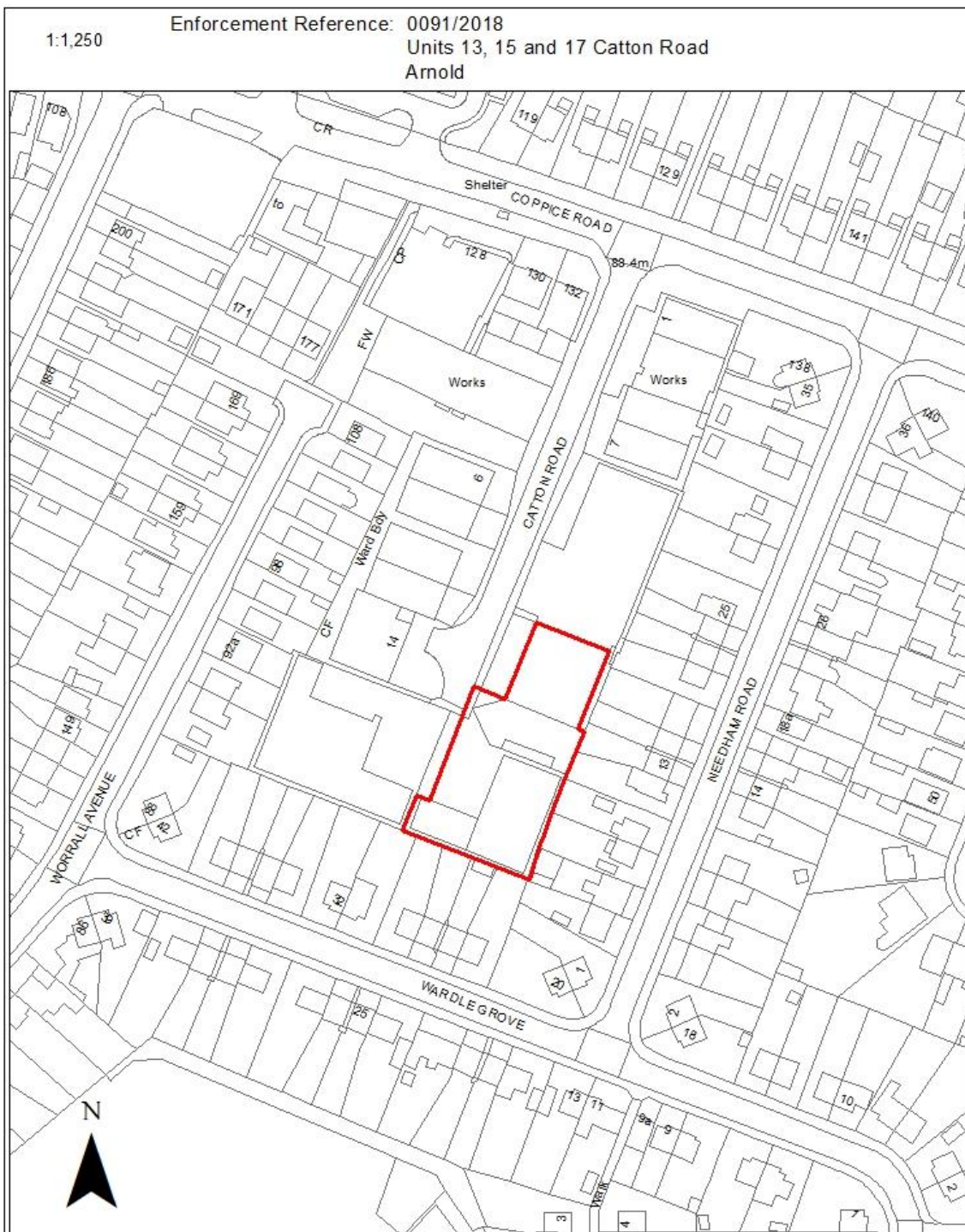


## Planning Enforcement Report for 0091/2018



NOTE This map is provided only for purposes of site location and should not be read as an up to date representation of the area around the site.  
Reproduced with the permission of the Controller of H.M.S.O. Crown Copyright. Licence No LA100021248.  
Unauthorised reproduction infringes Crown Copyright and may lead to prosecution or civil proceedings.

