

## **PLANNING COMMITTEE 15 September 2015**

### **OBSERVATIONS RECEIVED FOLLOWING PREPARATION OF AGENDA**

#### **Item 5: W15/1361 – Sydenham Industrial Estate**

##### Relevance of previous decision

Whilst the Committee must have regard to the previous refusal of a similar application and the desirability of consistency in its decision making, in view of the further evidence and enhanced noise mitigation measures and the situation in which the Council finds itself in relation to housing land supply, it is considered that there is now a stronger case in favour of the proposals, sufficient to justify Planning Committee taking a different decision this time around.

##### Revised recommendation to account for consultation period

The neighbour notification letters were sent out on 25 August and therefore the consultation deadline for these letters expires prior to the application being considered by Planning Committee on 15 September. Letters have been sent to all adjoining properties in accordance with the minimum statutory requirements. In addition, letters were also sent to everyone who submitted comments on the previous similar application for this site. So all of these people would have had the opportunity to submit their comments prior to Committee.

The site notice was put up on 27 August and therefore the consultation period on this runs until 17 September. The press notice was published on 4 September and therefore the consultation period on this runs until 28 September. To account for this, the recommendation has been changed to read as follows:

Planning Committee are recommended to delegate authority to the Head of Development Services in consultation with the Chair of Planning Committee to GRANT planning permission after the end of the consultation period on 28 September 2015, provided that no significant new issues are raised in any further consultation responses received prior to that date.

##### Further consultation responses

**Town Council:** No objection.

**WCC Highways:** No objection, subject to conditions and a contribution of £75 per dwelling towards the provision of sustainable travel packs. Confirm that the proposed development will result in a decrease in traffic compared with the current lawful use of the site (if fully occupied).

**Canal and River Trust:** No objection, subject to conditions.

**WDC Environmental Health:** No objection, subject to conditions.

**Public Response:** 3 objections have been received, raising the following concerns:

- the decision should not be made before the consultation period has ended;
- the scheme is identical to the scheme that was refused previously, nothing has changed to justify a different decision being made on this scheme;
- the three storey flats in the skyline view of Chesham Street and Waterloo Street would detract from the character and appearance of the Conservation Area;
- the flats should be relocated to the Sydenham Drive frontage;
- there is no need for the flats;
- more bungalows are needed;
- social rented homes are already well catered for in this area;
- the development is all low cost / affordable, there is little mix of housing type;
- the houses opposite Chesham Street and Waterloo Street should be set back further (as far as they are set back opposite Eastnor Grove);
- loss of privacy;
- overlooking of the houses in Chesham Street and Waterloo Street;
- increased traffic, particularly along St. Mary's Road;
- the site access should be direct from Sydenham Drive;
- detrimental to highway safety;
- insufficient parking;
- more green space should be included;
- allotments should be provided;
- loss of trees and other vegetation along the canal;
- harmful ecological impact;
- overdevelopment;
- harm to the character and appearance of the area;
- flood risk;
- pollution of the canal;
- detrimental impact on the future operation of adjacent businesses;
- the houses and flats adjacent to Bellagio Stone would suffer from poor living conditions;
- noise from increased traffic and from construction activities; and
- existing facilities cannot cope with this number of new dwellings

**Bellagio Stone:** Object on the following grounds:

- the Council's determination of the application on 15<sup>th</sup> September would be unlawful because this is prior to the end of the consultation period;
- the Officer's Report was written before taking all consultations into account, contrary to the DMPO and PPG;
- Counsel's advice to Bellagio Stone will be to seek judicial review if a decision is made on 15<sup>th</sup> September;
- a judicial review would delay the final decision on the application, probably beyond the Inquiry date and will probably cost more than the inquiry, therefore taking this decision early will cost the tax payer more;
- this scheme is almost identical to the scheme that was refused previously, the changes are very minor and do not overcome the reason for refusal;
- the company is growing and is making an important contribution to the local economy, employing 30 people;
- the company is keen to expand further;
- their premises benefit from unrestricted B2 use (general industrial);
- typical working hours are 6am to midnight weekdays but it has been increasingly necessary to continue production at weekends and bank holidays and in the early hours of the morning;
- a B2 use is, by definition, unacceptable in a residential area;
- the proposals represent inappropriate piecemeal development;
- the industrial estate should be redeveloped in a comprehensive manner;
- the applicant's noise report is flawed;
- an independent noise assessment by Bellagio's acoustic consultant has found that the noise impact is significantly higher than that portrayed in the applicant's noise report, such that living conditions for future residents would fail to meet Environmental Health standards;
- the noise generated by Bellagio Stone would have a serious and adverse impact upon residential amenity;
- the Council required Bellagio Stone to relocate from their previous property due to noise complaints from neighbouring residents;
- if the proposed houses are built this will result in the company having restrictions imposed on them by Environmental Health, to the point where it will be forced to close or relocate;
- the existing industrial premises would represent a very poor outlook for the proposed dwellings;
- deliveries to Bellagio Stone and Magnet are on HGVs and cranes and these will cause further noise, disturbance, inconvenience and traffic congestion for the new residents;
- harm to pedestrian safety, particularly children, due to the lack of division between industrial and residential road users; and
- whilst Bellagio Stone are content in their present location and would prefer to expand there, they would also consider relocation subject to fair and suitable compensation for the upheaval of their business.

