

<b>Application</b> 12/00152/F	No:	<b>Ward: Bicester Town</b>	<b>Date Valid: 07/02/12</b>
<b>Applicant:</b>	Joblings Garage Ltd., Mr. Paul Jobling		
<b>Site Address:</b>	Unit 3A, Bessemer Close, Bicester OX26 6QE		

**Proposal:** Retrospective – Change of Use from B8 to B2

## 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 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.
- 1.4 The site has recently been the subject of an enforcement notice and appeal that was dismissed. The details of the enforcement notice and appeal will be considered fully later in this report.
- 1.5 Members will recall that this application was deferred at the last meeting to await further information from the applicant's noise consultants with regards to noise levels currently being experienced on the site, and therefore whether it will be possible to achieve the noise targets set in Condition 2.

## 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 8<sup>th</sup> March 2012. At the time of drafting this report 4 letters of objection have been received from two properties (three letters from 30 Fallowfields & one letter from 32 Fallowfields) and one letter of support from the owner of the Granite House (who is not the applicant). The material planning considerations raised as objections are as follows:

- Forms incorrectly completed
  - Noise from site.
  - Noise assessment flawed.
  - Silica being produced and not controlled
- 2.2 One objector has commented on the fact that the application does not include the roller shutter door and water tanks within the application. The Council cannot insist on what an individual applies for. The owner is aware that the roller shutter door and water tanks remain unlawful, but these elements are not the root of the concerns at the site. One has to take a view on the roller shutter door as and when the owner applies for permission. Failure to apply may result in the Council taking action against them. However, this can only be done where it is expedient to do so and where it is in the public interest. This application is only for the change of use of the building.
- 2.3 Representations have continued to be received since the last meeting indicating that noise nuisance continues to be experienced.
- 2.4 The letter of support from the owner comments that:
- a full noise assessment has been carried out,
  - a new milling machine has been installed,
  - noise levels have been reduced and complies with CDC officers expectations.

### **3. Consultations**

- 3.1 Bicester Town Council – Whilst welcoming the application and its potential for specialized employment, has concerns that this application must meet the appropriate statutory guidelines with regard to noise levels and the impact on immediate residents.
- Bicester Town Council would have no objection to this application if an assurance is given that this proposed change of use is not transferable.
- 3.2 The Local Highway Authority – No objection to the proposal.
- 3.3 Anti-Social Behaviour Manager – Recommends approval subject to conditions

### **4. Relevant Planning Policies**

- 4.1 National Planning Policy Framework Paragraph 123.
- 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

### Background

- 5.1 Members may recall this site from a previous application (11/00995/F) that was presented to the committee on 11<sup>th</sup> August 2011. The application was recommended for refusal as it was considered that the site gave rise to unacceptable levels of noise to the detriment of the amenities of adjoining residential occupiers at Fallowfields. Members of the committee agreed with the recommendation and the application was refused planning permission for the single reason of noise impact.
- 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 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.
- 5.4 The National Planning Policy Framework contains the following paragraph concerning noise matters:
- 123 Planning Policies and decisions should aim to:
- Avoid noise from giving rise to significant adverse impacts upon health and the quality of life as a result of the new development.
  - Mitigate and reduce to a minimum other adverse impacts on health and quality of life arising from noise from new development, including through the use of conditions.
  - Recognise that development will often create some noise and existing businesses wanting to develop in continuance of their business should not have unreasonable restrictions put upon them because of changes to nearby land uses since they were established; and
  - Identify and protect areas of tranquillity which have remained relatively undisturbed by noise and are prized for their recreational and amenity value for this reason.
- 5.5 Following the refusal of 11/00995/F an Enforcement Notice was served on the site requiring that the milling of stone and other materials to cease. The owner appealed against the Enforcement Notice under ground (a), that planning permission should be granted.

5.6 Following a site visit with a Inspector from the Planning Inspectorate, the appeal was dismissed on 23<sup>rd</sup> January 2012 as it was considered at paragraphs 10 and 11 of the decision that,

10. Planning Policy Guidance: *Planning and Noise* (PPG24) explains in Annex 3 how the likelihood of complaints about noise from such activities can be assessed. Using information from such an assessment, mitigation and/or attenuation measures can be investigated to achieve a rating level at which complaints would be unlikely. However, there is no evidence that the appellant has carried out such a noise assessment. Instead, the changes made have been on what the appellant says is an incremental approach but which might also be described as a 'trial and error' basis with claimed decibel reductions but no strategy to achieve a particular rating level at a specific point such as the site boundary.

