

Report considered by Development Control Committee – 24 September 2009

**Enforcement Reference Number: 06/00189/UNAWKS**

**ERECTION OF PORTABLE BUILDINGS FOR STAFF CANTEEN, CHANGING AREA AND OFFICE PURPOSES, REFRIGERATED COLD STORES AND DESPATCH DOCK AND EXTERNALLY MOUNTED COMPRESSOR**

**AT Pain Artisan Site, 15 Tanners Drive, Blakelands**

**FOR Messrs Giles Foods Limited**

**Ward:** Linford North

**Parish:** Great Linford Parish Council

**Report Author/Case Officer:** Julian Smith

**Contact Details:** 01908 254693 julian.smith@milton-keynes.gov.uk

**Team Leader:** Peter Lawrence

**Contact Details:** 01908 252571 peter.lawrence@milton-keynes.gov.uk

## **1.0 SUMMARY**

*(A brief explanation of what the application is about, what the main issues are and the officer's Recommendation to the Committee)*

- 1.1 This report concerns the unauthorised erection in late 2005 of portable buildings to the northwest of the site on an area previously forming part of the car park. The development created 592 square metres of floor space including 158 square metres of office, changing area and canteen, 416 square metres of cold store, and 18 square metres for the refrigerated dock.
- 1.2 A 2.70 metre fence in excess of the 2.0 metre height allowed under Permitted Development rules has also subsequently been erected without planning permission to screen the unauthorised development from the Railway Walk and residential development beyond.
- 1.3 These developments are 'unauthorised' within the meaning of the Town and Country Planning Act 1995, and also amounts to a Breach of Condition imposed in a previous planning consent (MK01190/93).
- 1.4 The unauthorised development will gain immunity from enforcement under the four year rule in November, 2009.
- 1.5 The issue concerned within this report is the continued retention, or otherwise, of the unauthorised development, retrospective planning consent for the development having been refused.

## 1.6 **RECOMMENDATION**

1.7 It is recommended that enforcement action be authorised to secure the removal of the unauthorised development, through the issue of Enforcement Notices :

1. Serve an Enforcement Notice, requiring that the unauthorised development ( the portable buildings, the refrigerated cold stores and despatch dock, and the externally mounted compressor) are removed, with an appropriate time period for compliance;
2. Serve a second Enforcement Notice, requiring that the fence erected in excess of the 2 metre height allowed under the Town and Country Planning ((General Permitted Development) Order 1995 (as amended) is reduced in height so that it does not exceed 2.0 metres, with an appropriate time period for compliance;
3. Serve a third Enforcement Notice, requiring that the parking scheme as required by Condition 5 of Planning application MK/01190/93 is provided, with an appropriate time period for compliance.

1.8 It is further recommended that the Notices 1 and 2 should have a 'compliance period' expiring 31st March 2011 in which the requirements of the Notice are to be complied with, and that Notice 3 should have a compliance period of 1 month greater, i.e. by 30<sup>th</sup> April 2011.

1.9 It is further recommended that the Committee authorises any subsequent actions necessary should the Notice/s not be complied with, including authorising any extension to the Compliance periods, but not including 'direct action' to remove these developments.

## 2.0 **REASON FOR REPORTING APPLICATION TO COMMITTEE**

*(Most planning applications are dealt with by the Chief Planning Officer under powers delegated by the Development Control Committee)*

2.1 This matter is brought to the attention of the Committee as there has been a breach of planning control.

2.2 The method of dealing with this breach of planning control is considered to have a potential impact upon the availability of continued or enhanced employment opportunities at this site should enforcement action be taken.

## 3.0 **INTRODUCTION**

*(A brief description of the site and its surroundings)*

3.1 The property is located within the Blakelands employment area and is adjacent to Railway Walk Wildlife Corridor, which separates the application site from the residential area to the northwest.

- 3.2 The residential area consists of residential properties on Wolverton Road and Miles Close, together with an area of land between the site and Wolverton Road/Miles Close for which planning consent has been granted for further residential development.
- 3.3 To the northwest and northeast of the building is car parking and to the southeast is the service yard. The service yard is shared with the adjacent units Nos.11 and 13 Tanners Drive. Access to the car parking area is shared with the neighbouring unit 17 (which is currently vacant). The unit is currently operating as a commercial bakery with finished products held in the external cold stores prior to dispatch from a refrigerated lorry dock.
- 3.4 The factory is operational 24 hours a day.

#### **4.0 RELEVANT PLANNING HISTORY**

*(A brief outline of previous planning decisions affecting the site – this may not include every planning application relating to this site, only those that have a bearing on this particular case)*

- 4.1 Following the grant of the initial consent to build this part of the industrial estate, a total of 9 planning applications allowing extensions to the building at the site have been dealt with including those below:

MK/01190/93

Extension to provide new plant room and freezer. Permitted 7.02.1994

07/00830/FUL

Erection of portable buildings for staff canteen, changing area and office purposes, refrigerated cold stores and despatch dock and externally mounted compressor (Retrospective). Refused 22.08.2007

08/02056/FUL

Extension to existing industrial units, extension to hardstanding, installation of an access barrier, and construction of loading bank. Permitted 9.02.2009.

#### **5.0 BACKGROUND INFORMATION.**

*(Details of the breach of planning legislation as reported and investigated)*

- 5.1 In mid 2006 the Planning Enforcement team were advised of the presence of this unauthorised development by the Environmental Health team, who had received two complaints regarding noise caused through the use of this part of the property. The first complaint related to noise caused by the chiller unit connected with the unauthorised development, and the second to the noise caused by refrigerated lorries using the loading dock part of the development – the noise from the lorries themselves, and the chiller units on their trailers.

- 5.2 A visit was made on 9<sup>th</sup> August 2006 by an Enforcement officer to the property, who spoke with Mr. Rixon, Managing Director. It was established that the development described in the application 07/00830/FUL had taken place, without the benefit of planning permission. Mr. Rixon described the business' need to provide a chiller facility for products to be loaded into vehicles for despatch, maintaining a 'cool chain' for these fresh foods. It was advised that the production process as laid out required that products enter the chiller units and thence to the despatch dock, so that the unauthorised development was an integral part of the production line. The Company also produces frozen food, which is despatched via a dock on the opposite side of the building. It was advised that the development occurred in November 2005.
- 5.3 A check of the planning history of the site revealed the existence of planning permission MK/01190/93. A Condition attached to this permission required the provision and retention of parking spaces that had now been partially subsumed in the unauthorised development now considered. A total of 8 spaces are no longer available as a consequence of the unauthorised development, and this amounts to a Breach of this Planning Condition.
- 5.4 Advice was taken from a planning officer, and a letter sent to the Company on 15<sup>th</sup> August 2006. In this, they were advised that the Council would not support a retrospective application, bearing in mind Officer comments in application MK/00427/95 that the site appeared then to be over-developed, and the loss of car parking spaces. The Company were invited to enter into discussions with the Council to militate against these concerns and then submit a planning application, or to remove the unauthorised development. It was understood by the Enforcement department at this stage that such removal would require a re-working of the production facility, and thus a planning application was anticipated.
- 5.5 After consultations and remedial works, the Company submitted planning application 07/00830/FUL on 9<sup>th</sup> May 2007. This application was refused under Delegated Officer powers on 22<sup>nd</sup> August 2007. A copy of the Officer report recommending refusal for that application is included as Annex 1 below. A letter was sent to the Company on 28<sup>th</sup> August 2007 asking that they contact the Enforcement Officer to discuss a date for the removal of the unauthorised development, or otherwise submit an Appeal.
- 5.6 The Company indicated their intention to appeal against this refusal, advising that they had acquired the adjacent unit at 13 Tanners Drive to use as a store and thus were able to 'poach' parking spaces from there.
- 5.7 As no appeal was lodged and the time for doing so had expired, the Company were again contacted. Through agents, they indicated their intention to also acquire the unit at 11 Tanners Drive, and that following appropriate changes, this together with number 13 would allow a restructuring of their operations to allow the removal of the unauthorised development and enable to Company to operate the now-combined units around a central courtyard.

