

Southampton City Planning & Sustainability
Planning and Rights of Way Panel meeting 29 May 2012
Planning Application Report of the Planning and Development Manager

Application address: 97 Regents Park Road SO15 8NZ			
Proposed development: Continued Use Of Garage For Car Repairs And Car Sales (Sui Generis)			
Application number	12/00096/FUL	Application type	FUL
Case officer	Mathew Pidgeon	Public speaking time	5 minutes
Last date for determination:	18.04.2012	Ward	Millbrook
Reason for Panel Referral:	Previous temporary consent was granted at planning panel.	Ward Councillors	Furnell Thorpe Laming
		Previously consulted Cllrs	Wells Furnell Thorpe

Applicant: Mr Vasilis Andrea	Agent: N/A.
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Recommendation Summary	Refusal
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Reason for Refusal

The development is unacceptable taking into account the policies and proposals of the Development Plan as set out below.

The use of the rear garage at 97 Regents Park Road as a commercial garage has introduced a non-conforming use into a residential suburb that causes harm to the living conditions and wider amenity of neighbouring residents. The increase in activity has caused excessive noise and disturbance which has harmed the reasonable living standards experienced within close proximity to the site. The proposal is therefore considered harmful the character of the area and the amenities of occupiers of surrounding residential development. This planning application has, therefore, been assessed as contrary to policies SDP1 (i), SDP7 (v) and SDP16 (i) of the saved City of Southampton Local Plan (March 2006).

Appendix attached	
1	Development Plan Policies.
2	Reason for Refusal re:09/01201/FUL - Use of existing garage for car repairs and car sales (sui generis) (retrospective)
3	Planning Conditions re:10/00581/FUL - Use of existing garage for car repairs and car sales (sui generis) (retrospective).

Recommendation in Full

Refuse

1. The site and its context

- 1.1 The application site is residential in scale and nature; and is comprised of a detached garage structure which is accessed from Lansdowne Road. The garage is associated with 97 Regents Park Road and was constructed under permitted development prior to the regulations changing in October 2008. The surrounding area is predominantly residential in character.
- 1.2 Although planning permission was granted in 2009 for the formation of a vehicular access to allow car parking at the front with new front boundary wall and gates the consent has not been implemented correctly. Please refer to paragraphs 4.3.1 and 4.3.2 for further a detailed explanation.

2. Proposal

- 2.1 The occupier of number 97 Regents park Road operates a car repair and sales business from the single storey garage which is located to the rear of his property. The garage itself has been constructed with a double skin design. In association with the business cars are bought, repaired and then sold. The applicant makes the case that the business is not open to the public and no passing trade takes place.
- 2.2 The hours of operation for the business is less intense than standard operating hours associated with car repair and sales garages. The applicant states that the business is only open between the hours of 09.30 and 15.30 from Monday to Thursday although it should be noted that the application forms requests permission to also include Fridays.
- 2.3 The applicant has highlighted to the LPA that there are other examples of premises within residential areas of Southampton with similar uses. A total of nine premises are illustrated. The LPA note that the majority of the premises highlighted are historic uses and were not approved under modern planning policies and guidance.
- 2.4 The exception is Villiers Road which gained permission on appeal to operate a tyre fitting centre, but no other purpose associated with the motoring industry (including MOT centre), on 2nd October 2008. The inspector considered that property to be on a border between a residential area and Shirley Town Centre as opposed from being wholly within a residential area and therefore it could be expected that residents would hear activity associated with the adjacent commercial area and thus the appeal was upheld. It should also be noted that the building was previously used as a retail unit rather than being wholly within the boundary of a residential unit.

3.0 Relevant Planning Policy

- 3.1 The Development Plan for Southampton currently comprises the “saved” policies of the City of Southampton Local Plan Review (March 2006) and the City of Southampton Core Strategy (January 2010). The most relevant policies to these proposals are set out at **Appendix 1**.
- 3.2 The National Planning Policy Framework came into force on 27th March 2012. Having regard to paragraph 214 of the National Planning Policy Framework the policies and saved policies set out in **Appendix 1** which have been adopted since 2004 retain their full material weight for decision making purposes.
- 3.3 Policy SDP1 seeks to prevent harm to the amenity of the city's citizens.
- 3.4 Policy SDP7 seeks to protect areas which have established characters. The

policy resists inappropriate development which fails to adequately integrate into the local community.

