



Appeal Decision

Site visit made on 18 October 2022

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 November 2022

Appeal Ref: APP/A5840/C/21/3289284

Land at 93 Camberwell Station Road, London SE5 9JJ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended (the Act). The appeal is made by Bishop Climate Wiseman against an enforcement notice issued by the Council of the London Borough of Southwark.
- The enforcement notice was issued on 16 November 2021.
- The breach of planning control as alleged in the notice is failure to comply with conditions imposed on a planning permission ref 11/AP/1568 granted on 1 March 2012.
- The development to which the permission relates is: 93 Camberwell Station Road: 1) Conversion of ground floor of main building to nursery school and 2) Conversion of warehouse to meeting place for youths and the community (Class D1). 95 Camberwell Station Road: Conversion of warehouse to place of worship and ancillary offices (Class D1). External alterations to front elevation of both buildings comprising infilling of existing warehouse doors and provision of two new doors at ground floor level.
- The conditions in question are nos 2 and 3 which state that:
 - (2) A noise management plan, outlining measures to mitigate any noise and disturbance to neighbouring occupiers caused by people who are attending the site, outside the building, arriving at and leaving the site, shall be submitted in writing to the local planning authority to its written approval to a Management Plan setting out the proposed measures to be taken to remind congregants to respect the privacy of neighbouring residents on the way in and out of the property within 2 months of the date of this permission. The site shall thereafter be operated in strict accordance with the agreed details in the approved noise management plan at all times.
 - (3) The use hereby permitted for place of worship, children's day nursery and community facilities shall not be carried on outside of the hours 09.00 hours to 1800 hours on Sundays, 0800 hours to 2100 hours on Mondays to Fridays and 0900 hours to 2000 hours on Saturdays.
- The notice alleges that the conditions have not been complied with in that: No details have been submitted and approved to discharge condition 2 and it appears to the Council that the hours of operation have exceeded the hours set out in condition 3.
- The requirements of the notice are to:
 - 5.1 Cease the use of the Property outside of the approved operating hours of condition 3 as specified within planning permission referenced 11/AP/1568.
 - 5.2 In accordance with the requirements of condition 2 of planning permission referenced 11/AP/1568 submit a noise management plan in writing to the Council for its written approval and following approval (within the time scale set out in 6.2.1 below) of the noise management plan to implement the same ((within the time scales set out in 6.2.2 below) and until such time as this plan is approved and implemented cease the use of the Land contrary to the approved hours as per condition 3 of 11/AP/1568.
- The periods for compliance with the requirements are: With regards to step 5.1 two (2) months. With regards to step 5.2:- 6.2.1 to submit a noise management plan to the Council in writing within two (2) months beginning with the day on which this notice is served on you; and 6.2.2 to implement the approved noise management plan within two (2) months from the date of written approval of the said noise management plan by the Council.
- The appeal is proceeding on the grounds set out in section 174(2)(c) and (g) of the Town and Country Planning Act 1990 as amended.

Decision

1. It is directed that the enforcement notice is corrected and varied by:
 - At section 5, sub paragraph 5.2, the deletion of 'and until such time as this plan is approved and implemented cease the use of the Land contrary to the approved hours as per condition 3 of 11/AP/1568' so that it reads 'In accordance with the requirements of condition 2 of planning permission referenced 11/AP/1568 submit a noise management plan in writing to the Council for its written approval and following approval (within the time scale set out in 6.2.1 below) of the noise management plan to implement the approved noise management plan (within the time scales set out in 6.2.2 below).'
 - At section 6, sub-paragraph 6.1, the deletion of 'two (2)' and the substitution of four (4) so that it reads 'With regards to step 5.1 four (4) months after this Notice takes effect.'
 - At section 6, sub-paragraph 6.2.1, the deletion of 'two (2) months beginning with the day on which this notice is served on you' and the substitution of 'four (4) months after this Notice takes effect' so that it reads 'to submit a noise management plan to the Council in writing within four (4) months after this Notice takes effect; and'.
2. Subject to the variations and corrections above, the enforcement notice is upheld.