11. On the totality of the evidence before me I consider that the magnitude and character of the sounds produced by the items of equipment is such that the development carried out causes harm to the living conditions of the occupiers of nearby properties. The development therefore conflicts with policy ENV1 of the Cherwell Local Plan adopted in November 1996. This policy was saved by a Direction issued by the Secretary of State in September 2007 and continues to have effect. Although neither party has suggested any conditions that might nevertheless allow planning permission to be granted, PPG24 includes a number that could be appropriate. However, these require an assessment of background noise levels to have been made and the rating level to be achieved at a specific point to have been calculated and set. As I have no evidence about any of these parameters no such condition could be drafted and, even if it could, there is no evidence that its requirements could be achieved.

5.7 The owner of the site had 28 days to comply with the Enforcement Notice and the milling and cutting of stone, granite and quartz should have ceased on 20<sup>th</sup> February 2012. Visits to the site have been made on a daily basis by Council Officers and only limited instances of milling have been heard. Officers continue to gather evidence.

5.8 This application seeks to address the concerns raised by the Council regarding noise at the site should be assessed by way 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.

5.9 Following the appeal decision, the applicant commissioned a noise report from Acoustical Investigation and Research Organisation (AIRO). This report concludes that,

'it is considered that the acquisition of a new machine to limit the need for hand grinding should enable noise emissions from the building at The Granite House to be limited so that the rating level does not exceed the background noise level at existing residential properties.

5.10 The Anti-Social Behaviour Manager (ASBM) was consulted on the application and the AIRO report. While comments from consultees are normally abridged, it is

important to provide them verbatim in this case to ensure that the basis of the recommendation is fully understood. The comments are as follows:

The planning history associated recent planning history of this site is that a retrospective planning application was submitted seeking approval for the change in the permitted use of the building from B8 to B2. This planning application was refused on noise grounds and planning enforcement action authorised. The applicants appealed the Council's decision to take enforcement action but the Planning Inspectorate upheld the Council's position.

Prior to the current planning application being made the occupants of the premises, on the advice of the Councils' Anti Social Behaviour Team, sought the advice of acoustic consultants. The consultants brief was to prepare a report quantifying the amount of noise being emitted from the premises and to assess the likely impact of changes in the specification of the equipment being used within the building. The company engaged to carry out these works was the Acoustical Investigation & Research Organisation Ltd. The report they produced is numbered DLW/6594.

Prior to producing this report they sought our advice as to the performance standard we would be seeking in order that we would not have objections to their clients planning application on noise grounds. Our advice was that for the noise emitted from the premises to be considered acceptable it the rated level of noise should not exceed background.

It should be noted that the reference to 'the rated' level means that the noise should be assessed in accordance with British Standard BS 4142:1997 Method for rating industrial noise affecting mixed residential and industrial areas.

We further advised the noise at weekends and noise outside those which would be considered 'normal' working hours should be taken in to account. Concern was also expressed that based on the experience of measuring noise close to The Granite House premises and visits made to residential properties in Fallowfields the structure of the building containing The Granite House operation could have an affect on the way sound was propagated. We provided AIRO with our own measurements of the background noise taken in Fallowfields.

Whilst there was some discussion as to what levels should be used and considered 'background' for the purposes of making the assessment AIRO accepted our measurements.

Noise measurements were taken within the building whilst the processing of granite was taking place. The shaping of granite with hand grinding equipment was identified as the activity producing most noise. A range of noise measurements were taken reflecting the various machinery operating within the building. The measurements included the grinding and cutting of granite using hand held tools and the sawing and milling of granite using a fixed equipment. The noise produced by air compression equipment used to power the fixed equipment was also captured during these measurements.

As hand grinding and cutting has and was identified as being the activity that produced the most noise an assessment was also made of the noise impact of

specialist equipment that could replace hand grinders. This assessment was based on data provided by the equipment manufacturers.

These measured and predicted values were used to calculate the various amounts of noise being emitted from the various elevations of the building. This exercise confirmed our belief that the roof of the building was the element of the structure that performed most poorly in terms of sound attenuation. By combining the quantity of sound emitted from each elevation of the building a total figure can be obtained and those figures, when corrected for tonality and distance indicate that the predicted sound levels at two specified properties in Fallowfields were shown to be at or just below the day time background level. When compared with the weekend background level the sound level from machining was predicted to exceed background by between 1 and 3 dB.

It is my interpretation of the report that the hand grinding and shaping of granite products would generate unacceptable levels of noise. The noise prediction exercise demonstrated that by the use of alternative equipment it would be possible to achieve sound levels at premises in Fallowfields that when assessed in accordance with British Standard BS 4142:1997 would indicate that justified noise complaints would be unlikely.

It should be stressed that this does not mean noise from The Granite House would be inaudible at properties in Fallowfields at all times. The reason for this being that the BS4142:1997 assessment process compares the integrated average sound level measured over 1 hour with the background level. It is therefore possible for some noise to be heard for short periods without exceeding the specified noise target.

The AIRO report goes on to suggest that with the exception of the slight exceedances on Saturday mornings with use of alternative equipment for cutting and shaping granite the Councils recommended noise target can met. This equipment has now been installed and has been demonstrated. Its performance reflects that predicted in the AIRO report.

