

Report No.

ES19089

London Borough of Bromley

PART ONE - PUBLIC

Decision Maker: PLANS SUB-COMMITTEE NO. 4

Date: Thursday 5 December 2019

Decision Type: Urgent Non-Executive Non-Key

Title: ENFORCEMENT ACTION UPDATE - BRONZE WORKS,
KANGLEY BRIDGE ROAD, LOWER SYDENHAM, LONDON
SE26 5AY

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1. Reason for report

1.1 Under planning ref.17/02072 the Council refused a lawful development certificate for use of the front building known as the 'Bronze Works' for 8 flats (Class C3) pursuant to grant of prior approval under planning ref. 13/03598. A subsequent appeal was allowed on the basis of a corrected description for the use of the building for 1 flat only. Following a High Court challenge however the Inspectors decision was quashed on one specific issue; that the Inspector should have also had regard to the test set out in relevant case law [Welwyn Hatfield BC v SSCLG [2011] UKSG 15 and Impey v SSe (1984) 47 P &CR 157] as to when a material change of use can be said to have occurred in the process of conversion to residential use. The court ordered that the appeal be re-determined and a new date for a Public Inquiry has been set for 21 January 2020. It is necessary to establish the expediency of taking enforcement action on the 7 remaining flats which the Council considers to be unlawful lest they acquire passage of time immunity from enforcement. In addition this report will clarify the Council's stance on this matter at the forthcoming Public Inquiry.

- 1.2 A site visit was carried out on 22 May 2019 of all parts of the building and the report summarises the findings of these investigations and the expediency of taking enforcement action at this time having regard for the development plan and any other material considerations.
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2. RECOMMENDATION(S)

- 2.1 Members are asked to note the current position which is identified as a breach of planning control and resolve to take enforcement action but for our legal services to hold any enforcement action in abeyance pending the outcome of the forthcoming Public Inquiry.
- 2.2 In the unlikely event an appeal decision is not issued before the flats are due to become immune from enforcement action, and then officers are duly authorised to take any necessary enforcement action against the breach of planning control.
- 2.3 Elevation alterations have been carried out to the building including replacement windows, doors and repositioning of window apertures these changes would need to be regularised under a separate application

3. COMMENTARY

Site & Surroundings

- 3.1 The appeal site lies on the western edge of Kangley Bridge Road and forms part of the wider Bromley Local Plan (BLP) designated Lower Sydenham Business Area. Lower Sydenham is also designated as a Locally Significant Industrial Site (LSIS) it is the second largest cluster of industrial and related employment land in the borough containing approx. 150 units and 70,000 sqm of floorspace. The surrounding area is mainly industrial in character. The northern boundary of the site marks the edge of the borough boundary with the London Borough of Lewisham.
- 3.2 On the southern and western boundaries of the site are manufacturing units (B2, approx. 4,600 sqm together), with a concrete batching plant (B2) further to the west and sharing a thoroughfare with some of the Bronze Works industrial units on the northern edge. Immediately south-west of the site is a scrap metal yard (sui generis). These uses generally operate on the heavier end of the industrial spectrum but also under conditions to limit impacts on amenity of residential areas on the edges of the LSIS, particularly further west along Kent House Lane. These conditions would not have anticipated potential new residential uses being introduced immediately adjacent to the uses they intended to regulate.
- 3.3 The subject property comprises a part two but mainly three storey flat roofed brick facing building fronting Kangley Bridge Road. The building is set back from the road behind a small green verge. Parking is along the northern flank boundary and also to the north of the subject building. There is a separate commercial vehicular entrance to the southern end of the site fronting Kangley Bridge Road, this section is separated off from the building by a chain link fence. Windows from ground floor flat 8 also have an outlook from this elevation.
- 3.4 Attached to the subject front building is a larger warehouse which is currently subdivided into 8 commercial units comprising the “left hand side” unit, 4 units within the “ground floor rear warehouse” including one which is linked and integral to the “left hand side” unit and a further 4 smaller units on the right hand side of the warehouse building. Collectively the units form part of the site known as the Bronze Works.

LOCATION	USE
Front building	8 units in use for (Class C3) residential purposes
M1	Car Body Work shop
M2	Stone Mason
M3	Hayes Car Body Workshop
M4	Joinery
Left Side	Hayes Car Body Workshop
Right Side 1-3	Marble, Granite Quartz
Right Side 4-5	Wheel Alignment
Right Side 6-7	Beckenham MOT
Right Side 8-10	RPS Fire Places

Table 1: Bronze works as at 11th May 2017

3.5 Apart from Hayes Car Body Work Shop none of the other commercial units at the Bronze Works site were inspected as a part of the site visit that took place on 22 May 2019.

