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Your reference

RTH-SJW
Our reference

T/APP/C/89/A1910/03/P6

Date

19 MAR 90

PLANNING DEPARTMENT	
DISTRIBUTION TO COUNCIL	
FILE	ADMIN
22 MAR 1990	

Gentlemen

TOWN AND COUNTRY PLANNING ACT 1971, SECTION 88 AND SCHEDULE 9
LOCAL GOVERNMENT AND PLANNING (AMENDMENT) ACT 1981
APPEAL BY BUSHEY ENGINEERING COMPANY LIMITED
LAND AND BUILDINGS AT 54 DUXONS TURN, HEMEL HEMPSTEAD, HERTFORDSHIRE

1. I have been appointed by the Secretary of State for the Environment to determine the above mentioned appeal. This appeal is against an enforcement notice issued by the Dacorum Borough Council concerning the above mentioned land and buildings. I have considered the written representations made by you and by the Council and also those made by interested persons, and I inspected the site on Monday 20 November 1989.

2. a. The date of the notice is 25 April 1989.

b. The breach of planning control alleged in the notice is the making of a material change in the use of the land from light industry and storage and trade sale of paint products being a use falling within Class B1 of the Town and Country Planning (Use Classes) Order 1987, to use of the premises for the carrying on of the industrial process of method pressing and forming of components involving the operation of 16 industrial machine presses, being a use falling within Class B2 of the said Use Classes Order, without the necessary grant of planning permission.

c. The requirements of the notice are:-

i. cease using the premises for the carrying on of the industrial process of method pressing and forming of components; and

ii. remove the 16 industrial machine presses from the premises.

d. The period for compliance with the notice is 6 months.

e. The appeal was made on the grounds set out in Section 88(2)(a), (b), (c), (g) and (h) of the 1971 Act as amended.

THE APPEAL SITE AND SURROUNDINGS

3. Your client's premises at 54 Duxons Turn comprise the western portion of a modern factory building situated at the north-western extremity of a purpose built industrial estate. Duxons Turn is a spur road leading off Maylands Avenue which is

the major distributor road for the estate. Other industrial premises are located to the east and south of the site, together with associated car parking areas. Access to the premises is on the south side of the building to a gated yard which appears to be shared with other firms in the eastern portion of the building. To the west of the site is a wedge-shaped tree belt separating the industrial estate from residential development. This residential development includes 3 recently built detached houses served by The Coppice which is a cul-de-sac, and somewhat older bungalows fronting Wood Lane End.

4. The appeal premises are divided into 2 areas with a general workshop area to the south containing various machine tools including lathes, pillar drills and a guillotine as well as work benches. The northern half contains the machine presses and metal forming machinery referred to in the enforcement notice. Mezzanine floors above the work spaces are used for storage, rest and refreshment areas and offices.

THE APPEALS ON GROUNDS (b) AND (c)

5. Your submissions on these grounds are common to both and are essentially that your client's present use of the premises falls within Class B1 of the Use Classes Order. In support of this contention you have listed 10 points in your statement of facts.

6. I note that in June 1986 express permission was granted for a change of use of the premises from special industry to light industry and storage and trade sale of paint products, subject to a number of conditions. There is no evidence of any subsequent permission being granted and thus it is clear that the lawful use of the premises is that permitted in 1986 which I consider falls within Class B1. As I understand the provisions of the Use Classes Order, the test as to whether or not a use falls within Class B1 is that it can be carried out in any residential area without causing harm to the amenity of the area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit; it does not have to be located in such a residential area and hence the surroundings of the premises play no part in applying the test. Moreover the absence of actual harm to the amenities of a residential area is not an indicator when applying the test since outside factors, such as natural or artificial features, may protect the residential area or there may be no residential premises near the site. Thus, I consider that in applying the test it is necessary to examine the inherent nature of the use to determine whether or not it has the potential to cause harm to residential amenity and in particular the extent to which it gives rise to noise, vibration, fumes, smell or other harmful emissions.

7. In the present case, from what I saw and heard within the building of the processes carried on there, involving the pressing, cutting and punching of metal products using machine tools I am satisfied that the use has the potential to harm residential amenity at least by noise and possibly vibration. Conversation had to be conducted by shouting above the noise of the machines which was very loud by any reasonable standard. Whilst I appreciate that outside the building the noise is much reduced by the enveloping effect of the building itself and by certain screening measures which were indicated to me, I nevertheless consider that the inherent nature of the use puts it outside the definition of a Class B1 use, as a matter of fact and degree. As the use does not appear to fall within any of the special industrial categories in Classes B3 to B7 I consider, again as a matter of fact and degree that it falls within Class B2. Hence a material change of use from the lawful use has occurred which is not permitted by the provisions of the Use Classes Order and accordingly your client's appeal fails on grounds (b) and (c).

THE APPEAL ON GROUND (a)

8. From my inspection of the site and its surroundings and from the representations made I consider that the main issue to be decided is whether or not a continuation of the use would be seriously detrimental to the amenities of adjoining residents.

9. It appeared to me that the residents most likely to be affected by the use are those living to the west of the site in The Coppice and in nearby bungalows fronting Wood Lane End. The impact upon their amenities would in my view be mainly from noise and vibration since I detected no significant smoke, dust, fumes or other similar emissions being generated by the processes involved.

