



Appeal Decisions

Hearing held on 26 November 2024

Site visit made on 27 November 2024

by R Hitchcock BSc DipCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 January 2025

Appeal A Ref: APP/N4205/C/24/3342973

Appeal B Ref: APP/N4205/C/24/3342975

Rigby Taylor House, Crown Lane, Horwich, Bolton, BL6 5HP

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (as amended). Appeal A is made by Ms Angela Mansell o/b Mansell Building Solutions against an enforcement notice issued by Bolton Metropolitan Borough Council. Appeal B is made by Mrs Joanna Male o/b Morley Industrial Holdings Limited.
- The notice was issued on 19 March 2024.
- The breach of planning control as alleged in the notice is Without Planning permission, the material change of use of the land to manufacturing use (Class B2).
- The requirement of the notice is to: Cease the use of the land for manufacturing.
- The period for compliance with the requirement is: 6 months.
- The appeals are proceeding on the grounds set out in section 174(2)(a), (c), (f) and (g) of the Town and Country Planning Act 1990 (as amended). Since appeals have been brought on ground (a), applications for planning permission are deemed to have been made under section 177(5) of the Act.

Summary of Decisions: Appeals A and B are dismissed and the enforcement notice is upheld with corrections in the terms set out below in the Formal Decision.

Appeal C Ref: APP/N4205/W/24/3342967

Rigby Taylor House, Crown Lane, Bolton, BL6 5HP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
- The appeal is made by Mansell Building Solutions against the decision of Bolton Metropolitan Borough Council.
- The application Ref is 16560/23.
- The development proposed is the Continued use for B2 use (retrospective) together with the creation of car parking, storage and loading areas, and installation of 3.1m high fence to eastern site boundary.

Summary of Decision: Appeal C is dismissed.

FORMAL DECISIONS

Appeals A and B

1. It is directed that the enforcement notice is corrected by:
 - the addition of the words "(Class B2)" after the requirement in part 5 of the Notice; and
 - the substitution of the plan annexed to this decision for the plan attached to the enforcement notice.
2. Subject to the corrections, the appeals are dismissed, the enforcement notice is upheld, and planning permission is refused on the applications deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal C

3. The appeal is dismissed.

PRELIMINARY MATTERS

4. Although described differently, the land use subject to the enforcement notice (and Appeals A and B) is the same as that subject to the planning application (and Appeal C). The term 'B2' is a reference to use Class B2, which is defined as 'use for the carrying on of an industrial process other than one falling within class B1...' in Schedule 1 to the Town and Country Planning (Use Classes) Order 1987 (UCO).
5. Since the hearing closed, I have given the parties opportunities to provide further written representations relating to a) legal submissions made by the appellant at the hearing, and b) the revised National Planning Policy Framework (the Framework) published on 12 December 2024. I have had regard to the parties' responses as well as the earlier written and oral evidence in reaching my decisions on these appeals.

THE NOTICE

6. Under s176(1)(a) of the Town and Country Planning Act 1990 as amended (the Act), I may correct any defect, error or misdescription in the enforcement notice, or to vary the terms of the enforcement notice. I can only do so, however, where I am satisfied that this will not cause injustice to either the appellants or the Council.
7. The site edged in red on the plan attached to the notice has been erroneously drawn to include parts of neighbouring residential gardens. The parties agree that the notice can be corrected without causing injustice to accurately represent the planning unit and exclude land not used in conjunction with the alleged manufacturing use.