- 5.8 It was agreed that the Council would withhold from issuing an Enforcement Notice, pending a meeting to discuss the necessary changes and any planning application. No meeting transpired, though the Company submitted planning application 08/02056/FUL, and this was permitted in February 2009. This would allow the construction of a new loading dock in the central service yard area.
- 5.9 The Design and Access Statement submitted by agents in support of this application indicated that its purpose was, amongst other matters, to permit the removal of the unauthorised development that is subject to this report.
- 5.10 No application having been received by Building Control advising of an intention to commence development on this proposal, and a meeting was held again with Mr. Rixon on 16<sup>th</sup> June 2009. He indicated that the Company had been unable to obtain access to the recently acquired unit, as the tenants remained in possession, and then works to correct dilapidations would be required to the units at 11 and 13 Tanners Drive. Following those works, the offices from 15 Tanners Drive would be removed, allowing the removal of the unauthorised portable buildings, and subsequently the relocation of the chilled units and despatch dock.
- 5.11 A letter was then sent to the Company on 29<sup>th</sup> June 2009, outlining this understanding and proposing the service of an Enforcement Notice with an appropriate Compliance Period to allow time for the dilapidation and construction works.
- 5.12 This prompted a reply from the Company in July 2009, advising that they now wished to retain the unauthorised development for which planning permission had been refused.
- 5.13 The letter advised of the need to retain the chiller/despatch facilities, as the Company needed separate docks for chilled and for frozen products, and the portable building would still be required for staff purposes in order not to intrude upon potential production floor space within the main buildings. The Company also indicated that they wished to introduce one, or two, new lines thus enhancing local employment opportunities.
- 5.14 Arguing in this letter against the reasons for refusal of the previous planning application in 2007, the Company disputed the Highway officer's objection regarding highway danger, and the parking requirement. They also indicated that any action leading to a reduction in production would lead to a reduction in employment opportunities. Consequently, it has been arranged to meet Mr. Rixon on 10<sup>th</sup> September 2009 at the site.

## **6.0 THE EFFECT OF FORMAL ACTION.**

- 6.1 A meeting was held on site on 10<sup>th</sup> September 2009, between an Enforcement Officer and Mr. Rixon, (Managing Director) and Mr. Willis (Finance Director) of Messrs Pain Artisan, occupiers of the site and the Company responsible for the unauthorised developments.

- 6.2 During this meeting, the principles of the need for enforcement action as described within this report were outlined, and information sought as to the likely or potential impact of the service of any of the Enforcement Notices proposed.
- 6.3 During the meeting, it was established that Messrs Pain Artisan had acquired the leases to numbers 11 and 13 Tanners Drive, and that works were in hand to bring these buildings back to a usable standard; occupation is possible later this year.
- 6.4 Following this, the Company intend to carry out the alterations allowed under planning application 08/02056/FUL, and remove the unauthorised developments subject to this report once the production facilities have been re-organised.
- 6.5 However, the economic downturn currently being experienced in the U.K. has resulted in a reduction of sales for the Company, and the new facilities will need to be provided at the Company's expense rather than at the landlord's cost as initially anticipated. Given the cost of the project, this will need to be met through borrowing, and this aspect is being pursued by the Company. The general economic situation is hindering the availability of the finance.
- 6.6 The Company anticipate that the construction works can commence in early 2010.
- 6.7 Once the new and removed production facilities are in place, an expansion of production will be possible, preserving and hopefully enhancing the employment prospects of the current staff of 150 people employed at the site.
- 6.8 Assuming that the development plans progress at the expected rate, it is anticipated that the revised facilities will be available towards the end of the calendar year 2010.
- 6.9 It was also established that if the Enforcement Notices as recommended in this report were to be served, and the removals proposed had not taken place, the impact on the Company will be such that it will lose profitability.

## **7.0 CONSULTATIONS AND REPRESENTATIONS**

*(Who has been consulted on the application and the responses received)*

- 7.1 The response to consultations regarding planning application 07/00830/FUL is summarised in the Officer's Delegated report reproduced below.
- 7.2 With regard to application 08/02056/FUL, neither the Environmental Health officer nor the Highways Officer had any objections to the grant of planning permission, since that application also involved the removal of the unauthorised development.

### 7.3 **Environmental Health**

The Environmental Health Office has been re-consulted with regards to the potential of carrying out the enforcement action proposed by this report. It is advised that no further complaints regarding noise have been received by that office.

7.4 That office also advises their main concern is now noise from vehicles manoeuvring at the Railway Walk side of the building (the north-west), particularly the impact this may have on the dwellings behind those on Wolverton Road which although not yet built were given planning approval.

7.5 Despite the factory unit being in position well before the houses, if the Environmental Health department received a complaint from a resident the Council has a duty to investigate and take action if necessary, and this might necessarily include the service of a Noise Abatement Notice under Statutory Nuisance legislation.

7.6 Advice has been received that this course of action is not discretionary, but mandatory.

### 7.7 **Head of Transport**

The Highways department has been re-consulted, and a response received to the effect that they have not changed their position from that expressed in response to application 07/00830/FUL.

### 7.8 **Councillors**

As a part of the consultation process, details of this proposed course of action were circulated to Ward Members and the Chair of the Development Control Committee.

7.9 A response was received expressing concern over the possible impact of enforcement action resulting in a loss of employment opportunities, either current or projected, vs. the amenity of a yet to be built residential area.

### 7.10 **Local Residents**

No local residents have been canvassed in respect of this Enforcement Process, in line with legislation.

## 8.0 **RELEVANT POLICIES**

*(The most important policy considerations relating to this application)*

8.1 The most important factor that the Committee must consider is the relevant planning policies. Relevant Government policy documents need to be considered, in this case Planning Policy Guidance 18: Enforcing Planning Control, and secondly the Council's own planning policies. In this case the relevant policy is the Development Control 'Planning Enforcement: Policy and Procedure'. Planning legislation requires that all planning decisions should be in line with the relevant policies.

