



Appeal Decision

Hearing Held on 3 August 2021

Site visit made on 5 August 2021

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 22 October 2021

Appeal Ref: APP/J1535/C/20/3264151

**Land at St Leonards Farm, St Leonards Road, Nazeing, Waltham Abbey
EN9 2HG**

- 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 RS One Property Limited against an enforcement notice issued by Epping Forest District Council.
- The enforcement notice was issued on 27 October 2020.
- The breach of planning control alleged in the notice is failure to comply with condition No 2 of planning permission Ref EPF/1343/14 granted on 27 August 2014.
- The development to which the permission relates is land and buildings at St Leonards Farm. The condition in question is No 2 which states that: The premises shall be used solely for B1 and/or B8 and for no other purposes (including any other purpose in Class B of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended), or in any provision equivalent to that Class in any Statutory Instrument revoking or re-enacting that Order. The notice alleges that the condition has not been complied with in that the use of Units 2 and 6 falls outside B1 and/or B8 use.
- The requirements of the notice are: To cease the unauthorised B2 use of Units 2 and 6 and to remove the powder coating equipment from the land.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2)(c) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld subject to corrections

Decision

1. It is directed that the enforcement notice be corrected and varied as follows:

a) Delete the last paragraph of Section 3 "The Breach of Planning Control Alleged" in full and substitute therefore by:

"It appears to the Council that the condition has not been complied with as the current use of Units 2 and 6, St Leonards Farm falls outside the B1 and/or B8 use permitted by planning permission Ref EPF/1343/14."

b) Delete paragraphs 3, 4 and 5 of Section 4 of the notice "the Reasons for this Notice" in full.

c) Delete the whole of the requirements of Section 5 of the notice "What you are required to do" and substitute therefore by:

"As the person responsible for the Breach of Condition specified in Section 3: To comply with condition 2 of planning permission reference EPF/1343/14 by

ceasing use of the Units 2 and 6 other than for B1 and/or B8 uses and for no other purpose in including any other purpose in Class B of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended) (the Use Classes Order) or in any provision equivalent to that Class in any statutory Instrument revoking or re-enacting that Order. For the avoidance of doubt, the requirement of this notice is not intended to remove any rights granted by the Town and Country (Uses) Order 1987 (as amended)."

2. Subject to these corrections and variations, the appeal is dismissed and the enforcement notice is upheld.

Procedural Matters

3. An accompanied site visit was undertaken as part of the appeal, and I was able to see the context of the appeal site particularly the relationship between the appeal site and neighbouring dwellings and to observe the powder coating process. However, what was observed in terms of the powder coating process does not affect whether or not a breach of planning control had occurred prior to the issue of the notice in October 2020.
4. Following discussions which led to revisions to the wording of the notice, the appellant withdrew the ground (f) appeal.

Background information and relevant site history

5. Units 2 and 6 are part of a business park that was formerly part of St Leonards Farm until planning permission¹ was granted on the 27 August 2014 for "change of use of agricultural land to use Class B1/B8 including ancillary works and new vehicular access" ("the planning permission"). Following the grant of planning permission, farm buildings were converted into a business park made up of units for light industrial and storage use.
6. Condition 2 of that planning permission states the following: "The premises shall be used solely for B1 and/or B8 and for no other purposes (including any other purpose in Class B of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended), or in any provision equivalent to that Class in any Statutory Instrument revoking or re-enacting that Order." The reason for that condition was *"To ensure that full consideration is given by the Local Planning Authority to any alternative in the interests of safeguarding the amenities of surrounding residents in accordance with the guidance contained within the National Planning Policy Framework and policies RP5A and DBE9 of the adopted Local Plan and Alterations."*
7. In November 2015², a prior approval notification permitted conversion of a barn to dwellings to the south of the business park. The prior approval resulted in further conversion of farm buildings for residential use in close proximity to the business park. The delegated report for the prior approval acknowledged that there would be some noise for new residents from the business park but considered that the wording of condition 2 with its use restrictions meant that the residential use and the business park use were not incompatible.

¹ EPF/1343/14

² EPF/2336/15

8. On 14 April 2020³, the Council refused retrospective planning permission relating to Unit 6 for the "Installation of a flue extractor for use within a powder coating specialist business".
9. In July 2020⁴, an application for a Certificate of Lawful Use (LDC) to establish that the ongoing powder coating use at Unit 6 fell within the terms of the planning permission was refused on the 8 September 2020.

