



Appeal Decision

Site visit made on 24 June 2020

by Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH

an Inspector appointed by the Secretary of State

Decision date: 08 July 2020

Appeal Ref: APP/E5330/C/19/3242001

**Land known as Paul Rhodes Bakery Ltd, Hoskins Street, Greenwich,
London SE10 9PB**

- 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 Paul Michael Rhodes (Paul Rhodes Bakery Limited) against an enforcement notice issued by Royal Borough of Greenwich Council.
 - The enforcement notice was issued on 4 November 2019.
 - The breach of planning control as alleged in the notice is without planning permission: (i) the siting of a refrigerated storage unit measuring 6.05m(l) x 3.80m(w) x 2.7m(h) on the Property within the last four (4) years.
 - The requirements of the notice are: (i) to permanently remove from the Property the refrigerated storage unit; and (ii) to permanently remove from the Property all other equipment or apparatus and materials generated as a result of or associated with the development.
 - The period for compliance with the requirements is 1 month.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act fall to be considered
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Decision

1. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Preliminary Matter

2. The appellant's statement says that his appeal under ground (c) will not be pursued and no further action needs to be taken on it. As the burden of proof is on the appellant to make a case on which to satisfy me that this legal ground should succeed, it does not do so.

Ground (a) and the deemed planning application

Main issue

3. The main issue in this appeal is the effect of the development on the living conditions of neighbouring residential occupiers as regards noise.

Reasons

Living conditions of neighbours - noise

4. The appeal development is a reasonably large refrigerated storage unit situated outside the northern elevation of the existing bakery building on the site. While there is a tall brick wall to the site's northern boundary around 5 metres away, very close to the other side of it is Pipers House, a 3 and 4 storey residential building. Pipers House has habitable room windows in the southern elevation above the level of the brick wall and facing the appeal site and refrigerated storage unit. There is a particularly close, direct and uninterrupted relationship between the habitable windows in the south-eastern corner of the residential building and the double access doors to the refrigerated storage unit on its eastern elevation.
5. I accept the appellant's submissions, supported by an expert acoustic report, that mechanical plant noise would be satisfactorily remedied by his proposal to re-locate the condenser equipment to a location further from Pipers House. I am satisfied, based on the clear findings of the acoustic report, that this would meet the Council's noise criteria in relation to this aspect of noise from the development.
6. However, and notwithstanding that the appeal site is a working bakery with permission for industrial use, the refrigerated storage unit acts as an added locus for activity in the particularly noise-sensitive location I have described above. Accordingly, in my judgement, the additional noise resulting from accessing the unit and loading and off-loading of materials creates a significant adverse impact on the living conditions of close occupiers of Pipers House.
7. I have considered, in accordance with the National Planning Policy Framework, whether the otherwise unacceptable development could be made acceptable through the use of conditions. The Council has suggested a condition, were I minded to grant permission, which would prohibit access to the unit outside of 08.00 to 18.00 Monday to Sunday. The appellant finds this restriction acceptable. However, in my view the noise caused by access to and loading/unloading of the unit would be unacceptably harmful to residents' living conditions regardless of any restriction on hours which might reasonably be imposed by condition. A suggested condition requiring the relocation of the condenser/compressor would not address the harm I have identified. I have also considered whether the development might be made acceptable by imposing a condition requiring its removal after a temporary period, but I consider the noise impacts to be so significantly adverse that no temporary permission would be acceptable in mitigating the harm the development causes.
8. For the above reasons, the appeal development causes significant harm to the living conditions of neighbouring residential occupiers through an adverse noise impact. As such it is contrary to Policies E(a) and E(b) of the Royal Greenwich Local Plan: Core Strategy with Detailed Policies (2014) (LP) and Policy 7.15 of the London Plan (2016) (LONP) which together seek to protect living conditions from noise and pollution.

Other Matters

9. I accept that the siting of the refrigerated display unit is a benefit to the business, and that in maintaining the viability of the enterprise in uncertain economic times (noting the appellant's submission that it has been/will be used for stockpiling ingredients in case of a no-deal Brexit) it has positive impacts on the local employment and economy. While the development is not contrary to Policies EA1 and EA(a) of the LP and Policy 4.1 of the LONP for these reasons, I find that the development does not accord with the development plan as a whole due to the extent of the breach of policy as regards harm caused to living conditions. As there are no considerations which outweigh this finding, the appeal under ground (a) and the deemed planning application do not succeed.

Ground (f)

10. The appellant says that the steps required by the notice exceed what is necessary to secure its purpose, which he says can be achieved by relocating the compressor and all associated equipment from the refrigerated storage unit to an alternative position further from Pipers House. However, as this would not address the significant adverse noise impact I have found caused by access to and loading/unloading of the unit it would not remedy either the breach of planning control or injury to amenity. Accordingly, the appeal under ground (f) fails.

Ground (g)

11. The appellant argues that 1 month to comply with the notice is too short, and requires 6 months to enable him to seek and arrange for a new location for the refrigerated unit, which may also need planning permission.
12. However, I consider that the unit can readily be removed from the site in one day and that a month to make arrangements to secure this and to find a suitable alternative location (or to return the currently unused unit to its owner as referenced in the letter from the appellant dated 8 June 2020) does not fall short of what should reasonably be allowed. Accordingly, the appeal under ground (g) does not succeed.

Conclusion

13. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

Andrew Walker

INSPECTOR