

**Southampton City Planning & Sustainability**  
**Planning and Rights of Way Panel meeting 16 August 2011**  
**Planning Application Report of the Planning and Development Manager**

<b>Application address:</b> Unit A Bakers Wharf 20-40 Millbank Street SO14 5QQ			
<b>Proposed development:</b> Retention of use for the production of sheet plastic (Class B2 - general industrial use) together with the retention of associated elevational changes including 8 grilles to northern facade and noise attenuated vents to roof			
<b>Application number</b>	11/01007/FUL	<b>Application type</b>	FUL
<b>Case officer</b>	Steve Lawrence	<b>Public speaking time</b>	5 minutes
<b>Last date for determination:</b>	11.08.2011 (Over time)	<b>Ward</b>	Bevois
<b>Reason for Panel Referral:</b>	Member referral and complex planning history	<b>Ward Councillors</b>	Councillor Barnes-Andrews Councillor Rayment Councillor Burke

<b>Applicant:</b> Baba Trading Ltd	<b>Agent:</b> Consultant Planning Services
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<b>Recommendation Summary</b>	<b>Refuse</b>
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**Reason for Refusal – Unacceptable noise disturbance**

The retention of this general industrial use, operating on a 24 hour a day basis for most days of the year is considered to be injurious to the residential amenities of those living in the Northam Estate opposite the site during the late evening and early morning hours, especially during still, dry weather conditions, by reason of adverse noise impact. Notwithstanding the works which have been undertaken to seek to mitigate noise impact, a number of site visits have revealed a low continuous tonal hum is still present, with intermittent noise episodes, such as a bell ringing when certain plant is in operation, clearly distinguished above background noise levels in the immediate area. The council, as local planning authority, is mindful that such disturbance has been present since 2002; the use is unlawful and has generated complaints, substantiated by noise monitoring. Two planning Appeals have been dismissed, the latter to an Enforcement Notice, which the Inspector upheld and which the applicant has breached. The last Inspector was not prepared to impose mitigating conditions without the certainty of such mitigation working. Officers have also witnessed a side fire exit door being left open and consider that conditions requiring openings to be kept shut during certain hours, deliveries not to be received during certain hours and on-going maintenance of plant to involve an intolerable level of supervision, where the basic test of enforceability is therefore in grave doubt. The council notes the local employment Baba Trading provides, but in overall terms considers the harm from this use continuing on a 24 hour a day basis to be harmful to the amenities of those living close by. As such, the proposals are considered to be contrary to 'saved' Policies SDP1 (i) and SDP16 (i) of the City of Southampton Local Plan Review (March 2006).

<b>Appendix attached</b>			
1	Development Plan Policies	2	Planning history summary
3	Appeal decision dated 8 January 2010	4	Appeal decision dated 15 October 2010

## **Recommendation in full**

Recommendation 1 - Refuse.

Recommendation 2 – Institute Court proceedings to prosecute the breach of an effective Enforcement Notice, to secure the cessation of the unauthorised use for the manufacture of plastic products.

Recommendation 3 – Provide the applicant with access to an updated list of available commercial property to allow for relocation of the business to more suitable and authorised premises.

### **1.0 Background**

- 1.1 The application site has historically been used for as a Transport Depot ('Bakers Transport Ltd' from 1963 and in more recent times, until plastics manufacturing started, for storage and distribution purposes (use class B8). In 2002 a planning application was submitted seeking the change of use of the premises to enable the manufacture of plastics. This planning permission was never formally issued, although previous planning enforcement dealings on the site have been so on the basis that the consent was issued. The use of the premises for the manufacture of plastics is not lawful. An enforcement notice has subsequently been served relating to this matter.
- 1.2 Enforcement dealings following the 2002 application, secured the submission of an acoustic report which contained a number of mitigation measures which were agreed with the Council's Environment Health Officers. These mitigation measures related to the management of the doors, the installation of an acoustic curtain, the installation of silencers and air control to the machines. The report suggested that the mitigation measures be re-assessed for effectiveness with further mitigation measures being introduced if necessary.
- 1.3 The work currently carried out at the factory is different to that considered in that original acoustic report. A number of noise complaints from local residents have been received by both the Planning Enforcement Team and Environmental Health.
- 1.4 This further application seeks permission to continue the use and retain certain noise mitigation measures installed this year since the Planning Inspector dismissed the Appeal against the Enforcement Notice.
- 1.5 Should Members conclude that these additional measures are still resulting in injury to the amenity of the area by way of late night noise, the next step would be to sanction a prosecution of non-compliance with the upheld and effective Enforcement Notice in the Courts.
- 1.6 During the course of this application's determination, Officers have made unannounced site visits at night, one time accompanied by several Members of the Planning and Rights of Way Panel and more latterly in conjunction with the agent and applicant's acoustic consultant. The weather on each occasion was fair and dry with little to no wind blowing and plant inside the factory was fully operational. Light could be witnessed under the left hand side door as one looks at the front of the property, indicating an air tight seal has not been achieved, despite an internal roller shutter door having been fitted. During an officer site visit the northern side

