

Enforcement Delegated Report

Receipt Date:

31/03/2009
08/05/2009

Officer Gary Bakall	Enforcement Case Number(s) EN09/0239
Breach Address Railway Arches South Side Leybourne Road London NW1	Photo & Other Material
Area Team Signature <i>C Fleming 7/12/09</i> <i>SW</i> <i>John Jones</i>	Date 3 rd December 2009
Alleged Breach	

Change of use of railway arches 9, 10, 11, 12, 13, 15 and 16 along south side of Leybourne Road from light industrial into retail.

Recommendation(s):

Issue an enforcement notice requiring retail use of railway arches to cease.

OFFICERS' REPORT

1. SITE

1. Leybourne Road runs off Castlehaven Street and becomes Torbay Street before running into Hawley Road. It is situated between two railway viaducts and is characterized by motor repair workshops, operating within the B1c light industrial use class, working out of railway arches located beneath these viaducts. There is no residential accommodation within Leybourne Street; it is within the Regents Canal Conservation Area and within the Camden Town Centre Area.
2. The southern viaduct in Leybourne Road forms the northern boundary of Hawley Wharf Market. The western half of the market site has been used as a market for many years with the eastern half used for a variety of B1/light industrial uses some in connection with the railway arches along Leybourne Road and car parking. A large fire in February 2008 severely damaged the site and as part of the refurbishment the market was extended with wooden stalls covering the entire site and the railway arches along Leybourne Road becoming retail outlets for the market.
3. The market site has a whole is roughly triangular in shape with the main access to the site via Haven Street which in turn, leads off Castlehaven Street. The access leads under a railway viaduct that is the northern boundary of the site. This viaduct continues along Leybourne Street to Water Lane where the market stops. The Southern boundary of the site is formed by the Regents Park Canal and towpath. The western boundary by 1-9 Chalk Farm Road, there is also a vehicle crossover on Chalk Farm Road immediately north of the canal bridge.

2. ALLEGED BREACH

2.1 Change of use of railway arches along Leybourne Road from light industrial into retail.

- 2.1 This report is only concerned with the change of use of the railway arches fronting onto Leybourne Road, further enforcement action may be taken against the rest of the market in the future.

3. RELEVANT PLANNING HISTORY

- 3.1 12 June 1986 planning permission (8600374) was granted for the continued use of Hawley Wharf, on a limited period basis, for market purposes and car parking on Saturdays, Sundays and Bank Holidays in addition to the existing light industrial use. The permission was limited until the end of May 1988 and made personal to Davey Autos Ltd during their occupation of the premises; upon vacating the site the use should revert to light industrial purposes. This permission was renewed again on the 2nd May 1989 (8802293), again in July 1991 (9100198) and again in February 1994 (9300708) for a further limited period to expire on 3rd February 1996.
- 3.2 On the 21st March 1996 The Council granted planning permission (9502020R1) on a permanent basis for the use of Hawley Wharf for a market and car parking on Saturdays, Sundays and Bank Holidays in addition to the main use for industrial purposes at other times. On the 24th October 1997 planning permission (PE9700208R2) was granted for the retention of market stalls along the southern boundary and the extension of the area used for market with moveable stalls. This was subject to a condition requiring the stalls and site to be used for a market only on Saturdays, Sundays and Bank Holidays in addition to the main use for industrial purposes at other times. A condition requiring a scheme for improving the southern boundary of the site was implemented in August 1999.
- 3.3 On the 5th June 1998 retrospective planning permission was refused and enforcement action authorised against car parking and car servicing facilities in existing building buildings and compound and limousine service at units 9/11 Leybourne Road.
- 3.4 A planning enforcement investigation (EN09/0239) was opened in April 2009 regarding the new market stalls. After meetings on site it was decided to allow the owners the opportunity to submit retrospective planning applications for the new market stalls and change of use of the railway arches.
- 3.5 In June 2009 a planning application (2009/2978/INVALID) for the retention of 171 non fixed timber stalls for use as retail market stalls and ten stalls for the preparation of hot food and drink for a temporary period of 18 months and a retrospective application (2009/2979/INVALID) for the retention of new shopfronts and alterations to fascias to southern elevation of railway arches and northern elevations of 2-6 Castlehaven Road, continued temporary use of railway arches 2-6 Castlehaven Road & 8-9 Leybourne Road and temporary change of use of arch number 10-16 Leybourne Road from class B1c/A1 to Class A1 for 18 months. Both of these applications are currently awaiting further information before they can be progressed.

