



**Planning Statement in support of an Application
under S 192 (Town and Country planning Act 1990),
For a Certificate of Lawful Proposed Use
Relating to
Units 1-3, Solent Building,
Southmoor Lane, Havant**

Application by Monolution Ltd



Photo – Courtesy of Savills

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CONTENTS

- 1.0 Introduction**
- 2.0 Site Description**
- 3.0 Planning History and Use**
- 4.0 The Use Proposed**
- 5.0 Relevant Planning Law**
- 6.0 Analysis**
- 7.0 Conclusions**

Appendices and Plans

- Appendix 1 Photographs of the site and Environs**
- Appendix 2 Copy of planning permission 23162/1**
- Appendix 3 Copy of planning permission 23162**

- Plan H 124 -LP Location Plan**
- Proposed Floor Plan**

1.0 INTRODUCTION

- 1.1 The application relates to a site on Southmoor Lane that is referred to as Units 1-3, but effectively serves as one planning unit. This comprises of two large areas of workshops together with a suite of offices, occupied until recently by the Guinness Partnership.
- 1.2 The site lies within the wider area referred to as the Southmoor Lane employment area, for which planning permission was first granted for industrial uses in 1959 and 1960. This has subsequently been built out with a varied selection of industrial and storage buildings.
- 1.3 The applicants are a specialist engineering company, producing precision machine parts, largely using high tech automated cutting machines, and wish to clarify that their intended use of the site does not require planning permission. In my opinion the existing (permitted) use of the site and the use proposed both fall within class B2 of the Use Classes Order, such that no further planning permission is required to change within this class.
- 1.4 It has been suggested that the existing use of the site is limited to a use within Class B1, by a planning permission granted in 1973, and this application sets out why this is inaccurate and why the premises can now be used for any purpose within Class B2 (general industrial).

2.0 SITE DESCRIPTION

- 2.1 The application site comprises of a long rectangular strip of land of just over 1 acre in size, situated on the east side of Southmoor Lane, which has a building in excess of 1,700m² located approximately in its centre.
- 2.2 The area to the front of the building is laid out as a car park and delivery space, with a slightly smaller area for car parking to the rear (see Figure 1).

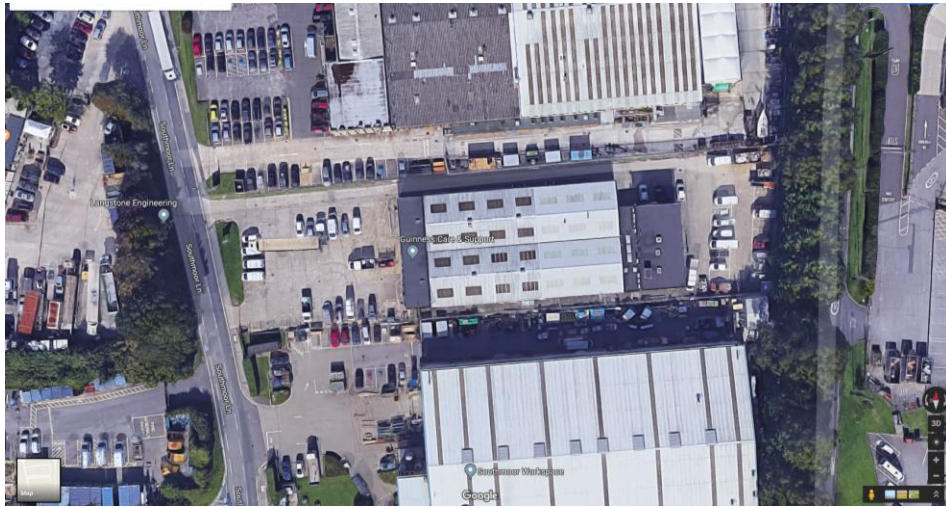


Figure 1 – aerial view of the application site (centre of picture)

(photo courtesy of Google Mapping)

- 2.3 The main building on the application site is made up of several different building structures, all of which are integrated internally. The largest of these comprise two large, connected ‘sheds’ situated at right angles to the road, which are linked to brick, office buildings to the front and rear.
- 2.4 The two large sheds are effectively two storeys in height, but single storey internally, with roller shutter doors to the front and rear. There is a brick wall that divides the two internally for most of their length, but there is an open link between the two sides close to the front of the building and various other doorways that connect the two sides, towards the rear. Hence, this large space is partially divided but effectively operates as one unit internally. The northern side operates internally mainly as a maintenance shed for various ground maintenance machinery, and the southern side for a mix of uses, including staff facilities, meeting rooms and an assembly area for kitchens and other modular furniture. Both units are laid out and provided with ‘industrial scale’ heating and ventilation units (see photos 5-8).
- 2.5 The office unit at the front is two storeys in height and laid out to provide several small office spaces, accessible from within the factory space. This is typical of many office units on the road frontage of industrial units. The office space at the

rear is a larger block of offices and whilst this could be occupied independently, it is currently interlinked with the industrial space described above.

- 2.6 Externally, there is vehicular access along the north side of the site to the parking area and delivery door at the rear, and a narrower, pedestrian access along the southern side.
- 2.6 Situated on either side of the site (north and south) are premises occupied by Lewmar, producing high quality engineering products for ocean going yachts.
- 2.7 Further to the south and north are other large scale industrial premises. On the opposite side of Southmoor Lane are Havant Lorry Park and Budds Farm sewage treatment works.
- 2.8 The buildings on site have been referred to historically as Units 1-3, with the office space at the rear described as Unit 1, and the two sheds as units 2 and 3 (unit 2 to the north of unit 1).

3.0 PLANNING HISTORY AND USE

- 3.1 The planning history for units 1-3 reveals the following:-
- 3.2 Outline planning permission was granted in in sept 1959 for industrial use of 50 acres of land – ref **HWU 5450**. There are various planning conditions, but none of these limit the use of the land.
- 3.3 A second outline planning permission was granted in June 1960 for the industrial use of 37 acres of land. ref **HWU.5450/1**. Again, none of the conditions attached limit the use of the land.
- 3.4 There is no plan available to show the extent of these two permissions, but it seems likely that together these granted permission for some 80+ acres of land to be used for industrial purposes Given the referencing, it is possible that 5450/1 related to part of 5450 and was part of the 50 acres. If so then only 50 acres had planning permission, but there is no significance in this. There are no conditions limiting the type of industrial activity or suggesting that this should be a use that would now equate to B1.
- 3.5 Planning permission was granted in Feb 1973 for ‘light industrial premises’ at Southmoor Lane **ref 23162**. The applicants were the ‘Top Twenty Phonograph and Automatic Machine Co. No details of the building or the site are available to the public.
- Condition 2 required parking for min of 61 cars.
 - Condition 3 required a landscaping scheme.
 - Condition 4 requires no machinery within the building likely to cause a nuisance or annoyance to the occupiers of neighbouring premises.
- 3.6 There are two points to note. First that the reference to light industrial in 1973 had a different meaning to that now given to a B1(c). Light Industrial was, in 1973, a use within Class III of the Use Classes Order (1972) and this described only the process carried out within the building. B1(c) (which was introduced by the 1987 UCO, has a broader definition. Second, the reference in condition 4 to

not causing nuisance or annoyance to neighbouring premises, did not relate to residential neighbours, but to other commercial (industrial) businesses. Hence this condition would not secure the level of protection that would be expected for a B1(c) use. In reality any use requiring 61 parking spaces would not now be considered a B1 use.

- 3.7 A second Planning permission was granted to the Top Twenty Phonograph and Automatic Machine Co, in May 1979 – **ref 23162/1**. This proposed the addition of a second floor over the rear part of ‘unit 1’ to provide additional office space.

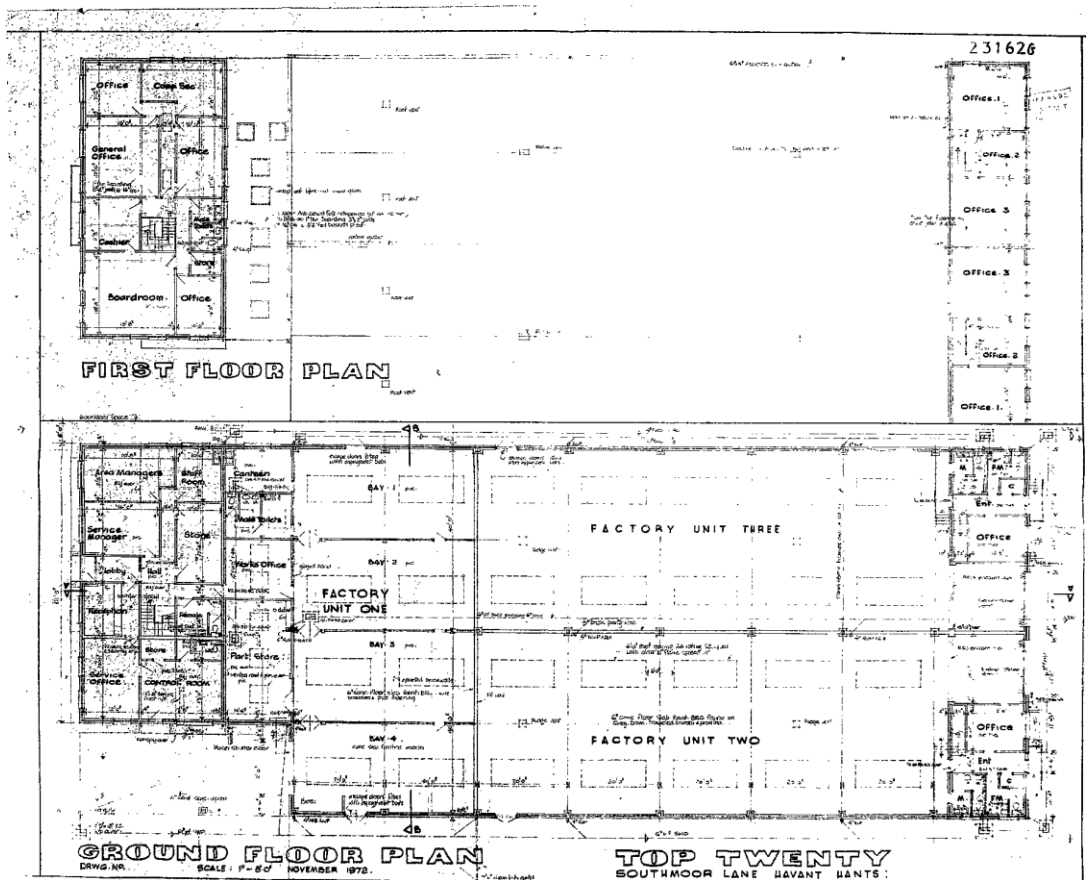


Figure 2 copy of plan submitted with 23162/1 - - showing three ‘factory units’

- 3.8 Plans submitted with the application show units 2 and 3 (the LH and RH units as viewed from the car park) as 'factory unit two and 'factory unit three', each with a large open floor area, and unit 1 as part 'factory unit one' and part as smaller rooms (offices). The drawing suggests that most of the ground floor was in use as a factory (see Figure 2 above). The application involved extending over the offices. The layout on the drawings is consistent with my inspection of the site on 12th December, as described in section 2 above.
- 3.9 The application form (in 1979) describes the existing use as machine sales, servicing and administration, although this may relate only to unit 1 (the red edge).
- 3.10 Overall, it appears that permission was granted for the industrial use of 50-80 acres of land, with a detailed permission for the erection of a building described in 1973 as 'light industrial'. The only limitation placed on this use (by condition 4), was that any machinery installed within the building should not cause nuisance to the occupiers of the neighbouring (industrial) premises.
- 3.11 The subsequent occupants of the building then used this for the sales, servicing and administration of phonograph and other machines, with approximately $\frac{3}{4}$ of the building laid out as factory space and approximately $\frac{1}{4}$ as office space (based on the submitted floor plans).