8.2 A retrospective planning application seeking consent to retain the unauthorised development was made by the occupiers in 2007, and this was refused under officer delegated powers following consideration of relevant Local and National Policies.

8.3 No appeal was lodged against this refusal to grant consent, and no other application has been received in this respect.

8.4 In this case, therefore, Local and National policies relating to development have already been tested, and the issue at hand is how Milton Keynes Council should address the continuing breach of planning control.

8.5 **National Policy – Planning Policy Guidance Note 18.**

The Council's power to undertake enforcement action is discretionary. The wording of the legislation is that where it appears to the local planning authority that there has been a breach of planning control after the end of 1963; and they consider it expedient to do so having regard to the provisions of the development plan and to any other material considerations, they may issue a notice requiring the breach to be remedied.

8.6 In this case, there has clearly been a breach of planning control and this is not disputed by the occupiers of the site.

8.7 Whether it is expedient to take enforcement action requires an assessment of the provisions of saved policies of the Adopted Milton Keynes Local Plan 2001 – 2011, National guidance, and any other material considerations. This assessment is considered at item 9 of this report.

8.8 Planning Policy Guidance Note 18 (PPG18), although dated December 1991 provides the Government's guidance on the enforcement of planning control. Circular 10/97 deals with legislative provisions and procedures.

8.9 PPG18 advises that:

The integrity of the development control process depends on the readiness of a Local Planning Authority (LPA) to take effective enforcement action when it is essential (paragraph 4)

Public acceptance of the development control process is quickly undermined if unauthorised development, which is unacceptable on planning merits, is allowed to proceed without any apparent attempt by the planning authority to intervene before serious harm to amenity results (paragraph 4)

Authorities need to assess, in each case, which enforcement power (or mix of powers) is best suited to dealing with any actual breach of control to achieve a satisfactory, lasting, and cost effective remedy. Rapid initiation of enforcement action is usually vital to prevent a breach of control becoming well established and more difficult to remedy (paragraph 4)

In pursuing enforcement action, local authorities should be guided by a number of considerations which include whether the breach would unacceptably affect public amenity or the existing use of land or buildings meriting protection in the public interest; and enforcement action should always be commensurate with the breach of planning control to which it relates (paragraph 5)

Where the breach of planning control took place in the full knowledge that planning permission was needed, the person responsible for the breach will not submit a planning application and the breach is causing serious harm to public amenity in the neighbourhood of the site; local authorities are advised to pursue vigorous enforcement action.

8.10 At paragraph 4 in PPG 18, advice is given that it is not an offence to carry out development without planning permission, and in the 'general approach to enforcement' the document states:

"Nothing in this Note should be taken as condoning a wilful breach of planning law. LPAs (Local Planning Authorities) have a general discretion to take enforcement action, when they regard it as expedient. They should be guided by the following considerations:-

(1) Parliament has given LPAs the primary responsibility for taking whatever enforcement action may be necessary, in the public interest, in their administrative area (the private citizen cannot initiate planning enforcement action);

(2) the Commissioner for Local Administration (the local ombudsman) has held, in a number of investigated cases, that there is "maladministration" if the authority fail to take effective enforcement action which was plainly necessary and has occasionally recommended a compensatory payment to the complainant for the consequent injustice;

(3) in considering any enforcement action, the decisive issue for the LPA should be whether the breach of control would unacceptably affect public amenity or the existing use of land and buildings meriting protection in the public interest;

(4) enforcement action should always be commensurate with the breach of planning control to which it relates (for example, it is usually inappropriate to take formal enforcement action against a trivial or technical breach of control which causes no harm to amenity in the locality of the site); and

(5) where the LPA's initial attempt to persuade the owner or occupier of the site voluntarily to remedy the harmful effects of unauthorised development fails, negotiations should not be allowed to hamper or delay whatever formal enforcement action may be

required to make the development acceptable on planning grounds, or to compel it to stop (LPAs should bear in mind the statutory time limits for taking enforcement action).”

- 8.11 Given that a planning application in this matter has failed, guidance is also given at paragraph 12 in PPG 18 where an unauthorised development is unacceptable and relocation is not feasible.

“Where, in the LPA's view, unacceptable unauthorised development has been carried out, and there is no realistic prospect of its being relocated to a more suitable site, the owner or occupier of the land should be informed that the authority are not prepared to allow the operation or activity to continue at its present level of activity, or (if this is the case) at all. If the development nevertheless provides valued local employment, the owner or occupier should be advised how long the LPA are prepared to allow before the operation or activity must stop, or be reduced to an acceptable level of intensity. If agreement can be reached between the operator and the LPA about the period to be allowed for the operation or activity to cease, or be reduced to an acceptable level, and the person concerned honours the agreement, formal enforcement action may be avoided. But LPAs should be aware of the possibility of intensification of the development after expiry of the statutory period for enforcement action. If no agreement can be reached, the issue of an enforcement notice will usually be justified, allowing a realistic compliance period for the unauthorised operation or activity to cease, or its scale to be acceptably reduced. Any difficulty with relocation will not normally be a sufficient reason for delaying formal enforcement action to remedy unacceptable unauthorised development.”

- 8.12 Guidance is also given at paragraph 15 in PPG18 regarding unauthorised development by small businesses or self-employed people, although the site in question seems unlikely to fall within that description. It advises that an initial aim should be to explore a means of permitting the business to continue at the site at an acceptable level, and that in the event of being unable to reach a mutually satisfactory compromise, the Council should make its intentions clear and aim to agree on a timetable for relocation to minimise disruption to the business and if possible avoid any permanent loss of employment.

- 8.13 At paragraph 15 of PPG18, advice is given that:

If a mutually satisfactory compromise cannot be reached, and formal enforcement action is essential, the LPA should make their intentions clear, at the outset, to the owner or operator of a small business or a self-employed person. Unless it is urgently needed, formal enforcement action should not come as a "bolt from the blue" to a small business or self-employed person. It should be preceded by informal discussion about possible means of minimising harm to local amenity caused by the business activity; and, if formal action will

clearly be needed, by discussion of the possible relocation of the business to another site. As explained in paragraph 10, it is not the LPA's responsibility to take the initiative in finding or providing a suitable alternative site. If formal enforcement action is likely to compel a small business or self-employed person to relocate their trading activities, the LPA should aim to agree on a timetable for relocation which will minimise disruption to the business and, if possible, avoid any permanent loss of employment as a result of the relocation.

8.14 Although it is felt that the business of Messrs Pain Artisan would not fall within a definition of 'small business', it is nonetheless considered that this aim should be followed in this instance.