- 3.6 The current owners Ground Gilbey Ltd own the leases to all the railway arches in Leybourne road, Torbay Street and Water Lane as well as Hawley Wharf. In September 2009 a planning application (2009/4146/NEW) was submitted for redevelopment of the market site including railway arches at 1-8a Torbay Street, 1-17 Hawley Road and 1-9 Chalk Farm Road, involving provision of new building comprising market retail, food and drink, business workshops, leisure and residential uses, open space and related ancillary activities and works.

4. ASSESSMENT

- 1.1 The main planning considerations relate to the loss of B1c/light industrial units and their replacement with retail use. This is contrary to policy E2 of the Council's Unitary Development Plan.
- Policy E2 of the Unitary Development Plan (2006) states that planning permission will not be granted for development that involves the loss of a business use on a site where there is the potential for that use to continue. In assessing whether there is the potential for a use to continue the policy states that consideration should be given to the following:
- whether the site is in or adjacent to the Industry Area;
 - the size of the site and whether it could potentially provide for servicing by large vehicles;
 - whether the site is particularly suitable for small firms;
 - accessibility of the site by public transport and by service vehicles;
 - relationship of the site to nearby land uses;
 - demand, supply and variety of sites that are suitable for employment uses, in that use class and in business use in general; and
 - retention of design features that enable flexible use, including use of light industry as part of schemes for the redevelopment or alteration of industrial premises for B1 purposes.
- 4.3 The railway arches in Leybourne Road are ideally suited for light industrial use meeting the above criteria. No valid planning reasons or justifications as to why the industrial space is no longer viable have been put forward. Although located within the Camden Town Centre where the principle of A1/retail may be considered acceptable, the site is located adjacent to the designated Kentish Town Industry Area. There are few concentrations of general industrial use left in the Borough, and the areas around Kentish Town, in particular around the railway lands, provide the best opportunity to provide space for small scale businesses. Uses such as vehicle repairs and panel beaters are often forced out due to pressure from competing, higher value, land uses. As a result the Council seeks to protect those spaces which already exist.
- 4.4 Whilst we cannot apply Policy E3 as the site is located adjacent to, rather than within the Kentish Town Area, the general principles of E2 of protecting employment

floorspace do still apply in this case. This is further supported by evidence from the Roger Tym Employment Study, which suggests that such space is in short supply. The principles of protecting suitable employment floorspace have been carried through into the emerging LDF.

- 1.5 An officer from the Council's Regeneration and Partnership division visited the site in February this year (2009) and made notes on the location of light industrial units under the railway arches in Leybourne Road; at that time seven of the arches under the southern viaduct were occupied by vehicle repair businesses and one was occupied by a food preparation business. All businesses faced northwards onto Leybourne Road and were closed up on the south (market-facing) side.

These were

No 9, 10 and 11 Leybourne Road: three arches, plus vehicle parking area in front, occupied by W. Starling (coach and body repairs)

No 12: single arch occupied by KP Body Shop

No 13: Single arch occupied by Mikes Motors

No 14: Single arch - occupied Citroen Repairs

No 16: Single arch - occupied by a food preparation business

No 17 (on bend with Torbay Street) occupied by Harry's Motors.

At the end of September this year only two units (no 14 and no 17) continued to be used as light industrial units. The remaining units (Nos 9,10,11,12, 13, 15 and 16) have been opened up on the south facing side and were being used by market stallholders. It is understood that the business tenants vacated some time between February and May 2009.