3.5 Policy SDP16 of the Local Plan resists noise-generating development where it would cause an unacceptable level of noise impact.

4.0 Relevant Planning History

4.1 **07/00789/FUL** - Dropped kerb to form new vehicular access - Refused 28.06.07

4.2 **07/01538/FUL** - Dropped kerb to form new vehicular access to Regents Park Road (resubmission) - Refused 14.11.07

4.3 **09/00925/FUL** - Formation of a vehicular access to allow car parking at the front with a new front boundary wall and gates - CAP 16.10.09

4.3.1 NB Pre-commencement condition 03. (Surface treatment) has not been discharged although the front boundary has been constructed and access is achieved via Regents Park Road. As such the size of the area provided for vehicular parking is in excess of that which was considered acceptable in 2009 and the LPA have not been convinced that surface water does not discharge onto the adjacent highway.

4.3.2 The condition was applied in order to protect the residential amenity of the adjoining property, the visual amenity of the local area, the safety of highway users and to prevent surface water discharge onto the adjacent highway.

4.4 **09/01201/FUL** - Use of existing garage for car repairs and car sales (sui generis) (retrospective) – Refused 30.12.2009 - REASON: Impact on residential amenity (for the full reason for refusal please refer to **Appendix 2**).

4.5 **10/00581/FUL** - Use of existing garage for car repairs and car sales (sui generis) (retrospective). Resubmission of 09/01201/FUL. Approved at panel with temporary permission. Strict conditions applied with the aim of preventing harm to neighbouring amenity (for conditions please refer to **Appendix 3**).

5.0 Consultation Responses and Notification Representations

5.1 Following the receipt of the planning application a publicity exercise in line with department procedures was also undertaken which included notifying adjoining and nearby landowners and erecting a site notice (08/03/2012). At the time of writing the report six representations have been received from surrounding residents; four of which oppose the scheme, one of which is in support and one is not opposed to the scheme provided that the conditions previously approved are correctly adhered to.

Planning related concerns raised by the objectors are as follows:

- Car sales taking place (contrary to condition 03).*
- Hours of operation not adhered to (contrary to condition 04) including weekend operation.
- Front garden is being used for storage of vehicles associated with the commercial activity (contrary to condition 05).
- Doors not kept closed during operation (contrary to condition 08) and thus the operation on site is not inaudible and causes disturbance to nearby residents whilst enjoying private gardens.
- Parking of vehicles associated with the use on the public highway, potential traffic/highway safety issues.
- Incremental increase in hours of operation (with each application)

exceeding recommended hours as per the noise report.

* It is noteworthy that the use of the site for car sales (sui generis) was listed within the description of development (10/00581/FUL) but was not specifically referred to in condition 03 (scope and restriction of use of other classes).

5.2 **SCC Environmental Health (Pollution & Safety)** One of the objectors has stated that there have been complaints as a result of the proposal. It is however noted that there have not been any formal complaints lodged with the council's Environmental Health Team regarding noise.

5.3 **SCC Highways** Objections appear to result from the breach of conditions applied to the original application (10/00581/FUL). Mainly the use of car parking on the front where there is no formal driveway/parking area as there is no dropped kerb along the Regents Park frontage.

5.3.1 No highways related accidents were reported within close proximity to the site within the period of 01/08/2008 - 31/07/2011.

6.0 Planning Consideration Key Issues

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

- i. The principle of development;
- ii. Residential Amenity;
- iii. Highways and Parking;

6.2 Principle of Development

The nature of a car repair business involves noise generating equipment and working methods as well as the generation of fumes, all of which are not conducive to residential environments. The garage is likely to result in an increase in comings and goings to and from the site. The movements would not only be associated with the cars which are repaired and sold but also the delivery of parts and tools. Such movements have the potential to cause disturbance to neighbouring residents. Overall the activity associated with the garage is likely to be of a frequency which is uncharacteristic of the predominantly residential environment.