3.6 The visit included a full inspection of the interior of the subject *front building* and revealed that all 8 units had been completely refurbished and to all intents and purposes appeared to be in residential use.

Planning History

3.7 13/03598/RESPA

On 10th December 2013 the Local Planning Authority granted prior approval for the change of use of premises from Class B1 (a) office to Class C3 dwellinghouses to form 2 one bedroom, 4 two bedroom and 2 two/three bedroom flats. This was a 56 day application for prior approval in respect of transport and highways, contamination and flooding risks under Class J Part 3 of the Town and Country Planning of the Town and Country Planning (General Permitted Development)(Amendment)(England) Order 2013, with Section N of the Order providing the framework for determination.

3.8 14/02347/FULL1

Under reference 14/02347 a planning application was submitted to the Council for the extension and elevational alterations to the office. During the course of this application (which was subsequently withdrawn) it was brought to the applicant's attention that the Council was doubtful as to the lawful use of the building on 30th May 2013 and whether that use fell within Class B1(a) as per the prior approval application.

15/05049/ELUD

3.9 Under reference 15/05049 an application for a lawful use/development certificate was submitted which sought to establish that the offices at the Bronze Works were non-ancillary and self-contained offices falling within Class B1 (a). The application was described by the applicants 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."

3.10 The application was submitted on 19th November 2015. The chronology submitted by the same applicants in this current application states that at this stage the tear out works of the office block had begun (para. 7 of statutory declaration dated 28th April 2017).

3.11 The application was reported by the Chief Planner to the Plans Sub-Committee meeting on 14th July 2016 where members refused the lawful development certificate on the grounds:

“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.” The decision was dated 15th July 2016.

3.12 An appeal against the Council’s refusal of the lawful development certificate was allowed.

3.13 14/00741/RESPA

Prior approval was granted under planning ref. 14/00741 for change of use of unit 1 Bronze Works [a separate building within the same site] from Class B1 (a) offices to Class C3 comprising 3 one bedroom flats. Whilst there were serious reservations about the suitability of the site for residential occupation owing predominantly to the likely noise levels and lack of amenity spaces no objections could be raised within the limited scope of the prior approval application. Changes were made to convert the property which did not involve elevational alterations.

Policy Considerations

3.14 It is considered that only 1 of the 8 flats that are now occupied is lawful. In circumstances such as these where the grant of prior approval had not been complied with within the relevant time limit and in accordance with the conditions and limitations of the 1995 and 2015 Orders (as amended) then those flats should rightly be assessed with regard to the relevant planning policies and any other material considerations.

3.15 The main issue to be considered from a policy point of view is the loss of industrial land / employment land within the LSIS to non industrial purposes. The relevant national, regional and local policy context will be considered below.

National Planning Policy Framework (NPPF)

3.16 The NPPF sets out the Government’s planning policies for England and how these are expected to be applied. Chapter 6 entitled ‘Building a strong, competitive economy’, paragraph 80 is of most relevance in this case, it states:

“Planning policies and decisions should help create the conditions in which business can invest, expand and adapt. Significantly weight should be placed on the need to support economic growth and productivity, taking account both local business need and wider opportunities for development. The approach taken should allow each area to build on its strengths, counter and weaknesses and address the challenges of the future...”

London Plan

- 3.17 The London Plan identifies Bromley as 'restricted' with regards to the transfer of industrial land to other uses. Policy 4.4A states that boroughs will work with the Mayor to ensure sufficient stock of land and premises is retained to meet future industrial needs and to plan, monitor and manage release of surplus land. Policy 4.4B states how this should be undertaken, highlighting that Council's Local Plan should take into account need to identify and protect LSISs where justified by evidence of demand.
- 3.18 Part 7 of The Mayors Housing SPG (2016) states that industrial land should only be released for residential purposes where this land is surplus to requirement and on a "selective and carefully managed and monitored basis....Where land is to be released from SILs and LSIS, this must be based on authoritative local and strategic evidence and should be managed and coordinated on a regular basis through the preparation and review of local plans." (paras 7.7.4 -7.7.5)
- 3.19 The Mayor's 'Land for Industry and Transport' SPG (2012) identifies an overall and annual industrial land release benchmarks for each borough for the period 2011-2031. Bromley has been assigned an annual benchmark of 0.5 ha. Since 2011 over 5 ha of land in the Borough has been transferred from industrial to other land uses by change of use permissions and the mean annual transfer has exceeded the annual benchmark. Class O permitted development rights from Class B1 offices to residential (Class C3) are likely to compound this loss further.
- 3.20 Para 4.8 of this document states that : "inappropriate redevelopment or changes of use even in parts of industrial sites can compromise the offer of wider areas as competitive locations for industry...change to residential use from commercial buildings would be inappropriate in LSIS unless they are part of a strategically co-ordinated process of consolidation through Local Plan."
- 3.21 In June 2017 the London Industrial Land Demand Study (CAG et al) was released in support of the preparation of the new London Plan, which is currently in draft stage. This study projects a positive net land demand of 5.3 ha for industry and warehousing in Bromley for the period 2016-2041.

