



Appeal Decision

Inquiry Held on 9-10 February 2021

Site visit made on 11 February 2021

by Simon Hand MA

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

Decision date: 01 March 2021

Appeal Ref: APP/Y5420/C/19/3226931

Unit 4 High Cross Centre, Fountayne Road, London, N15 4QL

- 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 Feel The Noise Ltd against an enforcement notice issued by the Council of the London Borough of Haringey.
 - The enforcement notice was issued on 28 March 2019.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use to a mixed use comprising residential and live-work accommodation.
 - The requirements of the notice are 1. Cease the use of the property as residential and live-work accommodation. 2. Remove from the land all fixtures, fittings and materials associated with the unauthorised use including mezzanine floors accommodating bedrooms; wall partitions facilitating bedrooms; residential kitchens (sinks, cupboards, cooking equipment). 3. Remove from the land any debris as a result of compliance with the above requirements.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice be varied by deleting requirement 2 and replacing it with "*2. Remove from the land all fixtures, fittings and materials associated with the unauthorised use excluding the mezzanine floors and 1 kitchen but otherwise including all partitions and kitchens including sinks, cupboards and cooking equipment*"; and by substituting "*12 months*" for "*6 months*" as the period for compliance. Subject to these variations 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.

Preliminary Matters

2. During the exchange of proofs it became clear the appellant was no longer pursuing the ground (d) appeal and this was agreed at the Inquiry. Although there seems to be no direct access between units 4a and 4, the appellant accepted that they were both being used in the same way. There was no argument that 4a was being used as an HMO and the dispute over the planning unit falls away. The appeal proceeded on ground (a), for live/work units across

the whole site, on ground (f) for the mezzanine floors across the whole site and ground (g) for an extension to 12 months.

3. An application for costs was also made just before the Inquiry by the Council, for a partial award against the appellant and this was dealt with in writing after the Inquiry closed and is subject to a separate decision letter.

The Appeal on Ground (a)

Description of the use

4. The appeal site consists of unit 4 of the High Cross Centre. At some point before the appellant took the lease this unit was subdivided into 4a and 4. According to Tim Whitehouse, the appellant, he first leased 4a in 2010 as a base for his younger brother's band to practice and record. He quickly realised that networking amongst creatives was the key to success and began renting out space for people to live and work. By 2012 he had leased the next door unit 4 and put in mezzanine floors in both units. The resulting entity was known as the Hub and became a successful breeding ground for talented musicians and other creatives. He was particularly interested in mixing by now established artists such as his brother, Josh Whitehouse, and people seeking to break into the industry.
5. Although the internal arrangements of the units can be relatively fluid, what I saw on my site visit was similar to the photographs provided to the Inquiry and to how the building was set up from the beginning. Both units had a large ground floor communal sitting area and shared bathrooms. A large communal kitchen in unit 4 services both units as does a utility room with washing machines etc and a communal workspace with computers. There was also several recording studios and cinema room. The communal living areas can be changed around to provide a space for live music events.
6. Unit 4a has one ground floor living unit (number 2a) and five on the mezzanine floors 1a, 3a, 4a, 5a and 6a. 2a is lit by conventional windows and the mezzanine rooms are lit by rooflights. In unit 4 a single room on the ground floor (number 4) had been used temporarily for accommodation but was actually a store and had no windows. Of the other rooms, 5, 7, 9, 14 and 15 were all on the mezzanine floor and lit by rooflights. Rooms 1, 2, 3, 10, 11, 12, 13 were all split level accommodation. Those that I looked into all had the bedroom upstairs, beneath the rooflights and used the downstairs as a workspace come living area. The downstairs space was lit from the upstairs windows. The remaining rooms 6 and 8 contained ground floor recording space.
7. Before the pandemic, when the Hub was operating as intended, most people lived there permanently, although at least one occupant also owned a flat elsewhere in London. Others came and went, depending on touring schedules, and often sublet their rooms to other bands or artists who were in London on tours of their own. From what I heard at the Inquiry it was the constant mix of people that provided endless creative inspiration. People collaborate across different artistic disciplines and with outside organisations. For example, Rafe Offer, whose company 'Sofar' puts on bespoke concerts for individuals has a close working relationship with the Hub. There is no doubt this was a successful and thriving community up to 2020.

