

Application No: 14/0456N

Location: 271, NEWCASTLE ROAD, WYBUNBURY, NANTWICH, CHESHIRE, CW5 7ET

Proposal: Variation of conditions 2 & 8 on approval 13/3046N - Change of use from shot-blasting heavy goods vehicles to car repairs, dismantling and salvage of parts

Applicant: Mr Victor Pickering

Expiry Date: 20-Mar-2014

**SUMMARY RECOMMENDATION:** Approve as a variation of condition

**MAIN ISSUES:**

- Key Issues;
- Background Information;
- Local Plan/Government Guidance;
- Character/Appearance;
- Conditions; and
- Other Matters

**REFERRAL**

This application is to be dealt with under the Council's delegation scheme. However, Councillor Brickhill has requested that it be referred to Committee for the following reason:-

*'Note this property is clearly in SHAVINGTON and not in Wybunbury. I am the ward councillor and as such I call in the current planning application which I think is to vary the conditions. I believe that the formal application to change the shot blasting operation into a car wreckers has been approved. Please tell me by whom and when please. I am also aware that Mr Pickering is already flouting the time of work conditions eg by delivering wrecked vehicles and unloading them at 3 am in a residential area and causing disturbance to his neighbours yet again. I require Craig Wilshaw to take immediate enforcement action to stop any work outside the permitted hours or explain to me in 24 hours why he is not doing so'.*

**1. SITE DESCRIPTION AND DETAILS OF PROPOSAL**

The application site is located to the north of the existing Blakelow Industrial Park, the proposal comprises a single storey building with associated hardstanding. The application building is utilitarian in form and is currently being used for the dismantling of vehicles. It was noted that there were several other buildings and offices, which make up remainder of the

complex. Located to the south of application are a number of residential properties, which front on to Newcastle Road. The application site is located wholly within the Open Countryside and the Green Gap.

The current proposal seeks permission to vary conditions 2 and 8 of planning application 13/3046N. Condition 2 states

Due to the potential for noise disturbance to local residents, the development should be subject to the following hours of operation restrictions:

Monday – Friday 08.00hrs 18.00hrs

Saturday 08.00hrs 14.00hrs

Sundays and Bank Holidays Nil

Reason:- To protect the amenities of neighbouring occupiers in accordance with Policy BE.1 (Amenity) of the Borough of Crewe and Nantwich Replacement Local Plan 2011.

And condition 8 states

The building hereby approved shall be used solely for the dismantling of vehicles and for no other purpose whatsoever.

Reason :- The Local Planning Authority would wish to give further consideration to uses within other classes in this location, in the light of the neighbouring residential properties, and access and parking arrangements and proximity of the town centre. In accordance with Policies BE.1 (Amenity) and BE.3 (Access and Parking) of the Borough of Crewe and Nantwich Replacement Local Plan 2011.

## **2. PREVIOUS RELEVANT DECISIONS**

13/3046N - Change of use from shot-blasting heavy goods vehicles to car repairs, dismantling and salvage of parts – Approved – 24<sup>th</sup> September 2013

10/2091N - Proposal for One Small 11Kw Gaia Wind Turbine where The Wind Turbine is Located at 27m AGL Mounted on a Free Standing Tower on a Concrete Base. The Proposed Dual-Blade Rotor has a Diameter of 13m – Refused – 2<sup>nd</sup> September 2010 – Appeal – Dismissed – 28<sup>th</sup> February 2011

P04/1169 - Change of Use from Hay Barn to Maintenance Depot for Racing Cars – Approved – 4<sup>th</sup> July 2005 – Appeal Allowed – 4<sup>th</sup> July 2005

P02/0618 - Change of use from Haybarn to Retailing – Refused – 15<sup>th</sup> October 2002

P00/0870 - Change of Use from Parking Used in Connection with Stables to Car Park Used in Connection with the Adjoining Commercial Premises – Approved – 2<sup>nd</sup> July 2004

P00/0869 - Erection of Hay Barn (Retrospective) – Approved – 29<sup>th</sup> July 2004

P99/0197 - Use of land for keeping of horses, erection of stables, tack room and implements building – Approved – 24<sup>th</sup> June 1999

P92/0166 - Maintenance building for servicing of commercial vehicles – Approved – 16<sup>th</sup> April 1992

P98/0222 - Replacement portal frame building – Approved – 5<sup>th</sup> May 1998

P93/0597 - Double garage – Approved – 20<sup>th</sup> September 1993

7/18460 - COU of land to form additional parking and turning area for commercial vehicles – Approved – 24<sup>th</sup> October 1990

7/08649 - Extension of area to rear of workshop of parking and storing vehicles – Refused – 25<sup>th</sup> February 1982

### **3. PLANNING POLICIES**

#### **National Policy**

The application should be determined in accordance with national guidance set out in:

National Planning Policy Framework

#### **Local Policy**

The principle issue surrounding the determination of this application is whether the development is in accordance with the following policies within the Borough of Crewe and Nantwich Replacement Local Plan 2011:

NE.2 (Open Countryside)

NE.4 (Green Gaps)

BE.1 (Amenity)

BE.2 (Design Standards)

BE.3 (Access and Parking)

BE.4 (Drainage, Utilities and Resources)

BE.5 (Infrastructure)

BE.6 (Development on Potentially Contaminated Land)

TRAN.9 (Car Parking Standards)

E.4 (Development on Existing Employment Sites)

E.6 (Employment Development within the Open Countryside)

Cheshire East Local Plan Strategy - Submission Version

SE1

SD2

SE2

SE3

SE4

SE6

CO2

EG2

EG3

PG5

PG6

The above Policies are consistent with the Crewe and Nantwich Local Plan

### **4. OBSERVATIONS OF CONSULTÉES**

**Environment Agency:** No objections

**Environmental Health:** Comments to follow

**5. VIEWS OF THE PARISH / TOWN COUNCIL:**

The Parish Council has considered the above planning application and has instructed me to raise the following strong objections to the proposal.

When permission was granted for the current activities last year the Parish Council, concerned about the potential for impact on neighbouring residential properties, requested restrictions on the hours of use to protect neighbours from noise and other disturbance.

The Parish Council has received representations from local residents which indicate the current conditions of use are already being ignored, and will therefore object to any proposed variation which in its view will make this situation deteriorate further. It is strongly of the opinion that rather than consider easing the restrictions on hours of use, Cheshire East Council should take action to firmly enforce the existing planning consent conditions.

**6. OTHER REPRESENTATIONS:**

**1 Letter of support has been received. The salient points raised are as follows:**

I operate a double-decker bus from the rear yard at Blakelow business park. I wish to offer my support for the change in planning conditions for Unit 5, Blakelow business park.

The staff at Unit 5 are considerate and helpful and I have not seen them working outside their current permitted hours. I cannot see how any car maintenance work carried out in this building could infringe on residents of Newcastle road as it is completely screened by buildings and tall hedges. I support the application to amend the onerous conditions originally applied by the council.

**10 letters of representation have been received objecting to the proposal and the salient points raised are as follows:**

- As local residents, we strongly object to the application to amend the existing conditions;
- We have already experienced increased noise levels and the flouting of the original conditions on this site and feel that this nuisance will only be exacerbated if the application is allowed;
- The situation will only become worse in the summer months when we are in the garden or in the house with windows open in the evening or at weekends.  
The application should be refused and the original conditions rigorously enforced. The original conditions restricting operational hours have been breached on several occasions resulting in unacceptable noise levels and movement of heavy goods vehicles onto the site in the early hours. The amendment of these conditions would result in a further nuisance and loss of amenity to nearby residents;

