



Appeal Decision

Site Visit made on 16 November 2021

by AJ Steen BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 January 2022

Appeal Ref: APP/A5840/C/20/3264730

Units Rear of 1 East Dulwich Road, Southwark, SE22 9BA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended (the Act). The appeal is made by Mr Jamie Elliott of Jailmake against an enforcement notice issued by the Council of the London Borough of Southwark.
- The notice was issued on 9 November 2020.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of the land to a B2 Workshop (for the carrying on of an industrial process other than one falling within the uses described in Schedule 2, Class E, sub-paragraph (g)). ("the Unauthorised change of use").
- The requirements of the notice are to:
 1. Cease the use of the land as a B2 Workshop (for the carrying on of an industrial process other than one falling within the uses described in Schedule 2, Class E, sub-paragraph (g)).
 2. Remove any tools, machinery and equipment that is associated with the B2 Workshop Use (for the carrying on of an industrial process other than one falling within the uses described in Schedule 2, Class E, sub-paragraph (g)).
- The period for compliance with the requirements is: two months.
- The appeal is proceeding on the grounds set out in section 174(2)(c), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary Decision: The appeal is dismissed and the enforcement notice is upheld with corrections in the terms set out below in the Formal Decision.

Preliminary Matters

1. The breach of planning control and requirements of the enforcement notice refer to a B2 Workshop and Schedule 2, Class E, sub-paragraph (g), but do not specify from which document these were taken. It is clear from the submissions of the appellant that they have understood what the Council meant. However, for clarity I will amend the notice to ensure it refers to the relevant document, being the Town and Country Planning (Use Classes) Order 1987 (UCO).
2. At paragraph 4.1 of the enforcement notice regarding the reasons for issuing the notice the Council there is a typographical error where it states "the" instead of "ten". I understand that this was raised prior to the appeal being made so the appellant was aware of what the enforcement notice should have said. Consequently, correcting the enforcement notice would not cause injustice to the appellant or the Council. I will do so for clarity.

The Appeal on Ground (c)

3. An appeal on this ground is that the matters described in the breach of planning control (if they occurred) do not constitute a breach of planning control. The burden of proof for this ground is on the appellant, with the

relevant test of the evidence being on the balance of probability. The main issue is whether the units to the rear of 1 East Dulwich Road were in use as a B2 workshop on the date the enforcement notice was issued.

4. There is no dispute that a change of use of the property to a use under class B2 of the UCO constitutes development within the meaning of Section 55 of the Act for which planning permission is required. No planning permission has been sought from or granted by the Council for a change of use.
5. The appellant suggests that the lawful use of the building fell under what was class B1, now class E sub-paragraph (g) (class E(g)) of the UCO. They suggest that it continues to operate under that use class. If that were the case, the allegation within the notice that the use falls within class B2 of the UCO would be incorrect.
6. Class B2 is defined as a use for the carrying on of an industrial process other than one falling within the uses described in class E(g) of the UCO. class E(g) of the UCO includes 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. In this case, the only suggested reason for detriment to amenity relates to noise.
7. In order to conclude whether the use falls within class B2 or E(g) I must consider whether any noise generated is being transmitted at a level that harms the amenity of the area. The definition of a use under class E(g) of the UCO refers to any residential area, which is general rather than specific to the actual area surrounding the site. As such, the background noise in the location of the units would not affect my conclusion as to whether the use falls within class E(g) of the UCO. Nevertheless, I can take account of mitigation measures to reduce the effect of noise on the area put in place on or within the building.
8. Jailmake is a design studio and workshop that occupies these units. It undertakes design, development and project management on behalf of clients, including designing and manufacturing lighting and furniture. The premises provide rental desk space for other professionals, including architects, web developers and graphic designers. The practice is involved with teaching, including having students on site. The workshop is used as part of the business: researching, developing and producing designs with a variety of tools and equipment. They work with metal, wood and electronics. These include window displays, furniture, fixtures and equipment.
9. I note that larger scale production is out-sourced such that it doesn't take place in these units. Nevertheless, manufacturing does take place in the workshops within the building using a variety of machinery, including hand tools and modern digital equipment. I understand that the processes undertaken within the units can result in significant levels of noise.
10. There are a limited number of openings and vents on the units that reduce the amount of noise that escapes from them. The appellant states that they have taken measures to mitigate and reduce noise escaping, including moving uses around within the building and installing acoustic curtains. I understand that they are investigating further measures to limit noise generation and transmission from the units. That further measures are suggested indicates

there is material noise generation within the units at present that is transmitted and affects the amenity of the area.