8.15 **The Council's Local Policy:  
'Planning Enforcement: Policy and Procedure'**

8.16 The Council's adopted enforcement protocol has the following objectives at Item 2:

1. Remedy the undesirable effects of unauthorised development;
2. Bring unauthorised activity under control to ensure that the credibility of the planning system is not undermined; and
3. Strike a balance between protecting amenity and other interests of acknowledged importance, and allowing acceptable development to take place.

8.17 Item 3 advises that:

Action taken will be dependant upon the nature and seriousness of the breach having regard to the following:

1. The Adopted Milton Keynes Local Plan (Adopted January 2006), which is the "development plan" for the District.
2. Relevant statements of planning policy contained in Circulars and Planning Policy Guidance Notes (in particular PPG1: General Policy and Principles – February 1997; and PPG18: Enforcing Planning Control – December 1991).

8.18 Item 3 continues:

- 3.2 The Council is mindful that enforcement action is a discretionary power to be taken only when it is expedient to do so, and any action taken should be commensurate with the breach of control
- 3.3 Notwithstanding the above, the Council will take effective enforcement action when it is essential to protect the amenity of the area, public or highway safety, and the integrity of the development control process within the Area.

Options available include:

minor breach with no significant effects – no further action  
breach likely to be regularised by grant of permission/consent  
– invite application for planning permission, etc. as appropriate

breach immune from enforcement action due to passage of time limit – invite application for Lawful Development Certificate

breach where permission unlikely to be granted – take enforcement action (enforcement notice, breach of condition notice, stop notice, injunction as appropriate depending on seriousness of breach and environmental effects)

where a Breach of Condition Notice has not been complied with the person responsible, who was served with the notice, is likely to be prosecuted

where an enforcement notice takes effect but is not complied with any owner/occupier/person who has control of or an interest in the land is likely to be prosecuted and the Council will consider using its default powers to take direct action to remedy the breach of control, recovering the cost from the owner or placing a legal charge on the land.

#### 8.19 **Local Policy: The Milton Keynes Local Plan 2001 – 2011.**

The Council's Enforcement Policy requires that consideration is given to policies contained within the Adopted Local Plan. In this case, the most relevant saved policies in the Milton Keynes Local Plan 2001-2011 are:

D1 - Impact of Development Proposals on Locality

D2 - Design of Buildings

NE1 - Nature Conservation Sites

T15 - Parking Provision

SPG Parking Standards for Milton Keynes adopted January 2005

PPG24: Planning and Noise.

These policies were considered during the process of the retrospective planning application 07/00830/FUL (Item 5.3 below) seeking to retain the development. The Officer Report for that application is attached at Item 11 below.

### 9.0 **OPTIONS TO CONSIDER**

9.1 In line with national planning policy and guidance and the Council's adopted enforcement policy there are two options open to the Council in response to the unauthorised development activity:

1. Do nothing, if it is considered that the breach represents a minor breach with no significant effects, or
2. Take enforcement action because the breach cannot be regularised by a grant of permission.

- 9.2 In terms of the 'do nothing' option above, if the Committee is satisfied that the factors on the site are material considerations that are considered not to unacceptably affect public amenity or the existing use of land or buildings meriting protection in the public interest, then the Council may exercise its discretion and take no further action in respect of this breach of planning control.
- 9.3 The Committee is advised that under section 171B(1) Town and Country Planning Act 1990 as amended, an enforcement action may not be taken after 4 years of the substantial completion of a building without planning permission. Failure to take action within the four year period means that the right to do so lapses and the action becomes lawful (Section 191(2) Town and Country Planning Act 1990 as amended). As indicated above, this development is due to gain immunity in November, 2009 and the course of action open to the Council thereafter would be to invite an application for a Lawful Development Certificate.
- 9.4 If the Committee considers that the unauthorised developments do unacceptably affect public amenity, then Notices as described below may be served to remedy the breach of control. Consideration should be given as to the period to be specified for compliance with the Notices, and the legislative requirements are that the specified period may not be less than 28 days.
- 9.5 In this particular case, the occupying Company have indicated that the service of Notices will impact upon their ability to continue production, and thus a reasonable period should be allowed for the Company to re-configure its production methods.
- 9.6 Taking these factors into account, it is considered that a compliance period of 12 months in the case of the first two Notices, and 13 months in respect of the third Notice, is a reasonable period.
- 9.7 It is recommended that Notices are served :
4. Serve a Enforcement Notice, requiring that the unauthorised development ( the portable buildings, the refrigerated cold stores and despatch dock, and the externally mounted compressor) are removed, with an appropriate time period for compliance;
  5. Serve a second Enforcement Notice, requiring that the fence erected in excess of the 2 metre height allowed under the Town and Country Planning ((General Permitted Development) Order 1995 (as amended) is reduced in height so that it does not exceed 2.0 metres, with an appropriate time period for compliance;
  6. Serve a third Enforcement Notice, requiring that the parking scheme as required by Condition 5 of Planning application MK/01190/93 is provided, with an appropriate time period for compliance.

As set out above, the window for issuing any enforcement action is limited to that prior to November 2009.

9.8 In summary, a breach of planning control has occurred, and in the circumstances it is appropriate for the Council to consider whether enforcement action should be undertaken and, since this is a discretionary power, it is firstly necessary to examine the expedience of taking enforcement action.

## **10.0 CONSIDERATIONS**

*(The analysis of the issues which are critical, material, considerations and/or of greatest concern to objectors for the Committee to weigh up before making a decision)*

### **10.1 Principle of Development**

Consideration has been given to the unauthorised development described within this report. It is felt that there has not been any material change to any factors that were considered as part of the planning application process in 2007.

### **10.2 Expediency**

A breach of planning control has occurred. The first question for the Committee to consider is whether it is expedient to take enforcement action having regard to the provisions of the development plan and to any other material consideration.

10.3 An application has previously been made seeking retrospective consent for the unauthorised development (except for the fence), and that application was refused consent. It is noted that no appeal was lodged against that refusal, and no modified proposal has been presented to the Council for consideration.

10.4 Instead, a second proposal was submitted, in which alternative proposals were submitted involving an additional factory unit and that proposal was found acceptable and consent was granted. It is noted that no details have been forwarded to the Council for any date at which this is to be implemented, except that concerns have been raised by the applicant regarding foreseeable problems with the weather, and the general economic situation facing the country. This planning permission will expire on 9<sup>th</sup> February 2012, and it is noted that an application for Building Control approval of the works was registered with this Council on 10<sup>th</sup> September 2009.

10.5 The Council can therefore have no guarantee that the development as proposed will be carried out, and the breach of planning control thus removed. Further to this, the unauthorised development as set out above will gain immunity from enforcement if enforcement action is not taken prior to November 2009.