APPEALS A AND B ON GROUND (C)

8. An appeal on this ground is that the matters stated in the Notice do not constitute a breach of planning control. The onus is on the appellant to make their case on the balance of probabilities.
9. There is no dispute between the main parties that the site is currently in use for B2 purposes; or that a B2 manufacturing use legitimately took place for a period after planning permission was granted for the factory at some point in the 1970's. However, lawful use rights can be lost by various means, with the most relevant in this case – as highlighted in the appellants' own legal advice¹ – being a material change to some other use.
10. Between 2015 and 2020 the site was occupied by a company called Allure Home Limited. The Council stated that it had no first-hand evidence of the use taking place at the time the site was occupied by Allure Home Ltd. However, it draws attention to the fact that their business was registered at Companies House as for the 'wholesale of textiles'.
11. At the Hearing, third parties highlighted that Companies House provides numerous pre-set descriptors explicitly referencing 'manufacturing' for the

¹ S Hall 16 March 2023

registration of companies involved in those activities. However, such descriptions were said not to appear in the register. Additionally, third parties made claim that previous recent uses of the site primarily involved warehousing and distribution.

12. It is the appellants' position that the site use by Allure Home Ltd fell within the B2 use class as it involved manufacturing with associated storage and distribution. This position is primarily derived from a statutory declaration of M.J. Lowe, a director of the company.
13. However, his signed statement testifies that the site was used for 'storage and wholesale of textiles and pet products and for the filling of home furniture cushions'. He goes on to confirm that some other specific items were manufactured, stocked, wholesaled and distributed from the site. On plain reading, and without more, that description indicates a mixed use of the site unless all activity was ancillary to the manufacturing of furniture cushions and pet products. The statement fails to make any such distinction. It does, however, confirm that the lease included a potential B8 use of the site.
14. A second declaration by a director of Morley Industrial Holdings Limited, the owners of the site, refers only to the uncontested periods of activity. Although that appellant states that she visited the site during the occupation of Allure Home Ltd, it goes no further. A claim that the site has been used by tenants for offices, storage and manufacturing is unspecific as to any user or dates (as in para. 6 of Mr Lowe's statement). An agreement with an undated (and therefore unspecified) supporting statement by the appellants' consultant is ambiguous.
15. The appellants' appeal statement only confirms that 'the site to some degree was being used for the stuffing of beanbags and cushions using machinery'. It too fails to clarify the context or extent of various operations undertaken by Allure Home Ltd, particularly whether the manufacturing use was the only primary use of the site to which all other activity, including the warehousing and distribution uses, were ancillary. Given the Council's identification of a shortfall in the detail provided in Mr Lowe's statement submitted to support the 2023 application² for a Certificate of Lawful Use, it was open to the appellants to address those matters in the evidence to the appeal.
16. Moreover, within the wide spectrum of manufacturing activity, there is probably some distance between the blowing of soft fill into textile casings and the assembly of large metal frames for use in building construction. In the context of a site now closely bordered by residential development and where no complaints were confirmed when occupied by Allure Home Ltd, I find that soft filling of household items would probably fall within the B1 / E use class.
17. Indeed, setting the likelihood of any primary storage and distribution uses aside, it is probable that the character of some earlier uses which gave little cause for concerns after the neighbouring houses were built had a (then) B1 use status by way of their compatibility with surrounding residential amenity. Certainly, little concern existed about neighbouring land-use compatibility when the Council considered the more recent housing about the site in 2000. If B2 operations existed at that time, surprisingly little was made of it.