## Report to Planning Committee

<b>Reference Number:</b>	<b>0091/2018</b>
<b>Location:</b>	<b>Units 13, 15 and 17 Catton Road Arnold</b>
<b>Breach of Planning Control:</b>	<b>Unauthorised change of use from B1 (business suitable in a residential area) to B2 (general industrial)</b>

### 1 Background

- 1.1 Units 13,15 and 17 Catton Road are located within the designated protected employment site at Catton Road. This is a well-established small industrial estate with fairly typical industrial/commercial uses present. According to the most recent Planning Policy Employment Site Survey this site has a very high level of business occupation. The industrial estate is embedded within a residential area.
- 1.2 The three units (13,15 and 17) are located in the south east corner of the industrial estate adjacent to residential properties. Two of the units adjoin each other and the third is separated from the other two by a service yard also used by the applicant. The business occupying these three units, manufactures shop fittings.
- 1.3 In May 2018, the Council received complaints about noise disturbance from the industrial units and on investigation it was found that an unauthorised change of use from the permitted light industrial/office use (Use Class B1) to a general industrial use (Use Class B2) had taken place at units 13,15 and 17 Catton Road, Arnold. It was alleged the change of use was causing significant noise disturbance to nearby residential properties. It was also alleged that a number of planning conditions attached to planning permissions 80/1941 and 83/0630 were not being complied with contributing to the disturbance caused by the activity at the site.
- 1.4 A site visit was carried out by officers on the 16<sup>th</sup> May 2018. At that time the weather was fine and the doors to the factory and the delivery areas were propped open. Noisy machinery was operating inside the building and a loud radio was playing. People were driving forklift trucks around the site with reversing bleeps sounding and were loading items on to a lorry trailer which was being used for storage in one of the yards/parking areas.

- 1.5 A detailed check of the relevant planning history showed that the existing planning permission (80/1941) for the site has a number of conditions which impose restrictions;
- Condition 2 states “The factory units shall be used for light industrial purposes only” (B1 of the Use Class Order)
  - Condition 3 states “No Machinery shall be operated on the premises between the hours of 8pm and 7.30am on weekdays or at any time on Sundays or Bank Holidays”
  - Condition 4 states “There shall be no storage on the open areas of the sites including the car park”
- 1.6 These conditions are also replicated in a subsequent planning permission reference 83/0630.
- 1.7 A Planning Contravention Notice was served on the 25<sup>th</sup> June 2018 to gather further information from the business owner about the operation of the business. A representative of the business responded stating the business was a general industrial use including the manufacturing of shopfittings for major retailers and that they had occupied part of the premises since 2013 and another part since 2016.
- 1.8 On the 22<sup>nd</sup> August 2018 a letter was sent by the council to the owner of the business to advise that a new planning application was required to change the use of No. 13 to a general industrial use (B2). It was also advised that if any part of No. 17 was also used for similar purposes (B2) or if the warehousing element exceeds 500 sq. metres this will also require permission.
- 1.9 Planning application 2018/0925 was submitted on the 19<sup>th</sup> September 2018 in relation to 13,15 and 17 Catton Road and the development was described as “Retrospective application material change of use from B1 to B2. This applies to 13, 15 & 17 Catton Road”.
- 1.10 Planning permission was refused on the 14<sup>th</sup> June 2019. An appeal to the Planning Inspectorate against the Council’s decision was lodged and dismissed on the 25<sup>th</sup> November 2019.

## **2 Planning History**

- 2.1 80/1941- Provide nursery units within existing factory – Approved 3<sup>rd</sup> December 1980
- 2.2 83/0630- Change of use from Warehouse to light industry – Approved 15<sup>th</sup> July 1983
- 2.3 2018/0925 - Retrospective application material change of use from B1 to B2. This applies to 13, 15 & 17 Catton Road – Refused 14<sup>th</sup> June 2019, appeal dismissed 25<sup>th</sup> November 2019.