8. Since the pandemic things have inevitably been different. Work for most people has dried up and some have had to move out. In order to make ends meet Tim Whitehouse has let rooms to two students and two non-creatives, a plumber and an electrician, who simply live there and do not use the work facilities. However, it is clearly unfair to judge the use on the basis of what is hopefully a short term dislocation in the artistic calendar. The evidence I heard suggests this was a thriving and successful artistic community.

Policy Background

9. The building housing the Hub is located in what was a warehouse in the High Cross Centre. This is an industrial area of warehouses and commercial units which is allocated as DEA10 'South Tottenham' Locally Strategic Industrial Land (LSIS) in the Tottenham Area Action Plan (TAAP). Within DEA10 is a sub area DEA16 'Fountayne Road' which is a local employment regeneration area and has been identified as TH11 in the TAAP where 'Warehouse Living' will be encouraged. DEA16/TH11 is immediately adjacent to the appeal site and the buildings within TH11 join onto the back of unit 4a/4.
10. These allocations sit within the Strategic Policies and Development Management Policies of the Haringey Local Plan. SP8 deals with employment and sets out a hierarchy of employment land designations of which LSIS are the second most important. It also encourages small businesses and a diverse economy. The DPD has two relevant policies, DM37 "maximising the use of employment land and floorspace" and DM39 "warehouse living". DM37 seeks to protect B class floorspace within LSIS. DM37B allows non-B class uses in exceptional circumstances subject to 5 criteria. Criteria a, b and c are either/or so only one of them needs to be met and criteria d and e are additional and both have to be met.
11. DM39 supports the development of Warehouse Living, and TH11 is set aside for such development. This is a specific, sui generis use that has developed within the borough, particularly for creative industries. However, the policy requires such development to be new build and subject to a masterplan, or redevelopment and to not compromise the wider site from being redeveloped. Despite its description the policy notes that warehouse living is not live/work and DM39H states that proposals for live/work anywhere in the Borough will be resisted.
12. There was some discussion at the Inquiry that DM39H did not align with NPPF paragraph 81(d) which requires plans to be flexible to respond to needs not anticipated and allow for flexible working practices – such as live/work. However, I agree with the Council that the local plan does allocate land where flexibility is possible, such as LEARAs, and specifically allocates land, such as TH11, for warehouse living, which is a form of live/work. It is entirely within the thrust of policies in the NPPF and the London Plan to define and seek to protect strategic industrial land, such as the Council seek to do with their LSIS designation.
13. However, this does throw up a confusion within the terminology. The Council accepted at the Inquiry that warehouse living was a form of live/work, but DM39, in section A specifically says it isn't. It is obvious to me that warehouse living is where people live and work in the same place which is a form of live/work. At 6.20 in the DPD it says that the areas identified for warehouse living (such as TH11) already contain "varying elements of warehouse living". I

need to digress slightly here, to a 2008 appeal decision allowing live/work units at 5 Fountayne Road. This building is behind the appeal site within, what is now, TH11, and I assume is one of the 'elements of warehouse living' referred to. From the description of the use at DL42 onwards it seems each unit was a genuine mix of living and working with no separately defined areas. Floorspace not used in such a way was available for communal working. It sounded very much like the current appeal use, except this also involves shared living spaces. The point is that while this was described as live/work it also has elements of warehouse living.

