9th March 2023

Our Ref: SWLC.LPC.5510

Development Services – North
Wiltshire Council
Monkton Park
Chippenham
Wiltshire
SN15 1ER

Dear Sir/Madam

**Town and Country Planning Act 1990**
**The Stoneyard, Potley Lane, Corsham, SN13 9RX**

As your records will show planning permission was recently refused at the above site for the erection of a new storage building (see Application; PL/2022/03399). Permission was resisted on four grounds, which for completeness I have inserted below.

1. *The application site forms part of an area of land that has been safeguarded for the construction of a new railway station and associated infrastructure. The development of a permanent new building at the site would prejudice the delivery of this project and the proposal is therefore contrary to Wiltshire Core Strategy Core Policy 34 (first paragraph); and Policy CNP T4 of the made Corsham Neighbourhood Plan.*

2. *The size and positioning of the proposed building mean that it would clearly feature in views out of Nos. 35-39 Tellcroft Close, to the detriment of their outlook. It would lead to an overbearing relationship that would adversely affect the enjoyment of these properties' private gardens and would be especially acute at No.39, whose small, west-facing rear garden would endure shade in afternoons and evenings. This unacceptable relationship conflicts with Wiltshire Core Strategy Core Policy 57 (vii) and paragraph 130 (f) of the NPPF.*

3. *The application site lies within a core sustenance zone for bats associated with the Bat and Bradford of Avon Bat SAC. The boundary vegetation at the site forms part of the local network of wildlife corridors and green infrastructure network, forming a connection to the major corridor of the railway line with offsite habitat features to the south. The proposed development would be sited approximately 2m from this vegetation, such that there is potential for it to negatively impact on this habitat.*

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*The proposed the siting of the development should have been informed by technical work demonstrating the habitat would not be prejudiced. However, the application has provided no evidence to allow the Council to conclude no adverse impacts would occur and that the development would not result in any net loss of biodiversity.*

*The proposal is therefore in conflict with Wiltshire Core Strategy Core Policies 50, 52 and 57 (ii, iii and vi); policies CNP ED1 (i) and CNP E2 (a) of the Corsham Neighbourhood Plan; and paragraphs 174 (a and d) and 180 (a) of the NPPF.*

4. *Insufficient information has been provided to allow the Council to consider carparking, deliveries and turning space within the development. The proposal is therefore contrary to Wiltshire Core Strategy Core Policies 61 (i and iii) and 64 (iv); and paragraph 112 of the NPPF.*

Unfortunately, the previous planning agent failed to explore the site's planning history, which represents a material planning consideration as it was lawfully commenced. In consultation with your colleague, Mr Daniel Tyrrell from the Enforcement team it has been confirmed that works were formally executed pursuant to applications N.92.0420.F and N.92.0419.F. By email, and having explored the details with his line manager he stated;

"*I have considered this matter in full and in my opinion the planning permissions referenced N/92/00419/FUL & N/92/00420/FUL are extant on the basis that:*

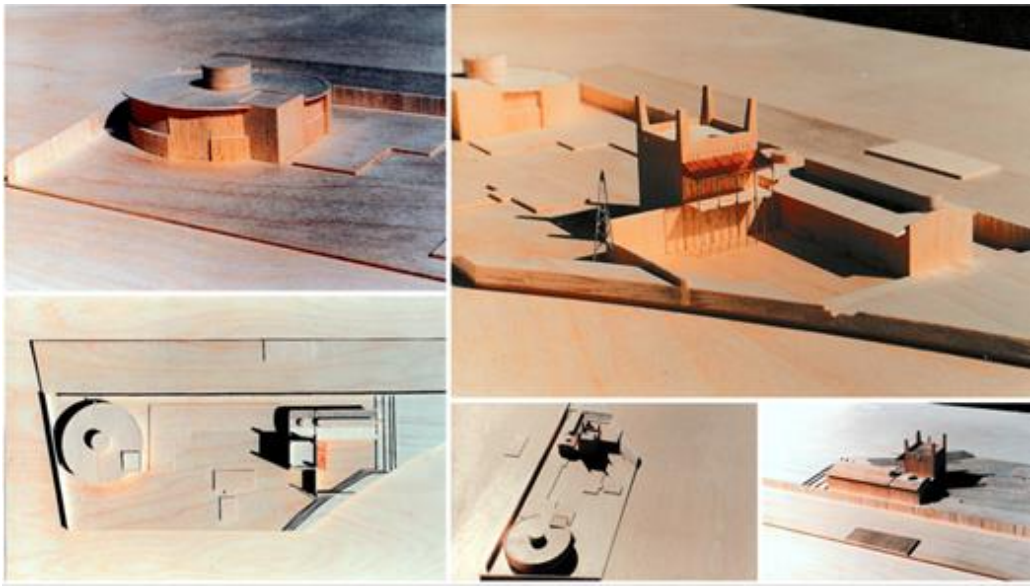
1) *The evidence is unambiguous and precise and demonstrates that on the balance of probabilities a material start was made on both planning permissions within 5 years of the date of the grant of the planning permissions.*

2) *No true condition precedents were imposed on the planning permissions.*

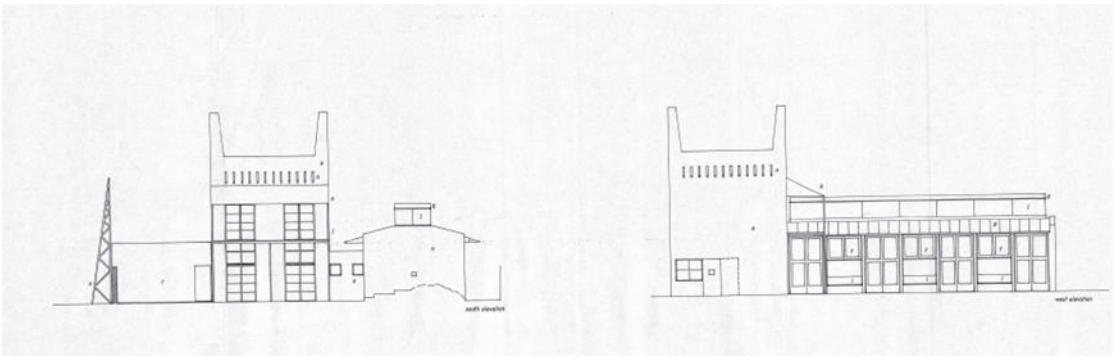
Application N.92.0419.F was described as, 'Erection of Replacement Office, Gallery and Drawing Office', and application N.92.0420.F as, 'Erection of Single Building to be used as Studio and Finished Work Store'. Building Regulation submissions were also made in respect of both applications, and in respect of the second application, the foundations were substantially completed (and have been recorded on site by Mr Tyrrell), along with the provision of drainage works for the first building.

