Appeal Decision

Hearing held on 9 September 2010

Site visits made on 9 & 13 September 2010

by R J Perrins MA MCMI

an Inspector appointed by the Secretary of State for Communities and Local Government

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Decision date:
15 October 2010

Appeal Ref: APP/D1780/C/10/2123714
Unit A, Bakers Wharf, Millbank Street, Southampton SO14 5QQ.

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr K S Kooner against an enforcement notice issued by Southampton Council.
- The Council's reference is 10/00015/APENF.
- The notice was issued on 4 February 2010.
- The breach of planning control as alleged in the notice is without planning permission, change of use of the land for the manufacture of plastic products.
- The requirements of the notice are to cease use of the land for the manufacture of plastic products and restore to its lawful use for warehousing and storage purposes, as defined by Class B8 of the Town and Country Planning (Use Classes) Order 1987, as amended.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (f) and (g) of the Town and Country Planning Act 1990 as amended.

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

Procedural matter

1. At the Hearing it was agreed by the parties that a late night site visit was required to hear the noise generated by the manufacturing process when ambient noise levels were at their lowest. This was carried out at 0030 hours on 13 September 2010.

The appeal on ground (a) the deemed planning application.

Main Issue

2. I consider the main issue in this case to be the impact of the operation upon the living conditions of nearby residents.

Background and Planning Policy

3. The property has a planning history which includes an appeal; (dated 22 December 2009) against a refusal to grant planning permission for *the retention of Class B2 use (manufacture of plastic products)* (Refs:APP/D1780/A/09/2113818) I have considered the previous Inspector's findings and decision based primarily upon the operation being of detriment to the living conditions of nearby residents and that additional noise attenuation measures could not be secured by condition. The Council have placed

considerable reliance on the previous Inspector's decision and I acknowledge the importance of consistency in these matters.

4. However, matters have changed since that appeal, works have been carried out to the fabric of the building, to the ventilation fans that sit on the roof, manufacturing equipment, and a further noise survey has been carried out. Moreover, the recent appeal was dealt with by a site visit and the Inspector did not have the opportunity to enter into the appeal premises, nearby residential properties, or the benefit of a night-time visit.

5. Nevertheless, it was agreed that the planning policies identified and discussed by the previous Inspector were salient. Namely, Policies SDP1 and SDP16 of the Southampton Local Plan Review 2006 which set out, amongst other things, that development should not unacceptably affect the amenity of the city and its citizens and will not be permitted if it would cause an unacceptable level of noise. I also consider Policy CS13 of the Local Development Framework Core Strategy Development Plan Document (2010) to be relevant. That sets out the fundamentals of design.

Reasons

6. The site sits opposite a residential estate comprising a number of blocks of flats the nearest being Trent House the gable-end of which faces the appeal premises. Noise measurements were taken from the third floor deck of Trent House and further observations from inside and outside a flat in Forth House which sits to the north of the appeal premises.

7. It was accepted by the parties that the current noise level generated by the operations, and most recently measured as 49 dB LA_{eq}, was unacceptable. I concur with that view which was borne out by the constant low frequency noise heard by all the parties inside and outside the flat at Trent House during my daytime visit. However, during the night time visit I was also able to hear and compare the noticeable difference between the business operating at full capacity and with fans running at reduced speeds and stopped.

8. Those differences are borne out by the undisputed noise measurements submitted by the appellant. It is clear that when the fans are turned off the overall noise level is commensurate with the 40 dB LA_{eq} which is accepted to be commensurate with the prevailing ambient levels within the locale. I was also able to experience the heat generated by the manufacturing process and I am in no doubt that on warm summer evenings adequate ventilation would be necessary for, and sought by, those working within the premises.

9. In addition to those findings the night-time visit enabled the parties to agree noise measurements when ambient noise levels were at their lowest. It also gave the opportunity to measure and listen to noises over a number of scenarios including the business at full capacity, reduced capacity, doors open and doors closed. Measurements were taken from the nearest block of flats at ground and third floor levels and I was also able to observe from Forth House the business with fans switched on and off.

10. I was able to determine from inside and outside the flat at Forth House a discernible low hum when the business was operating at full output with doors open and doors closed. When the fans were switched off and doors were open

no discernible noise could be heard inside or outside the flat. That is reflected by the noise measurements agreed on site. For example, from the third floor walkway measurements included; 47.9 dB LAeq when at full output with all doors closed; that reduced to 45.3 dB LAeq and 44.2 dB LAeq when operating with fans at 75% and 50% respectively; with the front fans only at 50% of capacity that reduced to 39.4 dB LAeq and; with fans off 39.1 dB LAeq.

11. Given those results I accept the appellant's view that by dealing with the fans positioned on the roof the noise levels could be reduced below the ambient noise levels. However, results were also obtained when front and side doors were left open. They record, from the third floor level and ground level, figures of 48.1 dB LAeq and 47.6 dB LAeq, respectively, for noise levels when all fans were turned off and all the doors were left open. Those figures rose to 51.7 dB LAeq and 51.1 dB LAeq when operating at capacity.

12. What is clear from those findings is that whilst the noise generated by the fans may be controlled, it is dependent upon doors remaining closed. Given the conditions within the unit I have no doubt, given the current set-up and the heat generated, that staff working within the unit would want to open up doors to compensate for that. In that event, even if the fans were not working, the noise generated would be unacceptable when the background noise level is at its lowest. That noise would lead to unacceptable harm to the living conditions of occupiers of the adjacent residential flats and would be contrary to the aforementioned policies.