door was twice witnessed open during the visit, with staff apparently taking a break from their work. During the Member accompanied visit, the operations of Polystar Plastics were also witnessed in Peel Street. On each occasion, officers have stood at a number of locations at ground floor level and have also listened to noise coming from the factory at third floor level within an enclosed stairwell and on an open walkway within Trent House flats opposite the application site.

## **2.0 The site and its Context**

- 2.1 The application site comprises a 3-storey brick-built building with a large single-storey commercial building behind. This itself is split into two planning units and this application relates to the unit closest to Millbank Street and provides 1,272 sq.m of floorspace.
- 2.2 The south-eastern side of Millbank Street is an area defined by industry and warehousing, whereas the opposite side of the street is predominantly residential in character. The nearest residential properties to the site are directly opposite within the blocks of flats of Trent House and Clyde House. These dwellings are approximately 18 metres from the front boundary of the site.

## **3.0 Proposal**

- 3.1 The application site is used for the manufacture of plastics and this further current application still seeks to regularise this use. Currently the brick-built section of the building is used for ancillary office accommodation, with the manufacturing taking place in the main building.
- 3.2 The main deliveries access to the premises is through a large full-height concertina door in the front elevation to the left hand side as one looks at the front of the building. A roller shutter door has been fitted behind this concertina door. This opening is kept shut, except during deliveries of raw materials and dispatch of product between 07.00-19.00 hours. A similar opening exists on the right hand side. This has been fully blocked up behind its concertina door, which is almost fully drawn over the opening, except for the last metre or so, where a pedestrian height fire escape door opening has been formed, with a security code keypad giving access to nightshift staff. There are two other pedestrian height fire-escape doors, one on either side of the building, set back from Millbank Street.
- 3.3 There is a forecourt area to the front of the site where delivery vehicles may pull-in off the carriageway and car parking spaces are also provided in this area. The delivery of plastics and the removal of the finished product occurs on a daily basis (except Sunday according to the agent) and items are removed to and from the warehouse by fork-lift truck. The warehouse itself provides a single open area, which accommodates a range of machinery used in the production of plastic film and bags. The manufacture of plastics is generally a 24 hour operation, because the machinery needs to run a high temperature, which to reach this operational temperature from the machinery being switched off is about 5 hours. The company employs 25 people on a full-time basis.
- 3.4 The applicant's agent has made a planning statement in support of the current proposals, including a report by an acoustic consultant, which focuses on the following matters:-