Preliminary Matters

3. Planning permission 11/AP/1568 was granted in respect of 93 and 95 Camberwell Station Road. However, the enforcement notice is only directed at No 93 and I have considered the appeal on this basis.
4. Requirement 5.2 states 'In accordance with the requirements of condition 2 of planning permission referenced 11/AP/1568 submit a noise management plan in writing to the Council for its written approval and following approval...of the noise management plan to implement the same...and until such time as this plan is approved and implemented cease the use of the Land contrary to the approved hours as per condition 3 of 11/AP/1568.'
5. This requirement is ambiguous. Requirement 5.1 requires the use of the property to cease outside the approved operating hours of condition 3 and so it is unnecessary to repeat the requirement to cease the use contrary to the approved hours. For the avoidance of doubt, I shall delete this part of the requirement and correct the wording so that it simply requires the approved plan to be implemented. Since such a correction would not alter the substance of the requirement, which is to ensure compliance with condition 2, such a correction would not cause injustice to either party.

Ground (c)

6. An appeal under ground (c) is made on the basis that those matters (if they occurred) do not constitute a breach of planning control. The appellant has drawn my attention to a lawful development certificate (LDC), reference 21/AP/1124 for the use of the premises as a private hire vehicle office (Use Class E), issued on 28 July 2021. The appellant states that the office operates

as a 24 hour call centre and requests that the administrative operations granted under the LDC are not bound by the requirement to comply with condition 3.

7. Section 55(f) of the Act states in the case of buildings or other land which are used for a purpose of any class specified in an order made by the Secretary of State under this section, the use of the buildings or other land or, subject to the provisions of the order, of any part of the buildings or the other land, for any other purpose of the same class. The Council found that the office use is within Class E of the Town and Country Planning (Use Classes) Order 1987 (as amended)(UCO) and although not explicitly stated in its decision, appears to have granted the LDC on the basis that the proposed office use would not be development. In such a situation, the planning permission and associated conditions still apply.
8. Even if the administrative operations were granted by the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended) (the GPDO), it simply grants the change of use of a building and any land within its curtilage, it does not remove the need to comply with conditions attached to planning permission granted on this site. Article 3(4) of the GPDO states 'Nothing in this Order permits development contrary to any condition imposed by any planning permission granted or deemed to be granted under Part 3 of the Act otherwise than by this Order.'
9. Consequently, condition 3 applies to the site as a whole and the appeal under ground (c) must therefore fail.

Ground (g)

10. An appeal under ground (g) is made on the basis that any period specified in the notice in accordance with section 173(9) falls short of what should reasonably be allowed.
11. The appellant states that they were not the applicant for the planning application, reference 11-AP-1568 and were unaware of the condition. They assert more time is needed to fully understand the acoustic requirements of the premises and to procure quotes from and engage the services of an acoustic consultant.
12. The appeal site is adjacent to a block of flats which front onto Camberwell Station Road. Concerns raised by interested parties point towards noise arising from the site causing harm to living conditions of nearby occupants. Significantly, the appellant hasn't appealed under ground (a). The requirement, 5.1, to cease the use of the Property outside of the approved operating hours of condition 3 as specified within planning permission referenced 11/AP/1568 is reasonable and proportionate, having regard to the need to safeguard the amenities of neighbouring occupiers and the surrounding area by reason of noise and disturbance.
13. The compliance period for step 5.2 is stated as 'to submit a noise management plan to the Council in writing within two (2) months beginning with the day on which this notice is served on you. This compliance period is not reasonable because the notice would not have taken effect on the day the notice had been served. The notice was issued on 16 November 2021 and, had an appeal not been made, would have come into effect on 20 December 2021.

14. I have considered whether this would render the notice a nullity, however, it is possible to work out that this compliance period, in effect, would have given the appellant a period of 4 weeks from 20 December 2021 to 16 January 2022. As such, I do not consider the notice to be a nullity. The appellant has appealed on the basis that 2 months is insufficient and so I consider the compliance period should be varied to give the appellant at least 2 months to comply.
15. The appellant states they wish to engage the services of an acoustic consultant. The appellant did not specify a time period they consider would be reasonable and so I have sought the views of the parties on extending the compliance period to 4 months.
16. Given the date of this decision, which would mean the compliance period would extend over the festive period, and the appellant's intention to appoint noise consultants to carry out an assessment, I consider it would be reasonable to extend the compliance period for submission of the noise management plan to 4 months, to enable a suitably qualified consultant to be appointed and for an assessment to be carried out.
17. For the reasons given above, I consider it would be reasonable and proportionate to extend the compliance period to 4 months. The appeal under ground (g) therefore succeeds to that extent.

Conclusion

18. For the reasons given above, I conclude that the period for compliance with the notice falls short of what is reasonable. I shall vary the enforcement notice prior to upholding it. The appeal on ground (g) succeeds to that extent.

M Savage

INSPECTOR