One further activity that has been carried out at The Granite House in the past that has produced excessive and unacceptable levels of noise is dressing or levelling of the bed of the stone saw/mill. The carrying out of this operation would without doubt result in an exceedance of the Councils noise target. Equally under certain conditions the milling of granite has resulted in elevated levels of noise being heard at properties at Fallowfields.

Having assessed the evidence presented by AIRO on behalf of the applicants and considered this information in the context of our own observations of the premises in operation I would conclude that it is now possible to approve a planning application for the change of use of these premises. However any approval granted must be subject to [the following] panning conditions.

- 5.11 Therefore, the ASBM had accepted that the noise levels have been reduced sufficiently though the installation of a new milling machine and recommended that the application be approved subject to conditions. However, shortly before the last meeting of this Committee it became apparent that a further noise source on the same premises may be liable to cause concern and hence the last recommendation of deferral.

The Council is currently awaiting the outcome of further investigation/discussion between applicant's noise consultant and the ASBM.

- 5.12 It should be noted that the appeal decision is a material consideration in the determination of this application. The Inspector dismissed the appeal as he considered that the noise from the site caused harm to residents of Fallowfields. However, he also confirmed that in the absence of an assessment of background noise he could not approve the application subject to conditions. The report from AIRO provides this information and overcomes the concerns raised by the Inspector.

#### **Other Matters**

- 5.13 Noise Assessment Flawed – Following an objection which stated that the noise assessment undertaken was flawed, the applicant commissioned a further response from AIRO. The response takes into account all the comments made by the objector and concludes that,

'Having carefully considered the observations made by an objector to the planning application (set out in email dated 21 February 2012 and provided to AIRO), we confirm that, in our opinion, AIRO report DLW/6594 dated 30 January 2012, provides a rigorous, objective and independent environmental noise assessment of the situation pursuant to the planning application.'

- 5.14 Forms Incorrectly Completed – 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. However, the forms were correctly completed although some of the information was incorrect. This does not have a bearing on the decision.
- 5.15 Silica Hazard – The ASBM has taken samples of dust at the site for analysis. However, this does not affect the decision being recommended. Should silica be identified as a hazard the ASBM has separate powers to control the issue.

## **6. Recommendation**

**Approval, subject to:**

- (i) **the Council's Anti-Social Behaviour Manager being satisfied that Condition 2 below can be reasonably applied and with an expectation of being able to be complied with.**

**and the following conditions:**

1. That the building shall be used only for the purpose of milling and cutting of stone, granite and quartz and for no other purpose whatsoever, including any other purpose in Class B2 of the Schedule to the Town and Country Planning (Use

Classes) (Amendment) (England) Order 2005.

Reason - In order to maintain the character of the area and safeguard the amenities of the occupants of the adjoining premises in accordance with Policy BE1 of the South East Plan 2009 and Policies C28 and C31 of the adopted Cherwell Local Plan.

2. That the rated level of noise emitted from the building shall not exceed 46 dB Laeq 1hr between 08:00 and 18:00 hrs Monday to Friday and 43 dB Laeq between 09:00 and 12:30 hrs on Saturdays as measured 10 metres from the building and at a microphone height of 4 metres from ground level.

Reason - To ensure the creation of a satisfactory environment free from intrusive levels of noise and to comply with advice in PPG24: Planning and Noise, and Policies C30 and ENV1 of the adopted Cherwell Local Plan.

3. That the operational use of the premises shall be restricted to the following times:-

Monday-Friday - 8.30 a.m. to 6.00 p.m.

Saturday - 8.30 a.m. to 1.00 p.m.

Sunday and Public Holidays - No time.

Reason - In order to safeguard the amenities of the area and to comply with Policy BE1 of the South East Plan 2009 and Policies C31 and ENV1 of the adopted Cherwell Local Plan.

#### **SUMMARY OF REASONS FOR THE GRANT OF PLANNING PERMISSION AND RELEVANT DEVELOPMENT PLAN POLICIES**

The Council, as local planning authority, has determined this application in accordance with the development plan, unless material considerations indicated otherwise. The development is considered to be acceptable on its planning merits as the proposed development is of a design, size and style that is appropriate in its context and would not have a detrimental impact on the character and appearance of the area, the Conservation Area or the amenities of adjoining occupiers. As such the proposal is in accordance with the advice within Planning Policy Statement 1: Delivering Sustainable Development, Planning Policy Statement 4: Planning for Sustainable Economic Growth, Planning Policy Guidance 24: Planning and Noise, saved policy ENV1, C30 and C31 of the Adopted Cherwell Local Plan 1996. For the reasons given above and having regard to all other matters raised including third party representations the Council considers that the application should be approved and planning permission granted subject to appropriate conditions as set out above.

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