### **3 Assessment**

- 3.1 Although the development has occurred without planning permission and is therefore unauthorised, local planning authorities are required to consider government guidance when deciding whether to take planning enforcement action. Government guidance is found in the National Planning Policy Framework (NPPF) (Paragraph 58) and states that although effective enforcement is important as a means of maintaining public confidence in the planning system, ultimately enforcement action is discretionary and local planning authorities should act proportionately in responding to breaches of planning control.
- 3.2 The main considerations when deciding whether to take enforcement action in this case are;
- i) The acceptability of the principle of the B2 use within this location
  - ii) The impact of this use upon nearby residential amenity

#### Planning policy considerations

- 3.3 The NPPF places weight on supporting and sustaining the local economy. ACS policy 4 states that existing employment sites should be managed to cater for the full range of employment uses by retaining strategic employment areas that are an important source of jobs. The Catton Road Industrial Estate is designated as an employment site to be retained for employment uses as shown on the LPD Policies Map 2018.
- 3.4 LPD Policy 44 recognises the need to be more flexible about the range of employment uses that can be accommodated on employment sites. LPD Policy 44 permits the expansion, conversion or redevelopment of land and premises for employment uses on existing employment sites including at Catton Road providing the employment use is within use class B1-B8 and sui generis uses of a similar nature or is an employment use that is compatible with the nature of the employment site. However, this is subject to certain criteria of which, LPD 44 (iii) is relevant;
- The proposal would not cause a significant adverse impact on the amenity of nearby residents and occupiers.
- 3.5 It is therefore considered under LDP Policy 44, the change of use that has occurred is acceptable in broad principle terms however, the acceptability conflicts with LPD 44 (iii).
- 3.6 In considering the noise and impact upon residential amenity of the change of use that has occurred Policy LPD 32 is also relevant. This policy advises that planning permission will be granted for development proposals that do not have a significant adverse impact on the amenity of nearby residents or occupiers, taking into account potential mitigation measures. LPD 32 also advises that special consideration will be given to noise affecting residential areas generated outside of normal business hours and to the impact of the level of activity of business/commercial uses within predominantly residential areas.

- 3.7 Residents have produced a diary sheet which suggests the factory is operating outside of normal business hours and the hours permitted by condition 7 attached to the permission. Site visits have confirmed that noisy machinery is operating at the premises and that doors to the factory are often propped open. The owner agreed at a meeting on site in May 2018 that the business often operated all through the night and that as shopfitters there was an industrial manufacturing use in the buildings.
- 3.8 The appeal decision for planning application 2018/0925 made it clear, the noise assessment report submitted with the planning application indicates that a 'doors open' operation at the application site would result in a predicted noise level at the rear wall of the nearest dwellings on Needham Road of 7dB above the background noise level. BS4142:20141 advises that 'a difference of around +5dB is likely to be an indication of an adverse impact depending on the context'. It is therefore concluded that the level of activity taking place in very close proximity to private residential dwellings would be unacceptable and would result in significant undue harm to the amenity of occupiers. The use therefore conflicts with Policy LPD 32.
- 3.9 The noise assessment report indicated a predicted noise level at the rear of the Needham Road dwellings of 2dB above the background noise level if the business carried out its operations with all doors and windows closed. BS4142:2014 indicates that 'the lower the rating level is relative to the measured background sound level, the less likely it is that the specific sound source will have an adverse impact or a significant adverse impact'. As part of the appeal the Council indicated that it would consider this acceptable, and so would require the business to operate with doors and windows closed at all times.
- 3.10 The appellant indicated that they would not be able to do this while also complying with its obligations towards its employees' health and safety. Furthermore the public protection team also advised that the hours of opening should be controlled by way of condition if the application were to be approved. Although it was considered that opening hours could be reasonably controlled via condition was not considered that the closing of doors and windows at all times would be easily controlled and enforceable and as such would not represent a reasonable condition.
- 3.11 The business owner stated, they had moved into the premises thinking there was a general industrial use without restrictions. The response on the PCN stated, "We employ staff who work days and nights (if needed) ...this is crucial to enable us to supply Blue Chip customers who depend on our services. We are required to work to timescales/deadlines set by our customers. We have been operating for many years and never had direct complaints from the community. We would like you to take this into consideration."
- 3.12 While it is acknowledged that this business has been operating from the site for some time and that in taking enforcement action there would be an impact on the business which may result in a loss of jobs, it appears the business cannot remedy the noise disturbance caused to nearby occupiers of residential properties and planning conditions could not be imposed to overcome the noise issues. The units occupied have planning permission for B1 use only and it is

noteworthy that no other units within the industrial estate operate under a B2 use. The use is contrary to LDP Policy 44 iii and LDP Policy 32.