- Night time noise generated by the factory, because background noise during the daytime usually masks any noise coming from the site. The current application seeks to retain the use for general industrial purposes, on the basis of the further works that have been undertaken, rather than see the imposition of planning conditions for unspecified controls which may or may not achieve their desired objectives.
- The last Planning Inspector was not prepared to impose a planning condition on noise mitigation, because it was not known at that time what the works would be, their likely efficacy and the ability to enforce any planning condition about the on-going maintenance and operation of such measures, should they mitigate the problem. The applicant has therefore carried out a series of measures and has commissioned an acoustic report to verify their efficacy.
- The first Planning Inspector for the Appeal against 09/00580/FUL - (Retain Class B2 use (manufacture of plastic products) - did not dismiss the Appeal on grounds of vibration or odour, after having made a daytime site visit (see paragraphs 10, 11 and 17 of **Appendix 3**. The second Inspector reached a similar conclusion in respect of odour in paragraph 16 of **Appendix 4**). The Inspector concerned himself with noise break out from the factory as a result of doors being left open, but went on to say that alternative ventilation with doors kept shut could also be problematic. Since no details of any alternatives were in front of the Inspector, he did not consider a condition or conditions could be suitably framed to meet the test of Government guidance and so dismissed the Appeal for retention of B2 use as being contrary to Saved Policies SDP1 and SDP16 of the Local Plan Review (LPR).
- Criticism is made of the wording of requirements to the effective Enforcement Notice, in that it is held by the agent that the authorised use of the premises is as a heavy haulage transport depot, not for B8 Storage and Distribution use, implying that reversion to warehousing under B8 would itself not be compliant with the permitted use under decision 757/1231/86R1 in 1963 (See **Appendix 2 – Officer note - the second Inspector had the opportunity to vary the terms of the upheld Enforcement Notice but did not do so for the reasoning set out in paragraphs 19 and 20 of Appendix 4**).
- The second Inspector considered an Appeal against the Enforcement Notice. He made two site visits – one during the daytime and one during the night time. A deemed application for retention of the use/seeking of less drastic measures to address the problems/longer time to comply with the Notice were considered, in light of the attenuation of roof mounted ventilation fans (originally fitted in December 2004), a generator attenuated and 1 piece of plant being adjusted. Some adjustments had also been made to the envelope of the building (including blocking up of the right hand concertina door opening behind the door and installation of a second roller shutter door lowered behind the existing left hand door opening/concertina door. This roller shutter door and concertina door in front of it are kept closed between 19.00-07.00 hours).
- An agreed night time noise level of 48-49 dB  $L_{LAeq}$  was at issue and found to be unacceptable. When fans were switched off, a noise level of 40 dB  $L_{LAeq}$  was comparable to background levels. A condition to require doors to be kept closed between specified hours was thought reasonable and enforceable, but again no scheme was in front of the Inspector to mitigate the fan noise and he did not consider it was possible with certainty to specific a condition to remedy that matter. With the fans switched off, workers would naturally want the doors left open to ventilate the premises leading to unacceptable harm from noise break out. The Appeal was dismissed.

- The applicant has set themselves a target of designing noise attenuation to air intake and extractor fans of 35 dBA, 5 DBA below background levels. And the overall combination of noise from that ventilation system and work area noise break out through the building structure and doors to a level no higher than 40 dB (A). The submitted acoustic report shows noise levels measured of 39.9 dBA<sub>L<sub>Aeq</sub></sub> at ground floor level and 40.9 dBA<sub>L<sub>Aeq</sub></sub> at third floor level by Trent House flats opposite the site, with fans switched on. The respective figures with fans switched off, were 38.4 dBA<sub>L<sub>Aeq</sub></sub> and 40.6 dBA<sub>L<sub>Aeq</sub></sub>. The consultant asserts that these figures slightly overstate impact to facades containing habitable room windows in Trent House, which are arranged at right angles to the application site. I.e. a blank flank wall to Trent House faces Baba Trading premises, the only fenestration being to a common stairwell. Measuring procedures under BS4142:1997 were followed. Five of the production units were in operation that night with one unit stopped, representing typical operations. All doors to the premises were shut. The acoustic consultant based his conclusions on noise measurements undertaken the night of 25 May 2001.
- The acoustic consultant concludes that because of levels of residual noise it is not possible to establish precisely the specific noise level attributable to Baba alone, but his best estimate being 34-37 dB(A), when ventilation fans are operating at maximum speed and with all doors closed. If permission were to be granted, conditions setting noise limits and a requirement to keep doors closed between specified hours are anticipated. The agent says elsewhere that the applicant would even entertain a requirement for doors to be kept closed at all times on Sundays.
- The current application therefore seeks to show that the attenuated rooftop fans are capable of being operated without detriment to neighbouring residents, such as to allow doors to be kept shut, which in turn would be 'policied' by the applicant's own CCTV system, to demonstrate to the LPA that doors were being kept shut on request. The chosen method of passive ventilation has been carefully designed and is acoustically treated such that it does not produce any additional noise, or act as a pathway for noise from within the premises.
- Reference is made to Policy CS6 of the Core Strategy in terms of the planning merits of retaining employment on the site and having a building occupied for its safeguarded purpose, contributing to the health of the local economy. It is stated that the manufacture of plastic products is a significant sector within the local economy serving both national and international trade with specialist knowledge (1 year of training asserted) serving a diverse market - (Two other specialist firms of this nature exist locally – Polystar Plastics nearby in Peel Street and Siva Plastics over the river in Spitfire Quay, Hazel Road). 25 full time equivalent jobs are provided on a shift basis, some from the adjoining Northam estate, others from Bevois Valley and Nicholstown areas. It is suggested this provides a higher employee/floorspace ratio than other businesses that might otherwise come to occupy the building. Productive use is being made of an existing building, thus saving similar development on Greenfield land in the countryside.
- The owner has been unable to find any suitable alternative premises, owing to the need for skilled labour, size of floorspace, electrical power supply (at least 500kVA), adequate access by multi-axel HGV's and physical height constraints of available vacant premises in Test Valley, Eastleigh, Fareham and Gosport areas (important infrastructure features of the existing site/area). A table has been produced as evidence of the 24 alternative properties researched, ranging between 6,480 to 53,100 ft<sup>2</sup> against the above criteria. An 'exchange' with another user on Baker's Wharf has also been considered but has not borne fruit as a solution.
- A flood risk assessment has been submitted concluding low risk and a series of measures to mitigate any risk to human life, including subscribing to the Floodline