6.3 Residential Amenity

6.3.1 The representations received demonstrate that the commercial activity has in the past year compromised the reasonable living standards experienced within close proximity to the site. The activity on the site has clearly caused a disturbance to nearby residents to the detriment of their amenity.

6.3.2 Although the applicant has provided a noise report (in order to comply with condition 07 of 10/00581/FUL) representation letters recently received suggest that the recommendations within the report have in part not been complied with and/or the measures recommended are not sufficient to prevent noise disturbance.

6.3.3 In particular representations have been received which claim that the hours of operation are being exceeded and doors are not closed whilst repairs are taking place.

6.3.4 As highlighted by an objector the applicant proposes to increase the hours of operation in excess of the current operational hours and those hours

supported by the noise survey submitted to ensure compliance with condition 07 of planning permission 10/00581/FUL.

- Hours of operation supported by the noise survey: 10:00 to 15:00 on weekdays, and no work to be carried out on weekends and bank holidays.
- Hours of operation supported by Planning and Rights of Way Panel re application 10/00581/FUL (condition 04.): 09.30 - 15.30 Monday to Thursday.
- Hours of operation currently proposed 09.30 - 15.30 Monday to Friday.

6.4 Highways and Parking;

The LPA cannot ensure that the public highway is not used for the parking of vehicles associated with the commercial activity of the site through the use of planning conditions. Planning conditions which might be applied, with an aim of addressing this issue, are unlikely to withstand the tests of circular 11/95.

- 6.4.1 In order to protect residential amenity and in the interests of Highways Safety condition 05. was added in order to ensure that the frontage of the site is not used for the parking or storage of any vehicles associated with the commercial use of the garage. Letters of representation illustrate that this has not occurred.

7.0 Conclusion

- 7.1 Following a temporary period of one year the Local Planning Authority have received letters of representation which demonstrate that harm is caused by the commercial operation of the garage.
- 7.2 The residential environment is an inappropriate location for a development of this nature as such the application is recommended for refusal.

Local Government (Access to Information) Act 1985 **Documents used in the preparation of this report Background Papers**

1(a), 1(b), 1(c), 1(d), 2(b), 2(c), 6(c), 7(a), 9(a), 9(b).

MP3 for 29/05/2012 PROW Panel

Reason for Refusal

The development is unacceptable taking into account the policies and proposals of the Development Plan as set out below.

The use of the rear garage at 97 Regents Park Road as a commercial garage has introduced a non-conforming use into a residential suburb that causes harm to the living conditions and wider amenity of neighbouring residents. The increase in activity has caused excessive noise and disturbance which has harmed the reasonable living standards experienced within close proximity to the site. The proposal is therefore considered harmful the character of the area and the amenities of occupiers of surrounding residential development. This planning application has, therefore, been assessed as contrary to policies SDP1 (i), SDP7 (v) and SDP16 (i) of the saved City of Southampton Local Plan (March 2006).

POLICY CONTEXT

City of Southampton Local Plan Review – (March 2006)

SDP1	Quality of Development
SDP7	Urban Design Context
SDP16	Noise

09/01201/FUL - REFUSAL REASON - Impact on residential amenity

The use of the rear garage at 97 Regents Park Road as a commercial garage introduces a non-conforming use into a residential suburb that would harm the living conditions and wider amenity of neighbouring residents. This would occur and has occurred due to an increase in activity, excessive noise and disturbance, and the potential for additional air pollution. The proposal is therefore considered to harm the character of the area and the amenities of occupiers of surrounding residential development. This retrospective planning application has, therefore, been assessed as contrary to policies SDP1 (i), SDP7 (v) and SDP16 (i) of the City of Southampton Local Plan (March 2006).

Application No: 10/00581/FUL

Subject to the following conditions.

01.APPROVAL CONDITION - Time Limited (Temporary) Permission Condition

The use of the garage hereby permitted shall be discontinued on or before 12 months from the date of this consent.

Reason:

To enable the Local Planning Authority to review the special circumstances under which planning permission is granted for this type of development.

02.APPROVAL CONDITION Personal Consent (Performance Condition)

The development to which this consent relates shall only be undertaken by Mr Andrea and by no other person(s) unless otherwise agreed in writing by the Local Planning Authority.

Reason

In order to control the scale of the operation of the development and in order to reflect the extenuating circumstances for which planning permission is granted.