² Ref. 15676/23

18. The appellants' claim that there has been no unauthorised unlawful user of the site. However, of the users since the 1970's there is only limited detail of their activities. An occupier referred to by the Council as the incumbent when some surrounding houses were constructed (Carrington Viola) was not referred to at all. While the appellants claim that any alternative intervening use is for the Council to demonstrate, s172 of the Act determines that it need only 'appear' to the Council that there has been a breach of planning control.
19. On the evidence, the step-change in noise generation coinciding with the first appellant's active use of the building, probably caused a significant change in the character of the use of the site. This is evident by the numerous representations of third-parties living close by. That change most likely amounted to a material change of use from a B1, B8 or mixed use by Allure Home Ltd. In coming to this view, I am mindful that the Council has also seen fit to serve a Noise Abatement Notice on the current site operator as a consequence of their activity.
20. Pursuant to my finding that a material change of use had probably occurred, and that the use of the site before occupation by Mansell Building Solutions was neither demonstrated to be solely a B2 use as alleged in the Notice nor subject of enforcement action, no fallback to reinstate any lawful B2 use exists by the provision of s57(4) of the Act, or other provision. Although the Town and Country Planning (General Permitted Development) (England) Order 2015 allows for a cascade of some changes of use from B2 to other, less impactful uses, a return to a B2 use once supplanted by another use, or mixed use, requires the benefit of planning permission.
21. I acknowledge the appellants' submission of tenancy agreements over the years. However, they appear to show an open classification consisting of all, some or any of B1, B2 or B8, or other uses approved by the landlord. Just as descriptive references in various Council reports, rental adverts, and documentation submitted to support earlier planning applications on the site are loosely termed, I find them a matter of limited weight.
22. In view of the above, the Council's reference to *Fairstate*³, which concerns loss of lawful use rights acquired through the provisions of s171(B), is of little assistance to me since it concerned the use of a building for temporary sleeping purposes subject to the Greater London (General Powers) Act 1973.
23. On the evidence before me, I find that the alleged material change of use to manufacturing (B2 use) probably occurred. I have also found that the breach most likely required but does not have planning permission. It follows that, on the balance of probabilities, there has been a breach of planning control as alleged in the Notice. The appeal fails on ground (c).

APPEALS A AND B ON GROUND (A), THE DEEMED PLANNING

³ *Fairstate Ltd v FSoS & Westminster CC* [2005] EWCA Civ 238

APPLICATIONS, AND APPEAL (C).

Main Issues

24. The main issues are the effect of the B2 use on the living conditions of nearby residents, with particular regard to noise and disturbance, outlook and privacy, and the character and appearance of the locality.

Reasons

Living conditions – noise and disturbance

25. Policy CG4 of Bolton's Core Strategy Development Plan Document [2011] (the CS) seeks to ensure that new development is compatible with surrounding land uses and occupiers, protects amenity and (amongst other things) should not generate unacceptable noise. As a B2 use, there is no dispute between the main parties that the manufacturing use of the site has potential to cause adverse effects on neighbouring residents by way of noise and disturbance.
26. A Statement of Common Ground between the main parties confirms that they agree that the background noise levels had been suitably established at ground floor level. Additionally, based on measured noise, worst-case rating levels to provide a measure of likely effects on nearby neighbouring residents were also not in dispute. This included noises arising from the manufacture, movement, loading and unloading of tubular metal frames. Some noises arise from outside activities, others are from within the building with the extent of their effects dependent on whether large doorways in the eastern gable of the building are open or not.
27. The magnitude of the noise effects on neighbours ranges from marginal through to significant adverse. However, there is little assessment of the overall number, or frequency of the worst-case noises or what exactly they consist of. Surveys carried out in March 2022 and July 2023 refer only to 'occupational noise' with no explanation of what activities were actually taking place during recording. It is therefore unclear whether all occupational noise was captured.
28. The Planning Practice Guidance (PPG) cautions that 'the subjective nature of noise means that there is not a simple relationship between noise levels and the impact on those affected'⁴. The local background noise derives primarily from a constant hum of the distant traffic on the M61 and more sporadic local road traffic noise. Representations from neighbouring residents and video evidence played at the Hearing confirm that the effects of volume, the nature of the noises, their intensity, impulsivity and intermittency contrast sharply to the background noise environment.
29. Neighbour representations describe the noises, amongst other things, as 'jarring', 'unbearable', 'intolerable', 'frightening', 'damaging to health', and causing 'distress'. With that in mind, it seems to me that even with corrections for tonality, impulsivity, intermittency or other acoustic features applied, as directed by BS4142⁵, the cumulative effects of the intermittent noise of

⁴ Paragraph: 006 Reference ID: 30-006-20190722

⁵ BS 4142:2014+A1:2019 Method for rating and assessing industrial and commercial sound

reversing alarms or the impulsive bangs, crashes, grinding or drilling both internally and externally may be somewhat underestimated.