### Time Limits

- 3.13 The statutory time limit for taking action for unauthorised changes of use and breaches of planning condition is ten years. In this case the evidence available to the Council strongly suggests the unauthorised use and breaches of the relevant conditions has not occurred for 10 years and so the Council is within the legislative time limit to commence enforcement proceedings such as issuing an enforcement notice requiring the use to cease.

### Human Rights

- 3.14 Under the Human Rights Act, it is necessary for the Council to have regard to the rights of the owner and occupier of a site under Article 1 of the First Protocol to peaceful enjoyment of possessions and the protection of property and under Article 8 of the convention to respect for his private and family life, his home and his correspondence except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.
- 3.15 In considering whether to take any enforcement action, the Council has to consider the proportionality of its actions. In other words whether the proposed action would be proportionate to the objective being pursued – here the enforcement of planning control in support of National and Local Planning Policies. It is recognised that issuing an enforcement notice, or pursuing formal proceedings in the Magistrates Court if the notice is not complied with, will result in interference with the recipients' rights and the possible loss of jobs at a time of National crisis. However, it is considered that issuing a notice in the first instance would be a proportionate response to rectifying the breach of planning control taking place and depending on compliance with the notice it might well be justified to take court action. As such action will seriously impact on the business it is considered a long compliance period should be allowed.

### Equalities

- 3.16 The Council's Planning Enforcement team operates in accordance with the Council's Planning Enforcement Policy and is largely dictated by legislation which reduces the risk of discrimination in this service. The Council is accountable to the public, including its stakeholders, for its decisions both to take enforcement action and not to utilise its enforcement powers. There is a legitimate expectation of the public and stakeholders that the Council will take action to address breaches of planning by such means as are appropriate in the individual circumstances and which are in accordance with the Council's policy and government legislation.
- 3.17 The Council strives for a consistent approach in targeting its enforcement action. This means that the Council will take a similar, but not the same, approach to compliance and enforcement decisions within and across sectors.

It will strive to treat people in a consistent way where circumstances are similar. Each case however will be evaluated on the basis of its own facts and circumstances but will ensure that decisions or actions taken in any particular case are consistent with the law and with the Councils published policies. It should be noted that decisions on specific enforcement actions may rely on professional judgment. The Council will usually only take formal enforcement action where regularisation and/or attempts to encourage compliance have failed as in this case.

### Crime and disorder

- 3.18 The Crime and Disorder Act 1998 places a duty on the Local Planning Authority to do all that it reasonably can to prevent crime and disorder in its area. The potential impact on the integrity of the planning system and the setting of a precedent if action is not taken is therefore a material consideration in the authorisation of enforcement proceedings.
- 3.19 In light of all the facts it is now considered expedient to serve an enforcement notice to require the business to cease the use of the premises for a general industrial use (B2 use).

## **4 Conclusion**

- 4.1 A breach of planning control has been identified which is causing noise disturbance and is detrimental to the amenity of nearby occupiers of residential properties.
- 4.2 The breach conflicts with both national and local policies. The failure of the Council to act in these circumstances may set a precedent for other poor development and which is detrimental to the amenity of the area.
- 4.3 By serving an enforcement notice, it is acknowledged there will be difficulties caused to a business which employs a number of people from the local area but by giving the business 18 months to comply with the notice and assistance from the Council to find new premises it is hoped the company will be able to relocate to more suitable premises and there will be few job losses as a consequence.
- 4.3 In order to alleviate the disturbance caused to local residents it is considered the Council should now commence enforcement action without delay to require the B2 use to cease and compliance of the conditions attached to planning permission 83/0630 and 80/1941.

## **5 Recommendation**

- 5.1 That the Assistant Director – Planning and Regeneration, be authorised to take all enforcement action including the service of any necessary enforcement notices and in conjunction with the Director of Organisational Development & Democratic Services, proceedings through the courts if required to ensure the unauthorised use is ceased.**