## **11.0 Human Rights Act Considerations.**

- 11.1 The Human Rights Act requires that the action proposed within this report must be found to be necessary and reasonable, when assessed against the policies and guidance contained in National and Local policies and guidance as described in Section 4 above.
- 11.2 The action must also, and over-ridingly, be consistent with the requirements of the Human Rights Act, which protects individuals against the actions of the State (which includes Local Authorities).
- 11.3 The UK Planning System has been found to be compliant with the Charter of Human Rights - the rights of a person or business not to be interfered with in their enjoyment of their land are over-ruled by the rights of the community (as represented by the democratically accountable local council) to regulate the activities that go on in their midst.
- 11.4 Additionally, the rights of employees are protected by employment laws to so that the employees must be treated properly if their employer has to close down the business for any reason: they will get redundancy or transfer of undertakings protections enforceable at the Employment Tribunal.
- 11.5 In assessing the expediency of enforcement action, consideration has been given to the general interest against proceeding with issuing an enforcement notice against the individual interests that will be interfered with, i.e. the occupier's use of his own property for his own purposes.
- 11.6 The material considerations that have been expressly considered are primarily that the occupier will not lose the benefit of his use of the property as a place for its authorised use for Industry as that use is not to be enforced against. This consideration also applies to the owners of the property, as they would not, through the service of an enforcement notice alone, lose the income that their property generates.
- 11.7 The secondary consideration is that the unauthorised development was carried out by the occupier, although there is no record that they contacted Milton Keynes Council for informal advice in this respect. This same consideration also applies to the owners of the property.
- 11.8 Against this, the interests of the users and occupiers of the surrounding properties have also been considered, and their right to the peaceful enjoyment of their own homes and surrounding areas including the Railway Walk.
- 11.9 The Enforcement Notice proposed by this report includes a period of 12 months in which compliance must be achieved with the requirements of the Notice, following the expiry of the statutorily required period in which an Appeal is allowed against the Notice.

11.10 This period has been chosen after discussion with the Company as representing an appropriate period for Messrs Pain Artisan to carry out the development approved under Planning Application 08/02056/FUL thereby allowing the restructuring of their method of operation, and the removal of the unauthorised development.

If the Company feel that this period is inadequate, or that the requirements of the Notice are too stringent, then they are at liberty to appeal against the Enforcement Notices, thus protecting their right to a fair hearing.

11.11 The Council also has discretion, following negotiation with the Company, to extend the period for compliance if requested by the Company. The question of extension of the period for compliance is a matter which may be either brought back before the Committee or dealt with under Delegated Powers.

11.12 In this particular case, therefore, it is considered that the exercise of enforcement action is expedient, appropriate, and proportionate.

## **12.0 CONCLUSIONS**

*(The officer advice to the Development Control Committee on the appropriate decision, based on the policies of the Development Plan, taking into account the issues detailed in the report)*

12.1 Consideration has been given to the issues raised through the unauthorised development described above, and during consultations with the occupiers of the property and Council officers.

12.2 In this particular case, it is considered that the exercise of enforcement action is expedient, appropriate, and proportionate, and the recommendation at Item 1.5 on is commended to the Committee.

## **ANNEX1: COPY OF OFFICER DELEGATED REPORT REGARDING PLANNING APPLICATION REFERENCE 07/00830/FUL:**

“The current proposal is a retrospective application for the erection of portable buildings to the northwest of the unit on an area previously forming part of the car park. The proposal creates 592 square metres of floor space including 158 square metres of office, changing area and canteen, 416 square metres of cold store, and 18 square metres for the refrigerated dock. The works undertaken were partially in replacement of a pre-existing structure containing refrigerated plant and equipment. A noise report regarding noise from the compressor was submitted with the application and a further noise report was submitted on the 2nd July 2007.

The Design and Access statement states that the rationale for the development is to improve the efficiency of the production process rather than to facilitate any expansion in staff numbers and, therefore, the works would not tangibly increase the demand for car parking on the site. The factory operates a 2-shift system: a day shift (0500 - 1900 hrs) and a night shift (1900 - 0500 hrs). During the day shift, the number of staff on site at any one time is in the region of 60 - 65 with approximately 25% agency works who arrive by mini-bus and approximately 20 - 25 car drivers with others either sharing a lift, cycling or walking to work. Staff numbers during the nightshift are lower (approximately 30 - 35) and the proportion of agency staff is greater (approximately 50%); therefore, the total number of car drivers working the night shift is comparatively low i.e. approximately 8 - 10. Therefore, the applicant considers that the 30 car parking spaces available for staff and visitors its adequate provision for their business' operational needs.

### **RELEVANT PLANNING HISTORY**

The application site has been subject to several extensions and alterations in the past:

MK/310/84 Erection of cold store

MK/495/84 Erection of storage silos and equipment store

MK/1674/88 Erection of extension for small freezer and plant room

MK/1220/91 Freezer and engineering store extensions and alterations to existing to existing building

MK/484/92 Extension to provide engineers store

MK/1190/93 Extension to provide new plant room and freezer

MK/959/94 Extension to provide additional production area, installation of new staff entrances and relocation of existing doors

The plans for application MK/959/94 showed 38 parking spaces to the side and rear of the unit with space for an additional four parking spaces.

A further application was received in 1995 (MK/427/95) for an extension to provide additional office space. This application was refused on the grounds that the application premises suffers from an inadequate level of on-site parking space and the proposed office extension was considered to represent an over-development of the site which would fail to provide sufficient car parking facilities to meet the council's standards. Failure to provide sufficient car parking facilities was likely to result in obstruction to the highway and shared service areas to the detriment of other highway users and the amenities of adjoining occupiers.

## PLANNING POLICY

The most relevant policies in the Milton Keynes Local Plan 2001-2011 are:

D1 - Impact of Development Proposals on Locality

D2 - Design of Buildings

NE1 - Nature Conservation Sites

T15 - Parking Provision

SPG Parking Standards for Milton Keynes adopted January 2005

PPG24: Planning and Noise

## CONSULTATIONS

Neighbour Observations: Objections have been received from the occupiers of Nos.1 and 3 Miles Close, the properties located to the north of the unit on the opposite side of Railway Walk. The objections can be summarised as follows:

- The layout and parking arrangements are inadequate for very large lorries (eighteen wheel, 40 ton vehicles). These vehicles cannot manoeuvre to the loading bay provided without encroaching onto the rear car park of the currently vacant unit at No.17 Tanners Drive.

- At times there is more than one vehicle, these vehicles need somewhere to park. The occupier of No.3 understands after speaking to some of the drivers that they should not leave the vicinity until the temperature of the load is about four degrees centigrade, which can take up to 2 hours if the weather is very warm. The occupier of No.3 has enclosed a copy of a letter sent to the Council's Environmental Health Department regarding a noise complaint from vehicles parking at the bottom of the garden of No.3 Miles Close.

- The occupier of No.1 states that since the development has been in place there has been a noticeable rise in noise from the refrigeration plant and lorries. The 'beeping' noise of lorries reversing can be heard until late in the evening.

- Originally all deliveries were made to the sides of these factories, which kept any disruption a significant distance from the residential properties, this development brings the disruptions to within approximately 20 metres of these houses, which significantly impacts on the enjoyment of the gardens of the neighbouring residential properties.