Warnings Direct service offered by The Environment Agency, use of first floor for emergency evacuation, chain escape ladder installed at first floor to allow rescue if necessary and 10 person inflatable dinghy kept on first floor for emergency use if required.

- That the use needs to operate 24/7, except for Christmas closing between 22 December to following early January each year, allowing for full scale maintenance of plant and machinery. A phased re-commissioning of machinery then occurs to allow full production to begin in the first week of January. The machinery needs to run hot and takes 5 hours to reach running temperature required for the manufacturing process – (Something the second Inspector acknowledges in paragraph 19 of **Appendix 4**). Turning the machinery off each night would therefore seriously disrupt production and is not considered tenable.
- Ventilation and air extraction has been addressed by acoustically attenuating the 4 roof fans (now suspended from the roof, rather than as previously mounted on the roof) and drawing cool air in via the new 8 air intake grilles (also acoustically treated), to allow a tolerable work environment and be able to keep doors shut. Between 6 to 9 complete air changes within the building per hour can be achieved. The rooftop ducts have been fitted with silencers projecting up- from the roof surface. It is asserted that when in full operation the noise coming from the factory is below ambient background noise levels outside throughout a 24 hour day. The system installed at the factory has been designed to avoid the use of mechanical or forced air intake, (which itself might have created other noise issues). Air is drawn through the grilles by being sucked out of the rooftop fans.
- Owing to the above considerations, it is asserted that all previous concerns relating to night time noise have now been addressed. It should be noted that the current new grilles/fan system first became fully operational on 20 May 2001, after the date of the most recent complaint to the council's Pollution and safety Team in April 2011.

Commentary on these matters is given in the planning considerations section of this report.

- 3.5 The applicant's agent has sent an e-mail to explain that on or around 16 June 2011, Baba Trading reported what they considered to be the strong smell of gas in the area to the Gas utility Company, who later arrived carried out testing and confirmed no gas leak at Baba Trading's premises. Baba later that day or the following day received an odour complaint from a local resident. Baba explained what had occurred.
- 3.6 The applicant's agent had also supplied the Council two CD-Roms dated 8 and 9 February 2011. These purport to show CCTV footage from those dates and proof that the left hand side door – as one looks at the front of the factory – remained shut during the night. This is the date that a complaint had been received about the factory made by a local resident to the Council's Pollution and Safety Team. The agent asserts that this proves that it could not have been the factory that was prompting the complainant to complain. Regrettably, council officers have not been able to 'run' the footage when loading it on computer to verify whether the footage actually does show this door to have been closed on those dates during the night/early morning of 8 and 9 February 2011. The agent has been advised of this, but no alternative means of viewing the footage has been submitted for review.

## **4.0 Relevant Planning Policy**

- 4.1 The planning policies to be considered as part of this proposal are scheduled in **Appendix 1** to this report.
- 4.2 The site is located within a designated flood zone and allocated on the Proposals Map of the Local Plan Review (LPR - March 2006) for industry reliant upon wharfage (LPR Policy REI12 (i)). However, the site has been divorced from the river frontage for over 50 years. The first Inspector (paragraph 8, **Appendix 3**) concluded:-
- “Furthermore, the binding Inspector’s Report into the LPA’s Core Strategy, which in time will form part of the Local Development Framework replacing the existing Local Plan Review, concludes that a special or additional policy to protect sites for marine businesses is neither necessary nor desirable”.*
- 4.3 LPR Policy SDP16 seeks to prevent noise-generating development where it would have an unacceptable impact and encourages the use of measures to mitigate any noise impact to an acceptable level.
- 4.4 LPR policy SDP1 is also applicable in respect of protecting the amenities of local residents.
- 4.5 Core Strategy Policies CS6 and CS7 seek to promote/sustain economic growth and safeguard existing employment sites.
- 4.6 Policy CS23 is relevant to all new development within the designated floodplain.