Bromley Local Plan

- 3.22 The Council's position in respect of the type of uses considered acceptable within Locally Significant Industrial Sites (LSIS) is set out within Policy 82 of the Bromley Local Plan.
- 3.23 The following uses are permitted: B1a (provided use is consistent with relevant office and town centres policies and does not impede effective operation of neighbouring businesses or the broader LSIS), B1b, B1c, B2, B8 (provided scale and design are congruous with adjoining premises and overall LSIS)
- 3.24 Proposals for employment generating uses resulting in a loss of Class B uses must demonstrate:
- site is no longer suitable or viable for existing or any potential Class B use (by refurbishment or redevelopment, in medium to long term), as demonstrated through a period of marketing generally accepted to be at least 2 years, consistent with the Mayor's SPG (2012)

- proposed development contains a similar quantum of employment generating floorspace and is flexibly designed to allow for future refurbishment for a range of industrial and other compatible employment uses
- proposed use would not compromise primary function of LSIS, or the capacity of neighbouring sites in the LSIS to continue to accommodate Class B uses in the medium to long term
- proposed development is compatible in scale and design with surroundings

3.25 Where it is demonstrated that existing premises cannot viably accommodate a quantum of Class B floorspace in medium-long term, Council will consider employment-led mixed use proposals that are consistent with primary function of LSIS and do not impede effective operation of existing employment uses in the vicinity.

Accommodation Standards

3.26 It is further considered that as flats 2-8 do not have the benefit of permitted development the accommodation would be subject to assessment against standards set out as part of the London Plan. In particular those expectations set out in the Technical housing standards - nationally described space standard (March 2015). The standard deals with internal space within new dwellings and sets out requirements for the Gross Internal (floor) Area (GIA) and bedroom sizes at a defined level of occupancy. It is notable that there are substandard aspects (to a greater or lesser degree) with regard to bedroom size and overall GIA in relation to remaining 7 flats and also in terms of outdoor amenity space.

3.27 It was also noted during the site visit in May 2019 that the bedrooms to flats 7 and 8 are provided with windows fitted with obscure glazing or a skylight, there is no view or outlook from these rooms. Had the conversion been considered as a full application, then noise, air quality and land contamination would have been assessed at that time.

CONCLUSION

3.28 It is clear from the above policy background at all levels that the unlawful use of the remaining 7 flats is in conflict with Policy. It is considered that the pressure to accommodate residential development should not be at the expense of industrial land which is a finite resource in the borough. Had the conversion from office to residential floorspace been compliant with the conditions and limitations of Class O, J permitted development and no elevation alterations were necessary to achieve the conversion then the Council's powers to prevent such residential development would be limited. The current circumstances are different as the development is considered to be unlawful, if such development is allowed to go ahead unchecked then this could contribute to a long term reduction in the Borough's industrial capacity in two ways. Firstly, as a direct result of the loss of industrial land and secondly in terms of compromising the offer in the wider area due to the proximity of incompatible uses. As a Locally Significant Industrial Site and the second largest cluster of industrial and employment land in the Borough it is essential from

a policy point of view that any development is assessed in line with the relevant planning Policy. On this point Local Plan Policy 82 is quite clear that where it is demonstrated [as the appellant contends] that existing premises cannot viably accommodate Class B floorspace in the medium and long term the Council will consider employment led mixed use proposals that are consistent with the primary function of the LSIS and do not impede on the effective operation of existing employment uses in the vicinity

- 3.29 It has already been identified that since 2011 over 5 ha of land in the Borough has been transferred from industrial to other uses and this figure exceeds the mean annual transfer of industrial to non-industrial use set out in the Mayor's Land for Industry and Transport SPG.
- 3.30 On the basis of the above it is considered that there are compelling reasons for authorising enforcement action pending the outcome of the forthcoming Public Inquiry.