

Report of the Director of Planning & Community Services Group

Address 85 & 87 FIELD END ROAD EASTCOTE, PINNER

Development: Use of garage at rear for use as storage of commercial goods in connection with commercial premises (Application for a Certificate of Lawfulness for an existing use or operation or activity.)

LBH Ref Nos: 15225/APP/2008/3210

Drawing Nos: Decision Notice of Planning Permission Ref: 155225c/76/673
Letters in Support (see below)
Block Plan 1:500
Statutory Declaration of Miguel Patel

Date Plans Received: 11/11/2008 **Date(s) of Amendment(s):**

Date Application Valid: 11/11/2008

1. CONSIDERATIONS

1.1 Site and Locality

The site comprises a ground floor unit in a parade of commercial units. The application relates to a garage building at the rear of the premises accessed by a rear service road serving all the units within the parade. The site is within the Secondary Shopping Area of Eastcote Town Centre as identified in the Hillingdon Unitary Development Plan (Saved Policies September 2007).

1.2 Proposed Scheme

The application relates to the building at the rear of the premises, which received planning permission in June 1976(155225c/76/673). Condition 2 of this permission stated:

'The garage shall only be used for the accommodation of commercial vehicles used in connection with the business carried out from the premises 85-87 Field End Road.'

The application has been submitted by the business tenant of 85-87 Field End Road, whose claim is that the garage has been in use for the storage of commercial goods in contravention of this condition, for a period of at least ten years.

1.3 Relevant Planning History

15225/E/98/1311 85 & 87 Field End Road Eastcote Pinner
Installation of new shopfront

Decision Date: 18-12-1998 Refused

Comment on Planning History

See above.

2. Advertisement and Site Notice

2.1 Advertisement Expiry Date:- Not applicable

2.2 Site Notice Expiry Date:- Not applicable

3. Comments on Public Consultations

INTERNAL:

LEGAL SERVICES

An application for certificate of lawful use/development has been submitted by the business tenant of 'Still Waters' of 85-87 Field End Road, in order to make lawful the storage of commercial goods to the garage to rear of the property, which is in contravention of the planning permission reference 155225c/76/673.

Sections 191 and 192 of the 1990 Act provide for anyone (not just a person with a legal interest in the land) to apply to the local planning authority (LPA) for a lawful development certificate (LDC). A certificate is a statutory document certifying:

(1) In the case of an application under section 191, the lawfulness, for planning purposes, of existing operations on, or use of land, or some activity being carried out in breach of a planning condition; or

(2) In the case of an application under section 192, the lawfulness of proposed operations on, or use of land.

By virtue of section 191(2), uses and operations are "lawful" if no enforcement action may be taken against them and they are not in contravention of any enforcement notice which is in force.

By virtue of section 191(3), a failure to comply with any condition or limitation subject to which planning permission has been granted is "lawful" if the time for taking enforcement action in respect of the failure has expired and it does not constitute a contravention of any enforcement notice or breach of condition notice which is in force. This is most relevant in this case.

A breach of planning control becomes "immune" from planning enforcement action if no such action has been taken within certain time-limits. By virtue of section 191(2) and (3) of the 1990 Act, a breach of planning control which has obtained immunity by the passage of time also becomes "lawful" for planning purposes. The time limit that is relevant here is 10 years.

With LDC applications the onus of proving the lawfulness of an existing operation rests with the applicant. In the case of *Gabbittas v Secretary of State for the Environment* [1985] it was held that the relevant test of the evidence is 'the balance of probability.' Further to this if the Local Authority have no evidence of their own to contradict the applicants version then there is no good reason to refuse the application, provided the applicants evidence alone is sufficiently precise and unambiguous.

There is conflicting evidence in relation to the application. Importantly, however, the applicant must demonstrate on the balance of probabilities that on the evidence he has presented that the 10 year period is satisfied thereby making the activities lawful.

Planning policy and merits are irrelevant to the determination of this application. The Committee is strongly advised to take the officers findings in relation to the credibility of the evidence at face value. The procedure does not enable the committee to embark on a factual inquiry, of their own, in relation to this application.

If the Committee is minded not to follow the officers recommendation or to question the officers factual analysis then the advice is that the matter is deferred to allow the drafting of a further report.

EXTERNAL:

This application relates to a Certificate of Lawful Development for an existing use or activity, and as such consultation is not required and is not normally carried out.

However, a letter from a local resident enclosing a petition of 22 signatures has been received which disputes the supporting evidence submitted as part of the application.

4. UDP / LDF Designation and London Plan

The following UDP Policies are considered relevant to the application:-

Part 1 Policies:

Part 2 Policies:

5. MAIN PLANNING ISSUES

In order to gain immunity from enforcement action and be eligible for a certificate of lawful use the use would have to be continuous for a period of 10 or more years.