- The staff canteen and forthcoming smoking ban is likely to lead to workers that smoke gathering outside the canteen; the 'banter' is certain to be intrusive particularly in the early morning and late at night.

- If the business wishes to expand there are a number of larger units within the Blakelands employment area that could accommodate this development.

Great Linford Parish Council: No objections.

Environmental Health: The Senior Environmental Protection Officer states that Environmental Health received a complaint in April 2006 regarding noise from the chiller equipment. The company added absorbent material around the equipment to attempt to reduce the noise. The noise nuisance continued for around 2 months and Environmental Health were seeking to obtain some further evidence in the form of measurements and recordings from a resident's property, this may have lead to

formal action. The resident did not contact us further and it did appear that the noise levels had been reduced to an acceptable level at this particular property. However, permission has been granted for residential development on a site much closer to the factory; the future residents of this site may find that the noise from the equipment is still enough of a problem to be a nuisance, particularly at night.

The report by Bird Acoustics deals with noise from the compressor plant. The report identifies that noise from the plant could be a problem at 'quieter' times such as night-time and weekends. The application states that a recommendation report is to follow to identify measures that can be taken to reduce noise from the equipment. In the absence of this report the Officer would object to the proposal being approved on the grounds that the compressor plant is a potential noise nuisance to residents of Wolverton Road and future occupiers of the new dwellings. The applicant has submitted a second report dealing with noise from the compressor units. The report states that it is unlikely that complaints would be received regarding noise from the compressor with recently added noise abatement measures. The report states that the compressor could operate up to seven days a week, but only during the daytime from 0700 to 1900 hrs. Therefore, it is assumed that the equipment is not operational between 1900 and 0700 hrs, this part of the day would be of the most concern with regard to noise disturbance. Therefore, on this basis the Officer has no objection to the proposal subject to a condition restricting use of the compressor equipment to between 0700 and 1900 hrs.

The Officer has also received a separate complaint from a resident in the area; engine noise and noise from chiller units were specifically mentioned as sources of disturbance. In particular noise from chiller units on lorries parked at the rear of the premises adjacent to Pain Artisan, this unit is vacant and the lorries are usually waiting to load at the bay which forms a part of the development in question. The company have erected signage instructing drivers to switch off their engines; however, the fact remains that the lorries are only in this position as the company has fundamentally changed the design of the building to allow loading at this side of the property. The Officer remains concerned that the loading of HGVs at this side of the building is likely to cause noise disturbance to existing and future residents. In regards to the dispatch dock the Officer recommends that a condition be applied specifying no HGV movements in the area of the dock between 0700 and 1900 hrs; the reason for this restriction being potential disturbance to occupiers of existing and planned dwellings to the north of Railway Walk. The use being proposed is considered to be different to that of the Silo that was previously located in this area. The Silo would have had deliveries by HGVs; however, they would not have been of the same frequency and would have generally taken place within the working day between 0800 and 1800 hrs.

Highways Development Control: The Highways Engineer recommends that planning permission be refused. The applicant had not included adequate space within the site for the parking of vehicles clear of the highway; the development would likely lead to additional on street parking to the detriment of highway safety and convenience. The applicant has not included adequate provision for space within the site for the loading and manoeuvring of vehicles clear of the highway; the development would likely lead to the stationing of vehicles on the highway and to vehicles reversing onto or off the highway to the detriment of public highway safety.

The Engineer states that the buildings occupy areas that were previously used for car parking for staff and visitors. The site has previously been refused planning permission for extensions to the office floor space due to a lack of on-site parking. Planning permission was granted in 1994 (MK/959/94) for a small extension of the production area; at this juncture it was established that 38 car parking spaces were available on the site with room for another four. A briefing note on the planning file makes reference to the fact that the site at that time was 22 car parking spaces short of what was then the required standard. The briefing note also makes reference to the fact that it was considered at that time that the business had outgrown the premises; this thought had been relayed to the applicant.

The expansion of the premises that are the subject of the current application has further reduced the available parking to 30 spaces, which is unacceptable. The additional gross floor area to be considered in this application at B1 (c) use need to provide a further 20 car parking spaces; this clearly cannot be accommodated. The Highway Engineer's site visit showed that the parking spaces allocated to the vacant industrial unit at 17 Tanners Drive are being utilised for staff parking for Pain Artisan. This in itself shows that parking on the application site is wholly inadequate. The Engineer states that the red line boundary shown on the location plan goes to the centre of the access road between the two units, this is clearly wrong as the access road is adopted.

As well as the parking problems on the application site there are also problems with manoeuvring of HGVs that service the site. When the industrial estate was constructed the access to these particular units was arranged in order that the road serving the service yards was set to a width of 7.30 metres. Further north beyond the access to the service yards the road was constructed to the narrower width of 5.50 metres on the basis that the road was only required for access to the parking areas at the rear of the units. The wider access to the service yards also included larger radii to accommodate HGV turning movements. This application is now trying to make use of the highway for purposes for which it wasn't intended. This has resulted in HGVs having to use part of the private area designated to what is the vacant unit on the opposite side of the road. Once the vacant unit is occupied the space currently being used by HGVs will not be available and may be likely to result in difficulties in terms of access. The specification for a commercial vehicles turning head allows a length across the turning head of 51 metres; the length of public highway available for turning is 27.50 metres, which is insufficient for manoeuvring an HGV. It is therefore clear that there is insufficient manoeuvring space within the highway for the servicing of the operation and this is unacceptable. It would also be unacceptable for HGVs to manoeuvre elsewhere in the vicinity of the site and reverse for long distances on lengths of public highway.

## CONSIDERATIONS

### Visual impact:

It is considered that, due to the location and scale and in light of the previous structures adjacent to the rear of the building, the buildings would not have a significant impact on the visual amenity of the area. From the footpath of Railway

Walk a band of mature vegetation approximately 9m wide screens the development from view.

#### Wildlife Corridor:

No representations have been received from the landscape officer. Within Milton Keynes Wildlife Corridors are linear pathways containing habitats that encourage the movement of plants and animals between important wildlife sites. The Wildlife Corridors are given the same status as Milton Keynes Wildlife Sites; although not statutorily designated, they do receive protection through policies in development plans (including local plan policy NE1). Where proposals lie within or adjoining a Wildlife Corridor, the council will consider whether the proposals would damage the viability of the corridor.

The structures are separated from the planting within Railway Walk by a strip of grassland. If the structures extended further towards Railway Walk Wildlife Corridor then the trees would start to overhang the structures; it is likely that this would lead to pressure for the removal of vegetation within the Wildlife Corridor. It is considered that the structures do not have a significant enough impact on the Wildlife Corridor to warrant a refusal on that basis; however, numbers of HGVs manoeuvring to access the despatch dock within the rear area adjacent to the Wildlife Corridor may increase the likelihood of damage to the Corridor.

