



Appeal Decision

Site visit made on 15 September 2020

by Diane Lewis BA(Hons) MCD MA LLM MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 October 2020

Appeal Ref: APP/N5090/C/20/3245448

Land at Unit 3 Granville Road Industrial Estate, 146-148 Granville Road, London NW2 2LD

- 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 Isqueeze Limited against an enforcement notice issued by the Council of the London Borough of Barnet.
 - The enforcement notice, numbered ENF/0919/19, was issued on 19 December 2019.
 - The breach of planning control as alleged in the notice is: Without planning permission, the permanent positioning of refrigerator/freezer containers to the northern side of the site as shown roughly hatched in black on the attached plan.
 - The requirement of the notice is: Permanently remove the 2x refrigeration/freezer units from the site.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (e) and (f) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act as amended.
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Decision

1. It is directed that the enforcement notice be corrected by:
 - The deletion of the last sentence in section 4 Reasons for Issuing the Notice, and
 - In section 5, What You Are Required To Do, the deletion of the wording of step 1 and the substitution of "Permanently remove the 2 x refrigeration/freezer units, shown in the approximate position edged and hatched black on the attached plan, from the site."
2. Subject to these corrections the appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Reasons

The Enforcement Notice

3. The Land to which the enforcement notice relates is stated to be Unit 3 Granville Road Industrial Estate. The plan attached to the notice identifies a roughly rectangular area of land in the northern corner of the industrial estate. On my site visit I confirmed that this is where the refrigerator/freezer units are

sited. However, it appeared that the appellant company occupied Unit 2 and not Unit 3.

4. The Council has explained that while the breach relates to the installation carried out by Isqueeze Limited which occupies Unit 2, the containers are sited on land owned by Unit 3. The appellant did not question the address of the Land.
5. As a result of the additional information I am satisfied that the description of the Land does not require correction.
6. In section 4, Reasons for Issuing the Notice, the last sentence has been included in error and should be deleted. In section 5, What You Are Required To Do, I intend to correct step 1 to ensure consistency in the detail of the wording with that of the alleged breach. This correction would not introduce any additional requirement and no prejudice would result to either the Council or the appellant.

Ground (e)

7. The issue is whether copies of the enforcement notice were served as required by section 172 of the 1990 Act and if not whether substantial prejudice has been caused.
8. The appellant argued that the notice was served on The Company Secretary of Isqeeze Limited, when no such company exists. The correct company title is Isqueeze Limited. In my view this is a simple typographical error. There is no claim that the notice was not delivered at the company's address. No prejudice has been identified and an appeal against the notice was able to be made by the company within the required timescale.
9. The Council confirmed in its appeal statement that the list on whom the notice was served was based on information from the Land Registry and that copies also were served on the owners and occupiers. However, the documentation submitted with the appeal questionnaire indicated that the notice was not served on Unit 2. The Council has since clarified that the documents sent with the questionnaire were not the updated lists. A signed certificate of service shows that a copy of the notice was served on the owner and on the occupier of Unit 2 and on the "Company Secretary of Isqeeze Limited".
10. In conclusion, a copy of the notice was served on the appellant company. The incorrect spelling of the company title was a typographical error that did not lead to any prejudice being caused.
11. The appellant considered the notice should refer to the adopted London Plan policies. This point relates to planning merits and is not relevant to a ground (e) appeal.
12. The appeal on ground (e) fails.

Ground (b)

13. The issue is whether two refrigerator/freezer units in containers have been positioned on the land as a matter of fact.
14. A ground (b) appeal should address the matters stated in the notice to constitute the alleged breach of planning control (section 174(2) of the 1990

Act). The appellant does not dispute that there are two refrigerator/freezer units on the land. On my site visit I confirmed that the units were in the position indicated on the plan attached to the enforcement notice. The appeal on ground (b) fails.

15. The points raised by the appellant relating to the reasons for issuing the notice are more appropriately addressed in the appeal on ground (a).

Ground (c)

16. This is a legal ground of appeal. The onus is on the appellant to demonstrate that the positioning of refrigerator/freezer containers does not constitute a breach of planning control. This may be because development is not involved or that planning permission is not required or that permission is granted, whether through a planning application determined by the local planning authority or through article 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO).
17. The appellant's case on ground (c) addresses none of these matters. The representations on the need for the units, their location, their operation and the effect on residential amenity are all considerations relevant to the appeal on ground (a). The planning history provides no evidence of planning permission being granted for the units, rather planning permission was refused in February 2016 for two refrigerated container units at Unit 2 (retrospective development).
18. The GPDO allows for the erection, extension or alteration of an industrial building or warehouse but in this instance development is not permitted because of the proximity of the units to the boundary of the premises.
19. I conclude the positioning of the two refrigerator/freezer containers amounts to a breach of planning control and the appeal on ground (c) does not succeed.