The evidence submitted with this application is as follows:

* The letter from Agate Glass Ltd, of 101 Field End Road, which states `The garage to the rear of 85 Field End Road has been used as storage since 1995, when the shop was a plumbers merchant. Subsequently, the garage was also used for storage when it became a supermarket in 1998, and a furniture shop two years later.

* The letter from Trade Price Beds and Flooring, of 424 High Road, Wembley, claiming that they were tenants from Jan 2001 to Jan 2002, and that they used the buildings to the rear to store stock, and prior to the tenancy the buildings were already being used as storerooms.

* Letter from Wave Distribution Ltd, of Burnham Lane, Burnham, stating `I frequently visited 85-87 Field End Road as a representative for Balco Manufacturing for 19 years, when it was a hardware/plumbing merchant, run by Mr Edwards, both rear buildings were used for storage of commercial goods and not parking of vehicles.

* Letter from Carole Caldwell, stating that they have lived at 19 Deane Croft Road for almost 11 years, and that she regularly walks past the alley behind the parade of shops and she has always observed the building at the back of no 85 being used a storeroom.

* Letter from Vogue, at 89 Field End Road, stating ` this facility has been used for the storage of goods for at least 10 years, which I have personally witnessed over the years, because I park my vehicles at the rear of our premises and access to our parking bays are via the service road directly in front of said garage.

* A statutory declaration has been submitted by the applicant stating that they have owned the lease since 25th January 2002 and have continually used the garage as storage for our business.

Conflicting evidence has been submitted from a local resident, situated at the rear of the site, and the points are summarised as follows:

* I have lived at my property since 1963, and my landing window looks directly at the garage in question.

* When we first moved here the unit was occupied by the Co-op, then a butchers, followed by an ironmongers/tool shop, who were tenants for more than 20yrs. My son worked there as a Saturday boy and the manager lived in the flat above. At this point the garage was used for the shop van and the manager's son's motorbikes.

* Once this use ceased, the unit was empty, and then used as a charity shop, then the unit was taken on by Londis as a convenience store, who only used this side entrance to take deliveries of bread and milk, and at no time had the garage or rear yard been used for any other purpose than parking of motor vehicles.

* After Londis left Stillwater bathrooms took over the lease, they cut a door into the back of the garage, to facilitate access from the rear service road, installed a roller shutter door, and put a roof over the yard, so that they could use the whole area as a warehouse for the storage of goods (without planning permission)

* Stillwater bathrooms have not occupied the property for 10 yrs.

* No tenant by the name of Trade Beds and Floors has ever been in the unit, I have checked this with both LCP Securities (the current freeholders), and Land Securities (the previous freeholders)

* I enclose a petition of a number of residents in Dean Croft Road (22 signatures, all bar two who have lived there in excess of ten years), stating the garage was not used for warehousing prior to the arrival of Stillwater Bathrooms

* The letter from Carole Caldwell (as above), have recently had work done by the applicant and have only lived at their address 4yrs

* Also Vogue Windows and Agate glass have not occupied their shops for anywhere near 10 years

The following points are of concern to the Council and are therefore relevant to this application.

(i) The use of the garages for the storage of commercial goods is contrary to planning application ref: 15225C/76/673, which was approved subject to the following condition:

'The garages shall only be used for parking of commercial vehicles in connection with the business carried on from the premises at 85-87 Field End Road.'

(iii) It appears to the Council that this use commenced within the last ten years.

The review of the evidence submitted and the conflicting evidence from local residents is as follows:

The applicant has provided a number of documents with the application which are considered in turn below;

1. Statutory Declaration of Miguel Patel

A statutory declaration has been submitted by Mr Patel who is the manager of Still Waters. A Statutory Declaration is a way of assisting on the discovery of fact, indeed it is a method of making a statement of fact, which gives the statement greater evidentiary weight than it might otherwise have. It should be noted that if any of the facts mentioned within the Statutory Declaration are proved to be untrue, this is a criminal offence.

Mr Patel has confirmed that he acquired the lease on 25 January 2002. Since taking over the premises Mr Patel states that the garage was already being used for the purpose of storage of commercial goods.

Mr Patel states at paragraph 7 that he understands that the predecessors of the premises used the garage for storage of commercial goods, since the lease commenced in June 1998. However he has only submitted evidence dating back to 2001 and this is not in the form of a statutory declaration.

In determining whether the ten year immunity period has been met, it is important to decipher the point at which the ten year period become calculable. The Council should use the date upon which Mr Patel took over the premises as a starting point, that being 25 January 2002. This would mean if it is accepted that the garage has been used for the storage of goods since this date, the unauthorised activities have only been carried out for a total period of 7 years.