The Notice

10. The wording and terminology throughout the notice is confused in referring to both a breach of condition and a material change of use. After some discussion, the Council indicated that the notice was intended to allege a breach of condition and the appellant confirmed that it had treated the notice as such. A number of amendments were subsequently agreed to remove unnecessary wording which related to a material change of use.
11. The parties therefore agreed that the breach of planning control should be deleted in full and substituted for the following: "It appears to the Council that the condition has not been complied with as the current use of Units 2 and 6 at St Leonards Farm falls outside the B1 and/or B8 use permitted by planning permission Ref EPF/1343/14."
12. The reasons for the notice can be limited to retaining paragraphs 1, 2 and 6 which refer to the breach occurring in the last 10 years, the alleged harm due to noise and fumes and the Council not considering a relaxation to the condition to be appropriate.
13. The requirements of the notice need to relate only to the breach of condition. The parties therefore agreed to replace the existing requirements with

"As the person responsible for the Breach of Condition specified in Section 3: To comply with condition 2 of planning permission reference EPF/1343/14 by ceasing use of the Units 2 and 6 other than for B1 and/or B8 uses and for no other purpose in including any other purpose in Class B of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended) (the Use Classes Order) or in any provision equivalent to that Class in any statutory Instrument revoking or re-enacting that Order. (For the avoidance of doubt, the requirement of this notice is not intended to remove any rights granted by the Town and Country (Uses) Order 1987 (as amended).)"
14. The changes were agreed by the parties and I am satisfied that these changes do not cause injustice to either party. I will amend the notice accordingly.

An appeal under ground (c)

15. An appeal on this ground is that the matter alleged in the notice does not constitute a breach of planning control. The onus of proof is on the appellant. The Council alleges that condition 2 of the planning permission is not being complied with as the powder coating business which operates from Units 2 and Units 6 falls within B2 Use as opposed to the B1 and /or B8 uses permitted by the condition.

³ EPF/0377/20

⁴ EPF/1437/20

16. The Use Classes Order(the UCO) describes a Class B1(c) use as including a use **'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'**. The compatibility with residential area amenity is the governing criterion for this class and such uses should be capable of being carried out *in any residential area* [my emphasis]. Order A use for the carrying on of an industrial process other than one falling within Class B1 would fall within Class B2 in the UCO.
17. The meaning of the term '*industrial process*' is given in Article 2 of the UCO. The powder coating process involves the cleaning of items which are then placed on metal frames and hand sprayed within a wet wall. The items are then put in an oven and baked at very high temperatures. Once baked, the items are left on the frames to dry and then packed for collection by delivery lorries. Whilst in operation, the extractor for the wet wall and the flue for the oven are working. It is not disputed between the parties that powder coating is an "industrial process" and I have no reason to disagree. The only area of disagreement between the parties is whether it meets the criterion with regard to amenity set out above. If the character of the powder coating use does not fall within the limitation set out in Class B1 (c), then it does not have the benefit of the 2014 planning permission and the appeal under ground (c) would fail as a breach of planning control has occurred.
18. Despite the presence of the business park and nearby dwellings, the surrounding locality is largely rural. The appeal site sits in between Laundry lane which is a quiet rural lane providing access to the business park and the nearby dwellings and the B194. In my view, ambient noise levels are therefore likely to be low with some background noise from St Leonards Road which was more noticeable in the car park area of the business park to the north than near the dwellings to the south.
19. The appellant confirmed at the Hearing that Units 2 and 6 are used in a similar way to each other in that they both have a wet wall and oven for the powder coating process although Unit 2 is bigger and has a larger capacity oven. Unit 6 has been in use for powder coating since around September 2019. The appellant has queried the inclusion of Unit 2 in the notice, but the powder coating business has operated from Unit 2 as well since around June 2020. The occupier of Willow Cottage has referred specifically to noise issues with Unit 2 from the extractor. Movements between the two units across the yard within the site are also likely to have occurred particularly when Unit 2 was being established.
20. Complaints from residents include not being able to sit out in gardens due to noise and smells. The noise is said to be from the extractors, employees, spray guns, transportation of large metal items on forklift trucks or dragging metal across concrete. The smells are said to be from strong chemical paint or hot burning smells exiting from the flue. The occupier of Willow Cottage also refers to forklift truck movements operating between the two units.
21. Ash Cottage and Willow Cottage are the closest to the business park as they share boundaries with it and Chestnut Cottage is then next to Ash Cottage. The block of units which includes Unit 6 runs along the whole of the side of the

garden boundary of Ash Cottage. Unit 2 is within a different block and is closest to Willow Cottage which shares the southern boundary with the business park.

22. Photographs and two short videos of activity at Unit 6 were provided by the occupier of Willow Cottage. The photographs show outside storage including the storage of metal frames. One photograph shows an employee working on a metal frame outside with the shutters open. The occupier of Willow Cottage indicates in his written representation that the shutters are frequently left open in the day. The appellant clarified at the Hearing that after the oven is turned off and the items removed from the oven, the doors are opened to allow some of the heat to escape. However, the evidence before me indicates that shutters as well as windows are likely to be left open for different lengths of time for reasons such as workloads and for example in the summer months.
23. One of the recurring issues for residents relating to noise is the wheeling of metal frames upon which finished products are stored outside the units. Residents refer to metal frames and metal products jangling as they are being pushed along the hard -surfaced yard causing noise issues particularly for occupants of Willow Cottage, due to its location to the other side of the yard. At the Hearing, the appellant did indicate that the metal frames with wheels were being gradually replaced with new ones.
24. The appellant considers that the videos were unclear, and in any event sees the hours and working outside conditions as distinct from the breach of condition 2 as the Council has chosen not to serve breaches of conditions notices for these matters in the past or as part of this notice. However, the conditions do not operate in isolation. Given the nature and scale of the powder coating activity, working outdoors as well as operating outside the permitted hours has an off-site effect. The appellant did indicate that outside storage had taken place during extremely busy periods. Residents consider that these activities cause noise disturbance, particularly in early morning or in the evening, due to the proximity of the dwellings to Units 2 and 6.