4.0 THE USE PROPOSED

- 4.1 The proposed user is a well establish precision engineering company manufacturing parts for motorsport, aerospace, marine and automotive markets. The manufacturing process utilises modern computer controlled machinery (CNC) which operate in enclosed cabinets. Most parts are made from aluminium and therefore the machining processes are relatively quiet. Hearing protection for operators is seldom required.
- 4.2 There are no gaseous or other noxious emissions involved in any of the manufacturing processes.
- 4.3 Incoming delivery vehicles are typically of the rigid rather than articulated type. Outward deliveries are made either by courier or their own transport. In either case, vehicles are typically no larger than 'Transit' size. There are typically 2-3 each inbound and outbound deliveries per day.
- 4.4 There are approximately 28 employees with 20 of those employed in workshop-based roles.
- 4.5 Although the company offers a 24/7 service, the machines are left to run un-manned overnight with no staff on-site. There is currently only a single shift pattern. Office hours are typically 8am-6pm Monday to Friday.
- 4.6 Plan 'SL_Gen' shows the planned layout of the workshop which will involve approximately seventeen CNC machines and 3 air compressors. In addition, there will be areas for storage, goods-in/out, quality control and component finishing (polishing).
- 4.7 Although the use is very clean overall and the high spec machines operate with very limited vibration and noise, the overall scale of the activity is such that this could not be accommodated within most residential areas without the prospect of some complaints. Hence the use is unlikely to be a B1use, and therefore more likely to be assessed as B2.x

5.0 PLANNING LAW

The ‘Use Classes Order’

5.1 The details below highlight those aspects of planning law that are specifically relevant to the application, namely that help in understanding the permission that was granted, and how this relates to the proposed use of the premises.

5.2 The T&CP Use Classes Order provides various generic ‘use classes’ in an attempt to group together uses that are similar in nature. Most activities/uses will fit into one of these classes. Activities that do not are referred to as ‘sui-generis’. However, the Order is not a static document, and both the number of classes and the meaning of each of these has changed significantly over time.

5.2 Of relevance here, is that in 1973, when permission was first granted for this site (ref 23162) the relevant Use Classes Order was SI 1972 No 1385, which included as **Class III** ‘a light industrial building for any purpose’. A light industrial building was then defined as:-

-‘an industrial building (not being a special industrial building) in which the processes carried on or the machinery installed are such as could be carried on or installed in any residential area without detriment to the amenity of an area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit.’

5.3 In contrast, the ‘equivalent provision in the current Use Classes Order (1987 – as amended – SI 1987/764), includes:-

-‘ Class B1. Use for all or any of the following purposes-

(a) as an office other than a use within class A2 (financial and professional services),

(b) for research and development of products or processes, or

(c) for any industrial process,

Being a use which can be carried out in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, soot, ash, dust, or grit.'

- 5.4 Paragraph 3B- 968.1 of the Encyclopaedia of Planning law provides the following additional advice.

' First the reference to "any residential area" is general, and not specific to the actual area surrounding the site. - - -The residential area is purely notional. Secondly, the definition is focused not on the inherent qualities of the proposed industrial process, but on the impact of the use.

- 5.5 Attention is drawn to two specific factors. First, as highlighted in the encyclopaedia, that the test of whether a use is or is not within B1(a) or Class III relates to whether this use is suitable in **any residential area**. Secondly, that there has been a change in emphasis from 1972, where the emphasis was on the processes carried on, to 1987 where the emphasis is drawn more broadly, and now focuses on the overall use of a site.

- 5.6 **Class B2** is defined as "use for the carrying on of an industrial process other than one falling within class B1 above."

- 5.7 Article 3-(1) of the UCO provides:-

3-(1) Subject to the provisions of this Order, where a building or other land is used for a purpose of any class specified in the Schedule, the use of that building or other land for any other purpose of the same class shall not be taken to involve development of the land.

S192

- 5.8 S192 of the Act provides a procedure to ascertain whether any proposed use of any land or buildings would be lawful, and allows any person to apply to the local planning authority for a Certificate. Hence it is possible to check whether the a

proposed use of a site would be permitted by an existing planning permission or whether this would be a material change of use for which planning permission has not been granted. The application must specify the land in question and describe the proposed use. Section 192 says:-

192, - (1) if any person wishes to ascertain whether-

(a) any proposed use of buildings or other land; or

(b) any operations proposed to be carried out in, on, over, or under land, would be lawful, he may make an application for the purpose to the local planning authority specifying the land and describing the use or operations in question.

6.0 APPRAISAL

- 6.1 It is helpful to consider whether the planning permission granted in 1973 included any limits on the use of the site and specifically if this is restricted to what is now a B1 use.