- The original conditions should be rigorously policed and enforced. The application is to extend the working hours inside the building and reference is made to the existing operation on site of racing car maintenance already allowed. The noise from this operation is particularly obtrusive and any additional noise would be unwelcome. Also, the noise from the movement of heavy goods vehicles to and from the premises as already experienced in the early hours is very annoying and would not be restricted to inside the building.
- The industrial unit is less than 100 metres from adjacent residential properties. The processes involved in the change of use would inevitably cause noise pollution for local residents.
- Increase in vehicular movements to and from the site would cause noise pollution for local residents.
- On the grounds of noise and disruption in rural residential area out of normal working hours;
- This site has domestic dwellings in close proximity and the noise from dismantling and cutting up of scrap metal with hand held petrol saws would have a big impact to the local community in the surrounding area;
- The other concern is movement of large vehicles entering and leaving the site at night and weekends to add to the noise and disruption to the local residential area;
- There is also a concern about pollution and contamination in the area around this site owing to possible spillages of oil, brake fluid and in the surrounding ground and water sources in the area to the detriment of the environment;
- There are strict regulations regarding the dismantling and salvage of car parts.
- We ask you to reject the extension to the working hours requested in this application. As stated on many occasions, this is a residential area, Mr Pickering has no respect for the surrounding residents. It is very unlikely that he would police the hours worked by anyone working within this site.;
- As a taxpayer, working each day of the working week, this would be severely disrupted if kept awake until the early hours of the morning because of industrial noise. At weekends it is a time for relaxation but again it is unacceptable to be disrupted by industrial noise, surely we have a right to relax in the garden in peace and have windows open at night. Why is it we must accept the goings on this site time and time again. Laws are supposed to offer the protection residents require. Why is it necessary for this business to operate at such unsocial hours? Surely it needs to be sited within a more conventional industrial park, far away from residents and communities.
- Reference has been made in the application to the existing hours allowed for the racing car repairs and the comparison to the activities in the application, we would prefer both to have more restricted time limits.

**In addition to the above, the occupier 269 Newcastle Road has submitted a diary which makes reference to a number of alleged breaches of the current planning permission**

**1 letter of objection received from Richard Ellison (Planning Consultant) acting on behalf of the occupiers no. 269 Newcastle Road, the conclusion of his report are as follows:**

Currently the activity, the subject of this planning application for the variation, is still unlawful and has been operated in this way to cause major harm to residential amenity since

December 2012. This is despite the approval of planning application 13/3046N with a number of conditions, most of which have not been enforced by Cheshire East Council.

The activity in all its manifestations is causing significant noise and disturbance especially during unsocial hours particularly when background noise levels are much lower than during the day time through the uncontrolled way it is still operating as described in this Statement.

The proposed development is contrary to NPPF para 123 and policy NE.17 of the CNRLP.

An Inspector had previously imposed similar conditions those attached to 14/3046N on a the previous use of the building for shot blasting due to location of the building near to 279 Newcastle Road and the likely harmful effect on residential amenity.

The most strongest objection is made to this proposal. However, no strong case has been made for the variation of conditions 2 and 8 on 13/3046N.

## **7. APPLICANT'S SUPPORTING INFORMATION:**

### **Design and Access Statement**

## **8. OFFICER APPRAISAL**

### **Key Issues**

The main issues in the consideration of this application are the acceptability of the development in principle having regard to its impact on residential amenity, drainage, highway safety.

### **Background Information**

Members may recall that planning permission was recently sought for change of use from shot-blasting heavy goods vehicles to car repairs, dismantling and salvage of parts (13/3046N) and was approved on the 24<sup>th</sup> September 2014. Having considered the application it was felt that the change of use of the building from shot blasting to the dismantling of vehicles was an appropriate use within the Open Countryside in this existing industrial complex. Furthermore, it is considered given the scale and nature of the proposal and its location and juxtaposition in relation to other residential properties means that the amenities of surrounding uses would not be detrimentally compromised. However, following the grant of this planning permission, the applicant is seeking to vary a number of these conditions. In particular conditions 2 and 8 attached to planning permission 13/3046N.

