1.5 The building also has a roller shutter door installed in the north elevation to allow a fork lift to enter and exit the building. As the material used is heavy, this is the only means of vehicular access to the building. The roller shutter door has recently been replaced with an acoustic door in an attempt to reduce noise emanating from the building.

2. Application Publicity

- 2.1 The application has been advertised by way of two site notices. One was placed directly outside the site in Bessemer Close and a further notice placed in

Fallowfields on a telegraph pole opposite number 22. The final date for comment was 22nd July 2011. At the time of drafting this report 20 letters of objection have been received from individuals and couples from the 7 properties at 20 – 32 Fallowfields. The material planning considerations raised as objections are as follows:

- Forms incorrectly completed
- Planning history incomplete and incorrect
- Noise from the site as a result of the industrial process
- Silica being produced and not controlled
- Hours of work unsociable and noisy
- Human Rights

All other matters raised by objectors (such as radio being on too loud, swearing from staff, fork life beeping, talking on mobile phones, promise of consultation with neighbours by managing director before application submitted) are not material planning considerations and cannot be taken into account when considering this application.

3. Consultations

- 3.1 Bicester Town Council –objects to the change of use from B8 to B2 on the grounds of the excessive noise and air pollution, and the detrimental effect on the neighboring residential areas. They also express their disapproval at receiving retrospective applications.
- 3.2 The Local Highway Authority raises no objections to the proposal.

4. Relevant Planning Policies

- 4.1 National Policy
Planning Policy Statement 1:Delivering Sustainable Development
Planning Policy Statement 4: Planning for Sustainable Economic Growth
Planning Policy Guidance 24: Planning and Noise
- 4.2 Adopted Cherwell Local Plan 1996
C30 – Compatible with scale and character of street scene and standards of amenity and privacy.
C31 – Compatible with character of the area and does not cause unacceptable levels of nuisance or visual intrusion
ENV1 – Development that causes detrimental levels of noise, vibration, smell, smoke, fumes or other types of environmental pollution will not normally be permitted

5. Appraisal

- 5.1 The application should be assessed in terms of its impact on the amenities of adjoining residential occupiers in terms of noise and disturbance caused as a result of the operations from the site.
- 5.2 The site lies within an established commercial area and it is accepted that B1 (light

industrial) and B8 (storage or distribution) are uses that are normally compatible adjacent to residential areas. However, B2 (general industrial) uses can cause problems with regards to noise nuisance and other impacts on residential amenity.

- 5.3 Noise: All of the letters of representation received have commented on the level of noise emanating from the site. Some of the noises referred to vary and include swearing from staff, a radio, fork lift trucks beeping, talking on mobile phones, waste being thrown into skips and doors being slammed. These specific noise matters are not material to this application and should not be considered as such. One has to accept that the use of the building for its lawful B8 use could also produce these noises and that they are out of the control of the Local Planning Authority.
- 5.4 Other noises that have been commented upon refer to those produced as a result of the use of the building to cut marble, quartz and granite at the site. These noises are considered by adjacent occupiers to be intrusive and often carry on into evenings and over weekends. The noises referred to are produced by the machines used to cut the stone, both handheld and larger bench/table top cutting machines. One objector also states that compressor motors can also be heard emanating from the site.
- 5.5 Saved policy ENV1 of the Adopted Cherwell Local Plan 1996 states that developments that are likely to cause material detrimental levels of noise will not normally be permitted. The policy states further at paragraph 10.4 that, 'The Council will seek to ensure...in particular the amenities of residential properties, are not unduly affected by development proposals which may cause environmental pollution.
- 5.6 PPG24 (Planning and Noise) also states at paragraph 10 that,
- 'Much of the development which is necessary for the creation of jobs and the construction and improvement of essential infrastructure will generate noise. The planning system should not place unjustifiable obstacles in the way of such development. Nevertheless, local planning authorities must ensure that development does not cause an unacceptable degree of disturbance. They should also bear in mind that a subsequent intensification or change of use may result in greater intrusion and they may wish to consider the use of appropriate conditions.'*
- 5.7 With this in mind, the Environmental Health Team were consulted on the application and commented as follows:
- 5.8 *Following the withdrawal of the previous retrospective planning application for the change of use of these premises from B8 to B2 the occupier has installed an uprated roller shutter door with a automatic open and close mechanism in an effort to reduce the amount of noise emitted from the premises. The premises being used for the machining and shaping of granite and quartz material in to kitchen work tops etc..*
- 5.9 *It was not possible to predict how the door would perform following its installation as the supplier only provided very limited acoustic data and the only effective way to assess the performance of the installation was to wait until it had been installed. The installation has now been completed and an assessment of its performance was made on 27 and 28 July 2011.*