30. Despite any lack of scientific or calibrated measurements, the video evidence at the Hearing certainly undermines the appellants' initial justification for applying only a +3dB correction on the basis that noise from the site was 'only just perceptible'. Although this has since been amended, there is little explanation of how the relevant +6dB correction figure was arrived at. In conjunction with the absence of detail of the sources of measured noise levels, the appellants claim that worst-case scenario assessment has occurred remains unqualified.
31. Having regard to the experiences expressed by residents, phrased in no uncertain terms, the Method Implementation Document for BS4142 (22 December 2023) advises that if the calculated methods do not match human observations, then the observations should take priority over the calculations. The Council's Environmental Health Officer's account of their experience within the receptor sites concluded that noise was considered clearly perceptible and sufficient to constitute a statutory nuisance.
32. Furthermore, the Council's observations post-dated the planning application for retention of the B2 use. This was after the implementation of some noise mitigation measures including: use of plastic or rubber hammers, rubber matting, acoustically-rated shutters, gantry cranes and electric vehicles for loading and unloading. Although I saw some examples of those measures at my site visit, the extent of their retention or success in providing sound mitigation is unclear from the evidence.
33. The planning proposal detailed a 3.1m high acoustic fence. Estimated by the Council to be some 130m in length, it would be set off the site's eastern boundary by about 3.5m. According to the appellants' acoustic assessments⁶, the sound shadow arising from the fence would reduce levels by some 9-15dB at ground floor and 3-7dB at first floors of the adjacent houses.
34. While I agree with the appellants' assessment that some source noise would be largely mitigated by the fence, there is limited measured assessment of the effects at first floor.
35. Even accounting for the height of the fence and the likely higher background noise levels at first floor (due to less existing screening from the primary background sources), the range and different locations of noise sources, both internal and external, would likely be largely unabated due to clear lines of sound between sources and receptors.
36. The appellants' contest that first floor accommodation within the surrounding houses is not normally in use over the periods the appeal site is active. However, since the Covid-19 pandemic, there has been an attendant change in working regimes for many. Home working is highlighted by third parties as being particularly affected by the noise from the site. In addition to effects on shift workers, those with ailments, or those with young children requiring daytime rest, I find the identified effects on residential living conditions would remain significant.

⁶ Azymuth Acoustics UK

37. A proposed relocation of the loading area to the north of the building would be reliant on loaders utilising the area to the east of the building to transfer frames between the building and trailers. Furthermore, this would still require at least one roller shutter to be open for the duration of transfer operations allowing a greater level of sound outbreak from within the building. At the Hearing the appellants accepted that efforts to impose working practises with the aim of keeping the eastern doors closed as much as possible had been largely ineffective.
38. As a measure to limit the effects of noised generated within the building, residents highlighted concerns over the practicalities of enforceability of a proposal to keep the eastern shutter doors closed apart from times of loading/unloading. This concern was shared by the Council. Even if it were possible to precisely define what constituted 'for the purpose of loading/unloading', on the first appellant's stated aspiration to significantly increase production, such a requirement would be self-defeating. As factory production increased, with likely corresponding increases in noise generation and loading requirements, the effectiveness of that measure would proportionately decrease.
39. In addition to those mitigation proposals, the appellants highlighted that they were agreeable to a restriction preventing outside storage. However, in the planning appeal, as complete restriction of outside storage would nullify the benefit of a permission which explicitly seeks it, that would not pass the legal test of reasonableness as reflected in Paragraph 56 of the Framework. Furthermore, on the case made out by the first appellant in relation to ground (g), the current business would struggle to effectively operate without the availability of outside storage. In the circumstances, as such a condition would also effectively nullify a permission for the alleged use of the site, it too would be unreasonable.
40. A proposed alternative of limiting storage to an area approved for that purpose in 2011 would provide little benefit to noise incidents. This is because it would concentrate storage and handling immediately adjacent to houses and gardens most affected by noise.
41. On the evidence before me, in conjunction with a lack of assessment of the actual temporal frequency of the occurrence of loud noises, I find the noise effects at ground floor, within private gardens immediately adjacent to the site and, most certainly, at first floor level cause significant adverse effects on the living conditions of neighbours. The proposed measures to control noise have not been shown to satisfactorily mitigate their effects. Accordingly, the existing B2 manufacturing use of the site has not been demonstrated as compatible with the surrounding residential development.
42. Furthermore, as highlighted by the PPG⁷, the 'agent of change' will need to take into account not only the current activities that may cause a nuisance, but also those activities that businesses are permitted to carry out, even if they are not occurring at the time of the application being made. Although the PPG scenario is in the context of introducing sensitive land uses where established businesses exist, I see little reason why that wider consideration of potential effects should not apply here.

