



Appeal Decision

Site visit made on 3 July 2017

by Grahame Kean B.A. (Hons), PgCert CIPFA, Solicitor HCA

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 13 July 2017

Appeal Ref: APP/N5660/C/17/3167464

Land to the rear of 54-64 Conyers Road, London SW16 6LT

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Con Diver against an enforcement notice issued by the Council of the London Borough of Lambeth.
 - The enforcement notice was issued on 9 December 2016.
 - The breach of planning control as alleged in the notice is without planning permission, the unauthorised material change of use of the light industrial B1 workshop located to the end of the lock up garages (shown hatched on the attached plan) to a B2 general industrial use ('the unauthorised B2 general industrial use').
 - The requirements of the notice are: cease the unauthorised B2 general industrial use of the premises and remove all plant machinery, equipment, apparatus and materials which facilities such use, from the premises.
 - The period for compliance with the requirements is one month after this notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(b) and (c) of the Town and Country Planning Act 1990 as amended.
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Summary of Decision

1. The appeal is dismissed and the enforcement notice is upheld with corrections.

Background and matters concerning the notice

2. The notice relates specifically to a workshop about 14m by 7.5m at the end of an approximately rectangular, backland site between railway lines to the west and the bottom of residential gardens of 52-64 (even) Conyers Road. The access to the workshop is a narrow road with a dog-leg turn into the site. On either side of the access road nearer to the workshop there are several lock up garages let separately for storage purposes. I agree with the view of the previous inspector in an appeal decision relating to some of these garages, that Conyers Road has a character of a relatively quiet suburban residential road.¹
3. A B2 use is defined in the Town and Country Planning (Use Classes) Order 1987 as amended (UCO), as a use for the carrying on of an industrial process other than one falling within Class B1. The relevant part of Class B1 for the purposes of this appeal is Class B1(c), whereby a use will exist 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, smoke, soot, ash, dust or grit.

¹ APP/N5660/C/03/1108644, APP/N5660/A/02/1107021

4. It is undisputed that the premises were used for stonecutting when the notice was issued, and continue to be so used. The allegation in the notice does not refer specifically to this use and indeed the reasons for its issue merely refer to a B2 general industrial use. Whilst the recipient of the notice would know the matters which appear to the Council to constitute the breach of planning control, they are not plainly stated. If they were, it would illuminate the distinction between the two grounds on which the appeal is proceeding.
5. I will therefore correct the notice to refer to a material change of use to a B2 general industrial use comprising a stonemason's workshop. The notice should also be amended so that "facilities" reads facilitates" which appears to be the intention in drafting the notice. I make these corrections under powers in s176(a) of the 1990 Act.

The appeal on ground (b)

6. The issue under ground (b) is whether the breach of planning control alleged in the notice as corrected has occurred as a matter of fact.
7. The workshop benefits from a certificate (LDC) confirming the lawfulness of the existing use of the premises for light industrial purposes (B1), granted in 1998. Since then the site was occupied by successive joinery businesses. The current occupier, who makes kitchen stone worktops, moved on site in February 2016.
8. As there is no dispute that when the notice was issued the premises were used for stonecutting, it cannot be maintained that such matters have not occurred.
9. In his statement in relation to both grounds (b) and (c), the appellant makes clear that the appeal is submitted on the basis that the current use does not constitute a change of use from the lawful use of the site. Arguments that the current use is similar in nature to the previous joinery use, and disputes as to the degree of injury, if any, to amenity caused by the current use of the workshop and associated activities, are relevant to consider under ground (c).
10. The appeal on ground (b) must therefore fail.

The appeal on ground (c)

11. The issue on ground (c) is whether what is alleged in the notice to have taken place constitutes a breach of planning control. The burden of proof is on the appellant to show on the balance of probability that the material change of use has not occurred. The focus of inquiry is therefore whether the use as a stonemason's workshop is such that it can be carried out in a residential area without detriment to the amenity of that area as defined in the UCO.
12. By mid-May 2016 nearby residents had complained about: industrial vehicles on the access road, carrying heavy materials such as quartz/marble; storage of materials in the access road and their transfer from vehicles too large to access the site, thus causing obstruction in the highway. The stated hours of use are from 0800 to 1800, typically finishing at 1500. However the residents allege irregular hours of operation, including up to 2200 and at weekends and holidays. They state that they have found the noise generated by the use distressing, including the loud reversing warning sounds from vehicles, the repeated use outside normal hours and the noise from the industrial saws used to cut the worktops. No conditions have been drawn to my attention that control the hours of operation, nor does the LDC specify lawful hours of use.