14. There is no definition of live/work in the local plan, nor in the London Plan, although it is supported in the 2016 SPG on Housing, where the consequences of introducing a residential element into an industrial area needed to be carefully considered and conditions were required to ensure the work element was retained. However, there was a policy EMP7 in the superseded local plan, which supported live/work units and defined them as self-contained units where the live element should meet the usual living standards and was separate from a defined work area. This policy led to problems of residential creep. The 2015 Haringey Employment Land Study reported on research carried out in Haringey and other London Boroughs that the long term result was often (if not always) that the work element disappeared and the units became C3 uses. Hence the Council has turned against this form of live/work.
15. To make sense of this tangle of contradictions it seems to me that live/work is being used in two different ways. As a general umbrella term for a range of residential/commercial concepts and as a specific policy definition of live/work that has now been superseded by warehouse living. If policy DM39 is a live/work policy then the references to it not relating to live/work must refer to the specific policy definition that the Council, for good reason, do not like. But where warehouse living is described as an element of live/work then the phrase must be being used in the wider more general sense.
16. Although the enforcement notice is directed against a live/work use, the actual use of the site is clearly neither live/work in the restricted sense of EMP7 nor warehouse living as defined by DM39, although it incorporates elements from both. The key difference is there is a large aspect of communal living in the appeal site which seems to me to underpin the philosophy of the whole Hub. It would be difficult, for example, to control the allocation of work-space because it is fluid depending on the requirements of the occupiers at the time. Some use their accommodation for working, others use the communal space, sometimes both and sometimes the communal space is given over entirely to work other times to living. The Hub is therefore a sui generis use that simply isn't catered for in the local plan or in the London Plan but could come under the umbrella term live/work, in the NPPF.
17. It was suggested that DM39H means "Proposals for Live/Work units [other than those described as warehouse living] anywhere within the Borough will be resisted", with the words in square brackets to be understood. I cannot agree with this, as if that is what the policy meant it would have been easy to say so, and it would hardly be in the spirit of flexibility required by the NPPF. It makes more sense to assume it is referring to the old policy definition of live/work for which there is ample evidence to support a policy of resistance.

18. In my view, live/work as used by the Council to describe warehouse living or in the enforcement notice, is an umbrella term for a use where people live and work in one space. Live/work as used in DM39H is a specific policy term that is best described as referring back to EMP7 and the now discredited provision of segregated live/work units. Given this understanding, DM39H does not weigh heavily against the proposal.
19. Policy DM37 seeks to protect the amount of floorspace designated as LSIS and if possible, to intensify, renew or modernise it. Section B is an exception policy that allows non-B class uses only in exceptional circumstances. One of three criteria must be fulfilled. Criterion (a) is that the "proposal is necessary to facilitate meeting the needs of modern industry and business". The Council argues this means the current use or building has to be unsuitable for modern industry. However, this is not what the policy says. I agree with the appellant this must mean that the proposed non-B class use itself facilitates the needs of modern industry. In other words the exception is for something modern rather than traditional, and the HUB is clearly a modern business.
20. Criterion (b) is that the proposal relates to a use which supports the continued functioning of the LSIS as a predominantly industrial and commercial area. Clearly the sui generis live/work use is a predominantly commercial use. When operating as intended, all the occupants work from the site. Another way of looking at this criterion is that nothing should be introduced that would undermine the continued functioning of the LSIS. The residential element is the problem here, as that could impact on neighbouring uses, who may be constrained in the way they operate because people are now living next door. In many contexts I would agree this could be a serious problem, but not it would seem here. The residential element has been operating since 2010 and there is no record that it has caused any problems. It is also attached to buildings that are themselves allocated as warehouse living, another form of live/work. So clearly the introduction of live/work would not seem to be inimical to the functioning of the High Cross Centre as a whole.
21. The 2008 Fountayne Rd decision was subject to a number of restrictive conditions. This was a much discussed decision at this Inquiry but for the purposes of criterion (b) I note that the site lies in TH11 (behind the appeal site) and would still seem to be functioning as live/work as I noticed on my site visit an advertisement for live/work occupiers attached to the building. Although the Council reported issues with the conditions, there was no suggestion the use had affected the continued functioning of the LSIS.
22. Criterion (c) is that the proposal would deliver strategic economic benefits of a borough or sub-regional scale, but I cannot see that the Hub has such wide ranging economic benefits.
23. Criteria (d) and (e) must both be met. Criterion (e) is that "proposal would not restrict, prevent or in any way prejudice the continued operation of adjoining or nearby established employment uses". There was no argument over this, that the use does not prejudice adjacent uses (see also above the discussion of criterion (b) as there seems to be a cross-over here) so the issues revolve around criterion (d), which is that the loss of B class floorspace "*would not compromise the strategic employment land requirement*". What this comprises is explained clearly in the Council's closings as "*a numerical figure established by the development plan process through the evidence base. Thus for Haringey*

specifically, it is established by the Employment Land Study which informs the Local Plan process and which then justifies the amount of land then designated for protection”.