- 5.10 *Performance was assessed in two ways. Firstly an unannounced site visit was made to the Granite House site and the noise levels produced by activities within the unit were assessed subjectively and the sound levels measured. Over a period of 1 hour attended noise measurements were taken. Over two separate 30 minute periods the average LAeq was 50dB(A). Comparing these results with similar measurements made prior to the installation of the uprated door it shows that there has been a reduction in the sound levels emitted of 5dB(A). During the course of this monitoring exercise a tonal noise was being emitted from the unit which was consistent with the operation of the granite milling equipment at the site.*
- 5.11 *The following day a similar monitoring exercise was carried out at one of the residential properties in Fallowfields. From the rear of the this dwelling it was possible to hear, above the background noise level and constant hum which experience indicates is the noise emitted from the Granite House premises. After around 10 minutes of observation I became aware of a screeching sound. This was the sound of granite or quartz being worked with a hand grinder. For the next 20 minutes a series of these sounds were heard lasting 20 - 30 seconds each. A few minutes later another grinding sound was heard at Fallowfields. This sound I recognised as the noise produced by a different hand working operation were a grinding wheel is applied to a granite work piece to shape a curve. Both sounds were clearly audible at and within the Fallowfields dwelling.*
- 5.12 *This noise was, although intermittent, judged to be unacceptable and was not evident when the previous days noise assessment was made. During the lulls in activity it was also possible to hear noise from within unit 3a. These noises included shouted human conversations and the music*
- 5.13 *Approximately 30 minutes after leaving the site I received information alleging that a screeching noise could now be heard in the roadway at Fallowfields. It was alleged that the Granite House was the source of this noise and from the description given it was I sound that I had myself heard previously.*
- 5.14 *Having considered the observations made over the two periods of attendance, although the installation of the uprated door has reduced the level of sound emitted from the building by a degree, the noise emitted from these premises remains unacceptable. The presence of the constant low level hum combines with the periods of extremely loud and distinctive noise to cause a significant impact on the occupants of the nearest dwellings.*
- 5.15 *Concern has also been expressed over the potential for the premises to emit dust containing silica. No evidence of dust emissions from the building itself have been observed during my many visits to the premises. The processes involving the machining of granite using fixed equipment are carried out wet with the water used being drained away and stored in sealed tanks at the rear of the premises. Operations involving the use of hand tools are carried out within a booth fitted with a wet extraction system. The water used in this system as with the water collected in the tanks at the rear of the premises are treated as liquid trade waste and are tankered away for disposal elsewhere.*
- 5.16 *In conclusion I would recommend that this planning application be refused on*

the grounds that the noise produced by this business is still excessive

- 5.17 From the above comments, it is clear that the proprietor of The Granite House has made attempts to reduce the noise emitted from the building with the installation of a new acoustic door. However, it is also clear that this particular installation has failed.
- 5.18 The supporting statement submitted with the application states that,
- ‘should the results [of the acoustic door] be found to be unsatisfactory, the Occupant will make alternative provisions including constructing a cell to house the milling equipment, enclose the cutting head of the machinery or use of replacement hand tools.’
- 5.19 None of the above alternative provisions have been included within the application and no details have been provided to assess their effectiveness. Therefore, the Environmental Health team are unable to comment on these measures and the application must therefore only be considered against the equipment that has been provided and installed i.e. the acoustic door.
- 5.20 In addition, PPG24 also states that the Council may wish to consider conditions to overcome nuisance and that it shouldn't place unjustifiable obstacles in the way of developments. However, it is clear from the assessment undertaken by Environmental Health that the noise nuisance is excessive and it is unlikely that suitable conditions would overcome the noise created as a result of the building being used for the cutting of granite and other stone material.
- 5.21 Therefore, the proposal is considered to be contrary to the provisions of the local development plan as it creates a level of noise that impacts on the amenities of adjoining residential occupiers to an unacceptable level.

