

SECTION '2' – Applications meriting special consideration

Application No : 15/05049/ELUD

Ward:
Penge And Cator

Address : Bronze Works Kangley Bridge Road
Lower Sydenham London SE26 5AY

OS Grid Ref: E: 536727 N: 171352

Applicant : Mr Dominic Hill

Objections : NO

Description of Development:

Use of office block as non-ancillary self-contained offices falling within Class B1(a).
LAWFUL DEVELOPMENT CERTIFICATE (EXISTING)

Key designations:

Biggin Hill Safeguarding Area
London City Airport Safeguarding
Smoke Control SCA 25

Proposal

This application seeks a determination from the Local Planning Authority with regards to the lawfulness of an existing use of the site. The applicants seek to establish that the offices at the Bronze Works are non-ancillary and self-contained offices falling within Class B1(a). The application is described thus:

"This application is to certify that the office block is B1(a) use and not ancillary to a wider commercial use on the site. The site apart from the office block is made up of 15 separate commercial units, all of which have tenants."

The application site lies on the western edge of Kangley Bridge Road and forms part of the wider UDP designated Kangley Bridge business area. The building the subject of the application comprises a three storey block attached to the warehouse/business units adjacent and which collectively form part of the site. The site plan outlines the front building in red as the application site, with the remainder of the site outlined in blue as it is within the applicants' ownership.

Consultations

No response has been received in response to the Council's notification to nearby owners/occupiers of the submission of the application.

Planning Considerations

The application was received by the Council on 18th November 2015, with additional information being provided on 8th April 2016 following correspondence from the Council to the applicant dated 3rd February 2016.

The applicant refers to the prior approval application (listed in the Planning History section of this report) and states that the office in question has been stripped ready for conversion to residential use.

The information submitted by the applicant is summarised below:

The application has been submitted with the following information to support the case:

- A copy of a Lease between the applicant family and Factormark Ltd.
- A chart detailing the tenants of each of the units within the complex, including the front building and warehouse, since August 2000.
The chart seems to suggest that some industrial use continued notwithstanding the user clause within the lease.
- Letters from persons with knowledge of the use of the site
- A statement from the applicants
- An illustrated floor plan showing the current site layout as at 30th October 2014 and the site layout as at 29th May and June 2014.
- Statutory declarations from Mr D and Mr N Hill
- Factormark Ltd report and financial statements for years including 1995, 2000 - 2007 inclusive
- Tower Dental directors' report and financial statements 2005 - 2007 inclusive
- Red Apple directors' report and financial statements 2000 - 2007 inclusive
- Letter from Minerva Dental Ltd to Red Apple Dental Supplies Ltd. referring to net current liabilities of the company in form of amount owing to Factormark Ltd.
- Commercial Property Register invoice dated November 2009 referring to property listing, photographs of letting boards and chartered surveyors listings.

Planning History

13/03598 Residential prior approval granted for the conversion of premises from Class B1(a) offices to Class C3 dwellings, comprising a total of 8 flats. The

Council, in granting prior approval, did not comment on the authorised/established use of the site.

14/02347 Applications for elevational alterations and extension submitted following the prior approval for works. In dealing with this application it became apparent that the lawful use of the building was not clear. The building is part of a larger site in general industrial use, within a designated business area. It was not clear that the building was a separate planning unit in Class B1(a) use rather than an integral and possibly ancillary element of the wider Bronze Works site. On this basis it was not clear that the permitted development rights of Part 3 Class J would have applied. The application for planning permission was withdrawn with the intention to submit a Certificate of Lawfulness application relating to the existing/established use.

The historical planning records for the site are summarised:

50/260 Permission granted for a factory extension to provide caretaker's flat and canteen

53/286 Permission granted for an extension to the factory

65/01004 Erection of new factory permitted subject to conditions including (iii) which stated that the area covered by the permission shall be used for sheet metal working and general engineering associated with sheet metal working, together with ancillary offices.

74/1258 Change of use to general industrial use to include plant hire business and offices - application withdrawn.

Conclusions

It is considered that it has not been established on the balance of probabilities that the use of the office block was separate to the remainder of the uses on the site which themselves seem to have changed over time.