Bellagio Stone have submitted a noise assessment from their own acoustic consultants which supports their objections. This concludes that noise from Bellagio Stone's current operations would lead to significant adverse impacts for the

proposed dwellings. It goes on to conclude that the adverse impacts would be exacerbated should Bellagio Stone switch to their expanded operational hours or more to full 24 hour operations.

Bellagio Stone have also submitted a further letter from their acoustic consultant which reviews the applicant's Noise Report and Additional Noise Statement. This concludes that the applicant's Noise Reports are fundamentally flawed because they:

- fail to use the correct assessment methods, relying instead on a superseded British Standard that was withdrawn in October 2014;
- fail to assess the final mitigation proposals for the site;
- use inconsistent and incorrect background noise data in their various assessments;
- fail to properly account for the character of Bellagio Stone's noise emissions; and
- fail to take account of the lack of controls in Bellagio Stone's planning consent.

#### Applicant's response to Bellagio Stone's objections

The applicant has submitted a letter in response to Bellagio Stone's objections. This makes the following points in support of the application:

- the Council's Environmental Health Officer has been extremely involved with the scoping, methodology and outcomes of the applicant's noise assessment work;
- it is surprising that the response from the objector can have reached conclusions which are completely contrary to the findings of two other fully qualified professionals;
- the current joint applicant and site owner, Richard Soans, moved his motor trade business to the site in 1967 and still has an office on the site and therefore has been in the area far longer than the objectors; he will tell you categorically that out of hours working in the area is far less than that which is reported in the objector's comments;
- the objector cannot expect to make as much noise as they wish, there are WHO standards in place which they must meet and there are existing residents and businesses close by who must be taken into consideration by them;
- Deeleys have recently delivered over 250 affordable homes on Queensway which sit immediately adjacent to continuing commercial premises; there was no lack of demand for those homes and there have been no complaints from the occupiers;
- the previous site where Bellagio Stone were served a Noise Abatement Notice was in a vastly different situation to that which would occur on the application site (the yard of that unit shared the garden wall of the adjacent houses); in

addition, the dwellings adjacent to their previous site were order properties which were not designed to current day standards in terms of acoustic mitigation;

- it is telling that the freehold owners of the Bellagio Stone site have not objected and thus it would suggest that they see no long term viability issues for their land in terms of an employment site and its relationship with the proposed development; and
- given the current planning policy situation the Council is required to assess whether any harm from this development significantly and demonstrably outweighs the benefits; the benefits of the scheme (redevelopment of a brownfield site, provision of affordable housing, provision of low cost housing) significantly and demonstrably outweigh harm (given that Officers do not identify any harm which will arise).

The applicant has also submitted a further letter from their acoustic consultant in response to the information submitted by Bellagio Stone's acoustic consultant. This includes the following comments:

- focusing on the use of the assessment method set out in BS4142 is a relatively simplistic and singular approach which paints a negative outcome which is used widely in isolation would most likely result in few brownfield site redevelopments;
- the assessment does not allow account for the acoustic mitigation measures that have been incorporated into the scheme;
- a key note in BS 4142 suggests that for situations where there is new development proposed near to existing commercial sound, other standards may be appropriate to inform the assessment;
- normally consideration would be given to BS 8233 which guides on acceptable standards of noise for new dwellings – this is not mentioned in the Bellagio noise assessments;
- Bellagio's singular approach does not allow for any considered balance in the context of sustainable development;
- Bellagio's assessments compare their noise to the existing background level, which is very quiet due to the fact that most surrounding units are vacant; this makes no allowance for increased background levels due to traffic associated with the proposed development;
- the position taken by Bellagio to measure background noise was in the old Bellagio storage yard, which meant that the microphone was shielded from surrounding traffic noise by the existing industrial building on the site, which would have given an artificially low background noise level;