Other Material Considerations

- 5.22 Forms Incorrectly Completed and Misleading – The Council has a local validation checklist for all planning applications. This check list states what must be submitted in support of an application before it will be registered as valid. The staff that check applications for validity cannot and do not know the constraints of every site and rely on the application forms to provide the correct information.
- 5.23 When the application is validated it is passed to the Case Officer who will visit the site and should it transpire that further information is required, will contact the applicant. This can be very simple matter such as indicating no trees are affected by a proposal but the site visit indicates otherwise. An objection has indicated that the application should not have been registered as valid as the forms do not contain a number of ‘pertinent and important facts and information.’
- 5.24 In order to determine an application the Case Officer has to decide whether further, relevant information would be required to properly assess the proposal. In this case, despite the protestations from an objector, the application contains all relevant information required to make such an assessment and conclude to a recommendation. However, the errors the objector refers to will be considered as follows:

- 5.25 Section 3: Drainage – The objector is stating that the description is misleading as the development consists of ‘the installation of a series of underground tanks in the rear yard for the storage of water and the filtration of silica contaminated water and storage of silica residue periodically collected by a tanker vehicle.’
- 5.26 The application forms must not be read in isolation. The application consists of application forms, a Design and Access Statement, drawings, plans and covering letters, all of which must be referred to when considering the proposal. In this instance, the Design and Access Statement submitted in support of the application clearly states that, ‘drainage works were carried out to install a recycling system passing through the granite milling saw item of machinery. No discharge being made into the existing drainage system.’ The supporting drawings also indicate the location of the drains and their use. Therefore, the application description is not misleading and correctly identifies the proposal.
- 5.27 Section 7: Waste Storage and Collection – The objector states that this has been answered in the negative yet waste from the drainage (silica residue from cutting the stone) is collected from the site and skip where silica contaminated stone is disposed of and collected should have attracted a positive answer.
- 5.28 The ‘Help Text’ for completing planning applications forms (Planning Portal - Paper Form Help Text, Sc4 V3.5 from www.planningportal.gov.uk) states the following when completing Section 7 of the 1APP forms:
- ‘Please identify what provision has been made for the storage of waste and recycling as part of the proposal, and demonstrate that these aid the collection of waste and recycling materials by the waste collection authority. The location of waste storage and recycling facilities should be clearly identified on the plans.’*
- 5.29 In answering the specific question regarding waste the applicant is correct in answering ‘No’ as the waste is not collected by the waste collection authority and is dealt with privately. However, it would have been helpful to have answered in the positive and identified the waste produced by the cutting machines, where this was stored and how it is disposed of.
- 5.30 The applicant has stated that the drainage system is cleared periodically by a contracted company that clears the drainage of waste by sucking material through a large pipe (similar to drain/cesspit clearance). The skip is emptied as and when it becomes full. It must be stressed that the contaminants alluded to by the objector do not cause a health hazard to employees or surrounding occupiers. The answer in the negative to this specific question does not indicate that the development is not acceptable nor should it be viewed that the applicant was seeking to mislead the Council.
- 5.31 Section 8: Neighbour and Community Consultation – This is clearly a matter for the applicant to decide whether this would be carried out before submitting an application.
- 5.32 Section 13: Is the proposal within 20m of a watercourse? – The objector states that a watercourse exists between the rear gardens of the properties along Fallowfields and the site and this should have been identified as part of the application. The applicant has not ticked either yes or no on the application forms.