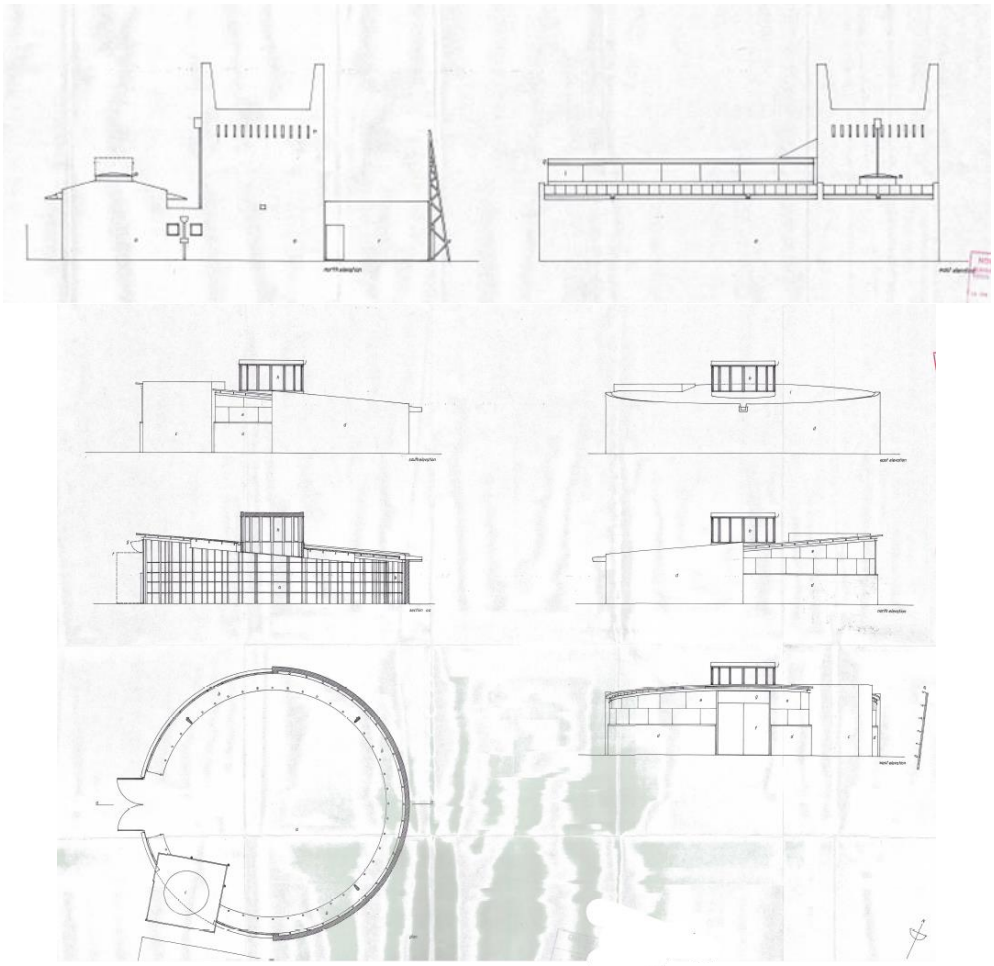
Dated documentation in these regards has been provided to Mr Tyrrell, demonstrating that a substantive commencement in accordance with the provisions to Section 56 of the Town and Country Planning Act 1990 has been made regarding both applications. I do not propose to repeat the submitted documentation as part of this application as the position is believed to be sufficiently unambiguous and both applications are therefore irrefutably extant. The information is of course available and on your council's files.

Plan details regarding these two permissions are inserted on the following page. Initially though, I have seen that a model was also prepared at the time of submissions in 1992 and I've included photographs below showing the two buildings approved, as modelled too.









As you will see from the reasons for refusal above the recently refused application was not resisted in terms of any concerns about the commercial use of the site and therefore it is the purpose of the two separate applications enclosed, supported by this overarching statement, to seek to allow the use of both extant buildings without complying with the terms of condition No 2 imposed on both 1992 permissions.

With regard to application N.92.0419.F condition No 2 reads as follows;

2. *The development hereby permitted shall be used solely for general office, reception, drawing office, gallery and related purposes associated with the stone carving and sculpting activities on the site and for no other purpose, including any other use falling within Classes B1, B2 and B8 of the Town and Country Planning (Use Classes) Order 1987, without the prior grant of planning permission in that behalf.*

The purpose of condition No 2 imposed on application N.92.420.F is similar, but is differently worded, as follows;

2. *The development hereby permitted shall be used solely for the purposes of stone carving, sculpting and associated operations and storage and for no other purpose, including any other use falling within Classes B2 and B8 of*

*the Town and Country Planning (Use Classes) Order 1987, without the prior grant of planning permission in that behalf.*

In both cases the purpose of the related Section 73 applications enclosed are to allow a commercial Class E use and a mixed storage use, within Class B8 to the Schedule to the Use Classes Order or individually as Class E or B8. The dominant use of the buildings on site at the moment is Class B2 and will be unchanged by the enclosed applications.

As you will be aware Section 73 to the Town and Country Planning Act 1990 enables an applicant to apply to develop land without compliance with conditions attached to an extant planning permission, and under this section a Local Planning Authority may amend or remove conditions. Additionally, of course it is understood that a successful Section 73 application results in the grant of a new planning permission, without deleting the original permission, which is therefore a material consideration.

I am aware that the Courts have held that when determining a Section 73 application the amendments permitted should not amount to a 'fundamental alteration' of the proposal put forward in the original application. The case of R (Vue Entertainment Limited) v City of York Council [2017] EWHC 588 (Admin) gave clear support for use of Section 73 in respect of changes to a condition that went beyond 'minor' amendments though.