- most importantly, it needs to be clearly understood that the Bellagio noise levels are actually relatively low and they can be readily reduced to suitable standards of sound for inside the new dwellings to allow rest and sleep as guided by BS 8233;
- the scheme has been developed such that habitable rooms and gardens face away from Bellagio Stone and so benefit from significant screening so as to address the potential risk of noise should Bellagio wish to operate at night; and
- the design on the scheme has been developed such that even for a “what if scenario” the noise levels from Bellagio can be reduced to well established acoustic standards.

#### Officer’s comment on acoustic reports

Planning Committee have two different acoustic reports before them, one from the applicant and one from an objector. These reports reach different conclusions. However, it is considered that the applicant’s noise report should carry more weight in the assessment of the application. This is because the Council’s own expert on noise matters (the Environmental Health Officer) was involved in agreeing the methodology for this report. Furthermore, Environmental Health have reviewed the findings of this report and have confirmed that this represents a suitably robust assessment of the noise impacts of the development. Finally, the layout of the development and the acoustic mitigation measures proposed in the applicant’s noise report have been designed in consultation with Environmental Health.

#### Survey of parking and servicing on Ramsey Road

The applicant carried out a parking and servicing survey of Ramsey Road over the course of a day. In terms of servicing, this observed one articulated vehicle servicing the Magnet premises and rigid vehicles of various sizes servicing the Bellagio Stone premises. The service vehicles were observed to leave the Bellagio Stone site in a forward gear.

#### **Item 6: W15/1244 - Opus 40, Birmingham Road, Warwick**

#### Further comments

**WCC Highways:** No objection to the removal of this condition.

### Section 106 agreement

Legal Services have advised that the Section 106 agreement relating to the existing planning permission remains valid for this variation of condition application. Consequently there is no need for a new Section 106 agreement and the recommendation is changed accordingly to read as follows:

Planning Committee are recommended to GRANT planning permission, subject to the conditions listed in the report and subject to the Section 106 agreement related to planning permission no. W15/0646.

### Applicant's queries about Officer's Report

The applicant has queried whether a comma should have been included in the following sentence in the Committee Report to clarify that the term "illegal" only applies to right turns out of Haywood Road and not to u-turns in Eastley Crescent.

Current wording / punctuation:

*"..... this would generate a very small number of additional illegal right turns or U turns in Eastley Crescent (the applicant bases this assumption on previous surveys observing less than 10% of vehicles undertaking these illegal/dangerous manoeuvres)."*

This is accepted and therefore the sentence should more correctly read:

*"..... this would generate a very small number of additional illegal right turns, or U turns in Eastley Crescent (the applicant bases this assumption on previous surveys observing less than 10% of vehicles undertaking these illegal/dangerous manoeuvres)."*

The applicant is also concerned that the Committee Report might indicate that the applicant agrees that the occasional u-turn in Eastley Crescent is "illegal/dangerous". They wish to clarify that they do not consider the occasional u-turn to be dangerous because this is not evidenced by accident records. They also point out that this manoeuvre is not illegal.

For clarity, it remains the view of Officers that u-turns in Eastley Crescent are dangerous, but not illegal.

**Item 8: W/15/1245 - 28 Park Road:**

Leamington Spa Town Council: No objection.

Public Response: An objection has been received from the occupier of 8 Canberra Mews on grounds of loss of light and creation of an oppressive outlook. This property is sited directly to the side of the application property and is most affected by the proposal.

Nine further emails of support and one stating a neutral stance to the proposal have been received from local residents.

**Item 12: W15/1107 – Radford Barn, Valley Road, Radford Semele.**

A further letter from the applicant has been submitted disputing the recommended reason for refusal.

**Item 13: W/15/1297 - Land at The Fosse, Eathorpe**

This application has been withdrawn following receipt of an objection from the Highways Authority.

**Item 14: Bridge Garage, Birmingham Road, Warwick**

Given the site's proximity to the road/ railway the Environmental Health Officer has requested an additional condition to secure a noise assessment and carry out any noise mitigation measures within construction, as necessary.