In applying for a Certificate of Lawfulness for an Existing Use the onus is on the applicant to demonstrate that on the balance of probability the property has been used as claimed without significant interruption for a period of 10 or more years. The Planning Practice Guidance states that the applicant is responsible for providing sufficient information to support an application. If a local planning authority has no evidence to contradict the applicant's version of events there is no good reason to refuse the application so long as the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.

Consideration is given to the requested determination based on the information submitted by the applicant.

In support of the application a number of statements have been submitted from former employees, in addition to the statutory declarations of Mr N and Mr D Hill

and company accounts information. No evidence has been supplied regarding the use of the offices and the site prior to the applicant's first occupation in August 2000.

Evidence submitted includes a copy of the lease for "Property at The Bronze Works" between the landlords (Mr P, Mr N and Mr D Hill) and the tenant, Factormark. The lease is dated 12th April 2001 and includes on Page 17 a user clause which refers to the use and occupation of the premises as a whole "for offices and storage and for no other purpose whatsoever or any part for a residence." The lease related to a larger area than the application site including the attached and unattached buildings at the rear.

The usage chart provided by the applicant does not show 10 years of continuous use of the office block. There are 2 blocks of usage of the offices, the first for a little under 9 years by Factormark Ltd and the second for 2 years and 4 months by Ngwena Limited, with a break between these occupations from June 2008 until May 2011 - a period of 2 years and 11 months. The remainder of the site seems from records and from the usage charts to have been used by a variety of companies partly for storage with some industrial use continuing.

Evidence submitted includes an entry in the Kent, Surrey and Sussex Commercial Property Register November 2009 - March 2010 which described the accommodation as comprising industrial units from 200 - 12000 sq. ft. plus 6000 sq. ft. offices. Advertisement hoardings refer to the site as "warehouse with offices" and a copy of an estate agent's advertisement describes the site as "warehouse premises, with offices and secure yard/off-street parking." A copy of an advertisement of rental for The Bronze Works (Hindwoods Chartered Surveyors) refers to "warehouse premises, with offices and secure yard/off street parking" which details the square meterage with the offer "May divide."

Some information submitted, including the letter from Mrs Frankis, former office manager employed by Factormark, indicates a link between the use of the office by Factormark during the period referred to above and the general operation of the site including the adjoining warehouse. Mrs Frankis states that Factormark was a management company for the site's tenants and for the businesses of the Hill family, including two businesses on the Bronze Works site - Red Apple Dental Supplies and Tower Dental which occupied part of the site immediately adjacent to the office block for the period of August 2000 until May 2008.

Other evidence however refers to the operation from the office block being separate to the building(s) at the rear. Mr Harris, a former Red Apple employee states that the company's stock and pick and pack operation was in the main warehouse behind the office block at the front of the site. He states that this was occupied by Factormark Ltd "which had some of the same directors as Red Apple." He states that the offices for Red Apple were contained at the back right corner and mezzanine of the main warehouse.

Mr Payne from the Ox Group UK, which occupied the main warehouse from May 2011 to January 2013, states that there was no direct access from the offices to the warehouse. Part of that period appears to correlate with the time when the

offices were vacant, with the latter part correlating with the early months of the office occupancy by Ngwena Ltd.

The statutory declarations submitted by Mr N Hill and Mr D Hill provides a detailed history of their companies, Factormark Ltd., Red Apple Dental Supplies Ltd and Tower Dental Products Ltd. and state that only Factormark occupied the Office building and that no storage or office activities were carried out in the office by or on behalf of the other two companies.

While the applicants have sought to demonstrate that the operation of the front offices during their period of tenancy and after was separate to the other businesses carried out within the Bronze Works site, on the basis of the evidence submitted by the applicant it is considered that insufficient proof has been provided to clearly and without ambiguity support the claim that the non-ancillary/separate use of the office block has been carried out for a continuous period of 10 or more years.

as amended by documents received on 08.04.2016

RECOMMENDATION: APPLICATION BE REFUSED

The reasons for refusal are:

- 1 Insufficient evidence has been provided to substantiate that the use of the front building would fall within Class B1(a) use and would not form part of a wider commercial use on the site. Insufficient evidence has been submitted to substantiate that the front building has been used as such continuously for a period of 10 years and as such the existing use is not considered to be lawful.**