13. The workshop has a sliding wooden door to the front that was open when I observed the stone cutting. The operation of the blade results in noise which increases significantly when actually cutting the stone. The appellant points out that the operation of machinery is all housed inside the workshop and asserts that the door is always closed to minimise any noise heard outside.
14. However the forklift clearly operates outside in the access areas. It seems to me impractical for employees to keep the door closed at all times during the stone cutting, given the close connection between the hoisting of slabs nearby, with the grab of the forklift and their transfer to the cutting area. When the Council visited in November 2016 the door was open. The cutting process results in high levels of dust and, despite dust calming measures it is also likely that the door will be kept open for ventilation. From within the garden of 54 Conyers Road I could hear the cutting blade when operated, and from the Council's inspections it was apparent that the noise of the machinery can be heard emanating from the building, whether the door is open or closed.
15. The railway line adjacent to the site provides part of the context for the ambient noise levels of the area and several trains passed during my visit. The noise from the trains was an intermittent and brief background noise whereas the noise from the use of the workshop is irregular in duration and frequency. For example, the cutting process to make the worktop takes about half an hour at a time, the use of polishing machines takes some two hours and finishing with hand angle grinders takes about fifteen minutes.²
16. In addition, the forklift truck used in conjunction with the use emits a particularly intrusive beeping noise because of its tonal qualities. It was clearly heard by me in the back garden of No 54, immediately in front of the rear elevation of the house. I consider this would be unreasonably disturbing to the occupiers, giving rise to well-being concerns if on a sustained basis, as it would to other residents whose properties are adjacent to the workshop and access.
17. Neither main party has supplied a technical noise assessment of the use. In the circumstances I should take a precautionary approach to the question of harm to the living conditions of nearby residents. But in any event the written evidence from those residents is compelling as to the likelihood of some operations outside of normal business hours, and of significant noise and dust from use of the machinery, fork lift truck and the larger delivery vehicles.
18. Overall I am not persuaded that the current use of the workshop is such that it can be carried on in this predominantly residential area without detriment to the amenity of that area, particularly by reason of noise but also by reason of dust.
19. I find the evidence inconclusive as to whether smells or vibration emitted as a result of the use is such as to be demonstrably harmful to the amenity of the area. Periodic collection in skips of waste stone cut-offs would however also result in some noise and dust generation. Further, the narrowness of the access road has given rise to problems when, even if exceptionally, larger vehicles deliver the heavier stone slabs to the premises. This necessitates reversing down the access to unload, or transferring the slabs via the use of the forklift truck from the highway. Irrespective of any highway safety concerns, this would be likely to cause further noise and disturbance.

² Appeal statement, Appendix 1.

20. I have had regard to all the other matters raised by the appellant but they do not affect my findings as described above. In particular, it is not a matter of simply assessing the degree of intensification from the previous joinery use. The numbers of worktops produced per month may be relatively few, but that does not detract from the industrial nature of the process. Although the current business may well involve simpler procedures, there is a qualitative change made by the stone cutting process and associated activity that is detrimental to the living conditions enjoyed by residents in the area.
21. The appellant has provided examples of other small scale stonemasons' workshops located close to or within a residential area, but their planning status is not clarified. I do not agree with the implied argument that their presence in backland residential areas means that such uses can always be carried on without detriment to the amenities of their surroundings.
22. I therefore conclude that the use of the appeal site as a stonemason's workshop constitutes a material change of use from the authorised light industrial use Class B1 to a Class B2 general industrial use. The change of use is without the required planning permission and therefore constitutes a breach of planning control. Consequently the appeal on ground (c) must fail.

Conclusion

23. For the reasons given above I conclude that the appeal does not succeed. I shall uphold the enforcement notice as corrected.

Formal decision

24. It is directed that the notice be corrected as follows:
- In the description of the breach of planning control, after "to a B2 general industrial use" insert "comprising a stonemason's workshop"; and
 - In the requirements of the notice, replace "facilities" with "facilitates".
25. Subject to these corrections the appeal is dismissed and the enforcement notice is upheld.

Grahame Kean

INSPECTOR