03.APPROVAL CONDITION - Scope and Restriction of use of other Classes

The use of the garage building shall be limited to the specific use (motor vehicle repairs) within the Town and Country Planning (Use Classes) Order 1987 (or any amendment to, replacement of, or reinstatement of that Order) Use Class B2 (General Industry) of Schedule 2 and for the purposes of clarity shall not be used for any Use Class B1 (Business) or B8 (Storage of Distribution) purpose or activity. No Body repairs work or paint spraying shall take place on the site.

Reason:

In the interests of the amenities of adjacent residential occupiers.

04.APPROVAL CONDITION - Hours of Operation. [Performance Condition]

The garage to which this permission relates shall only be use in connection with vehicular repairs between the hours of 09.30 and 15.30 Monday to Thursday, unless otherwise agreed in writing by the Local Planning Authority.

REASON

To protect the amenities of those members of the public who live close to the facility.

05.APPROVAL CONDITION, loading / unloading [Performance Condition]

The front curtilage of the dwelling house to which this application relates shall at no time be used for the parking and or storage of any vehicles associated with the commercial use of the garage structure hereby approved.

Reason

In the interests of highway safety and residential amenity.

06.APPROVAL CONDITION - Restricted use of garden area

The garden area serving the main dwelling shall remain in residential use ancillary to the dwelling and shall not be used in connection with the commercial use of the garage

hereby permitted, including for any storage purposes, unless otherwise agreed in writing by the Local Planning authority.

Reason:

In order to protect the privacy of adjoining occupiers

07.APPROVAL CONDITION - Noise Report - [Pre Occupation Condition]

Unless otherwise agreed in writing with the Local Planning Authority the hereby approved temporary consent shall be operated in accordance with the mitigation measures proposed by the 'Noise Impact Assessment' by KR Associates v1.1 dated 14th January 2011 for 97 Regents Park Road as supported by the Environmental Health Team (Pollution and Safety). The details/mitigation measures recommended in the approved 'Noise Impact Assessment' report shall be retained thereafter during the hereby approved operation of the site unless otherwise agreed in writing by the Local Planning Authority.

Reason:

To protect the amenities of the occupiers of existing nearby properties.

08.APPROVAL CONDITION, Keep doors closed - [Performance Condition].

All work to vehicles associated with this permission shall be carried out within the confines of the garage and whilst work associated with this permission is being undertaken all doors to the garage must remain closed.

REASON:

To limit the noise breakout from the workshop.

09.APPROVAL CONDITION - Approved Plans

The development hereby permitted shall be carried out in accordance with the approved plans listed in the schedule attached below, unless otherwise agreed in writing with the Local Planning Authority.

Reason:

For the avoidance of doubt and in the interests of proper planning.

Reason for Granting Permission

The development is acceptable for a temporary, personal consent, subject to the imposition of conditions, taking into account the small scale nature of the activity and the requirement for further mitigation works to be undertaken prior to consent be issued. Full regard has been had to the policies and proposals of the Development Plan as set out below. Other material considerations including surrounding character and amenity, in particular the potential for noise and odour disturbance to be caused, have been considered and are not judged to have sufficient weight to justify a refusal of the application. Where applicable conditions have been applied in order to satisfy these matters.. The scheme is therefore judged to be in accordance with Section 38(6) of the Planning and Compulsory Purchase Act 2004 and thus planning permission should therefore be granted.

Policies - SDP1, SDP4, SDP7, SDP15, SDP16 and SDP21 of the City of Southampton Local Plan Review (March 2006); and PPS1 Delivering Sustainable Development, PPS23 Planning and Pollution Control and PPG24 Planning and Noise).