⁷ Para.009 Reference ID: 30-009-20190722

43. The scale of the site and the partly cavernous building would have high potential for large scale or intensive B2 use. As the agent of change, the appellants' evidence of consideration of the wider implications of other potential sources of pollution, and the likelihood that they could have a significant adverse effect on residents, is limited. In a location where B2 uses have a high potential for incompatibility, I find this a substantial shortcoming in the appellants' site assessment.
44. Measures such as a higher fence or sound insulation of the building, for example, might be potential alternatives. However, there is no such proposal before me, nor assessment of any effectiveness to mitigate the current, alternative, or intensified use of the site for B2 purposes.
45. I note the frustrations expressed by the appellants acoustic advisor in relation to the level of communication from the Council. However, this is not a matter for this appeal, which I have determined on the evidence and the observations at my site visit.
46. Taking all of the above together, I find that a significant adverse effect is likely occurring to the living conditions of nearby residents. Applying the precautionary principle to a land-use relationship that is substantially dependent on the success of mitigation measures, but where no such encompassing mechanism has been identified, and where no obvious alternative exists, I find the development conflicts with Policy CG4 of the CS and Policy JP-P1 of the Places for Everyone Joint Development Document 2022-2039 [March 2024] (the JDP) as they seek to secure compatibility of neighbouring land uses, ensure that development does not generate unacceptable noise, and achieve high levels of amenity that minimise exposure to pollution.

Living Conditions – Outlook

47. At 3.1m high, the proposed timber acoustic fence would be visible over the majority of the rear boundaries of residential properties bordering the eastern flank of the site. However, with an offset of some 3.5m, and despite slight level differences, outlook from rear gardens and ground floor accommodation will be limited to only the upper section of the fence. It would not be so close to appear overbearing or cause any significant greater sense of enclosure of the residential properties than their existing boundaries.
48. Although it would be visible in the outlook of neighbours, views over third-party land is rarely a matter that carries significant weight in planning decisions. Moreover, even if I were to find it obtrusive, it could be mitigated by landscaping to soften or partially obscure its appearance. This could be secured by condition.

Living conditions - Privacy

49. The location of the current loading area is close to the rear of some residential properties on Rotherhead Close. The loading of flatbed trailers with completed frames stacked on top of each other requires the use of access equipment for operatives to secure the loads. This practise affords views over gardens and facing windows of the neighbouring houses reducing the level of privacy of occupiers.

50. Confined to the proposed loading area to the north of the building, the distance between operatives and residential properties would increase to one greater than typical of back-to-back interface distances on modern housing estates. Conditional restriction to the proposed loading area would thereby provide adequate protection of residential privacy.