## **5.0 Relevant Planning History**

- 5.1 Permission for the erection of a building to be used as a ‘Transport Depot’ was given in 1962, further to an earlier outline permission that year for ‘erection of transport depot, warehouse, offices and stores, also construction of an additional vehicular access’. Later in 1963, the permission was modified to allow the construction of the office element forming the front part of the premises. No planning conditions were attached restricting when the premises could operate. By comparison, Trent House and the surrounding flats were built under permission granted 1956, 1958 and 1959.
- 5.2 The history of the site is attached in **Appendix 2** to this report and largely summarised in Sections 1 and 3 above. Historically the site has been used as a road haulage depot.

## **6.0 Consultation Responses & Notification Representations**

- 6.1 A consultation exercise in line with department procedures was undertaken which included notifying adjoining and nearby landowners, and erecting a site notice on 30<sup>th</sup> June 2011. At the time of writing the report, 4 written objections had been received including a common e-mail from Ward Councillors Rayment and Burke and separate e-mail of objection from Ward Councillor Barnes-Andrews. A petition of objection signed by 21 people from 20 different flats located opposite/near the site has also been received. Ward Councillors Rayment and Barnes-Andrews have also contacted the Planning and Development Manager to express their objections to this application and concerns about this matter which has been at issue for 8

years. 3 letters of support have also been received, two on behalf of the freeholder of the building and one from the Hampshire Chamber of Commerce. All persons who have historically made complaints either to Environmental Health Pollution & Safety Team and the Planning Enforcement Team have also been separately and confidentially notified to give them an opportunity to comment on the revised proposals or be represented by their Ward Councillors, should they wish to retain their anonymity.

6.2 The following is a summary of the points raised:

### 6.2.1 **Objections**

- **Noise and Disturbance** – The use is noisy and its 24 hour operation causes disturbance to nearby residents, particularly during the night. Some writers acknowledge that ‘they have made adjustments to soften the noise’. Ward Councillors are critical that swifter enforcement action has not been taken and consider that doors are left open owing to the heat workers experience inside the premises (especially during summer months), allowing noise/fumes outbreak day and night. There is no confidence in a planning condition requiring doors to be shut being observed, given the applicant’s track record with its neighbours. Neighbours have lost confidence in the ability of the planning system to protect their residential amenities, where previous applications have been rejected and two Planning Appeals dismissed, the last against a valid Enforcement Notice, which was upheld. The last Planning Inspector concluded the noise was unacceptable during a lengthy early morning hours site visit.
- **Odour Disturbance** – The manufacturing process creates an unpleasant odour, which when the wind in a westerly direction is carried straight across a single carriageway street, straight into people’s homes. The factory operates on a 24/7 basis exacerbating that problem. The production of sheet plastic is environmentally damaging and should not be allowed to be carried out close to residential property.
- Granting B2 general industrial use would leave the possibility of wider further nuisance if additional or different machinery were to be installed.
- The business should be relocated to more appropriate premises to retain employment for the city, whilst safeguarding the amenities of residents.

### 6.2.2 **Support**

- Challenging to find respectable businesses for these properties and it would be a shame to lose this business.
- Difficult to know where such a business could relocate to in the city.
- Problems, which Baba accept previously existed, have been addressed by the new application, resulting in noise outside the factory meeting the level considered reasonable by the Planning Inspectorate. Extensive works have been carried out under the advice and supervision of an acoustic consultant. Monitoring equipment has been installed at the premises to ensure employees meet guidelines. It is considered that previous reasons for refusing planning permission, service of an Enforcement Notice and reasoning for dismissal by Planning Inspectors have been



overcome. This firm makes a positive contribution to the local economy and local employment.