13. However, it is the opinion of the appellant that noise could be controlled by way of planning conditions and it is to that which I now turn. I accept that a condition regarding the closure of doors, between specified hours, would be reasonable and enforceable. That includes the interior shutter door; when shut it does not allow light to escape through the external door but it does when open. It would therefore be discernible during night time hours if the shutter door was being kept open. In addition it would be obvious when side doors were being kept open at night and I see no reason why, given the local interest in the site, that could not be monitored successfully.

14. Furthermore I accept that works undertaken to the fabric of the building, since the last appeal and as borne out by the results of the noise survey, have proven sufficient to contain the internal noise when no fans are in use. However, I do not accept that a condition requiring a scheme for a 'quiet' ventilation system, to restrict the noise to a certain level outside any dwelling, would be satisfactory or effective. I am not convinced, without any detail before me, and given the size of the building and nature of the operations, that a satisfactory scheme for ventilation of the unit would be forthcoming.

15. Any such scheme would require a fresh-air inlet to the building to maintain an extraction rate given the doors would remain closed. In my opinion that introduces another unknown quantity in terms of noise generation. Also there is nothing before me that indicates any such equipment or installation, if needed, would not require planning permission. Moreover, I am not convinced that a scheme of noise attenuation and associated equipment would resolve the noise issue in the first instance. If that were the case further works and a noise survey would be required. This would have the unsatisfactory outcome of prolonging a use I have found to be unacceptable.

Other matters

16. I have considered third party representations regarding production smells. However, I see no reason to disagree with the Council's view that smells were not an issue. I have come to that conclusion having visited the site on several occasions and not having smelt any fumes, noxious or otherwise, emanating from the premises. That is unlike the very noticeable smell of plastic production I experienced from similar units nearby.

17. I also accept that the appellant is a valued tenant and I have no reason to doubt he has made efforts to secure good community relations but this does not outweigh the harm I have identified.

Conclusions

18. For the reasons given above and having considered all other matters raised I conclude the current operations have resulted in unacceptable harm to the living conditions of occupiers of nearby properties contrary to the aforementioned local planning policies. Thus the appeal on ground (a) fails and I refuse to grant planning permission on the application deemed to have been made under section 177(5) of the Act as amended.

The appeal on ground (f)

19. The appeal on ground (f) is made on the basis that the requirements of the enforcement notice exceed that required to remove the alleged harm. The appellant contends that the requirements should have addressed the noise level and required it to be reduced to a satisfactory level; it is impracticable for the appellant to stop use and re-start it regularly as it takes five hours to start the process. In addition the appellant is not clear what the former authorised or otherwise lawful use of the premises was.

20. I will deal with the latter point first, the appellant's own submissions record the lawful use in 2006 as being for storage and distribution (use Class B8). The notice is therefore clear and the requirement is sufficient for validity purposes. Also the Council confirmed at the Hearing that, whilst they considered other requirements, in their opinion the only satisfactory way of remedying the breach was by restoring the land to its condition before the breach took place and the notice falls within s173(4)(a) as it seeks to remedy the breach.

21. An appeal on ground (f) addresses whether the steps specified exceed what is necessary to achieve that purpose. In this case, the requirements seek the restoration of the land to its previous condition and, therefore, given the purpose of the notice are not excessive. I find that there is no option for the appellant to argue under ground (f) that the harm caused could be resolved by requiring the activity at the premises not to exceed set levels at certain times. In any event as I have found under the ground (a) appeal I am not confident that is achievable.

22. The appeal on ground (f) should therefore fail.

The appeal on ground (g)

23. The appellant seeks an extension to the time for compliance to 10 months to enable him to look for new premises, install a suitable power supply, de-commissioning and re-commissioning of plant and to service current orders. The Council contend that six months is sufficient given the period of time that has passed prior to this appeal.

24. I accept that the appellant employs 25 members of staff some of whom are local to the appeal premises. If the business were to leave the area it may not be able to retain those knowledgeable employees. In addition the operation requires a building with a high roof area which the appellant opines are hard to come by in the locale.

25. However, the appellant confirmed that he had not contacted the relevant Council departments with regard to re-location and I have no reason to dispute the Council's view that a proactive stance would have been taken to any approach. Moreover, there is no evidence before me regarding the availability or location of suitable units within the area or, if such units do exist, what modifications to them would be required.

26. Given that lack of evidence it seems to me that the appellant has not made sufficient steps to secure new premises and his view that none are available is unsubstantiated. There is also nothing before me to suggest that six months is not adequate to secure new premises, install equipment and start production so as not to affect current orders. For these reasons I find, given the evidence before me, that six months would allow sufficient time to comply with the notice.

27. Thus the appeal on ground (g) fails. Should any new circumstances be explained to the Council they have the powers under s173A(1)(b) to extend the compliance period whether or not the notice has taken effect.

Formal Decision

28. I dismiss the appeal and uphold the enforcement notice. I refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Richard Perrins

Inspector

APPEARANCES

FOR THE APPELLANT:

Mr C Patrick	Planning Consultant.
Mr R Davis BSc(Eng) MIOA	Acoustic and Noise Consultant.
Mr K Kooner	Appellant.
Mrs D Kooner	Appellant's wife.

FOR THE LOCAL PLANNING AUTHORITY:

Mr S Brooks BSc DipUPS	Planning Officer.
Mr A Amery BSc Dip TP	Planning Team Leader.
Mrs K Hunter BSc(Hons) Dip Acoustics & Noise Control	Environmental Health Officer.

INTERESTED PERSONS:

Mrs J Pritchard	Local Resident.
Mr C Collins	Local Resident.
Mr R Reay MRTPI	Planning Consultant.

DOCUMENTS

1 R Davis Supplementary Statement.

2 Copy of email outlining Council observations from site visit carried out on 7 September 2010.