Character and appearance

51. The locality is in mixed use. Although predominantly residential, the unit lies close to a modern employment area to the west. The site includes a large extended shed with attached ancillary offices. In contrast to the adjacent commercial estate, which appears substantially self-contained, the site is unusually open with an extensive street frontage. The building is set in a spacious plot with lawned areas and mature trees behind open railings and fencing. Hedges have recently been introduced within parts of the site.
52. The land benefits from 2 vehicular access points serving parking, storage and loading areas about the building. The sense of space about the large building helps moderate its scale against the immediate housing development.
53. Used in the construction of buildings, the metal frames produced at the site are relatively large scale. They require mechanical handling and loading, and HGV transport to deliver them to sites elsewhere. As acknowledged by the appellants, a significant proportion of the site is given over to the storage of materials and the completed frames.
54. Photos provided by the parties in evidence show various amounts of outside storage of the finished frames. This includes both stock set on the ground awaiting loading and frames loaded on to flatbed trailers awaiting collection.
55. The height of the stacks varies. On the ground, these would be largely screened from the ground floor and garden views of neighbouring residents by existing boundary treatments. The erection of a 3.1m high acoustic fence would offer additional screening to the properties on Rotherhead and Avonhead Closes.
56. However, the piles of stacked frames and those loaded awaiting delivery are widely visible. These are clear from facing first floor residential windows along the eastern side of the site. In addition, views are readily obtained from along the site's extensive frontage, particularly through the open access points and where hedging is limited.
57. The nature of the frames' appearance and their stacking on hardstandings or more informally on grassed areas, appear ungainly in the context of the site's otherwise reasonable visual quality. As incongruous features visually more prominent than outside storage on the nearby employment area, the number and nature of the frames significantly detract from the visual quality of the locality.
58. To reduce their visual impact, a restriction on the height of stacking could be imposed. However, given the number of frames present in photographs on some occasions, this is likely to give rise to a greater number of stacks requiring more dispersed storage about the site. In avoiding the use of areas closer to residential properties, this would likely require the use of more prominent parts of the site to the further detriment of the character and appearance of the locality.

59. In support of the development, the appellants' evidence shows a previous user relying on outside storage. This is confined to areas close to the building to limit its prominence. The appellants' proposed landscaping scheme would provide some mitigation to the effect of the stacked frames. However, given the wide scope of views, even the matured landscaping would be unlikely, in my opinion, to adequately screen the incongruous and extensive storage associated with the site use.
60. For the reasons set out above, I find the development conflicts with Policy OA1.9 of the CS and Policy JP-P1 of the JDP as they require it to conserve, enhance and respect the character of the locality.

Other Matters

61. I note the concerns of residents in relation to HGVs waiting within the highway and the manoeuvring of vehicles into the site with attendant effects on the free flow of traffic on Crown Lane (B5238). Although the current arrangement for access requires larger vehicles to reverse into the site such that traffic queues can form while waiting, this is a matter which could be addressed by the provision of a turning facility within the site. The main parties agreed that this could be achieved through a planning condition. The incidence of vehicle waiting was such that the Highway Authority raised no concerns in relation to highway safety or interpreted any effects as severe.
62. Neighbours have expressed concerns that the erection of an acoustic fence could create a blind alley which could facilitate anti-social behaviour or increase opportunities for crime immediately to the rear of the houses. However, unauthorised access to the proposed strip could be restricted through the use of additional security measures, which could be conditioned.
63. In support of the development, the appellants highlight that the occupying business directly employs some 54 staff with additional sub-contractors also dependent on the business. According to the appellants, this amounts to some 150 people. Furthermore, the company anticipates an expansion of its business.
64. Part 6 of the revised Framework seeks to create the conditions in which businesses can invest, expand and adapt. However, in seeking to support economic development, including manufacturing, this is not without regard to the specific locational requirements of different sectors. Notwithstanding, as an established business supporting economic benefits of some magnitude, these are matters that weigh in its favour.
65. Business rate payments made to the Council are mitigation. They are not a public benefit in favour of the development.

Conclusions on the ground (a) and planning appeals

66. Notwithstanding my findings in favour of the appellant with respect to the matters of privacy and outlook, I do not consider those matters, nor the commercial and economic benefits associated with the use of the site, outweigh the totality of the existing and potential harm to nearby resident's living conditions and the effect on the character and appearance of the locality. Consequently, the development conflicts with the development plan taken as a whole and there are no other considerations, including the revised

Framework, that outweigh this conflict. For the reasons given, I conclude that the appeals on ground (a) and the planning appeal should not be allowed.