11. A Noise Assessment has been provided that analyses noise from the units. This includes assessment of external plant noise levels. It concludes that noise from a fan is likely to have an adverse impact on the nearest receptor, which it stated is a residential receptor to the south west of the site. Whilst there are proposals for attenuation, that was not installed on the date the enforcement notice was issued. That indicates the noise from the external plant means the use of these units did not fall within class E(g) of the UCO on that date.
12. In terms of noise from internal processes, the Noise Assessment concludes the effects on the nearest receptors are low. However, this relates to this specific location as it takes account of ambient noise. I have to take account of whether the use can take place in any residential area, so I can place limited weight on this.
13. I note that the courtyard outside the building is used solely for access and not for manufacturing or other operations by the appellant. My attention has been drawn to a neighbour carrying out carpentry works in the courtyard in the past, which would be separate from the use of the units.
14. I understand that the Council have investigated the use in the past and concluded that it fell within class B1. However, I have limited details of the considerations at these times and, in any event, need to consider the appeal on the basis of the use being undertaken when the notice was issued.
15. Taking account of all the above, on balance I consider the use has resulted in noise at a level that is detrimental to the amenity of the area. Consequently, this use should not be carried out in a residential area. That means the use cannot fall within class E(g) of the UCO.
16. I conclude that, on the balance of probability, the use of the building falls within use class B2 of the UCO. As set out above, this use would require planning permission.
17. Since no planning permission has been granted for the development it thereby constitutes a breach of planning control.
18. For these reasons, I conclude that the appeal under ground (c) should fail.

The Appeal on Ground (f)

19. An appeal on this ground is that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach. In this case, the requirements seek to discontinue the use of the land under use class B2 of the UCO. Therefore, the purpose of the notice requirements is to remedy the breach of planning control.
20. The appellant suggests that the requirements should be amended to allow alternatives to be explored to reduce the effect of noise on occupiers of neighbouring properties, for example through the provision of an attenuator. It is not possible to require alterations to mitigate the effects of noise on surrounding residential occupiers in the absence of an appeal under ground (a)

that planning permission should be granted. In addition, limited information has been provided regarding the attenuator. In any event, allowing the use to continue would not remedy the breach of planning control.

21. As a result, I conclude that the requirements of the notice do not exceed what is necessary in order to remedy the breach of planning control. As such, the appeal fails on ground (f).

The Appeal on Ground (g)

22. An appeal on this ground is that the period specified in the notice for compliance falls short of what should reasonably be allowed. The notice suggests two months is sufficient to discontinue the use under class B2 of the UCO.

23. The appellant has requested a longer period for compliance to allow discussions on the lease for the building to take place and for changes to the building to enable the use to continue. However, the requirements of the enforcement notice are to cease the use under class B2 of the UCO and do not require further works. It is unclear how discussions on the lease would affect the ability to comply with the enforcement notice. Consequently, additional time is not necessary to allow further works to take place.

24. For these reasons, I conclude that the appeal under ground (g) should fail.

Formal Decision

25. It is directed that the enforcement notice is corrected by:

- The deletion of the words "*B2 Workshop (for the carrying on of an industrial process other than one falling within the uses described in Schedule 2, Class E, sub-paragraph (g))*" from the description of the breach of planning control at paragraph 2 and the requirements at paragraph 5.1 of the notice and substitution of the words "*Workshop under use class B2 of the Town and Country Planning (Use Classes) Order 1987 (for the carrying on of an industrial process other than one falling within the uses described in Schedule 2, Class E, sub-paragraph (g) of the Town and Country Planning (Use Classes) Order 1987)*";
- The deletion of the words "*B2 Workshop Use (for the carrying on of an industrial process other than one falling within the uses described in Schedule 2, Class E, sub-paragraph (g))*" from the requirements at paragraph 5.2 of the notice and substitution of the words "*Workshop under Use Class B2 of the Town and Country Planning (Use Classes) Order 1987 (for the carrying on of an industrial process other than one falling within the uses described in Schedule 2, Class E, sub-paragraph (g) of the Town and Country Planning (Use Classes) Order 1987)*"; and
- The deletion of the words "*the last the years*" and substitution of the words "*the last ten years*" in paragraph 4.1 of the reasons for issuing the notice.

26. Subject to the corrections, the appeal is dismissed and the enforcement notice is upheld.

AJ Steen

INSPECTOR