### **Local Plan Policy/Government Guidance**

As previously stated, the application site is located outside of the settlement boundary, as defined on the Crewe and Nantwich Replacement Local Plan Proposals Map, and is therefore situated in Open Countryside and within the Green Gap.

Policy NE.2 (Open Countryside) of the Crewe and Nantwich Replacement Local Plan restricts development other than that required for agriculture, forestry, outdoor recreation or other uses appropriate to the rural area. Policy NE.4 (Green Gaps) states that approval will not be given for the construction of new buildings or the change of use of existing buildings or land which would result in the erosion of the physical gaps between built up areas or adversely affect the visual character of the landscape. It is considered given that proposal is located wholly within an existing industrial complex and as such will not adversely affect the visual character of the landscape neither will it result in the creation of any new buildings and as such the proposal is broadly in accord with policy NE.4. The change of use would not result in the erosion of the physical gaps between built up areas.

According to Policy E.4 states that proposals for new employment development, for the re-use, re-development or intensification of the use of land within existing employment areas will be permitted. Whilst Policy E.6 of the Local Plan (Employment Development within the Open Countryside) restricts employment development to 'small scale' employment development in rural areas in order to diversify the rural economy. Small scale development should be adjacent to existing buildings or other existing employment areas. All new development should also meet the requirements of policies BE.1 – BE.5 as contained within the Local Plan.

According to the NPPF 'The Government is committed to ensuring that the planning system does everything it can to support sustainable economic growth. Planning should operate to encourage and not act as an impediment to sustainable growth. Therefore, significant weight should be placed on the need to support economic growth through the planning system' (para 19). The guidance goes on to state that 'To help achieve economic growth, local planning should plan proactively to meet the development needs of business and support an economy fit for the 21<sup>st</sup> Century'.

In relation to supporting a prosperous rural economy 'planning policies should support economic growth in rural areas in order to create jobs and prosperity by taking a positive approach to sustainable new development'.

Another important material consideration is the Written Ministerial Statement: Planning for Growth (23 March 2011) by The Minister of State for Decentralisation (Greg Clark). Inter alia, it states that, *"the Government's top priority in reforming the planning system is to promote sustainable economic growth and jobs. Government's clear expectation is that the answer to development and growth should wherever possible be 'yes', except where this would compromise the key sustainable development principles set out in national planning policy.*

## **Character and appearance**

The application site is located towards the north of Blakelow Business Park, which is a relatively small estate comprising several other buildings and workshops located on the western edge of Shavington. Located towards the south of the estate are a number of residential properties which front onto Newcastle Road. The industrial park boundaries are demarcated by mature native hedgerows on the northern and western boundaries. The site is accessed directly off Newcastle Road to the south.

The application building is utilitarian in form measures approximately 5.7m high with a rectangular footprint, with a floor area of approximately 108 square metres. Large entrance doors are located on southern elevation of the building. The remainder of the site provides parking for staff vehicles and open storage for vehicles and parts.

The building is not clearly visible from Newcastle Road as there is another building located closer to Newcastle Road, which helps to screen the application building.

## **Conditions**

### **Condition 2 states:**

*Due to the potential for noise disturbance to local residents, the development should be subject to the following hours of operation restrictions:*

*Monday – Friday 08.00hrs 18.00hrs*

*Saturday 08.00hrs 14.00hrs*

*Sundays and Bank Holidays Nil*

*Reason:- To protect the amenities of neighbouring occupiers in accordance with Policy BE.1 (Amenity) of the Borough of Crewe and Nantwich Replacement Local Plan 2011.*

The applicant's agent as part of their supporting statement stresses that the hours of operation permitted by this condition are too restrictive and would make the enterprise unviable. The agent goes on to enunciate that the restricted hours of operation do not take into account the nature of the activity and the hours of operation that are permitted on adjacent uses that lie between the application site and residential properties on Newcastle Road.

