



Appeal Decision

Site visit made on 30 August 2023

by J Moss BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21st September 2023

Appeal Ref: APP/Y3940/C/23/3317573

Land at Unit 2 Leafield Industrial Estate, Leafield Way, Corsham, Wiltshire SN13 9SW

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mrs Eleanor Sweet of E Sweet Properties Ltd against an enforcement notice issued by Wiltshire Council.
- The notice, numbered ENF/2021/00925, was issued on 1 February 2023.
- The breach of planning control as alleged in the notice is: Without planning permission, operational development comprising the erection of a roller shutter door on the southern elevation of the building on the Land. The southern elevation of the building on the Land is shown with a blue arrow on the attached plan entitled "Notice Plan"¹.
- The requirements of the notice are to:
 - 1) Remove in full the roller shutter door from the building.
 - 2) Block-up the roller shutter door opening with brickwork and mortar to match the existing surrounding brickwork and mortar.
- The period for compliance with the requirements is four months from the date the notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(c) and (e) of the Town and Country Planning Act 1990 as amended.

Summary Decision: The appeal is dismissed and the enforcement notice is upheld

Ground (e)

1. An appeal on ground (e) is that copies of the enforcement notice were not served as required by section 172 of The Town and Country Planning Act 1990 as amended (the 1990 Act).
2. The notice sets out the parties that the Council says were served with a copy. The appellant acknowledges that the notice correctly lists all parties on whom a copy of the notice should have been served, in accordance with section 172(2) of the 1990 Act. However, they say that the notice was not properly served on the appellant, as Mrs Sweet, the director of the company E Sweet Properties Ltd, did not receive the notice.
3. The appellant is mentioned twice in the list of those served with the notice at two separate addresses. The first address is taken from the planning contravention notice (PCN) and is given as the address for the owner of the site, who is the appellant in this case. The second address is taken from the HM Land Registry records for the appeal site, which gives the appellant as the proprietor. The Council also say that the second address is given on the Companies House web site as the registered address for the appellant.

¹ Reference to a plan here and elsewhere in the header is to a plan attached the enforcement notices to which these appeals relate.

4. The Council has provided the Royal Mail tracking details for the letters containing the copy of the notice served on the appellant at the two addresses mentioned above. This includes the proof of delivery of both items.
5. Having regard to the above, I am satisfied that the Council had taken all reasonable steps to ascertain the usual or last known place of abode of the appellant, in accordance with section 329 of the 1990 Act. The evidence also demonstrates that a copy of the notice was served at these addresses in accordance with this section of the 1990 Act. Whilst I note the appellant's contention with regard to Mrs Sweet's receipt of a copy of the notice, I am unable to conclude that the copies of the notice were not served as required by section 172 of the 1990 Act.
6. Notwithstanding the above, I am mindful of the provisions of section 176(5) of the 1990 Act. A valid appeal has been made by the appellant. Accordingly, even if I had concluded that the appellant had not been properly served with a copy of the notice, I would not be satisfied that they have been substantially prejudiced in these circumstances.
7. For the reasons given above, the ground (e) appeal should fail.

Ground (c)

8. To succeed on ground (c), the appellant must demonstrate that, on the balance of probability, the matters alleged in the notice do not constitute a breach of planning control. The burden of proof is on the appellant.
9. The appellant's case is briefly stated and is that the development that is the subject of the enforcement notice is permitted by Class A of Part 7, Article 3, Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (the 2015 Order), hereafter referred to as Class A. Class A permits the extension or alteration of a commercial, business or service establishment.
10. The Council points to the interpretation of Class A (at A.3.), which informs that, for the purposes of Class A, a commercial, business or service premises means a building, or part of a building, used for any purpose within Class E (commercial, business and service) of Part A, Article 3, Schedule 2 to The Town and Country Planning (Use Classes) Order 1987 as amended (the 1987 Order), and includes buildings with other uses in other parts as long as the other uses are not within the parts being altered or extended.
11. The Council says that the building, or the part of the building that has been altered, is not used for a purpose falling within Class E of the 1987 Order. It suggests that the use of the building is for a purpose falling within Class B2 of Part B, Schedule 1 of the 1987 Order.
12. To demonstrate its case, the Council refers to extracts it has taken from the online information for the occupiers of the site, Walcot Metal Fabrication Ltd, which it says shows that the company specialise in welding and the fabrication of gates, railings, handrails, staircases, structural steel, metal cutting and balustrades.
13. Class E of the 1987 Order includes a diverse list of uses. The most relevant to metal fabrication is a use falling within criterion (g)(iii), which is 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. Class B2 is a use for the carrying on of an industrial process other than one falling within the former Class B1².