6.2.3 All of the above are addressed in the Planning Considerations Section of this report.

### 6.3 Summary of Consultation comments

#### **6.3.1 SCC Environmental Health –**

- The roof fans were previously judged to be the predominant noise source from Baba Trading prior to the introduction of the attenuators, as tested by the Planning Inspector in September 2011 by the turning off of these fans to hear the difference between the sound levels with the fans on and off (and positions in between). Hence the most recent work to provide an acoustically treated ventilation system to the whole building, which has made a significant improvement to the noise levels from the roof fans. Previously these were holes in the roof with fans in them, and now the extracted air is passed through baffles and attenuators. This has had the effect of reducing the overall sound energy emitted from the building and so has reduced the time-averaged sound levels (Leq's) to close to acceptable – as reported in the applicant's acoustic report. However, I have always been clear that any tonal component should also be removed (broadband background noise such as 'white noise' is less irritating than tonal noises like whines, hums and hisses etc).
- During the recent site visits at midnight a clear and present 'hum' at ground level can be heard on the housing estate opposite. There are concerns that now the roof-fan noise has been reduced, noise emitted through the rest of the building, in particular the left hand side concertina door (as one looks at Baba Trading from Millbank Street), is now prevalent and has a tonal quality – i.e. a hum. It does seem to vary from night to night and having spoken to the applicants, the possible reasons for this are being investigated.
- The 'proof of the pudding is always in the eating' and the council and Planning Inspectors had previously been concerned whether following attenuation of the roof fans, more work would still be needed. This is why it was held to be too open-ended for a condition. In conclusion, now that the roof fans are attenuated, there is still a 'hum' audible at ground level even though overall the sound levels are reading lower. The officer's professional opinion is that whilst the hum noise at the level that has been heard it is very unlikely to constitute a statutory noise nuisance inside someone's home, it is detrimental to the amenity of the area which the planning system aims to protect.
- Assessed from the 3rd floor walkway of Trent House, opposite the site, noise from the whole area was detectable, as Baba was not dominant. The roof attenuators have had a clear effect at this location, as the noise from the roof fans was previously dominant there. The levels here were acceptable and in line with the acoustic consultant's report. In this location at this height noise sources from across the industrial area could be heard and the contribution from Baba was indistinguishable, with no hum from Baba audible. It is considered that on the ground, noise from the front where the roller shutter doors are, and perhaps elsewhere in the structure, is still dominant and not insulating at the frequencies to attenuate the hum.

- The letter by Robert Davis Associates dated 27 May 2011 reports the findings from noise monitoring conducted on behalf of Baba Trading on 25 May 2011. The report estimates a specific noise level in the region of 34-37 dB(A) (which would be acceptable if no tonal content), stating that 'from observations at ground floor it was evident that noise levels were generally dominated by residual noise from sources other than the Baba factory. Noise from Baba could sometimes be identified as a faint 'hum'. This might be acceptable if only occasional.
- On a further night time visit it was the officer's subjective opinion is that noise levels from Baba Plastics were quieter last night than the previous occasion. But on both nights the officer could easily & clearly hear a continual hum at ground level in front of Trent house facing Baba, clearly coming from Baba. Because Baba didn't know an assessment was being made, this is representative of their normal working between 12 midnight and 1am. In terms of BS4142, a +5dB correction can be added to the specific noise level if there are certain acoustic features such as discernable continuous note such as a hum. The last planning appeal stated that in achieving an acceptable noise level there should be no tonal component, in which case the specific noise level would be the same as the rating level. If there were no tonal component the Pollution & Safety Team would be quite happy with the specific noise levels there now. However with the continuous hum, adding the 5dB correction gives a rating level of 39-42 dB which is not going to meet the 40dB level agreed at ground floor level.
- At ground level on both nights the hum from Baba Plastics could be heard on the Northam estate in between vehicle passes. On one occasion officers could detect the hum as far away as the far end of flat 3 Trent House, and on another night visit half way along flat 2 Trent House. The hum from Baba is audible at ground level in the area between Forth House and Clyde House, and on the other side of Clyde House between it and Trent House. Occasionally a bell rings for about 10 seconds inside Baba Plastics which is also clearly audible on the estate in these locations. The Pollution and Safety Team had expected that Baba Plastics would have contained their noise so that no identifiable acoustic features such as hums and bells could be heard on the Northam housing estate attributable to Baba Plastics.
- It is considered that the noise from Baba Plastics still remains detrimental to the amenity of the area during the night time hours by reason that there is still a tonal hum clearly audible at night time on the housing estate which is clearly attributable to Baba Plastics and their bells are also audible periodically.
- However, officers also wish to make it clear that the noise levels from Baba Plastics, although audible as a hum outside, are not of a magnitude to constitute a statutory noise nuisance inside premises. If we were to just hypothetically say planning permission were to be granted, and Environmental Health's Pollution & Safety Team received noise complaints in the future, at the noise levels recently witnessed, officers would be extremely unlikely to be able to take formal action against the company under the Environmental Protection Act and require further works.
- The noise still arising from Baba Plastics on the housing estate is of a level really between that which would constitute statutory noise nuisance (preventing residents from sleeping, or awakening them in the night etc) and the level which we expect from a noise creating businesses in the city to contain their noise so as not to raise