Ground (a)/deemed planning application

Site and main issue

20. Granville Road Industrial Estate is a small estate of four units located on the eastern side of Granville Road. The estate backs onto Childs Hill Park, a terrace of housing lies to the north west and a recent development of flats is opposite. Therefore the site is close to a noise sensitive residential use.
21. The main issue is the effect of the development on the living conditions of nearby residents and the amenity of the surrounding area.

Policy

22. The development plan includes the London Plan 2016 (consolidated with alterations since 2011)¹ and the Barnet Local Plan Development Management Policies adopted in 2012 (the DMP). Policy DM04 of the DMP sets out environmental considerations for development. In relation to noise impacts, proposals to locate development that is likely to generate unacceptable noise levels close to noise sensitive uses will not normally be permitted. Mitigation of noise impacts through design, location and insulation will be expected where appropriate. Policy 7.5 of the 2016 update of the London Plan has similar

¹ The new replacement London Plan has not been finally published

wording to Policy 7.5 of the 2015 London Plan cited in the enforcement notice. This Public Realm policy is indirectly relevant in so far as it seeks to secure high quality public open space. The appellant has not drawn attention to any other relevant development plan policies.

23. The National Planning Policy Framework states that planning decisions should ensure developments will add to the overall quality of an area and that good design should make places better for people. The Framework also encourages sustainable economic growth and expects decisions to take account of local business needs. Planning Practice Guidance on Noise includes guidance on establishing whether noise is likely to be of concern.

Effect of the development

24. The containers housing the refrigerator/freezer units have been sited in a corner of the circulation yard to the estate. At the rear is the public park and the gardens of nearby houses have a common boundary with the yard. Whilst the containers are not immediately next to the adjacent dwellings, the units are close to garden areas and the separation distance to living space is not generous.
25. No noise report has been submitted by the appellant. On my site visit I was able to hear the noise made by the refrigerator/freezer units. The operation was continuous and there was a distinct cycle of noise as the equipment turned on and off. The hum became much louder and the character of the noise changed for a short burst before lowering down into a quieter phase. The noise was clearly audible from the park, although the area affected was relatively small.
26. The noise is likely to be heard by the nearest residents, particularly when the background noise is lower. The representations from residents indicate that the noise from the units is disturbing and has an adverse effect on the quality of life at home.
27. The appellant operates a food-related production industry from Unit 2 and the appellant submits that it is not unusual for such a business to need additional external refrigeration units to assist accessibility. In support of the development, the appellant states that as a mitigation measure the units are on a timer so that on a daily basis they do not operate between 2100 hours and 0700 hours the following day. Seemingly the units use their insulation to keep food products at the required temperatures. Even with the timer operating as indicated, the units would be operating for long periods of the day into the evening every day of the week, including weekends. The times of operation extend into periods when residents would reasonably expect respite from noise.
28. Another form of mitigation would be insulation. A container unit is typically used for storage, not to house refrigeration/freezer units. There is no evidence that the containers have any form of insulation. The appellant has expressed willingness to work with the Council on additional mitigation measures but in the absence of specific proposals or suggested planning conditions I am unable to attach any weight to further mitigation.
29. I conclude that the noise from the development has an adverse effect on living conditions that is not appropriately mitigated. The development is not

supported by Policy DM04 of the DMP. The harm to the amenity of the public park is slight in view of the small area affected. The development is not supported by the Framework in that it does not add to the overall quality of an area and the means of housing the refrigeration equipment is not good design.

Other considerations

30. The primary concern of the local planning authority is the noise from the operation of the refrigeration units. Representations refer to noise from vehicles servicing the units but vehicle movements and servicing would take place within the estate in any event. However, with reference to Planning Practice Guidance a cumulative effect is a relevant consideration, which adds to the weight against the noise introduced as a result of the refrigeration/freezer units.
31. The containers are accommodated on the industrial estate without harm to the appearance of the locality or the outlook of adjoining occupiers.
32. The appellant has not explained if or how the development contributes to the operation of the business and no claim is made that the removal of the units would impact on the performance of the business.

Conclusions

33. The development does not accord with Policy DM04 of the DMP and in the absence of appropriate mitigation the policy direction is that the units should not be permitted. The Framework does not provide support for the siting of the refrigeration/freezer units within containers. The planning balance is against the development. The appeal does not succeed on ground (a).

Ground (f)

34. The issue is whether the requirement to remove the 2 refrigeration/freezer units from the site is excessive.
35. The purpose of the notice is to remedy the breach of planning control and in so doing to remedy the injury to amenity. The requirement is not excessive to achieve the purpose of the notice.
36. The appellant has not put forward a specific alternative requirement that would meet the purpose of the notice. I have concluded that planning permission should not be granted, having taken into account use of a timer to control hours of operation. No other mitigation has been proposed and no reasoned argument has been presented to support the assertion that the requirement would be difficult to enforce and is beyond the scope of planning legislation.
37. I conclude that the appeal fails on ground (f).

Conclusion

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

Diane Lewis

Inspector