- 5.33 The watercourse referred to by the objector is a ditch at the rear of the site. It is not a stream of water considered a stream, river or beck that would be controlled by the Environment Agency. The site is not within a Flood Zone and the ditch is not identified on the Environment Agency website as a watercourse.
- 5.34 Section 15: Existing Use – The objector is stating that the current use is declared as ‘commercial warehouse and offices’ yet the building is being used for an industrial process. The current use of the building is for B2 (general industrial) purposes. However, the application is retrospective and clearly marked so. It is clear from the application that this is the current use and it is the use being applied for. This error does not indicate that the development is not acceptable nor should it be viewed that the applicant was seeking to mislead the Council.
- 5.35 Section 17: Trade Effluent – No trade effluent is being discharged into public foul sewers. Therefore, there is no requirement to either declare trade effluent or apply for a trade effluent licence.
- 5.36 Section 21: Working Hours – The applicant has applied to work the following hours:

Mon – Fri: 0800 – 1800
Sat: 0900 – 1600 (half year)
Sun/Bank Hols: Only in exceptional circumstances.

Neighbours have stated that currently the business operates late into evenings and over weekends and bank holidays. It would be reasonable to restrict hours of operation to:

Mon – Fri: 0800 – 1800
Sat: 0900 – 1230
Sun/Bank Hols: Closed

These hours could be controlled by condition and would be enforceable should the business operate out of these hours.

- 5.37 Section 23: Industrial Processes – The objector has stated that all processes (plant, ventilation/air conditioning, forklift truck, stone milling machine, angle grinders, stone polisher, fan ventilation system and an air compressors) should be declared at the site. The application forms require the applicant to declare what type of machinery which may be installed at the site. The ‘Help Text’ for completing applications gives a list of processes where information should be given. The cutting of granite is not included within this list.
- 5.38 Section 24: Hazardous Substances – The objector has stated that silica should have been identified as a hazardous substance at the site. However, no substances identified within the Planning (Hazardous Substances) Regulations 1992 are kept at the site.
- 5.39 Planning History – The history of a particular site is material to the determination of an application. With this in mind, the Case Officer should be aware of previous attempts to secure similar permissions, appeal decisions and responses from other statutory consultees and third parties that have been made at the site.

- 5.40 The planning history for this application was logged incorrectly against the property across the road from the site (the Lear site) so when one viewed the history via the Public Access website, the wrong information was presented to the viewer. This has since been corrected. However, the previous application (11/00482/F) did show the correct information and has always been available to view.
- 5.41 The information revealed via the Public Access module goes back to 1995. Any histories before that date needs to be checked at the Council offices. Therefore, application 07/00928/F for the site, which sought to vary a condition to application CHS 459/93, would have required further investigation at the Council offices. There are therefore obvious limitations to what information one can glean from the Public Access module. However, the Case Officer is aware of the planning history of the site. Moreover, given the objections received to application 11/00482/F, neighbouring occupiers are also aware of the planning history of the property.
- 5.42 With the above in mind, the error in presenting the wrong planning history via the Public Access module would not prejudice objectors commenting on the application nor from the Council making a decision on the proposal.
- 5.43 Human Rights – The European Convention on Human Rights 1988 (ECHR) states at Article 8 that everyone has the the right to respect for private and family life. Article 8 of the ECHR establishes a right to respect for private and family life and states there ‘shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.’
- 5.44 It should be noted that the right to a private life means that one has the right to carry on their life privately, without government interference, as long as one respects the rights of other people. It does not mean that everyone has the right to a quiet, peaceful life without disturbance from noise. However, where noise does interfere with this right, the correct authority to deal with this would be Environmental Health Team through the service of an Abatement Order where it is considered expedient to do so in the public interest. An Abatement Order has been served on the premises in November 2010.
- 5.45 Conclusion – The application has been considered against adopted local plan policies and comments from statutory consultees and third parties. It is clear that the use of the building for the particular stone cutting B2 use is unacceptable as it produces noise over and above an acceptable level. As a result, the amenities of adjoining residential occupiers is being harmed and the application should be refused and the matter referred to the Legal Department to instigate formal enforcement action to cease the use of the premises for B2 purposes.

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| 6. Recommendation |
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| Refusal, for the following reason: |
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| The use of the building for the B2 use being undertaken (the cutting and milling of stone material such as granite, quartz and marble) gives rise to unacceptable levels |
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of noise to the detriment of the amenities of adjoining residential occupiers at Fallowfields. The proposal is therefore contrary to the advice contained within PPG24: Planning and Noise and policy ENV1 of the Adopted Cherwell Local Plan 1996

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