



---

## Appeal Decision

Inquiry held on 16-18 July and 22 August 2024

Site visits made on 15, 18 and 19 July 2024

**by A Walker MPlan MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 19 September 2024**

---

**Appeal Ref: APP/J4423/C/24/3340817**

**Abbey Glen Limited, 10 Carley Drive, Sheffield S20 8NQ**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Abbey Glen Limited against an enforcement notice issued by Sheffield City Council.
- The notice was issued on 13 February 2024.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of the Land to a laundry within Use Class B2 of the Town and Country Planning (Use Classes) Order 1987 (as amended) and associated plant and machinery.
- The requirements of the notice are to:
  - i. Cease the use of the Land as a laundry within use Class B2 of the Town and Country Planning (Use Classes Order) 1987 (as amended); and
  - ii. Remove all associated plant and machinery from the Land.
- The period for compliance with the requirements is 12 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (f) and (g) of the Town and Country Planning Act 1990 (as amended). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

**Summary of Decision: The appeal is allowed and, subject to a correction, the enforcement notice is quashed.**

---

### Preliminary Matters

1. The appeal was initially made on grounds (a), (c), (f) and (g). However, the ground (c) appeal also includes an argument under ground (b) in that the appellant argues the use was not a Class B2 use at the time the enforcement notice (the notice) was issued, and therefore the breach of planning control has not occurred as a matter of fact. Accordingly, I have determined the appeal on the basis that there is a ground (b) appeal. All parties have had the opportunity to comment on this matter.
2. In addition to the accompanied site visit that took place on the afternoon of 18 July 2024, I carried out two unaccompanied site visits. The first was during the late evening of 15 July 2024 and the second was in the early morning of 19 July 2024.
3. The inquiry was adjourned on 18 July 2024 to allow the parties to agree the terms of a unilateral undertaking (UU) and revised list of conditions. The inquiry resumed on 22 August 2024 for discussions to be held on the UU, conditions and to hear closing submissions.

## **The ground (b) and (c) appeals**

### Background

4. I shall deal with the ground (b) and (c) appeals together as the two are inextricably linked, ie both rely on whether I find the use falls within Class B2 use or Class E use of the Town and Country Planning (Use Classes) Order 1987 (the UCO).
5. In appealing on ground (b) the burden of proof is firmly on the appellant to demonstrate that the alleged breach of planning control has not occurred as a matter of fact. The appeal on ground (c) is whether, on the balance of probabilities, the matters alleged in the notice do not constitute a breach of planning control. In both grounds of appeal, the burden of proof is upon the appellant.
6. Class E(g)(iii) of the UCO 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.' Article 2 of the UCO defines an industrial process as 'a process for or incidental to ... (b) the altering, repairing, maintaining, ornamenting, finishing, cleaning, washing, packing, canning, adapting for sale, breaking up or demolition of any article'.
7. The use of the appeal site is for the large-scale cleaning of bed linen, towels and clothing. This involves the use of industrial scale machinery, including washing machines, dryers, ironers, steam cleaners as well as automated lines for sorting dirty laundry and packing clean laundry. From the observations I made on site, the use falls squarely within the UCO's definition of an industrial process.
8. Therefore, for the laundry use to fall within Class E of the UCO it must be able to 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 and odour.
9. The appeal site benefits from planning permission for 'the erection of unit for B1 (Business) use with ancillary office and provision of car parking accommodation'<sup>1</sup>. Abbey Glen Limited purchased the site in July 2020 and relocated from their previous site in Doncaster shortly afterwards. Prior to Abbey Glen Limited purchasing the site, it was occupied by School Trends; a clothes manufacturing company.
10. The Council has received numerous complaints from local residents regarding noise and odour emanating from the appeal site since Abbey Glen Limited commenced its operations. In November 2022 NoiseAssess, instructed by the Council, assessed the noise levels of the mechanical services at the appeal site. The findings of the survey were made available to the appellant in July 2023 and confirmed the business was having a significant impact at some locations, including the ironer extracts, the air conditioning system and the steam generator.