It is contended that the industrial, storage and distribution uses at 269 Newcastle Road (immediately adjacent to the application site) operate with no planning condition restricting hours of operation. It is accepted that the neighbouring unit has no hours of operation condition, as stated by the applicants agent.

It is also confirmed that Blakelow Business Park, which includes general industrial and distribution uses, also mainly operates with no planning condition restricting hours of operation. There are two exceptions. Firstly, the permission granted on appeal for shot blasting (on the current application site) restricts shot blasting and the operation of ancillary machinery to within the building and between 08.30 to 17.30 on weekdays, 08.30 to 13.30 on Saturdays and not at all on Sundays and Bank holidays. Secondly, a permission for the maintenance of racing cars, granted on appeal under application reference P05/0175, restricts use of a converted barn to the hours of 08.00 to 22.00 on weekdays and 10.00 to 16.00 on Saturday and Sunday, with no outside working.

The applicants agent acknowledges that the hours of operation permitted by condition 2 are 'acceptable to control outside working at unsocial hours, but in view of the lack of control over the use of nearby industrial buildings and the much more generous hours of operation permitted on appeal for the use of the nearby barn for maintenance of racing cars, such a restriction on hours of operation within the building is unreasonable. It is also noteworthy that



*the building on the application site is insulated to an approved level for shot blasting, a noisier activity than that which is now proposed'. The agent proposes to vary the above times so that it reads,*

*Hours of operation outside the building are restricted to the following:*

*Monday - Friday 08.00hrs to 18.00hrs*

*Saturday 08.00hrs to 14.00hrs*

*Sundays and Bank Holidays Nil*

*Hours of operation inside the building are restricted to the following:*

*Monday - Friday 08.00hrs to 22.00hrs*

*Saturday 08.00hrs to 16.00hrs*

*Sunday and Bank Holidays 08.00hrs to 16.00hrs*

The agent stresses the above hours of operation are similar to the hours of operation imposed by the Planning Inspector as part of application P05/0175. It is accepted that the adjoining industrial premises do not operate with any hours of operation as does the applicants wider business premises, which includes general industry and bus repairs. Whilst, it is also noted that there a number of residential properties in close proximity to the application site (approximately 65m away), they cannot be afforded the same level of protection, as they are located close to a number of B2 Uses, which by definition are not compatible with residential dwellings. Therefore, these properties are not located in a secluded countryside location, but are adjacent to an area with high levels of ambient noise. Furthermore, it is considered given the separation distances, the intervening building, boundary treatment and the other factors cited above will all help to mitigate any negative externalities caused by the proposed development. Furthermore, it is considered providing conditions relating to hours of use, noisy works to place inside and the same conditions on 13/3046N preventing any sales to members of the public will all help to alleviate any problems associated with the proposal. Overall, it is considered that the rewording of this condition in line with the applicants wishes is acceptable and reasonable. Colleagues in Environmental Health have been consulted and their comments have not been received at the time of writing this report. Members will be updated regarding Environmental Health comments in the update report.

**Condition 8 states:**

*The building hereby approved shall be used solely for the dismantling of vehicles and for no other purpose whatsoever.*

*Reason :- The Local Planning Authority would wish to give further consideration to uses within other classes in this location, in the light of the neighbouring residential properties, and access and parking arrangements and proximity of the town centre. In accordance with Policies BE.1 (Amenity) and BE.3 (Access and Parking) of the Borough of Crewe and Nantwich Replacement Local Plan 2011.*

It is acknowledged that the wording of this condition explicitly excludes car repairs and salvage of parts which were included in the particulars of development as described on the application form, the Committee Report and the Decision Notice. The agent contends that this condition *'may be ultra vires. Circular 11/95: The Use of Conditions in Planning Permission advises at paragraphs 34 and 35 that a condition can be ultra vires on grounds of unreasonableness because it is unduly restrictive. Paragraph 84 deals with conditions altering the nature of the development and advises that a condition modifying the development cannot be imposed if it would make the development permitted substantially different from that comprised in the application. In this case, car repairs and salvage of parts are integral parts of the business and their exclusion is unduly restrictive and makes the development substantially different from that described in the application and on the decision notice'*.