#### Parking and Access:

The use of the unit falls within use class B1 (c) Light Industry. For a B1 use within zone 3 the Parking Standards require one space per 30 square metres of floor space; therefore, the development should provide an additional 20 parking spaces (as stated by the Highways Engineer). With conditions restricting the future use of the unit to B1 (c) only it may be suitable to use the Parking Standards for B2 General Industrial which require one space per 60 square metres plus one space per 30 square metres of office space. If the B2 standards were applied to the unit then the development would require an additional 12 parking spaces. The development has led to a reduction in the number of parking spaces from 38 with an additional 4 informal spaces to 30. The lack of any additional parking in support of the current application and the reduction in the on-plot parking provision created by the current application results in a shortfall of between 24 and 32 parking spaces above the existing under-provision of parking spaces identified during the previous planning applications (in 1994 the unit was 22 parking spaces short of the required standard). The Highways Engineer considers that the current application is likely to lead to additional on street parking to the detriment of highway safety and convenience; the proposal is therefore contrary to local plan policy T15.

Within the Design and Access Statement the applicant considers that the current parking provision is sufficient for their needs. The applicant states that during the day shift 25% of the workforce is made up from agency workers who are brought in by mini-bus; however, this leaves 75% of workers that drive, car share, cycle or walk to work. The Highway Engineer's site visit showed that the parking spaces allocated to the vacant industrial unit at 17 Tanners Drive are being utilised for staff parking. Small changes in the number of agency workers or the modes of

transport used by staff would have a significant impact on parking within the area, which would be compounded when the vacant unit is occupied. Any future intensification of use of the unit would also compound the lack of sufficient on-plot parking provision.

The Highways Engineer also recommends refusal on the grounds of inadequate provision for space within the site for the loading and manoeuvring of vehicles. The unit was designed with a service yard to the front (southeast) and car parking to the side (northeast) and rear (northwest). The proposal includes a despatch dock within the rear car park. The access roads and radii for the car parking area are considered to be insufficient for the manoeuvring of HGVs resulting in HGVs having to use part of the private area of the neighbouring vacant unit at No.17 Tanners Drive. The Engineer is concerned that the occupation of the neighbouring unit would result in HGVs reversing for long distances on lengths of public highway. The road between the parking areas for units 15 and 17 is adopted; therefore, the reversing and manoeuvring of HGVs within this area would be detrimental to the safety of users the public highway and the users of the car parks for units 15 and 17. There is inadequate access to, and vehicle movement within, the site; therefore, the proposal is contrary to local plan policy D1. In previous layouts the intensity of the use of this area by HGVs was much more limited in scale and did not involve dispatch.

Noise:

PPG24 Planning and Noise states that much of the development which is necessary for the creation of jobs will generate noise, the planning system should not place unjustifiable obstacles in the way of such development; however, local planning authorities must ensure that development does not cause an unacceptable degree of disturbance and should bear in mind that the subsequent intensification or change of use may result in greater intrusion (PPG24, para.10). PPG24 also recognises that the sound level within a residential building is not the only consideration; most residents will also expect a reasonable degree of peaceful enjoyment of their gardens and adjacent amenity areas (PPG24, para.17).

On receipt of the second noise report the Senior Environmental Protection Officer is satisfied that noise abatement measures can reduce the noise of the externally mounted compressor to an acceptable level during the daytime. The submitted report states that the compressor could operate up to seven days a week but only during the daytime 0700 to 1900 hrs. Therefore, the Senior Environmental Protection Officer has no objections to the compressor subject to a condition restricting the use to between 0700 to 1900 hrs; the Officer states that the period between 1900 and 0700 hrs would be of most concern with regard to noise disturbance.

The Senior Environmental Protection Officer remains concerned regarding noise from chiller units on lorries. The occupiers of neighbouring residential properties raised objections based on noise disturbance from the chiller units on lorries and the 'beeping' sound of vehicles reversing. PPG24 states that the character of noise should be taken into account as well as its level; sudden impulses, irregular noise or noise which contains a distinguishable continuous tone

will require special consideration (PPG24, para.11). The original service yard for the unit is located on the opposite side of the building from the residential dwellings with the building and increased separation distance reducing the impact of noise on the residential area. However, the current application includes a despatch dock to the rear of the unit. This intensifies the use and alters the character of the land to the northwest of the building from rear car park to service yard. The Senior Environmental Protect Officer considers the proposed use as different to that of the Silo that was previously located in this area within the car park. The Silo would have had deliveries by HGVs; however, they would not have been of the same frequency and would have generally taken place within the working day. As the access to this area is below standard lorries may be required to reverse long distances. The sound of vehicles reversing and the noise from the chiller units on lorries has a significant impact on the amenity of neighbouring properties including an impact on the reasonable degree of peaceful enjoyment of residential gardens. Therefore, the proposal is contrary to local plan policy D1.

Residential development site:

Outline permission was granted in 2005 (04/01148/OUT and 05/00377/OUT) for a residential development of 3 or 4 dwellings within the rear gardens of properties on Wolverton Road. The new residential properties would be located on the opposite side of Railway Walk directly to the rear of the application site and approximately 30m away from the new structures that form part of the current application. Although the residential properties have not yet been constructed the period for reserved matters to be submitted has not expired; therefore, consideration should be taken of the impact on the residential development site. The current application produces an intensification of use of the area to the northwest of the unit; which would have a significant detrimental impact on the residential development site.

Other:

The Design and Access Statement refers to Local Plan Policy E4 as of greatest relevance in this instance. However, Policy E4 Employment Development in the Town, District and Local Centres is not relevant to this application, as the Blakelands employment area does not form part of a town, district or local centre.