Mr Patel has submitted a letter from the previous leaseholder of the premises. The letter is from Mr Hussain and is dated 6 September 2008. The deed of assignment dated 25 January 2002 has been checked and this mentions the assignors as Irshad Hussain and Mahmood Sultan.

If it is agreed that Mr Hussain is Mr Irshad Hussain it is important to note that Mr Irshad Hussain and Mr Mahmood only leased the premises for a period of one year, this would mean the activities have been carried out for a period of 8 years, therefore not satisfying the 10 year period for immunity.

There is mention in the letter that prior to Mr Hussain taking over the lease, the garage was used for storage of goods, however evidence has not supplied from the previous leaseholders, nor has Mr Patel submitted any evidence from the current or previous Freeholders who, one would have assumed carried out regular property checks, and would therefore have authority to comment on whether such activities were carried out.

The freeholder's evidence to these unauthorised activities and the previous leaseholders in the chain is fundamental in proving on the balance of probabilities that the 10 year period for CLU purposes is satisfied.

Local residents have submitted a petition in respect of these unauthorised activities and the petitioners have checked with LCP Securities (Freeholders) and Land Securities (Previous Freeholders) and stated that Trade Beds and Floors have not been tenants of 85-85 Field End Road.

However, caution is advised in accepting this point, as it may well be possible that the business has changed its trading name since 2001.

The evidence submitted has failed to provide a paper trail relating to the storage of commercial goods in the garage, including for instance statutory declarations from his

stockists when delivering goods to the premises or even insurance papers covering the goods within the garage.

2. Letter from Agate Glass Limited dated 10 June 2008

This again is a letter, and not a Statutory Declaration. The letter does not provide details as to the period that Agate Glass has been operating from Field End Road and thereby supporting the time period referred to from 1995.

The petitioners' dispute that Agate Glass Limited have operated from the premises for 10 years.

3. Letter from Trade Price Beds and Flooring dated 6 June 2008

Covered above under Point 1.

4. Letter from Wave Distribution dated 15 October 2008

No comment to make in relation to this statement, as details dating back 19 years for history of the site are not available.

5. Letter from Carol Caldwell dated 16 October 2008

Ms Caldwell has stated in her letter that she regularly walks past the alleyway behind the parade of shops and has always observed the building to the back of 85 Field End Road being used as a storeroom. Ms Caldwell lives at 19 Dean Croft Road.

The petitioners state that Ms Caldwell has only lived at the premises for 4 years.

6. Letter from Vogue dated 28 October 2008

The letter states that the Director of Vogue Windows has personally witnessed the building at the back of the premises being used for storage of goods for at least 10 years.

The petitioners dispute that Vogue windows have even operated from the premises from 10 years.

Petitioner's comments:

The petitioner has stated that he/she has lived on Dean Croft Road since 1963 and has provided a history of the premises from that date.

There is conflicting evidence as to lessees', as the petitioners state that before Stillwater's operated from the premises, it was actually a 'Londis' supermarket. This is confirmed by Agate Glass; however Mr Patel has stated that the previous occupier was Trade Price Beds and Carpets.

Conclusion

The evidence supplied by the applicants and that supplied by the local resident has been considered in detail and the conclusion is that there is clearly conflicting evidence and that the applicant cannot demonstrate, on the balance of probabilities, on the facts, that the 10

year period is satisfied thereby making the activities lawful. On this basis it is recommended that a Certificate of Lawful use is refused.

6. RECOMMENDATION

REFUSAL for the following reasons:

1 **NON2** Non Standard reason for refusal

The proposed use is NOT LAWFUL by virtue of Section 191 of the Town and Country Planning Act 1990 as amended by Section 10 of the Planning and Compensation Act 1991 as the applicant has been unable to demonstrate that the operation described in the First Schedule has been in existence and in continuous use as such for a period of at least 10 years prior to the date of this application.


INFORMATIVES

Contact Officer: Catherine Hems

Telephone No: 01895 250230



Notes

 Site boundary

For identification purposes only.

This copy has been made by or with the authority of the Head of Committee Services pursuant to section 47 of the Copyright, Designs and Patents Act 1988 (the Act). Unless the Act provides a relevant exception to copyright.

© Crown Copyright. All rights reserved. London Borough of Hillingdon 100019283 2008

Site Address

**85 and 87 Field End Road
Eastcote**

Planning Application Ref:
15225/APP/2008/3210

Planning Committee
North

Scale
1:1,250

Date
June 2009

**LONDON BOROUGH
OF HILLINGDON
Planning &
Community Services**

Civic Centre, Uxbridge, Middx. UB8 1UW
Telephone No.: Uxbridge 250111



HILLINGDON
LONDON