Expert reports

25. The appellant commissioned expert reports as part of the application for the LDC and the same reports were submitted as part of the appeal. Both reports relate to Unit 6 only as at the time of the reports, Unit 2 was being set up for powder coating use.

Noise

26. The report refers to the main noise sources associated with the powder coating operation being the machine processes of the spray booth and the oven. The report found that the excess of rating over background sounds level for receiver 1 was 7dB and for receiver 2 was 10dB and a difference of around +10 dB is more likely to be an indication of a significant adverse effect depending on context.
27. These noise levels are the low end of the "Lowest Observed Adverse Effect Level" category. The report describes this as the level at which "adverse effects on health and quality of life can be detected." The author considers the rating to be acceptable due to the context of the area and the historical use of the site. I do not however share the author's view that such a level means that that the use in Unit 6 can be carried out without detriment to the amenity of

the surrounding area given that noise is higher than the ambient level and the rating level found.

Smells

28. An odour and air quality assessment was undertaken by the appellant's expert following a visit to the appeal site on the 8 June 2020. The author of the report indicates the two potential sources of odour from the process to be propane combustion from heating the oven released via a flue and the coating powder potentially released via the spray booth and fugitively from the roller door.
29. The report found that the facility may result in a maximum of a Slight Adverse Impact at three locations which represents about 4 properties and includes Ash Cottage, Chestnut Cottage and Willow Cottage. Whilst the report also highlights that there are other businesses in the area which generate smells, propane odours are released as part of the powder coating process.
30. The report says that any emissions will only be able to travel to dwellings when the wind is blowing towards the properties or during very calm conditions. However, in view of the proximity of dwellings to the units, residents should not have to rely upon weather conditions to not incur detriment to their residential amenity.
31. The author considers that the existing use of Unit 6 can be carried out without *significant* (my emphasis) detriment to the amenity of the surrounding residential area. Nevertheless, significant amenity is not the test set out in the wording of Class B 1(c) which refers to a use which can be carried out in any residential area without detriment.
32. The expert reports assessed noise and smells over a short period and both found adverse effects albeit at the lower end of the scale. The experiences of nearby residents are based on living in proximity to the units on a daily basis and their complaints show that the nature of the activity disturbs residents. The noise and smells generated by the powder coating process has off-site impacts for those residents and is an industrial process.

Other Matters

33. The appellant considers that the Council has not acted in a reasonable and proportionate manner and has not provided independent evidence to show that there has been a breach. However, the evidence which the Council relies upon is first hand evidence from residents who live next to the business park and the closest resident to Unit 6 has provided videos and photographs to support his concerns.
34. The appellant refers to Unit 6 being used for powder coating during the period 2015 to 2019 without any apparent difficulty but by a different company. The appellant took over Unit 6 in the summer of 2019 and refers to introducing new equipment including a modern spray booth with extraction flue. Whilst the end product is likely to be the same, the equipment used, any mitigation measures and how the company operates on day to day basis means that the uses are not necessarily comparable.

Conclusion

35. To succeed on a ground (c), the appellant would have to show that the matters alleged in the notice did not constitute a breach of planning control. Taking into consideration the points set out in the preceding paragraphs, I find, as a matter of fact and degree, that the character of the use of Units 2 and 6 is materially different from its lawful use for Class B1 or B8, because of the nature, type, and scale of the operations. I consider that the use therefore taking place at Units 2 and 6 contravenes condition 2 of the 2014 planning permission. Express planning permission is therefore required for that use and the appeal under ground (c) fails.
36. For the reasons given, the enforcement notice as corrected is upheld and the appeal should be dismissed.

E. Griffin

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Ben Du Feu	Barrister Cornerstone Chambers
Robert Moore	Director RS One Property Ltd
Steve Milne	Director RS One Property Ltd
Alan Hannify	Director Union4 Planning
Dr Austin Cogan	Director Air Pollution Services
Daniel Green	Senior Acoustic Consultant KP Acoustics
James Liebetrau	Associate at Howard Kennedy LLP
Georgie Gibson	Trainee Solicitor Howard Kennedy LLP

FOR THE LOCAL PLANNING AUTHORITY:

Caroline Brown	Planning Officer Epping Forest District Council
----------------	---

INTERESTED PERSONS:

Craig Hart	Willow Cottage
Christopher Wyles	Chestnut Cottage