---

<sup>1</sup> Council ref 02/03682/FUL

11. Following these findings, mitigation measures were put in place to address these impacts. A further survey was then carried out by Hepworth Acoustics in December 2023 and found that following the installation of the mitigation measures 'it is likely there would be a low impact'.
12. The wording of section 174(2)(b) of the Town and Country Planning Act 1990 (the Act) is in the past tense. It is only concerned with whether the breach has occurred, not whether it was occurring at the time the notice was issued.
13. It is common ground that up until November 2022 the business was having a significant noise impact which took it outside Class E. Therefore, on the face of it, the breach of planning control has occurred. However, under paragraph 4 of the notice there are numerous references to the 'current use'. There is no reference to the use being historical. Within the four corners of the notice, it is plainly clear that the allegation refers to the current use of the site (at the time the notice was issued). It does not allege the use has historically taken place and seeks to prevent it from occurring again.
14. In addition, section 173(2) of the Act states that a notice complies with section 173(1)(a) if it 'enables any person on whom a copy of it is served to know what those matters are', being the matters alleged to constitute the breach. If the notice was alleging an historical use of the site in Class B2 use then it must say so. Otherwise, if I found the site to be in Class E use at the time the notice was issued, the numerous references to 'current use' in the notice would result in it not being clear to any person on whom a copy of the notice is served as to whether it seeks to attack the current or historical use.
15. Consequently, in respect of the ground (b) appeal, if I find the appeal site was in Class E use at the time the notice was issued, even though it has previously been in B2 use, then the notice would be wrong. The question would then be whether I could correct the defect without causing injustice to any parties.

### Noise

16. There is no dispute the mitigation measures put in place between November 2022 and the date the notice was issued, 13 February 2024, have had a positive effect on noise levels. The question is whether the noise levels were reduced to such an extent that they no longer caused detriment to the amenity of the residential area.
17. After the notice was issued and this appeal lodged, further noise monitoring was carried out in May 2024. It is common ground that the results of this are considered to be representative of the situation at the time the notice was issued on 13 February 2024 as no significant mitigation measures were undertaken between February and May.
18. Section 11 of BS4142 states:
  - 'a) Typically, the greater this difference, the greater the magnitude of the impact.
  - b) A difference of around +10 dB or more is likely to be an indication of a significant adverse impact, depending on the context.
  - c) A difference of around +5 dB is likely to be an indication of an adverse impact, depending on the context.

- d) The lower the rating level is relative to the measured background sound level, the less likely it is that the specific sound source will have an adverse impact or a significant adverse impact. Where the rating level does not exceed the background sound level, this is an indication of the specific sound source having a low impact, depending on the context.'
19. The May 2024 assessment concluded there were no indications of significant adverse impacts (+10 dB). The only indication of adverse impacts (+5 dB) were found at locations A (1 metre from a second-floor bedroom Velux window at First Cottage, Waterfield Mews) and C (At the northern end of the garden of 18 Waterthorpe Rise at a height of 1.5m).
  20. Location A had a rating of 7 dB during the hours of 11pm-12am (night-time) and 5 dB during the hours of 5am-6am (early morning) for the lower quartile days. Location C had a rating of 5 dB during the hours of 11pm-12am (night-time) for the lower quartile days. However, in accordance with BS4142, this is only an *indication* of adverse impacts. The context must also be considered. BS4142 sets out that 'The significance of its impact, for example, can depend on such factors as the margin by which a sound exceeds the background sound level, its absolute level, time of day and change in the acoustic environment, as well as local attitudes to the source of the sound and the character of the neighbourhood'.<sup>2</sup>
  21. The appellant contends that having regard to context, it is important to note that locations A and C were outside. During the night-time and early morning recorded hours, the occupants of these properties would be indoors and therefore the fabric of the buildings, even with a window open, would attenuate noise. It was agreed between the parties that this attenuation would reduce sound levels by between 10 dB and 15 dB. However, this reduction must also be applied to the background sound level and consequently the rating would be the same.
  22. Notwithstanding the above, BS8233 states that in respect of dwellings it is desirable that the internal ambient noise level does not exceed 35 dB LAeq for bedrooms between the hours of 7am-11pm and 30 dB LAeq between the hours of 11pm-7am<sup>3</sup>. Taking the lower figure of a 10 dB reduction, the maximum noise level rating would be 27 dB (location C at early-morning at the lower quartile). Whilst the residual difference in noise levels would remain the same, the absolute noise levels would be below the desirable level of 30 dB.
  23. It is noted that of the three locations that recorded an indication of adverse impacts, only one exceeded the threshold of 5 dB (location A rated a residual difference of 7 dB at night-time on the lower quartile days).
  24. The Council contend that the results based on the upper and lower quartiles of the background sound is not the only comparisons that should be considered. However, there is no evidence that this is not an appropriate method of assessing the data or that there is a more suitable method.
  25. I have had regard to the context of the site in terms of its proximity to neighbouring residential properties to the North, South and West, which heightens the potential for noise to have a harmful impact. Nevertheless, it also forms part of an existing business park comprised of various industrial