24. The most recent study is the 2015 employment land study which showed vacancy rates were around 6% for warehousing which is slightly lower than is comfortable to allow for the natural churn of businesses. Although this is now some 6 years out of date, it is the most recent evidence.
25. The TAAP dates from 2017 and that notes that local evidence suggests there is a high demand for small scale, flexible space for small businesses. The protection and enhancement of its industrial areas has led to them becoming a hub for small firms to set up and thrive and also that Tottenham is the area where the bulk of the jobs that Haringey will provide by 2026 will be located. Thus while there is high unemployment, this does not suggest to me the vacancy figures are somehow incorrect – as suggested by the appellant – but that there is likely to be pressure on what B class floor space there is.
26. There was some anecdotal evidence of a vacant building in the High Cross Centre and I saw a vacancy sign on a unit opposite the site. However, the Council photographs and my own observations tended to support the idea that the area is generally busy. In other words there is nothing to suggest that there is an over-supply of B class floorspace in the Borough in general or in Tottenham in particular. In that situation any loss of B class floorspace is capable of undermining the strategic employment land requirement.
27. A subsidiary argument was that the warehouse was obsolete and removing the current use would serve no purpose as it would just remain empty. However, there was no evidence to support this assertion at all. The business rates record shows that in the 12 years before Mr Whitehouse took over there was only a period of a few weeks when it was empty. Whilst not definitive this is suggestive that the building was not difficult to rent out.
28. I would conclude from all this that the building is not obsolete, it does therefore play a part in providing B class floorspace as part of the Council’s strategic land supply and the latest evidence is that there is no over-supply of strategic land. Would the loss of the appeal site compromise the strategic employment land requirement? The Council say yes because any loss is unacceptable. The appellant replies that the loss of 400sqm of floorspace hardly compromises the Borough’s strategic requirements when it has over 320,000sqm of floorspace overall. My problem with the appellant’s argument is that it could be applied to any loss of floorspace, unless individual applications were on a strategic scale, and that cannot be the intent of the policy. The Council’s view that any loss is unacceptable is equally untenable otherwise it would not be an exception policy at all. In my view the policy allows the release of B class land only when it can be shown there is an over-supply in the borough or in the particular area of the site for some specific reason. That would be an exceptional circumstance. If not then anything, other than a de-minimis loss would be capable of compromising supply. There is no evidence of over-supply and so the loss of the appeal site to a non-B class use is contrary to DM37(d).

Living standards

29. There was no real dispute that living conditions as measured by the Council’s policies for housing are sub-standard. The issue is with outlook and light.

Although the rooflights provide plenty of natural light it is not clear which, if any are openable, and as they are made of toughened safety glass you cannot see through them. In unit 4a there is no outlook from rooms 1a, 3a, 4a, 5a and 6a. In unit 4 there is no outlook from any of the rooms. In addition, in unit 4, many of the rooms, as noted above, are split level, with the ground floor element only receiving light down the stairwell from the upper floor.

30. I visited the site on a dry but cloudy day and there was plenty of light flooding through the large rooflights, so much so that even in the ground floor elements of the split level rooms there was sufficient light. This would change on a darker day, and not every part of the ground floor rooms were well lit and I cannot disagree with the lack of outlook. Nevertheless, the impression of the space that had been created was airy, light and welcoming. It was a considerably more attractive place to live than many flat conversions I have seen despite them meeting the standards prescribed by the relevant councils.
31. There seems to me to be a 'Catch 22' of the Council's own making. Where they used to allow live/work units with standards so that they could function as dwellings in their own right, it was perhaps not surprising they quickly morphed into exactly that. But where the standards are not those of residential dwellings the Council insist they are unacceptable. In my view these are not primarily residential uses and so some relaxation of the standards is acceptable. Particularly as in this case where the overall provision of accommodation is so self-evidently popular, attractive and of a high quality.
32. I am well aware of other decisions where Inspectors considered that lower standards were not acceptable, but as I was constantly reminded during the inquiry, each case must be considered on its own merits. I do not know what the living conditions were like in those appeals but I have the advantage of having seen units 4 and 4a and was very impressed. It is certainly somewhere I would have been happy to live when I was younger. Which is perhaps the point that Mr Horne was making when cross-examined, not that young people should put up with lower standards of accommodation, but that there are certain groups who at certain times in their lives and careers have different priorities and it is unreasonable to penalise them for being in that situation. Consequently, while I consider the use is not strictly in compliance with DM1, which deals with living standards, I consider that overall the accommodation does exhibit good design quality and is well suited to its purpose. On balance therefore there is no conflict with DM1.