UDP policy E2 states that the Council will not grant planning permission for development that involves the loss of a business use on a site, particularly sites suitable for light industry and warehousing, where there is potential for that use to continue. No evidence has been provided by the owners to demonstrate that there the site does not have potential to continue in light industrial use. However, notices pasted onto the doors of most of the vacated units (W. Starling, R&T Body Shop and Mike's Motors) indicate that the owners have relocated to industrial units within the immediate area, either to railway arches on the north side of Leybourne Road or in one case in Torbay Street. Industrial tenants in the area have informed Regeneration and Partnerships that the businesses which vacated arches on the south side of Leybourne Road in most cases did so because they had been offered alternative accommodation or cash payments by the owners, not because of any falling demand for the services offered. This would indicate that there continues to be a demand for light industrial units in the area.

- 1.6 In application 2009/2979/INVALID for a temporary change of use of these railway arches the applicants claim that these arches were being used as a mixture of B1c and retail use apparently because they sold some motor supplies, however it is the Council contention that the primary use of these arches was light industrial and any retail activity was ancillary to this main use. This application also states arch 9 was not being used as light industrial when Council records and officer's site visits show it as part of Starlings body repair garage that also occupied arch 10 and 11.

- 1.7 Prior to April/May 2009 the railway arches were accessible from Leybourne Road, providing convenient access for deliveries and for customers of the vehicle repair businesses. One site, 9 – 11 Leybourne Road, had use of a forecourt which could be used for parking coaches and other large vehicle being repaired. The only purpose served by opening up arches 9,10, 11, 12, 13, 15 and 16 on the market-facing side (where there is pedestrian, but no vehicle access) is to facilitate their change of use from light industrial B1c to retail A1. As this change of use is not authorised and breaches UDP policy E2, it is proposed that the enforcement notice requires that the arches be closed up on the south-facing side.
- 1.8 Arches 12 to 16 had unauthorised extensions on the southern, Hawley Wharf, side that were demolished in February 2009 because of fire risks according to the market owners. The use of this area of Hawley wharf may be acceptable as retail as it use as light industrial appears impractical, this will be considered in more detail when planning application 2009/3372/INVALID is determined.
- 1.9 These railway arches have been used for motor repairs and other light industrial uses for many years. They are well suited for this type of use and provided a range of services and employment uses for local residents that are needed. It is considered important to keep this type of use in the Borough and not lose it too more retail use.

5.0 RECOMMENDATION

- 5.1 That the Head of Legal Services be instructed to issue an Enforcement Notice under Section 172 of the Town & Country Planning Act 1990 as amended, and officers be authorised in the event of non-compliance, to prosecute under section 179 or appropriate power and/or take direct action under 178 in order to secure the cessation of the breach of planning control.
- 5.2 The Notice shall allege the following breach of planning control: The change of use from a B1/light industrial use to A1/retail use of arches 9, 10, 11, 12, 13, 15 and 16 South Side, Leybourne Road, London NW1.
- 5.3 The Notice shall require that within a period of three months of the Notice taking effect,
- The use of the arches site for retail purposes shall permanently cease and all fixtures, fittings and stock related to this use removed.
- The openings on the south side of the arches onto Hawley Wharf be permanently bricked up
- 6.4 Reasons the Council consider it expedient to issue an enforcement notice.
- a. That the breach of planning control has occurred in the last ten years.
- b. That the use of the arches for retail is contrary to policy E2 of the London Borough of Camden Replacement Unitary Development 2006.

IMPORTANT - THIS COMMUNICATION AFFECTS YOUR PROPERTY

TOWN AND COUNTRY PLANNING ACT 1990 (AS AMENDED)

ENFORCEMENT NOTICE

Railway Arches 9, 10, 11, 12, 13, 15 and 16
South Side
Leybourne Road
London
NW1 8QY

ISSUED BY: THE LONDON BOROUGH OF CAMDEN

1. **THIS IS A FORMAL NOTICE** which is issued by the Council because it appears to them that there has been a breach of planning control, under Section 171 A (1) (a) of the above Act, at the land described below. They consider that it is expedient to issue this notice, having regard to the provisions of the development plan and to other material planning considerations. The Explanatory Note at the end of the Notice and the enclosures to which it refers contain important additional information.