APPEALS A AND B ON GROUND (F)

67. 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 the 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 such a breach.
68. In this case, by requiring the use to cease, the Notice seeks to remedy the breach of planning control. Moreover, I have considered the planning merits of the use via ground (a) and concluded that permission should not be granted even subject to mitigating conditions. For those two reasons, I cannot rehearse questions of amenity, and ground (f) could only succeed if the appellant shows that something less than ceasing the use would remedy the breach. The appellant has not done so, and so I find that the requirements of the Notice are necessary and not excessive.
69. That said, since the notice alleges that there has been a material change of use to a manufacturing use within Class B2 of the UCO, it should only require the cessation of manufacturing within B2 and not manufacturing more broadly. I can correct the notice to that effect without causing any injustice as doing so will make the notice more precise and less onerous to comply with. The appeal succeeds on ground (f) to the extent that the notice is corrected.

APPEALS A AND B ON GROUND (G)

70. This ground of appeal is that the period for compliance specified in the notice falls short of what should reasonably be allowed.
71. At the Hearing I heard that the appellants had agreed a termination of the existing lease due to the first appellant seeking to relocate the business elsewhere. However, in order to transition to new premises and provide continuity for the business to protect existing staff and sub-contractors' employment, the appellants seek a period of 12 months grace. This would facilitate obtaining the necessary permissions for the identified vacant premises and arranging the practicalities of relocation including the installation of new gantry crane/s. I heard that commitments to such works were understandably reserved until the relevant consents were in place and a lease finalised.
72. However, the appellants confirmed at the Hearing that this process was underway. An application for planning permission has already been submitted and although that is not yet validated, I have no reason to expect the process to be protracted – or that the appellant might face other complex logistical or other onerous difficulties associated with the relocation of the manufacturing activity and equipment.
73. I find that the appellant's need to look for alternative, lawful business premises would not justify subjecting nearby residents to unabated and unacceptably harmful noise effects for another 12 months. In balancing the public and private interests bound up in this case, I find that the period of six months given for compliance with the notice does not fall short of what is reasonable. The appeal on ground (g) therefore fails.

OVERALL CONCLUSIONS

74. For the reasons given above, I conclude that the Appeals A and B should not succeed. I shall uphold the enforcement notice with corrections and refuse to grant planning permission on the applications deemed to have been made under section 177(5) of the 1990 Act as amended. Appeal C shall also be dismissed.

R Hitchcock

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Anthony Gill	Barrister
Sophie Marshall	MacMarshalls Consultancy
Dominic McCann	Azymuth Acoustics UK

FOR THE LOCAL PLANNING AUTHORITY:

David Forshaw	Principal Planning Officer Development Management
Caroline Green	Environmental Health Officer
Jodie Turton	Planning Enforcement Officer

INTERESTED PARTIES:

Alison and Jeremy Grimwood	Local residents
Katy Coleman	Local resident
Cllr. David Grant	Ward Councillor
Alex Sykes	Local resident
Keith Johnson	Local resident
Matt Ward	Local resident
Declan Osborne	Local resident

Documents Submitted at the Hearing

- Appellant's legal submission on Council's reference to *Fairstate v SoS* [2004] EWHC 1807
- Transcripts:
 - Fairstate v SoS* [2004] EWHC 1807
 - Pioneer Aggregates (UK) Ltd v SSE* [1984] 2 All ER 358; [1984] JPL 651
 - Hillside Parks Ltd v Snowdonia NPA* [2020] EWCA Civ 1440
- Copy of (previously submitted) written submission of Cllr. David Grant



The Planning Inspectorate

Plan

This is the plan referred to in my decision dated: 3 January 2025

by R Hitchcock BSc(Hons) DipCD MRTPI

Land at: Rigby Taylor House, Crown Lane, Horwich, Bolton, BL6 5HP

References: APP/N4205/C/24/3342973 and APP/N4205/C/24/3342975

Scale: not to scale