Other material considerations

33. The appellant argues that more jobs are supported by the Hub than a simple warehouse use. I agree that this is likely to be the case. DM39 envisages that warehouse living would create more jobs than a B class use in general, and I agree that warehouse uses, which is what the building was previously used for, generate even less. When operating at its full potential, before the pandemic, the Hub provided a home and workspace for 18 people. The Council argued that because some of the space was taken up by living quarters this was lost to employment uses, but that seems to miss the point that the work and live space is intermingled, and the communal space operate as both living and working areas. This seems to be different to the other appeal decisions I was referred to. In Constable Crescent¹ the living spaces seemed to be entirely for

¹ APP/Y5420/C/16/3166240 etc. (2018)

living and in Gaunson House² and Fraser House³ they were old style live/work concept, where most of the floorspace was used for residential purposes.

34. The Council did not provide any figures for the typical number of jobs per sqm of floorspace and did not challenge the appellant's arguments that warehouse uses had the lowest employment densities of all. The anecdotal evidence was that the previous carpet storage use at the site employed only a couple of people. It would seem to me therefore likely the Hub would create more employment than an alternative B class use.

Conditions

35. The key problem, which was alluded to in the Inquiry, was how to ensure the use remained as a high quality creative employment hub and did not just subside over time into a pleasant HMO. This has clearly been an issue in the past and I have considerable sympathy with the Council's enforcement problems. It is very difficult, unless you make a visit and talk to the people involved, to be sure exactly what is happening inside the building. Which is why it is easy to stop working, but to carry on living there for 4 years and no-one knows any different. Already, as a response to the pandemic, at least four people have begun using the site purely as their primary residence.
36. The 2008 appeal decision grappled with this problem and attached various conditions controlling the description of uses that could take place in the building, the percentage of floorspace given over to business purposes and an annual list, provided by the freeholder, of the people resident, what they did and a plan showing where they did it. Neither of the first two conditions were suggested in this case, for practical reasons. It is difficult to pin down the exact use involved in order to make an enforceable condition and as noted above the amount of floorspace is flexible and not subject to simple controls.
37. The list idea was much discussed. The Council reported they had never managed to get a list from the freeholder of 5 Fountayne Road and so effectively they have no idea what is going on there. I know from experience that councils are always reluctant to get involved in annual monitoring style conditions because they simply do not have the resources to follow them up. I accept that mere difficulty of enforcement does not make a condition unlawful, but it can make it unacceptable. The appellant has not made any real effort to come up with a condition that might work or that is suited to the specific nature of the use going on at 4/4a. The freeholder is not involved in this appeal so it is unclear who would be conditioned to provide the lists or what they would contain.
38. This is a shame as it seems clear to me that control of these sort of uses is a major issue. The Council have tried to grapple with this via DM39, but this seems to be a sledgehammer to crack a nut, and it is not surprising that so far no uses conforming to DM39 have been allowed. I assume the key driver for most of these uses is the affordability of living in an old warehouse rather than a high-spec new build. However, in this appeal it would not have been impossible to come up with a management plan to control occupation and who vetted the occupiers and was responsible for ensuring the continued use of the Hub. This could have been condition or provided via a legal agreement, but

² APP/Y5420/C/13/2207698 (2014)

³ APP/D5120/W/17/3172765 (2018)

neither was forthcoming. I raised the possibility of a personal condition as one way of getting round the problem as Tim Whitehouse is the driving force behind the concept and this could have effectively created a temporary permission, but both parties were firmly opposed to such an idea. Consequently, I am forced to conclude there would seem to be no way of controlling the use in the future that would be reasonably enforceable.