2. **THE LAND AFFECTED**

Land at
Railway Arches 9, 10, 11, 12, 13, 15 and 16
South Side
Leybourne Road
London
NW1

as shown, for the purposes of identification only, outlined in black on the attached plan.

3. **THE BREACH OF PLANNING CONTROL ALLEGED.**

Without Planning Permission:

Change of use from light industrial to retail.

4. **REASONS FOR ISSUING THIS NOTICE**

- a) It appears to the Council that the above breach of planning control has occurred within the last 10 years
- b) That the use of the arches for retail is contrary to policy E2 of the London Borough of Camden Replacement Unitary Development 2006.

The Council do not consider that planning permission should be given, because planning conditions could not overcome these problems.

5. **WHAT YOU ARE REQUIRED TO DO**

- 1) The use of the arches site for retail purposes shall permanently cease and all fixtures, fittings and stock related to this use removed.
- 2) The openings on the south side of the arches onto Hawley Wharf be permanently bricked up

Compliance due date: ***date***

6. **WHEN THIS NOTICE TAKES EFFECT**

This notice takes effect on ***Legal to insert date*** unless an appeal is made against it beforehand.

DATED: (***Legal to insert date***)

Signed.....

Head of Legal Services, on behalf of the London Borough of Camden, Town Hall, Judd Street, London WC1H 9LP.

Council reference: ***EN09/0239***

THIS ENFORCEMENT NOTICE HAS BEEN SERVED ON:

1. *NAME*
Hawley Wharf
Haven Street
London
NW1 8QX

- 2.
- 3.
- 4.
- 5.

If you believe that there is someone else who should be served or any of those listed above has not received a copy of the notice or any other document please let that person and the Council know of this omission as soon as possible.

EXPLANATORY NOTE

YOUR RIGHT OF APPEAL

You can appeal against this notice, but any appeal must be received, or posted in time to be received by the Secretary of state **within 1 month** of the decision date. The enclosed booklet **Enforcement Appeals - A Guide to Procedure**, sets out your rights. Read it carefully. You may use the enclosed appeal forms. One is for you to send to the Secretary of State if you decide to appeal. The other is for you to keep as a duplicate for your own records. You should also send the Secretary of State the spare copy of this enforcement notice. Send the third copy of the appeal form and notice to the Council at:

Development Control
Planning Services,
London Borough of Camden,
Town Hall
Argyle Street,
London WC1H 8ND

FEES

Your attention is drawn to the information contained in the enclosed Planning Inspectorate booklet "Making Your Enforcement Appeal".

If you appeal against the notice on Ground (a) "That planning permission should be granted for what is alleged in the enforcement notice, or that the condition which is alleged not to have been complied with should be discharged", there is a fee payable under Regulation 10 of the Town and Country Planning (Fees for Applications and Deemed Applications) Regulations 1989 for the deemed application for planning permission for the development alleged to be in breach of planning control in the enforcement notice.

The fee is payable both to the "Office of the Deputy Prime Minister" for the Planning Inspectorate appeal, and also to the "London Borough of Camden", as the Local Planning Authority.

If you wish to appeal under Ground (a), the fee payable to the "Office of the Deputy Prime Minister" should accompany the copy of the appeal form sent to the **Planning Inspectorate, PO Box 326, Bristol, BS99 7XF**. The fee is *insert fee*.

The fee payable to the "London Borough of Camden" should accompany the copy of the appeal form sent to the Council. The fee is also *insert fee*. Please send to the following address:

Development Control
Planning Services,
London Borough of Camden,
Town Hall
Argyle Street,
London WC1H 8ND

WHAT HAPPENS IF YOU DO NOT APPEAL

If you do not appeal against this enforcement notice, it will take effect on **Legal to insert date**, and you must then ensure that the required steps for complying with it, for which you may be held responsible, are taken within the period specified in

the notice. Failure to comply with an enforcement notice, which has taken effect, can result in prosecution and/or remedial action by the Council.