14. Whilst the Council says that metal fabrication of the sort specified on the occupier's online web site is a use that falls within Class B2, it has not said whether the use of the site causes noise, vibration, smell, fumes, smoke, soot, ash, dust or grit. Neither does it demonstrate that any such matters cause detriment to the amenity of that area. Notwithstanding this, I have had regard to the representations of residents who live in the close vicinity of the appeal site. I acknowledge that their comments relate to the merits of the development that is the subject of this appeal and that such matters are not relevant to the ground (c) appeal. Nevertheless, they suggest that loud noises are created by steel deliveries and the cutting of the steel. They also refer to unpleasant fumes emerging from the unit. All of this points to a use that causes detriment to the amenity of the area by reason of noise, fumes and smell.
15. The appellant does not dispute that the appeal site is used for metal fabrication. Neither have they given me any reason to conclude that such a use of the building does not cause detriment to the amenity of the area by reason of the matters listed above. Accordingly, the evidence before me leads me to conclude that the use of the site is more likely than not to fall within Class B2 of the 1987 Order. For this reason, when the development subject of this notice commenced, it would not have had the benefit of the permission granted by Class A.
16. Even if I were to have found the use of the site to fall within Class E of the 1987 Order, the Council suggest that such a use is not permitted and would be unlawful. I have been given no reason to disagree with the Council on this and find such a use lawful. For this reason, the provisions of Paragraph 3(5)³ of the 2015 Order would be engaged and the permission granted by reason of Class A would not apply.
17. On a final matter, although no party has referred to Class H of Part 7, Article 3, Schedule 2 of the 2015 Order, I note that this permits the erection, extension or alteration of an industrial building or a warehouse. Notwithstanding this, even if the building is regarded as an industrial or warehouse building as described in Class H, I cannot be satisfied that the development subject of this appeal would have been permitted by Class H.
18. H.1.(e) informs that development is not permitted by Class H, if any part of the development would be within 5 metres of any boundary of the curtilage of the premises. The plan attached to the enforcement notice and the PCN, as well as the HM Land Registry title plan, shows a red line boundary of the site adjoining the east facing elevation of the building. On site I noted this elevation of the building and that it adjoins a walkway between the site and 32 Elley Green. The walkway is also bound by a fence running from the south-east corner of the building to the footway along Elley Green, which encloses the parking area

² Following amendments to the 1987 Order in 2020, uses that fell within the former Class B1 now fall within Class E.

³ The permission granted by Schedule 2 does not apply if (a) in the case of permission granted in connection with an existing building, the building operations involved in the construction of that building are unlawful; (b) in the case of permission granted in connection with an existing use, that use is unlawful.

(to the south) serving the building. This fence is also in line with the site boundary shown on the plans referred to above.

19. In view of the above, I am satisfied that the east facing elevation and the fence enclosure form part of the boundary of the curtilage of the premises. Having regard to the proximity of the roller shutter to the south east corner of the building, I am satisfied that it is within 5 metres of the eastern boundary of the curtilage of the premises. For this reason, the development would not be permitted by Class H.
20. All things considered, the appellant has not discharged the burden of proof that is upon them. I am not satisfied that, on the balance of probability, the development consisting of the erection of a roller shutter door on the southern elevation of the building is permitted by Class A. I have considered whether the development would have otherwise been permitted by the 2015 Order, but conclude that it would not. Indeed, I have been given no reason to conclude that the development would otherwise be permitted. Accordingly, I find it more likely than not that the matters alleged in the notice constitute a breach of planning control. For this reason, the ground (c) appeal should fail.

Conclusion

21. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice.

Formal Decision

22. The appeal is dismissed and the enforcement notice is upheld.

J Moss

INSPECTOR