Conclusions

39. I was impressed by the quality of the accommodation and the concept of its integration with the variety of workspaces and the flexibility the internal arrangements provided. It seemed to me the Hub had been a viable and thriving community that provided jobs and accommodation for people in the creative industries and, when operating in normal times, was just the sort of diverse economic opportunity that should be welcomed and encouraged.
40. Unfortunately it is located in an LSIS. Had it been next door in TH11 the policy objections would largely have fallen away, but in this part of the High Cross Centre the Council are concerned to safeguard the stock of B class floorspace of which I have found there is not an over-supply. The use is therefore contrary to DM37. I do not think it is contrary to DM39 for the reasons I have explained above and any shortfall in living standards is acceptable so it also not contrary to DM1. The use is also likely to generate more jobs than a straightforward warehouse use.
41. I have considered allowing the appeal although it is contrary to the development plan because the loss of floorspace is minor, the location is adjacent to an area where such uses are encouraged, there is general support for creative industries in the NPPF, the London Plan and the local plan and the likelihood of beneficial job creation. However, I accept that this is finely balanced.
42. Given my conclusion on the enforceability of conditions above, however, I do not consider that it is possible to frame a decision to allow the appeal that would give reasonable comfort to the Council that the use would remain a positive economic asset going forward, even though it entailed a loss of B class floor space. Consequently, I cannot allow the appeal.
43. There was some discussion as to the exact nature of the allegation, however, as I am not granting planning permission on ground (a) there is no need to consider this further. The mixed use of residential and live/work would seem to fairly describe the use at the time the notice was issued, even if it was not what the appellant sought planning permission for.

The Appeal on Ground (f)

44. It is the second requirement that is at issue; *"remove from the land all fixtures, fittings and materials associated with the unauthorised use including mezzanine floors accommodating bedrooms; wall partitions facilitating bedrooms; residential kitchens (sinks, cupboards, cooking equipment)"*. The Council accept that one kitchen can remain and so the dispute turns on the mezzanines and partitions. In their closing arguments the appellant appears to accept the partitions are inimical to the future use of the building as Class B floorspace so it is just the mezzanines that require further consideration.

45. Here is no dispute that although they are not development themselves the mezzanine floors have facilitated the unlawful use and can be removed. The nub of the issue is therefore that the Council consider they would be likely to put off any future occupier, as they take up valuable space, whereas the appellant argues they might actually be attractive to some as they create extra space. There is little evidence to support either view, although there was a planning permission in 1988 for internal floors to create office space which does suggest that at least some mezzanines could be useful. The appellant also argues that any prospective occupier could make it a condition that some or all of the mezzanines are removed before they take on the lease if that is deemed necessary.
46. The current owner of the units has obviously had no problem with the introduction of the mezzanines, and as the Council have been aware of them since at least 2010 and done nothing about them then presumably neither did they. I agree they cause no obvious planning harm and so can remain. I shall vary the requirements to remove mention of the mezzanines.

The Appeal on Ground (g)

47. The current compliance period is 6 months and the Council accept that in the current difficult climate this could be extended to 9 months. However, the appellant asks for a year. It clear from the evidence that the appellant has been actively seeking alternative accommodation for the Hub but this has not been successful so far. I agree that some of the current occupants could easily find somewhere else to live, some already have alternative accommodation, but many do not, and given the precarious nature of making a living, particularly in the current circumstances, even if some could find elsewhere to live, they are less likely to be able to easily find somewhere to work as well.
48. Although the loss of B class floorspace is current but the beneficial impact on the occupants of an extra 3 months is greater than the negative effect of sustaining that loss for the same period. I agree therefore with the appellant that the public interest is not served by forcing out the occupants too soon and shall extend the compliance period to 12 months.

Simon Hand

Inspector

APPEARANCES

FOR THE APPELLANT:

Mark Westmoreland – of counsel
He called
Tim Whitehouse – appellant
Josh Whitehouse
Peter Sampson
Rafe Offer
Derek Horne – planning consultant

FOR THE LOCAL PLANNING AUTHORITY:

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He called
Antony Fenner – enforcement
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