---

<sup>2</sup> Foreword of BS 4142:2014+A1:2019 - Methods for rating and assessing industrial and commercial sound

<sup>3</sup> Table 4 of BS 8233:2014 - Guidance on sound insulation and noise reduction for buildings

uses and therefore there must be an expectation that some noise would emanate from the site, more than one would typically expect from a solely residential area. It is unreasonable to expect an industrial use to operate in complete silence.

26. Further noise assessments would establish more accurate results. However, there is little evidence that the results of the assessment from May 2024 are inadequate. Such matters could be assessed to the nth degree. However, that would be wholly unreasonable. The appellant has provided evidence that sufficiently accords with standard practice and no substantive evidence has been provided to contradict its findings. Having regard to the findings of the assessment and the various matters of context I am satisfied that in respect of the fixed plant and machinery the use was not having a detrimental effect on the amenity of the residential area.
27. Notwithstanding the above, the May 2024 noise assessment does not account for noise generated by the movement of cages, vehicles or staff. A local resident raises concern regarding a lorry associated with the business frequently parking on the roadside overnight and setting off very early in the morning. The appellant confirms they have a client in Penrith and a lorry needs to set off to deliver linen to them at approximately 5:30am-6am. The resident states that the lorry leaves earlier than this. The engine starting creates enough noise to wake them up even with the window closed.
28. The parking of a vehicle outside of the appeal site is outside the control of the existing planning permission and could not be controlled by way of condition. Nevertheless, the lorry is clearly associated with the use. The concerned resident resides at 2 Sandy Acres Drive and is the closest resident to the junction of Owlthorpe Greenway and Carley Drive, situated directly opposite. Having their sleep disturbed would have a harmful effect on their living conditions. There is no evidence of other vehicles arriving or departing causing harm to residential amenity.
29. Noise is created by cages moving about the site and the dropping of the tail lifts on lorries. The cages are moved about when loading/unloading lorries. This is typically carried out throughout the working hours of the business. Their lightweight, metal frame construction results in them producing a rattling noise when being moved. I observed the movement of the trolleys from within the site, from which they can be quite loud up close as well as the tail lifts being dropped. I also heard them from various points outside the site including the adjacent footpath to the rear and properties on Waterthorpe Gardens, Waterthorpe Rise, Waterfield Mews, Sandy Acres Drive, Sandy Acres Close and Middlecliff Rise. However, the noise was barely audible from these locations. Accordingly, I do not find the movement of cages and tail lifts would cause material harm to the amenity of the residential area.
30. With regards to noise generated by staff, the operations taking place on the site are largely contained within the building. The only operations carried out externally are the loading/unloading of delivery vehicles. Staff members talking loudly outside the building would likely be heard from outside the site. However, given the distance between the site and neighbouring residents, there is no substantive evidence that they would be so loud that they would cause harm.