10. I understand from the Council's representations that complaints about noise from the premises by nearby residents were received in 1987 and in 1988 and that a Noise Nuisance Notice under Section 58 of the Control of Pollution Act 1974 was served on 16 June 1988. Noise readings taken by the council had indicated that there were increases of between 9 dBA and 12 dBA above the 48 dBA level set by Condition 3 of the 1986 permission. However you have explained that since 2 August 1988 when your clients' representatives and Council officials met on site it had been agreed that noise levels no longer constituted a nuisance and it was agreed that your clients would withdraw their appeal against the section 58 notice in consideration of the council withdrawing the notice.

11. However, more recently and in connection with this appeal, a number of adjoining residents have submitted written representations to the effect that they have experienced the effects of persistent deep thumping, a banging noise and noise which they have identified as coming from the heavy presses involved. Nevertheless, one resident specifically does not claim that the noise is deafening. That bears out the impression gained at my own inspection when I stood within The Coppice, near the boundary of the tree belt. The weather conditions were dry and almost calm and the trees were not then in leaf. Despite the noisy processes going on inside the building I found it difficult to distinguish them from the background noise of traffic using Wood Lane End. That would also appear to be confirmed by the evidence of your clients' acoustical consultants whose survey results indicate that, so far as airborne noise is concerned, it would be difficult to identify noise from the factory against background traffic noise, when standing in the open. However, loud banging noises of short duration, such as the presses would cause, which the Council have described as impulsive noises are, in my view, likely to be more intrusive. 4

12. My reading of the representations from nearby residents indicates, that the disturbance which they perceive is not so much from loud airborne noise as from vibration, described as deep thumping. When the presses are working, the impact of that noise or vibration, which you accept is repetitive, is no doubt also transmitted through the ground and is felt as much as heard within nearby houses. It is that aspect of the process which I believe causes serious harm to the amenities of those residents. The soundproofing measures at the factory, which I saw, would be of little effect in counteracting vibration or impulsive noise nor would a condition along the lines suggested by the council be any more effective in this respect. Moreover you have indicated that your clients are opposed to the imposition of such a condition. A condition to control the emission of impulsive noise, as further suggested by the Council would, in view of the nature of your client's business be likely to be so onerous as to be unreasonable, by taking away much of the benefit which any such planning permission would confer. In my opinion there are no other conditions which if attached to a permission to continue this general industrial use would offset the demonstrable harm which is caused to residential amenities. Accordingly, I conclude that the only alternative is to refuse planning permission

and that the presumption in favour of granting permission contained in Circular 14/85, should be set aside in this instance.

13. In reaching that conclusion I have taken account of the Government's policies for encouraging the formation and expansion of small firms. However, there are in this case convincing planning objections to the use continuing, which as I have indicated cannot be overcome by the imposition of specific conditions.

14. Your clients' appeal on ground (a) also fails therefore.

THE APPEAL ON GROUND (g)

15. So far as step (i) is concerned it will be clear from what I have said above that it is the fact that this is a use which is harmful to residential amenities that puts it within a general industrial classification. Changing the Use Class to B2, as you suggest, would not remedy the harm which the use presently causes to residential amenities and would be tantamount to granting permission for the use to continue, contrary to my findings on ground (a).

16. With regard to step ii. as the 16 industrial machine presses are the principal cause of the adverse effects of the use on residential amenities I consider that no lesser requirement than their removal could remedy that harm. From the evidence available to me further sound insulation would not in my opinion reduce noise and disturbance sufficiently to make the use acceptable. Accordingly, the appeal on ground (g) also fails.

THE APPEAL ON GROUND (h)

17. In considering this ground of appeal I have carefully weighed the arguments which you have put forward about the need for your clients to find alternative accommodation reasonably close to their other premises at 4 and 5 Duxons Turn and the possible disruption to production which is likely to be caused with consequent implications for their 45 employees. Having regard to the advice in Annex B to Circular 22/80 about the taking of enforcement action against small businesses I consider that a period of 9 months for compliance with the notice would be more appropriate. To my mind such a period would strike a reasonable balance between your clients' commercial interests and the interests of nearby residents. To extend the period to 12 months, as suggested by you, would in my view unreasonably prolong the harm to residential amenities which I have described. I therefore propose to vary the period for compliance accordingly and the appeal on ground (h) succeeds to that extent.

18. I have taken account of all the other matters raised but none is of sufficient weight to affect the considerations which have led to my decision.

FORMAL DECISION

19. For the above reasons and in exercise of the powers transferred to me, I hereby direct that the period for compliance be varied by the deletion from line 22 of the notice of the phrase "six months" and the substitution therefor of the figure and word "9 months". Subject thereto, I dismiss your clients' appeal, uphold the notice and refuse to grant planning permission on the application deemed to have been made under section 88B(3) of the Act.

RIGHT OF APPEAL AGAINST DECISION

20. This letter is issued as the determination of the appeal before me. Particulars of the rights of appeal against the decision to the High Court are enclosed for those concerned.

I am Gentlemen
Your obedient Servant

A handwritten signature in cursive script, appearing to read 'C H Johnson', written over the typed name.

C H JOHNSON ARICS
Inspector

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