the background noise levels of the area and not create audible tones at adjacent noise sensitive locations to safeguard the local amenity and minimise the adverse impact of noise (PPG24). There is research of the link between environmental noise and negative health effects in terms of in particular hormone and cardiovascular effects.

- Further night time monitoring has shown that frequencies of 80Hz and 100Hz stand out from Baba, both inside the factory and outside on Northam housing estate. It is these frequencies which constitute the tonal hum that officers can hear, and if they could be attenuated then in my opinion Baba Trading would have minimised adverse effects on the local and natural environment.
- If the Panel are minded to grant planning permission, suggested conditions would be:

All external doors to the factory area be fitted with close-fitting seals such that light from inside the factory cannot be seen around and underneath doors when it is dark outside and the door is closed.

All external doors to be kept closed between the hours of 7pm and 7am, except in times of emergency.

A condition to maintain the ventilation system in the roof in perpetuity to achieve the same acoustic standard, in accordance with details of the acoustic specification of the existing attenuated plant

It is hard to suggest a noise limit for a condition which would be enforceable, given that the measured level is so close to the residual background noise level. Tonal components will not show up in a LAeq measurement. A rating level under BS4142 of 40 dB(A) would indicate no tonal components and an overall level which we have previously said would be acceptable. The second Inspector reached a similar conclusion in paragraph 14 to **Appendix 4**.

**6.3.2 SCC Highways Officer** – No objection or conditions suggested.

**6.3.3 SCC Planning Policy Team** - Although the nature of the proposed use of the site is contrary to saved policy REI 12 (i), no objection raised as, firstly, the inland location of the unit does not prevent the future use of the wharf and, secondly, will also safeguard existing employment on the site. It should be noted that the Planning Inspector dealing with the Appeal against the refusal of 09/00580/FUL, did not dismiss the Appeal on the basis of the use conflicting with Saved Policy RE12 (i). The site is located in flood risk zone 3. In terms of Policy CS23, the local planning authority is satisfied that the proposal does not introduce a 'vulnerable' use and that the development is safe in accordance with the requirements of PPS25.

**6.3.4 Environment Agency** – Assessed previous application (09/00580/FUL) as having a low environmental risk and accordingly no specific comments were made. The current consultation has been chased and any view diverging from the above will be reported at the meeting.

## **7.0 Planning Consideration Key Issues**

7.1 The key issues for consideration in the determination of this planning application are:

1. Principle of development and flood risk;
2. Impact on residential amenity in terms of noise and odour disturbance; and
3. Parking and Highways Issues
4. The acceptability of the visual impact of the external alterations that have taken place.

### 7.1 Principle of Development and Flood Risk

7.1.1 Under the provisions of 'saved' policy RE112 (i) of the Local Plan, the retention of the use of the premises for General Industrial purposes (use class B2) is acceptable, owing to its separation from Bakers Wharf. The site provides 25 jobs and contributes to the local economy as well as markets/customers further afield. This planning merit is acknowledged but must be considered in the context of other impacts of the use discussed below.

7.1.2 The site lies within an area of high flood risk; however, the proposed use is not defined as 'sensitive' to a flood event. Accordingly, a sequential test or exception test is not required. Furthermore, since no external changes or alterations are proposed the development would not increase the likelihood of a flood event occurring and the proposal accords with Core Strategy Policy CS23.

### 7.2 Impact on Residential Amenity

7.2.1 The current application is accompanied by an up-to-date assessment of the noise impact on surrounding uses following two specific further measures taken to mitigate the noise. These relate to the fitting of attenuators to the rooftop fans and the fitting of acoustically treated air intake grilles. The submitted report asserts noise disturbance to nearby residential properties is now at an acceptable level prescribed by a Planning Inspector (40 dB (A)).