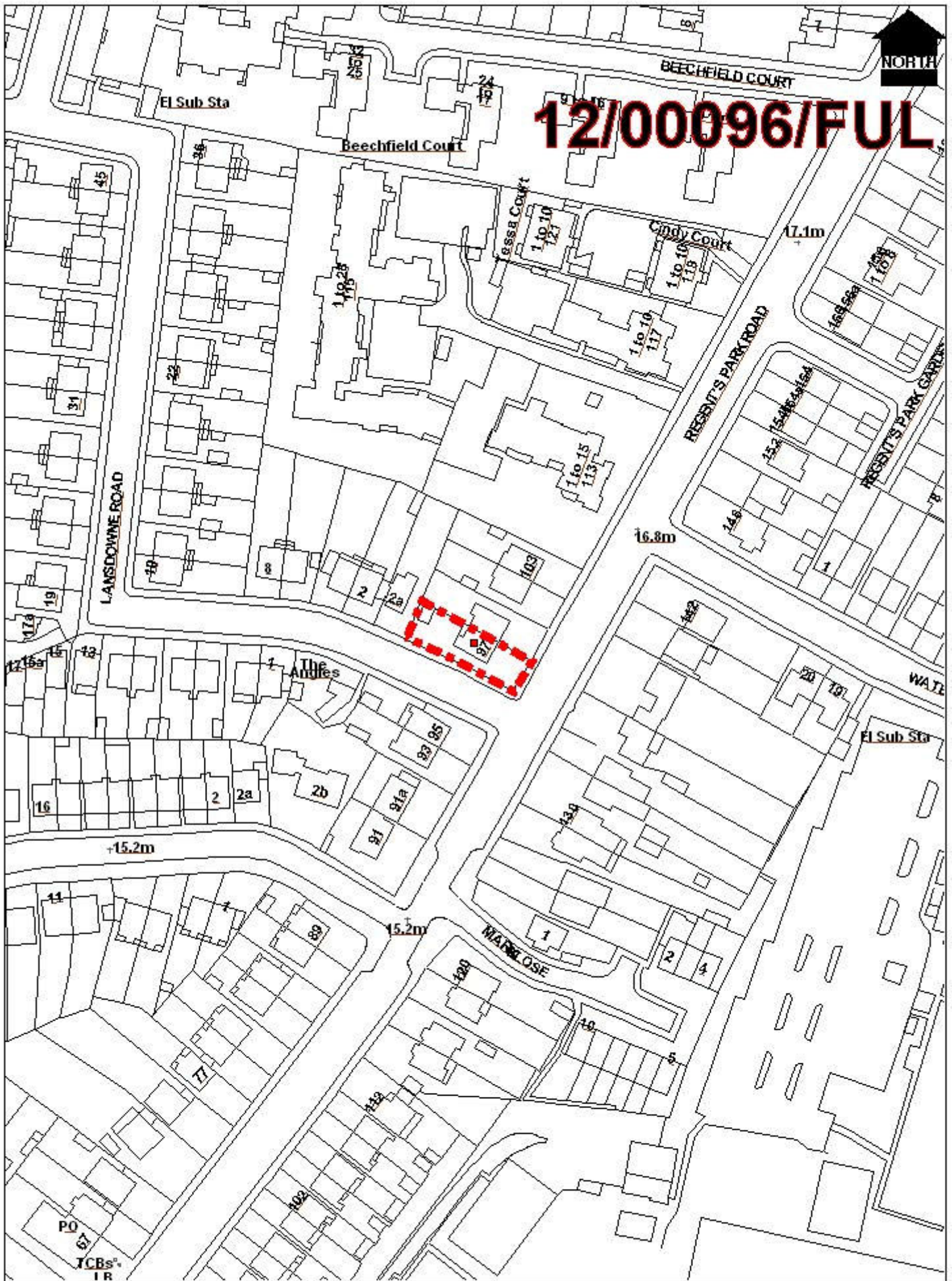
Note to Applicant

1. Temporary Consent.

The applicant is reminded that the consent hereby approved is for a temporary period only and accordingly should the applicant wish to continue to operate the use of the garage for commercial purposes following one year of this consent a subsequent planning application, or permanent consent, shall need to be applied for. It is suggested that such an application is submitted at least two months before the expiration of the hereby approve permission in order to ensure lawful continuation of the commercial activity.

Planning permission might be needed for the installation of subsequently required ventilation equipment.

The applicant should note that should ventilation equipment be required as a consequence of the planning conditions imposed in order to reduce the breakout of noise from the premises a planning application may be required and therefore it is advised that such proposals are discussed with the Local Planning Authority prior to the installation of any such equipment.



Scale : 1:1250

Date : 17 May 2012

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