### Odour

31. In respect of odour, the Council's investigation into the alleged breach of planning control on the site involved many visits by numerous Council officers. Out of 21 of the 26 visits, no odour was recorded. Out of the remaining 5 visits no offensive odours were detected.
32. Wardell Armstrong LLP carried out an Odour Assessment in June 2024 on behalf of the appellant. I note that this was after the notice was issued. However, there is no evidence that the situation at the time of the assessment was carried out was not the same as at the time the notice was issued.
33. The results of the assessment were 7% of the observations were slight adverse impacts whereas the remaining 93% were no or negligible odour effects. When odour was detected, it was near to the site and not at high intensities or for prolonged periods. The overall conclusion is there is no offensive odour and the appeal site does not significantly impact the amenity of the local residents.
34. Although the site visit timings and observation locations for the odour assessment were not agreed with the Council prior to the assessment being undertaken, there is no substantive evidence to suggest there was a requirement to do so. The sniff tests involved three visits, including 55 monitoring locations. Therefore, it covered a wide area around the site. Moreover, there is nothing to suggest that the timings of the visits between 9:45am and 12:40pm did not provide an accurate reflection of odour emissions from the site.
35. During my accompanied site visit I was able to smell the odour directly at its source and at the extraction point. The smell was not unpleasant or of a high intensity. Both its smell and intensity were little more than one would experience when opening a tumble dryer after it had finished.
36. A local resident describes the odour as 'accumulating' at their property and becoming stronger and having a significantly harmful effect on his wife's physical health. Whilst I acknowledge their concern, there is no substantive evidence to indicate that it is the appeal site causing such severe effects, particularly in light of the results of the odour assessment and the observations made by Council Officers on numerous occasions.
37. The Institute of Air Quality Management (IAQM) document 'Guidance on the assessment of odour for planning' 2018 states '...complaints are generally a public expression of concern over odour exposure that has been experienced over a much longer period of time, leading to the incremental development of annoyance. Once someone reaches the point of annoyance, they may then start to complain about odours that would not normally bother other members of the population. The lesson is, complaints in the present are likely to be strongly associated with events in the past.' Whilst this is directed at odour, it can also reasonably be applied to noise.

### Conclusion on grounds (b) and (c)

38. There have been a significant number of complaints made to the Council about noise and, to a lesser extent, odour generated by the appeal since it started operating. However, mitigation measures were put in place prior to the notice being issued and since then too. By the time the notice was issued, the business had been in operation from the site for over two years. Prior to



November 2022 limited noise and odour mitigation was in place and the appellant concedes there were significant noise impacts at some locations. Therefore, local residents were experiencing significant impacts on their amenity, which resulted in a significant number of complaints being raised with the Council. Given the length of time these significant impacts were taking place, it is reasonable to conclude that local residents reached the point of annoyance and became sensitised to noise and odour emissions from the site. This is further supported by the severity of the harm alleged by local residents that does not correlate with the findings of the technical noise and odour assessments and the numerous observations made on site by Council officers.

39. Class E(g)(iii) of the UCO 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*'. It does not state '...without detriment to the amenity of residents'. The consideration of whether the development would have detriment to the amenity of the residential area is to be focused on the area as a whole rather than individual residential occupants. An holistic approach must be taken to determine whether any effects that might occur have a material effect on the residential area as a whole. In this instance, the appeal site caused significant harm to the amenity of the residential area up to November 2022, which resulted in a material change of use from the lawful Class B1 use (now Class E use) to a Class B2 use. However, I am satisfied the extensive mitigation measures implemented in November 2022 significantly reduced the noise and, indirectly, odour emissions to the extent that they were no longer causing detriment to the amenity of the residential area.
40. I find there is harm to the living conditions of the occupants of 2 Sandy Acres Drive as a result of the single lorry setting off in the very early hours of the morning from the roadside and disrupting their sleep. However, I do not consider that a single vehicular movement, outside the appeal site, that harms the occupants of a single residential property results in material detriment to the amenity of the residential area as a whole.
41. I find therefore, on 13 February 2024 the appeal site was operating under Class E(g)(iii) of the UCO and had likely been doing so for some time since November 2022. As the notice clearly alleges the use at the time the notice was issued was Class B2 use, the notice is wrong and the ground (b) appeal succeeds.
42. I have the power to correct the notice if no injustice would be caused to any party. The appellant has suggested the omission of '...within use Class B2 of the Town and Country Planning (Use Classes Order) 1987 (as amended)' from the allegation. I find this would not cause any injustice to any parties and therefore I shall correct it accordingly.
43. Given the above, a laundry under use Class E can operate from the appeal site under the extant planning permission for a B1 use and therefore the subsequent corrected matters alleged in the notice do not constitute a breach of planning control. Therefore, the ground (c) appeal succeeds and I shall quash the notice. The appeal under ground (a) and the deemed planning application and appeals under grounds (f) and (g) do not therefore fall to be considered.

### **Formal Decision**

44. It is directed that the notice is corrected by the deletion of 'within use Class B2 of the Town and Country Planning (Use Classes Order) 1987 (as amended)' in paragraph 3 of the notice.
45. Subject to the correction, the appeal is allowed and the enforcement notice is quashed.

*A Walker*

INSPECTOR



## **APPEARANCES**

### **FOR THE APPELLANT:**

Stephanie Hall, counsel for the appellant.

They called:

|                |                                             |
|----------------|---------------------------------------------|
| David Thurstan | Acoustic Consultant, Hepworth Acoustics Ltd |
|----------------|---------------------------------------------|

|                |                       |
|----------------|-----------------------|
| Malcolm Walton | Wardell Armstrong LLP |
|----------------|-----------------------|

|               |                             |
|---------------|-----------------------------|
| Michael Edgar | Director, DLP Planning Ltd. |
|---------------|-----------------------------|

### **FOR THE LOCAL PLANNING AUTHORITY:**

Stephan Whale, counsel for Sheffield City Council.

They called:

|                   |                           |
|-------------------|---------------------------|
| Matthew Gascoigne | Director, NoiseAssess Ltd |
|-------------------|---------------------------|

|                |                                                                      |
|----------------|----------------------------------------------------------------------|
| Khalid Mahmood | Operations Manager (Planning Enforcement),<br>Sheffield City Council |
|----------------|----------------------------------------------------------------------|

|                    |                                                    |
|--------------------|----------------------------------------------------|
| Michael Eaglestone | Principal Planning Officer, Sheffield City Council |
|--------------------|----------------------------------------------------|

### **INTERESTED PARTIES:**

|                |                |
|----------------|----------------|
| Maureen Thorpe | Local resident |
|----------------|----------------|

|                    |                |
|--------------------|----------------|
| Christopher Cooper | Local resident |
|--------------------|----------------|

|                    |                |
|--------------------|----------------|
| Delphine Himsworth | Local resident |
|--------------------|----------------|

|             |                |
|-------------|----------------|
| Andrew Peat | Local resident |
|-------------|----------------|

|            |                |
|------------|----------------|
| Sean Corey | Local resident |
|------------|----------------|

|            |                |
|------------|----------------|
| Sean Frost | Local resident |
|------------|----------------|

|                 |                |
|-----------------|----------------|
| Dawn Groundwell | Local resident |
|-----------------|----------------|

**INQUIRY DOCUMENTS:**

1. 20 June appeal notification letter, submitted by the Council
2. Fixed Plant and Noise Management Plan (ongoing) plus a tracked version, submitted by the appellant
3. Opening statement, submitted by the appellant
4. Opening statement, submitted by the Council
5. Copy of 'Relevant Model SCC Planning Conditions on Noise Design Criteria, submitted by the Council.