7.2.2 The report concludes that during the night, the processes within the factory would not exceed the recommended limits due to the background noise.

7.2.3 If the Panel is minded to grant permission, conditions imposed would need to meet the tests of enforceability under DCLG Circular 11/95 and not involve the council, as local planning authority, in an intolerable level of supervision. Having been to site at night and during the day, including a good look inside the building, further assurances were sought from the agent for the application concerning how the acoustic envelope could still be improved. None have been offered since a meeting with the agent and the applicant's acoustic consultant.

7.2.4 The Inspector partly dismissed the last Appeal because of not being confident that requiring works could solve the problem of late night/early morning noise, given the 24/7 shift operation. Clearly there is not much point imposing a condition, which on the balance of probability has no chance of succeeding. To this end the applicant has carried out further works, at their own risk, in an attempt to attempt to show that they have solved the problem. This is a materially different circumstance to what the last Inspector considered. However, the Council's Pollution and Safety Team still consider a 'tonal hum' to be present and directly attributable to noise coming

from the application site, which is adversely affecting the amenity of the area and clearly still causing concern to several local residents who continue to lobby their Ward Councillors on this matter.

- 7.2.5 Several Members of the Panel, have been to the site at night to hear - and to a lesser extent - smell this issue for themselves, to arrive at a fair and impartial decision for a business that is said to be providing 25 jobs in times of economic austerity.
- 7.2.6 In terms of odour disturbance, the applicant's have previously commissioned an odour assessment, and neither Planning Inspector was presented with tangible evidence to conclude this was an issue. Neither Appeal was dismissed on odour issues. The Pollution and Safety Team have not witnessed any issues related to odour. No scientific evidence has been presented to the Planning Service in respect of the current application from objectors. This is not to say that no problems of this nature occur, but without specific evidence that is specifically attributable to Baba Trading, no refusal reason on grounds of odour nuisance is tenable.

### 7.3 Parking and Highways Issues

The number of car parking spaces on the site accords with the maximum car parking standards in the local plan review. The site lies within an area of high accessibility for public transport. The Highways Development Management Team is satisfied that the travel demands of the development can be accommodated within the existing road network. The proposed use would generate fewer trips than the lawful use of the site as a transport depot/warehouse and accordingly there is no requirement for contributions towards site specific or strategic highways contributions. The front forecourt of the site can accommodate the delivery vehicles associated with the development.

### 7.4 Visual impact of the external alterations undertaken

The grilles to the north-eastern elevation are barely visible from the street and in the context of the commercial building on which they are installed and context of surrounding industrial buildings do not harm the visual amenities of the area. The same can be concluded for the extractor box grilles fitted to the rooftop fans, which although visible from the higher flats opposite the site are seen in an industrial context, barely visible from street level, where most will perceive the building. If Members are minded to refuse the application and the unit becomes vacant when the Enforcement Notice is complied with, a new occupier may decide to remove these features in any event.

### 7.5 Summary

- 7.5.1 The current operation of the site still generates noise disturbance to nearby residential properties adversely affecting their residential amenity. This harm identified outweighs the economic merits of retaining the business on this site. Whilst noting the locational requirements of the business, the Member accompanied site visit to Peel Street, noted that Polystar Plastics were able to manufacture similar product in premises which were not as tall as the application site.
- 7.5.2 Measures required to properly attenuate the building to an acceptable level are not able to be identified and may require further review and investment. Such an open

ended condition does not appear to meet the test of reasonableness from an investment and viability perspective from the appellants side or the prolonged timescales of suffering noise problems that may result from the neighbours perspective.

- 7.5.3 Given the number of complaints received over a number of years it is reasonable to conclude that the 82 general industrial processes at the premises are having an impact on local residential amenity - in particular by reason of noise.

## **8.0 CONCLUSION**

The noise impact of the use is still unacceptable. The application is therefore recommended for refusal by the Planning and Development Manager.

### **Local Government (Access to Information) Act 1985**

#### **Documents used in the preparation of this report Background Papers**

1 (a) (b) (c) (d), 2 (b) (d), 4 (l), 5 (e), 6 (c), 6 (h), 7 (a) (b) (f) (n) (q) (u)(v)(w) and 10 (a)(b)

**SL2 for 16/8/11 PROW Panel**

11/01007/FUL



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