The decision notice(s)

- 6.1 It is clear from the details set out in the two planning decisions 23162 and 23162/1 that permission was granted for an Industrial building and that a large part of the floorspace provided was described as in use as a 'factory', ie that some form of manufacturing or repair activity was taking place.
- 6.2 Whilst the description of development on 23162 refers to "light industrial premises" the phrase light industrial in 1973 had a different meaning (in planning terms) to that in 2017 (or since 1987), such that a use described as light industrial in 1973 would not necessarily now be described as B1. The definition in 1973 related solely to the processes within the building, so ignored factors such as the number of people employed, the size and frequency of deliveries to the site, and the hours of work. Hence a use in 1973 that included frequent deliveries by HGV's, late at night or early am, could still be a light industrial use. Such a use would not now fall within B1.
- 6.3 Planning cannot impose retrospectively, controls that did not exist when the planning permission was granted. I have set out in paragraphs 5.2 – 5.5 above the differences between a use in Class III and a use within Class B(1) (c). If the use permitted in 1973 exceeded what is now described as a B1 use, then that use (as permitted) is not a B1 use and must, by definition, fall within B2.
- 6.4 It is significant that whilst the opportunity existed for the local planning authority to restrict the use of the site to Class III (in 1973), this restriction was not applied, and instead **condition 4** simply limited machinery within the building to that which would not cause a nuisance or annoyance to the occupiers of neighbouring premises. These premises were not residential. Hence, whilst it would have

been possible for the local planning authority to limit the use to Class III, (to uses appropriate to a residential area), the planning permission granted in 1973 chose instead to only limit the use to one that was appropriate (would not cause a nuisance) to other industrial uses. It appears that there was no intention by the local planning authority to limit the use to one within Class III.

- 6.4 The only limitation placed on the premises, in relation to potential disturbance, is that this should not occur at levels to cause a nuisance or annoyance to the occupiers of adjacent (industrial) units. This limitation did not satisfy Class III. Given that Class B1 is now more restricted, the planning permission granted in 1973 would fall far short of limiting the use to a use within B1(c).

The situation on site

- 6.5 The absence of any limitation on the use of the site is supported by simple regard to the situation on site, as shown in Figure 3 above. It is clear that the site is situated within a general industrial area, and surrounded by other industrial uses. It would, in these circumstances, be a nonsense to seek to limit activities on site (in 1973 limited to the processes within the building) to those that would only be suitable within a residential area.



Figure 3 showing the general layout of industrial buildings around the site.

- 6.6 It is also clear, from consideration of the style of building, and the way that this has been laid out and operated, that such a use could not reasonably be expected to operate in many residential areas. This is clear from the plans submitted with 23162/1. It is unlikely that any building, providing almost 1200m² of 'workshop' or factory space, serviced by three roller shutter doors, and with approximately 60 car parking spaces, could be sited within the majority of residential areas within Havant, or elsewhere, without the expectation of a nuisance being caused.

CONCLUSIONS

- 7.1 Having regard to the initial grant of permission for some 50-80 acres of industrial land, and having regard to what has developed subsequently, around Southmoor Lane, it seems unlikely that there was ever an intention of the local planning authority to limit processes on site to those suitable in a residential area.
- 7.2 If there had been this intention, and the application for a light industrial use, was to be interpreted as one that might be suitable for a residential area, the local planning authority failed to impose conditions to limit nuisance and annoyance to the levels suitable in a residential area (a Class III use), and instead limited these to levels suitable next to industrial neighbours. That use would, in 1973, have been a use within Class IV (general industry), now within class B2.
- 7.3 Although there is no condition that specifies a use within Class III, if this is 'read into' the decision notice (which it should not be) then a use within Class III is broader than what is now class B1(c), and the latter cannot now be added as a more onerous restriction. A use that does not fall within Class B1 is, by definition, a B2 use, and planning permission is not required to change to any other use within Class B2.
- 7.4 It is clear from the size and layout of the site, that this has operated for many years at an intensity that could not be accommodated within most residential areas such that the site can now be operated as within Class B2. This is entirely compatible with surrounding uses.
- 7.5 Any proposed use of the site will continue to be regulated by condition 4 (of planning permission 23162) but this will be assessed purely in relation to the potential impact on the adjacent industrial units. The potential level of disturbance could be substantial before it impacts on these properties, and is very unlikely to occur.