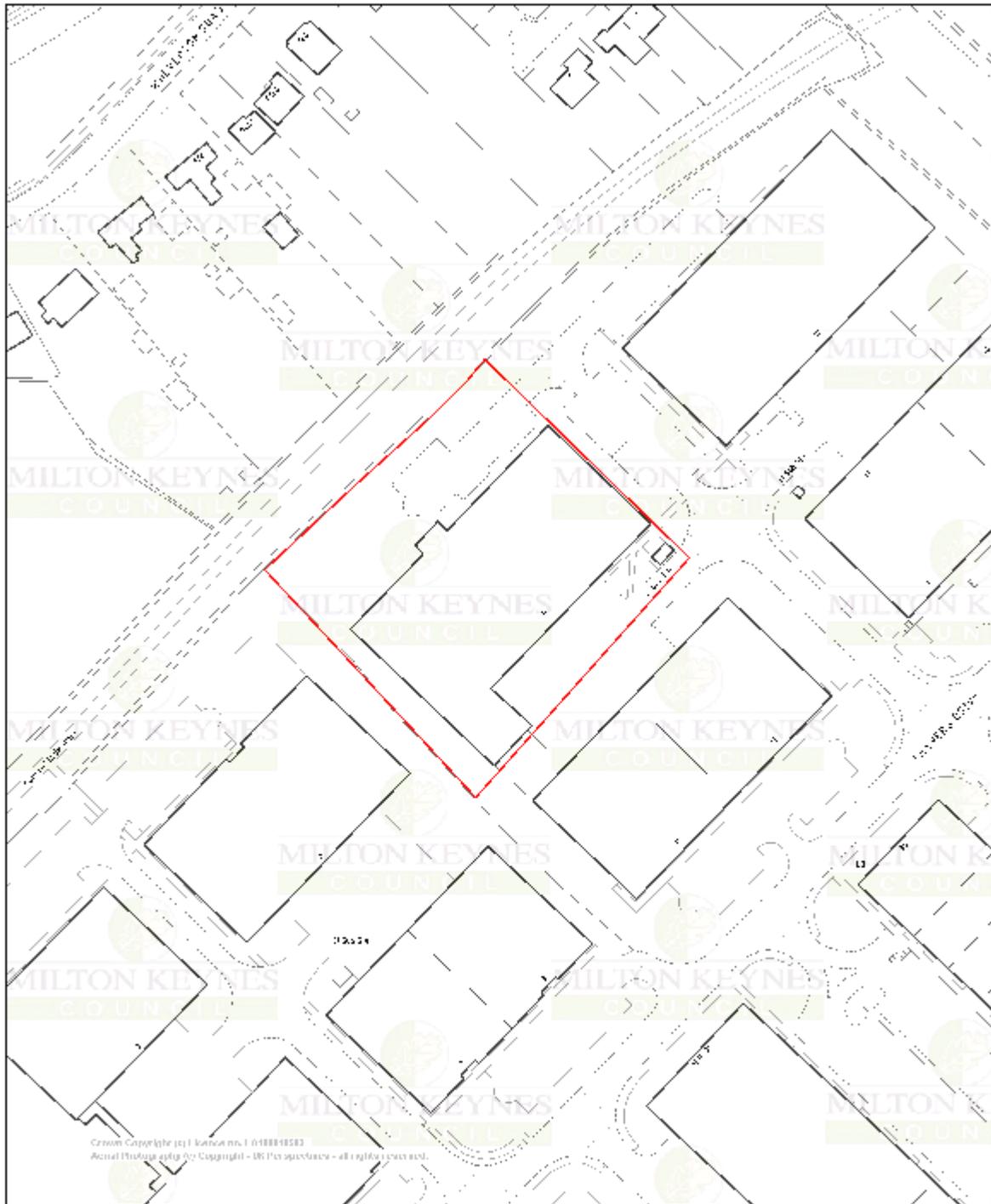
## CONCLUSION

In conclusion it is considered that the operation has outgrown the site and the current application represents an over-development. It is considered that the proposal would alter the rear area from mainly a car park that contained other equipment (including a Silo) to an area that is predominantly a service yard that contains some car parking. Evidence that the application represents an over-development can be found in the shortage of on-site parking provision and the insufficient space for the manoeuvring of HGVs to the despatch bay located within an area originally designed as a car park. The development has already led to objections from neighbouring residential properties on the grounds of noise disturbance both from the compressor unit and from HGVs reversing and parked with their engines running. Also, it is likely that the occupation of the currently vacant neighbouring unit (No.17 Tanners Drive) would intensify the lack of sufficient

parking provision and insufficient space for the manoeuvring of HGVs leading to additional on street parking and manoeuvring of vehicles to the detriment of public highway safety and convenience. The application is, therefore, contrary to local plan Policies D1 and T15.

#### RECOMMENDATION

It is recommended that permission be refused.”



Crown Copyright (c) 1. Licence no. 1 0100019593  
Aerial Photography Copyright (C) Geospaces - All rights reserved.

15, Tanners Drive, Blakelands, Milton Keynes.

Scale 1/1250

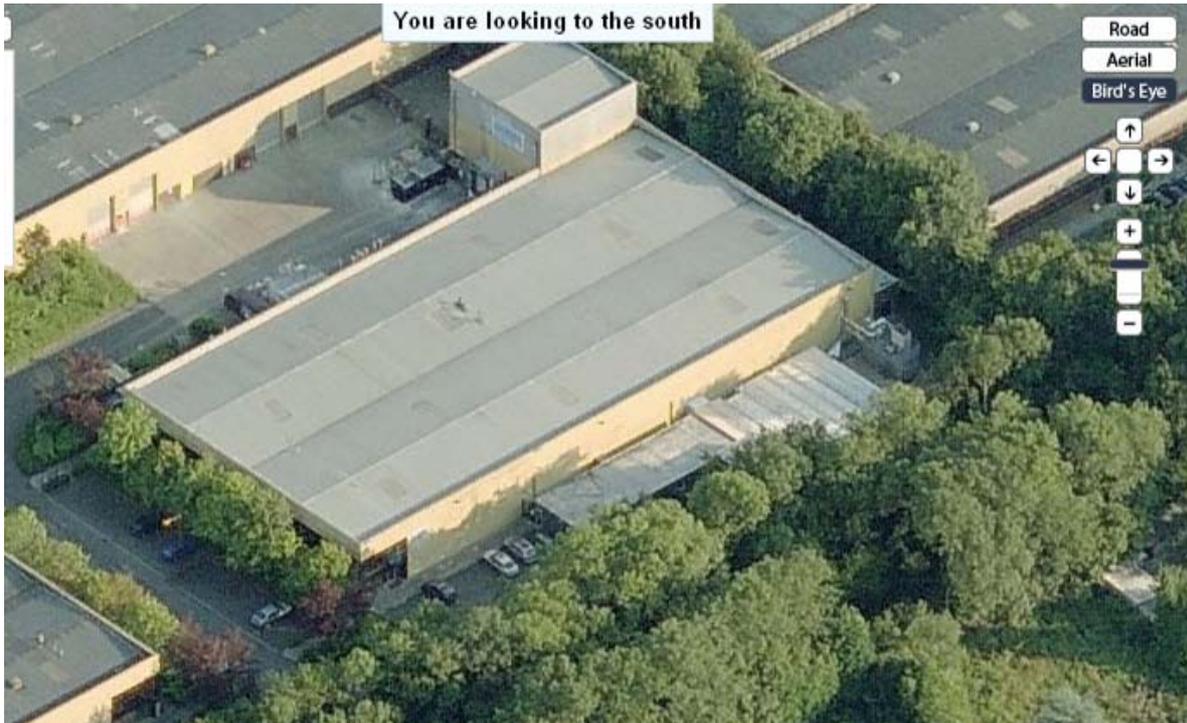
Date 9/9/2009

Centre = 486144 E 242986 N

Author Julian Smith

Crown Copyright (C) Licence No. LA100019593 - 2008  
Aerial Photography Copyright (C) Geospaces - All rights reserved.





From 'aboutmyplace.com' – view from the north. The 'unauthorised development' is visible along the lower side of the Unit. Units 11 and 13 are top left of the picture. Below: Rear car park at the site, showing portable cabin and loading dock; chiller units beyond. The fence is visible to the right of the despatch dock.