In that case Vue was a competitor opposed to the use of a Section 73 application relating to the increase of an approved multi-screen cinema from 12 screens with a capacity of 2000 to 13 screens and a capacity of 2400. The Courts though held that the amendment sought did not vary the terms of the permission. The same is I believe true in respect of the enclosed applications, and indeed I repeat that no refusal was presented in respect of the proposed use of the building, the subject of application PL/2022/03399.

It is a matter of fact that both buildings approved in 1992 were formally commenced within the meaning of the Town and Country Planning Act 1990 at Section 56. This has been confirmed by Mr Tyrrell's investigations. There are no impediments to both buildings being completed, and I can confirm that works are now progressing, first with regard to application N.92.0419.F.

Although not relevant to the simple relaxed uses proposed for both extant buildings, I would still like to draw out the distinctions that set aside the recent opposition to new built development at this site. The first reason for refusal reproduced above has been drafted to recognise that, notwithstanding the purely aspirational nature of Policy CNP T4 to the Corsham Neighbourhood Plan, that a 'permanent new building at the site would prejudice the delivery' of the new railway station and associated infrastructure. It follows therefore that had my client been consulted regarding the safeguarding of his land (further to which he is adamantly opposed) it would have been apparent that the policy aspirations were already prejudiced. As said though, the enclosed applications concern a broader commercial use of the site, and not new build development,

so it is not believed to be at issue, and the previously unrecorded scale of built development on the site means the policy aspirations are entirely nugatory.

Before addressing the matters arising in principle, I would also wish to confirm that as the new use relate to the extant and lawful buildings and not a new structure, the relationship to the neighbouring properties has already been approved. The second reason for refusal above is therefore not relevant. Similarly, bar of course my client's statutory requirements regarding protected species, the completion of both approved buildings raises no ecological issues as there are no such impediments to their continued construction, and the third reason for refusal previously reproduced is therefore similarly not applicable.

The same argument is of course applicable to the fourth reason too, however for the avoidance of doubt I have included an annotated site plan which seeks to show the allocation of parking and manoeuvring space, as well as for deliveries etc across the site, to include the existing buildings and those being completed.

Development Principle

Both conditions in question were imposed for the same reason – 'For the avoidance of doubt and to ensure that inappropriate uses do not take place in this locality'. What was permitted though effectively includes office accommodation, a gallery as well as a stone carving workshop, and storage facilities. These mixed uses would currently fall within a range of Use Classes and the site's planning history, outlined in the officer's delegated report regarding application PL/2022/03399, noted the failed Certificate of Lawfulness appeal (21/02142/CLE) which could not support the claimed Class B8 use, based on the fact that there is no single use/unit that could be defined.

The mix of uses carried out and the positioning of various storage containers over the years on different parts of the site have maintained the fluidity of activities and not abandoned or replaced any aspect of the site's commercial mix. In the main the existing buildings are used for joinery workshop purposes, being a use within Class B2 to the schedule to the Use Classes Order. Separate from the conditionally restricted buildings, the subject of these applications, the rest of the site is largely approved for storage use, falling within Class B8 to the Use Classes Order. The purpose of the application is to complement the existing workshop and other storage uses allowing internal storage as well as 'Commercial, Business and Service' uses falling within Class E to the schedule to the Use Classes Order. None of the potential uses are inappropriate on this commercial site (and would be acceptable by definition in a residential area too) and would not therefore give rise to any externalities that would be materially different from the conditioned uses described.

No highway objection was previously raised regarding application PL/2022/03399, but of course the benchmark is by comparison with the stated uses conditioned in 1992 and the related comings and goings from the varied conditions limiting the uses as described. In that regard and particularly by

reference to the severity test at paragraph 111 to the NPPF the potential intensity of use is maintained not to be materially different.

For the reasoning given I trust you have sufficient justification to support the future use of both buildings, approved in 1992 for Class E or B8 uses, varying condition No 2 imposed on applications N.92.0419.F and N.92.0420.F. The expanded potential uses are sufficiently clear and flexible within the Government's intended classification groupings and do not amount to inappropriate uses in this locality exceeding any of the site's recognisable parameters or the design detailing of the buildings to be completed.

Should you wish to discuss any aspect of the two applications supported by this overarching letter to ensure the grant of permission as sought please do not hesitate to contact me direct.

Yours faithfully



Simon Chambers
Director

Enc

Cc Mr B Baldwin