It is noted that the neighbouring unit repairs buses and other large vehicles. The development will help to support a prosperous rural economy. Furthermore, the proposal is an industrial use taking place within an industrial complex and as such the repair of vehicles and salvaging car parts is not unreasonable. Overall it is considered that the rewording of the condition to *'The building hereby approved shall be used solely for car repairs, the dismantling of vehicles and salvage of parts, and for no other purpose whatsoever'* as proposed by the applicants agent is entirely reasonable.

## **Other Matters**

A number of representations state that the applicants have been in breach of the current planning permission by working outside the permitted hours of operation. Whilst it is acknowledged that this may be the case any breach in planning control will be dealt with by colleagues in the Enforcement Section. Furthermore, residents have stated that the noise generated from the applicants premises causes demonstrable harm to their residential amenity, for example, keeping them up at night. If the proposal is causing a noise nuisance, this can be dealt with by colleagues in Environmental Health as a statutory noise nuisance.

A number of local residents claim that when the vehicles arrive at the site they have not been de-polluted i.e. none of the oil, brake fluid anti freeze etc has been removed. The applicant has stated that *'Vehicles have all possible contaminants removed within the building where a concrete slab enables any spillage to be contained and cleaned. All possible contaminants are to be disposed of in an approved manner by Enviro Care North West'*. The local residents are concerned that these vehicle contaminants can run off and cause significant damage to the local environ. Consequently, colleagues in the Environment Agency have been consulted and raise no objection

Colleagues in the Enforcement Section are aware of the current situation and requested that the applicant submit the current application. The Enforcement Team are awaiting the outcome of this application to assess whether its expedient for the Council to take any formal enforcement action.

## **9. CONCLUSIONS**

The proposed variation of conditions 2 and 8 of planning permission 13/3046N is acceptable in principle and, as conditioned, would not cause any detrimental harm to the amenities of nearby residents or the character and appearance of the area. It is concluded that the

proposed development would be in accordance with Policies NE.2 (Open Countryside), NE.4 (Green Gaps), BE.1 (Amenity), BE.2 (Design Standards), BE.3 (Access and Parking) and E.6 (Employment Development in the Open Countryside) of the Borough of Crewe and Nantwich Replacement Local Plan 2011.

## **10. RECOMMENDATIONS**

**Approve subject to conditions:**

- 1. Plan References**
- 2. Hours of Operation**

**Hours of operation outside the building are restricted to the following:**

**Monday - Friday 08.00hrs to 18.00hrs**

**Saturday 08.00hrs to 14.00hrs**

**Sundays and Bank Holidays Nil**

**Hours of operation inside the building are restricted to the following:**

**Monday - Friday 08.00hrs to 22.00hrs**

**Saturday 08.00hrs to 16.00hrs**

**Sunday and Bank Holidays 08.00hrs to 16.00hrs**

- 3. No Trade Counter or Sales to Members of the General Public**
- 4. Height of any vehicles stacked not to exceed 2m**
- 5. All noisy work to be done inside with the doors closed**
- 6. Drainage**
- 7. Details of External Lighting**
- 8. The building hereby approved shall be used solely for car repairs, the dismantling of vehicles and salvage of parts, and for no other purpose whatsoever**
- 9. Management plan for the removal of waste material to and from the site**
- 10. Details of the areas for storage and staff car parking be submitted for approval**
- 11. Drainage Details**



scale 1:200



Copyright. All rights reserved. Licensed under 103320448