

BOROUGH OF KETTERING

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Report Originator	Alan Davies	<i>Fwd Plan Ref No:</i> ENFO/2011/00249	
Wards Affected	Rothwell	27 th March 2012	
Title	Authorisation for Planning Enforcement Action at Replay House, 2 The Avenue, Rothwell		

1. PURPOSE OF REPORT

To seek authorisation to issue an Enforcement Notice in respect of unauthorised development at Replay House, 2 The Avenue, Rothwell, shown in bold outline for identification purposes on the site plan attached to this report.

2. BREACH OF PLANNING CONTROL

Without planning permission the making of a material change of use of the building to a mixed use of storage and workshops (Class B1) at ground floor and gymnasium/fitness studio/class space with Vibroplate machine (Class D2) at ground and first floor.

3. RECOMMENDATION

That in respect of the breach of planning control described above, the Head of Development Services be authorised to issue Enforcement and Stop Notices pursuant to section 172 and 183 of the Town and Country Planning Act 1990 (as amended) requiring the steps to be taken within the specified time period; and for the reason which are set out below:

3.1 Steps to be Taken

1. Permanently cease the use of the building as a gym/fitness studio/'Vibroplate' studio.

Time for compliance: 1 week

2. Permanently remove from the land all equipment associated with requirement (1) above.

Time for compliance: 3 months

3.2 Reasons For Issuing the Notice

The breach of planning control has occurred within the last ten years. The use of the land for a gym/fitness studio/classes, has resulted in an adverse impact on the amenity of neighbouring residential occupiers by virtue of the noise and

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vibration generated by music, people's exercises and the 'Vibroplate'. It is considered that the use results in a significant detrimental impact upon the amenity of neighbouring residents as the vibrations are transmitted through the structure and are clearly audible and can be felt within the habitable rooms of the neighbouring property, 4 The Avenue. There is also a detrimental impact by virtue of an increase in the number of cars parking in The Avenue and associated comings and goings to/from the gym/fitness studio.

As such the unauthorised development conflicts with the aims and objectives of the following planning policies:

Policy 13(l) of the North Northamptonshire Core Spatial Strategy and with national planning policy advice contained in PPS1: 'Delivering Sustainable Development' and PPG24: Planning and Noise.

The Council considers that planning permission should not be given because planning conditions could not overcome these objections to the development.

4. INFORMATION

Site Description

The property, which is the subject of this report, is a two storey red brick former factory building close to the centre of Rothwell. It is an historic building which is comprised of two connecting elements – the second of which is a single storey addition to the south. There is an associated car park surrounding this element of the building that allows for the parking of approximately 5 vehicles clear of the highway. The building adjoins 4 The Avenue to the north and 13 Rushton Road to the east.

Internally the building is subdivided into offices, store rooms, small workshops and, at first floor level of Replay House, the two storey element of the building to the north, the room has been turned into a fitness studio. At ground floor level an existing office is used as a 'Vibroplate' studio. This piece of equipment is similar in appearance to many pieces of gym equipment, but functions by vibrating at high velocity. This equipment has recently been moved from first floor level to ground level so that it can sit on a solid concrete base. The most harmful periods are when the fitness classes operate, which are between the hours of 17.30 and 21.30 Monday to Friday, outside of normal business hours.

Planning History

14.02.2012 – Temporary Stop Notice Served.

KE/1983/0140 – Change of Use from Class III use to Class I and X warehouse with new car park. Approved 17.02.1983.

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Planning Policy:

National Policies

PPS1: Delivering Sustainable Development

PPG18: Enforcing Planning Control

Circular 10/97: Enforcing Planning Control - Legislative provisions and procedural requirements

Development Plan

North Northamptonshire Core Spatial Strategy (CSS)

Policy 13(l): General Sustainable Development Principles

5. APPRAISAL

The unauthorised use of the building was first reported to Kettering Borough Council on 27.10.2011. It was reported that a gym/fitness studio was operating from the premises. The last known planning history for the site dates from 1983, when permission was granted for change of use from 'Class III to Class I and X warehouse use'. Under the Use Classes Order 1987 and amendments thereafter this would equate to A1 retail use with B1 storage space or similar. The use of part of the building as a gym/fitness studio, within Class D2, therefore constitutes a material change of use and planning permission for such a use is required. However, following extensive liaison with the parties and numerous site visits, it is considered that the effects of the use of the building could not be satisfactorily mitigated due to the structure of 2 The Avenue and therefore an application for planning permission would not be supported.

The first floor of 2 The Avenue appears to be a thin, historic timber floor supported by pillars underneath. The combination of the floor, along with the pillars and the adjoining residential structure allows for sound and vibration to be easily transmitted from 2 The Avenue and through the walls into 4 The Avenue and onwards. This causes a high level of disturbance to the occupants of 4 The Avenue and so any application submitted is likely to conflict with Policy 13(l) of the North Northamptonshire Core Spatial Strategy, as it would have a detrimental impact upon the amenity of the neighbouring residents. Whilst an application for the change of use has been submitted it is not valid and cannot become a valid application until a Noise Impact Assessment, as required by PPG24: Planning and Noise has been submitted. It is highly unlikely that such an assessment would confirm that the present structure of the building can allow for noise and vibration causing activities without having a substantial negative impact upon the neighbouring residents. It is for this reason that planning permission is considered highly unlikely to be granted.

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Environmental Protection have visited the neighbouring residential property, 4 The Avenue. They reported that the fitness class in 2 The Avenue created a substantial amount of noise and vibration as a result of people running on the spot and jumping up and down. The 'Vibroplate' machine caused a short duration of vibration and the conclusion was that the vibrations of the movement of people next door and the machine had a far greater detrimental impact than the noise of the music. They concluded that the vibrations heard in 4 The Avenue did not constitute a statutory nuisance, but did result in a negative impact upon residential amenity.

A Development Officer visited 4 The Avenue on 13 March 2012. The class began at 18.30 and noise created by the vibrations of the 'Vibroplate' and movement of the people next door was audible. The disturbance experienced was akin to workmen demolishing walls in the adjoining building. The noise could be heard in every habitable room of 4 The Avenue. The noise generated by the vibration of the 'Vibroplate' was akin to the low buzz of a microwave oven or similar. This again could be experienced in every habitable room. Whilst the noise could be drowned out by the noise of a tv/radio, this is considered to be an unacceptable impact upon residential amenity. The use therefore conflicts with Policy 13(l) of the North Northamptonshire Core Spatial Strategy.

PPG18 (supported by advice in Circular 10/97) advises how local planning authorities should determine whether or not it is expedient to take enforcement action in respect of a breach of planning control. In particular it advises *"the decisive issue for the local planning authority should be whether the breach of control would unacceptably affect public amenity or the existing use of land or buildings meriting protection in the public interest"*.

It is considered that the unauthorised development has an unacceptable adverse impact which conflicts with the Development Plan and therefore it is recommended that enforcement action is authorised.

Level of harm

The level of vibration and noise impacting the amenity of the neighbouring residents is considered to be significant. The hours of use, when people are generally at home and expect peace and quiet, exacerbates the harmful impact upon neighbouring amenity. It is at such a harmful level throughout the house that a Stop Notice is recommended.

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Human Rights Implications

Service of an enforcement notice in this instance is not a breach of the property owner's human rights. Whilst it does affect their property rights they will have an opportunity to challenge the decision by way of an appeal against the enforcement notice and that provides adequate safeguards in accordance with the Human Rights Act 1998 incorporating the European Human Rights Convention.

Background Papers:

Title of Document:
Date:
Contact Officer:

Previous Reports/Minutes:

Ref:
Date: