

Committee	PLANNING COMMITTEE C	
Report Title	Unit 11a, Evelyn Court, Grinstead Road, SE8 REQUEST FOR ENFORCEMENT ACTION	
Ward	Evelyn	
Contributors	R Lockett	
Class	PART 1	27 September 2012

<u>Background Papers</u>	<ul style="list-style-type: none"> <li>(1) Case File - DE/229/B/TP</li> <li>(2) Adopted Unitary Development Plan (July 2004)</li> <li>(3) Local Development Framework (June 2011)</li> <li>(4) The London Plan (July 2011)</li> <li>(5) Circular 10/97: Enforcing Planning Control: legislative provisions and procedural requirements (2006)</li> <li>(6) National Planning Policy Framework (March 2012) Paragraph 207: Enforcement</li> </ul>
<u>Designation</u>	Adopted UDP - Existing Use

## 1.0 Introduction

- 1.1 This report deals with a breach of planning control at unit 11a Evelyn Court, Grinstead Road, SE8 relating to the unauthorised change of use from B1 Office use to use as a place of worship, which falls within the Use Class D1.

## 2.0 Property/Site Description

- 2.1 The premises consists of a purpose built business unit on the first floor of Evelyn Court which is located on the southern side of Grinstead Road, at the junction with Evelyn Street. Evelyn Court currently comprises 18 x B1 units within a three storey modern building. The ground floor units are single storey, whilst those occupying the first and second floors are two-storey, some of which have been sub-divided. The premises, which is the subject of this report, comprises unit 11a, located towards the south end of the building, with facades facing onto Evelyn Street and the car park at the rear of the building.
- 2.2 There is a car park with 28 car parking spaces which are accessed via electric gates leading onto Grinstead Road.
- 2.3 The site is within the southeastern 'leg' of the designated Surrey Canal Strategic Industrial Location, but is not within a Conservation Area, nor within the immediate vicinity of any Listed Buildings. Grinstead Road is not a Classified Road; however, Evelyn Street is an A Classified Road (the A200). There are industrial and commercial sites on the opposite side of Evelyn Street.
- 2.4 To the southwest is a residential estate fronting Grinstead Road, whilst to the southeast are further industrial and commercial buildings. On the opposite side of Evelyn Street are a number of industrial and warehouse premises.

### 3.0 Planning History

3.1 Planning permission was granted in 1990 for the construction of the office building comprising 12 x B1 units. The conditions attached to the permission referred to disabled access, landscaping, the retention of the car parking, materials and loading times. However, officers note that online marketing of the property currently refers to 18 commercial units, presumably as a result of the sub-division mentioned above

3.2 On 18 July 2012 planning permission was **refused** under delegated powers for the continued use of Unit 11a Evelyn Court, Grinstead Road SE8, as a place of worship (Use Class D1) for the following reasons:

- (1) The proposed use as a place of worship would give rise to significant noise and disturbance for neighbouring B1 units and nearby residential occupiers. As such the proposal would have an unacceptable adverse impact upon neighbouring amenity contrary to saved policies URB 3 Urban Design, ENV.PRO 11 Noise Generating Development, LCE 1 Location of New and Improved Leisure, Community and Education Facilities and HSG 4 Residential Amenity in the adopted Unitary Development Plan (July 2004).
- (2) The applicant has failed to demonstrate that the premises should no longer be retained in employment use, contrary to Policy 3 Strategic Industrial Locations and Local Employment Locations in Lewisham's Core Strategy (June 2011).

#### Related Units

3.3 In July 2012 planning consent was **refused** under delegated powers for the continued use of Unit 3 (first floor), Evelyn Court, Grinstead Road SE8, as a place of worship (Use Class D1) for the following reasons:

- (1) The proposed use as a place of worship would give rise to significant noise and disturbance for neighbouring B1 units and nearby residential occupiers. As such the proposal would have an unacceptable adverse impact upon neighbouring amenity contrary to saved policies URB 3 Urban Design, ENV.PRO 11 Noise Generating Development, LCE 1 Location of New and Improved Leisure, Community and Education Facilities and HSG 4 Residential Amenity in the adopted Unitary Development Plan (July 2004).
- (2) The applicant has failed to demonstrate that the premises should no longer be retained in employment use, contrary to Policy 3 Strategic Industrial Locations and Local Employment Locations in Lewisham's Core Strategy (June 2011).

3.4 In July 2012 planning consent was **refused** for under delegated powers for the continued use of Unit 2 Evelyn Court, Grinstead Road SE8, as a place of worship, community meeting hall and for charity activities (Use Class D1) for the following reasons:

- (1) The use would result in the loss of employment premises within a Strategic Industrial Location and the applicant has failed to demonstrate that the premises should no longer be retained in employment use, contrary to Policy 3 Strategic industrial locations and Local Employment Locations in Lewisham's Core Strategy (June 2011).
- (2) The proposed use as a place of worship would give rise to significant noise and disturbance for neighbouring B1 units and nearby residential occupiers. As such the proposal would have an unacceptable adverse impact upon neighbouring amenity contrary to saved policies URB 3 Urban Design, ENV.PRO 11 Noise Generating Development, LCE 1 Location of New and Improved Leisure, Community and Education Facilities and HSG 4 Residential Amenity in the adopted Unitary Development Plan (July 2004).

#### **4.0 Policy Context**

##### National Planning Policy Framework (March 2012)

- 4.1 The NPPF was published on 27 March 2012. Annex 1 of the NPPF provides guidance on implementation and states, in paragraph 211, that policies in the development plan should not be considered out of date just because they were adopted prior to the publication of the NPPF. At paragraphs 214 and 215, guidance is given on the weight to be given to policies in the development plan. In summary, this states that for a period of 12 months from publication of the NPPF, decision takers can give full weight to policies adopted since 2004, even if there is limited conflict with the NPPF. Following this period, weight should be given to existing policies according to their consistency with the NPPF.
- 4.2 Officers have reviewed the Core Strategy and saved UDP policies for consistency with the NPPF and consider there is no issue of significant conflict. As such, full weight can be given to these policies in the decision making process, in accordance with paragraphs 211, 214 and 215 of the NPPF.
- 4.3 With regard to enforcement Paragraph 207 of the NPPF states:-  
  
*"Effective enforcement is important as a means of maintaining public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control. Local planning authorities should consider publishing a local enforcement plan to manage enforcement proactively, in a way that is appropriate to their area. This should set out how they will monitor the implementation of planning decisions, investigate alleged cases of unauthorised development and take action where it is appropriate to do so."*
- 4.4 In addition, Circular 10/97: Enforcing Planning Control: legislative provisions and procedural requirements (2006) is relevant.

### London Plan (July 2011)

- 4.5 The following London Plan policies are considered relevant:

Policy 1.1 Delivering the strategic vision and objectives for London, 3.1 Ensuring equal life chances for all, Policy 3.16 Protection and enhancement of social infrastructure, Policy 4.2 Offices, Policy 4.3 Mixed use development and offices, Policy 6.3 Assessing effects of development on transport capacity, Policy 6.9 Cycling, Policy 6.10 Walking, Policy 6.11 Smoothing traffic flow and tackling congestion, Policy 6.13 Parking, Policy 7.1 Building London's neighbourhoods and communities, Policy 7.2 An inclusive environment, Policy 7.4 Local character, Policy 7.15 Reducing noise and enhancing soundscapes

### Local Development Framework - Core Strategy (June 2011)

- 4.6 The Core Strategy was adopted by the Council at its meeting on 29 June 2011. The Core Strategy, together with the London Plan and the saved policies of the Unitary Development Plan, form the borough's statutory development plan. Relevant objectives and policies in the Core Strategy include Core Strategy are:

Spatial Policy 2: Regeneration and Growth Areas, Objective 4: Economic activity and local businesses, Objective 9: Transport and accessibility, Objective 10: Protect and enhance Lewisham's character, Objective 11: Community well-being, Core Strategy Policy 3 Strategic Industrial Locations and Local Employment Locations, Core Strategy Policy 5: Other employment locations, Core Strategy Policy 14: Sustainable movement and transport, Core Strategy Policy 19: Provision and maintenance of community and recreational facilities, Core Strategy Policy 20: Delivery education achievements, health care provision and promoting healthy lifestyles.

### Adopted Unitary Development Plan (July 2004)

- 4.7 The following saved policies of the UDP are considered relevant:

ENV.PRO 11 Noise Generating Development, HSG 4 Residential Amenity, LCE 1 Location of New and Improved Leisure, Community and Education Facilities

## **5.0 Consideration of Enforcement Action**

- 5.1 The main issue for consideration is whether it is appropriate and expedient for the Council to serve an Enforcement Notice, under the Town and Country Planning Act 1990 (as amended) on those who have a legal interest in the land which is the subject of this report, to secure the cessation of the use.

### Breach of Planning Control

- 5.2 The Council has confirmed by way of a site inspection that the use of the premises known as Unit 11a Evelyn Court has been changed to a church, without the benefit of the necessary planning permission.
- 5.3 The following assessment (paragraphs 5.5 – 5.25 below) was made in relation to consideration of the planning application – DC/12/80314 for the continued use of

the premises as a place of worship to which this report relates. The application was refused under delegated powers on 18 July 2012.

### Planning Considerations

- 5.4 The main planning considerations are the acceptability of the loss of employment floor space, whether the proposed use as a place of worship would be detrimental to the character and appearance of the area and whether there would be any harmful impacts on the amenities of nearby residential occupiers.

### Loss of Employment Floorspace

- 5.5 Lewisham's adopted proposals map shows the application site being within the Surrey Canal Strategic Industrial Location. Core Strategy Policy 3 states the following: 'The Council will protect the Strategic Industrial Locations (SILs) for uses within the B Use Class (B1c, B8 and where appropriate B2 industry), and also appropriate sui generis uses, to provide land for activities that support the continued functioning of London as a whole such as waste management, transport and utilities, and uses that require 24-hour functioning.' Point 2 of the policy refers to Local Employment Locations, stating that the Council will protect Local Employment Locations (LELs) for a range of uses within the B Use Class (B1, B8 and where appropriate B2 industry) and also appropriate sui generis uses, to support the local economy.
- 5.6 Policy LCE 1 Location of New and Improved Leisure, Community and Education Facilities of the UDP encourage the provision of new community facilities. The policy states that facilities serving local neighbourhoods should be located preferably in a District Centre, but a Local Centre may be acceptable. The policy allows for new facilities that are appropriately located in residential areas or where other sites are not available. In these instances, the policy states that a new community use will only be acceptable if there will be no adverse impact on residential amenity arising from noise or traffic generation, there is good access by public transport, or the premises are suitably accessible to the client group or community to be served; and the proposals do not conflict with the other policies and provisions of the Plan.
- 5.7 The applicants have provided a letter from a letting agent 'Kalmar's Commercial.' The letter provided details of marketing, including a 'to let' board which has been in place since 2009, offering units ranging from 634sq ft to 2,648 sq ft which, in accordance with the online advertisement, confirms that the units are/can be split or amalgamated to suit the occupier(s). It is also argued that churches need administrative services which would result in the retention of some employment use at the unit. The letter goes further to state that there have only been 34 viewings since 2009, that market demand for offices in secondary locations is 'generally very poor' and that the problem with the site is the location and close proximity to residential occupiers. There is no reference to the vacancy rate for the remainder of the site. It should be noted that this letter has also been used to accompany the concurrent applications as referred to in the 'Planning History' section of this report.
- 5.8 In the Planning Statement, the applicant states that the unit had been vacant for two years, prior to the occupation of the current user which, in their opinion, demonstrates that employment use is not viable. Reference is also made to an

appeal decision made in 2006 within an employment location (the Elizabeth Industrial Estate) in which the Inspector allowed the appeal, agreeing that the first and second floors of that building were no longer viable for employment use. It should be noted that the building in question is approximately 90 years old and in need of considerable investment.

- 5.9 To summarise the above, Council policy states that employment land should be retained. The applicant states that Unit 11a has been vacant for a period of time and therefore the change of use should be allowed.
- 5.10 In producing the Core Strategy (adopted June 2011), the Council has undertaken a recent review of its employment land. The Lewisham Employment Land Study 2008 was commissioned from Roger Tym and Partners and is part of the evidence base for the LDF. The Roger Tym Study describes Evelyn Court as a modern business building occupied by a number of business users. As a result of the review, the area allocated as SIL was reduced in extent and the area designated as Defined Employment Area in the 2004 UDP has also been reduced. The Council's Core Strategy has identified a number of strategic sites, where significant growth and development is envisaged within the plan period. Four of the five strategic sites are designated as Mixed Use Employment Locations where a range of economic, employment and training opportunities focusing on flexible business and light industrial uses is envisaged, as well as significant numbers of new dwellings. One of the strategic sites, Oxestalls Road, is located directly opposite Evelyn Court on the northeast side of Evelyn Street. In the main, the strategic sites comprise land, formerly designated as 'Defined Employment Land' comprising a mix of general industrial/warehousing uses, with mainly older buildings in need of significant investment. In addition, the designated Surrey Canal SIL and Local Employment Locations (LELs), in addition to the strategic sites, are the result of the employment land review.
- 5.11 Evelyn Court forms part of a contiguous area which the Core Strategy envisages will continue to contribute to the continuing functioning of the Lewisham economy and has been subject to a comprehensive and rigorous recent review in terms of its continued protected designation.
- 5.12 The applicant states in the submitted Planning Statement that the property has been vacant for 30 months prior to the occupation of the current tenant. However, of the 18 units one vacant unit is considered to be an acceptable vacancy rate for the site with an 89% occupation rate. Further, given the 89% occupation rate, officers are mindful of the need to protect the existing employment space within the remainder of the site which is being used for B1 activities. In a building housing a significant number of units, it can be expected that the level of vacancy will vary from time to time.
- 5.13 The Lewisham Employment Land Study 2008 confirms that space for small and medium sized enterprises is in short supply across Lewisham. Growing sectors in the Borough, such as creative industries, rely upon high quality and affordable accommodation in order to maintain and develop their businesses. The Council seeks to support the growth in the number of businesses in the borough and in particular, to attract higher value added knowledge based businesses. The Employment Land Demand Study highlighted the need to create more office space and higher quality workshops and industrial units. There are opportunities

to increase the number of businesses which support the business and financial sector within the area.

- 5.14 It is considered that the current use for religious worship is not compatible with the use of the remainder of the building for B1 employment purposes. There have been a significant number of objections from residents of Inwen Court, the residential block adjoining to the southwest. Should occupiers and employees of other units wish to work on a flexible basis, after normal business hours or at weekends, they could be disturbed by the activities of the D1 use. The Use Classes Order states that B1 uses (Offices), research and development of products and processes and light industry are appropriate in a residential area. Therefore, the B1 occupiers should also be protected against any business activity outside of these restrictions. While Core Strategy Policy 3 indicates that more general industrial activities can be appropriate within SILs, the Surrey Canal SIL covers a larger area and there are locations, such as in this instance, where residential uses are in close proximity. Therefore, whilst some parts of the SIL is appropriate for more general industrial activities, given the character of the area, those sites where there is an interface with residential property have also to be considered in the context of the their residential neighbours. The site is in such a location given the proximity of Inwen Court.
- 5.15 The applicant has made the point that there is significant demand within the wider area for church uses. As stated above, two further concurrent similar applications for Units 2 and 3 are under consideration. In the marketing information, Kalmars stated that they have had 82 inquiries for churches or colleges. It is considered that there is a danger that if this unauthorised change of use was permitted, it would be difficult to resist the two concurrent applications and that further occupation of the building by church uses would result. It is considered that a proliferation of such uses would undermine the continuing functioning of the building as a business centre and would adversely impact on the continued functioning of other nearby business and industrial premises. The applicant has stated that the church use includes an element of administrative employment; however, the church would be able to use B1 business premises for office use without the necessity for a change of use.
- 5.16 The demand for church premises is acknowledged, however this should not result in the loss of designated employment premises, particularly in the context of a recent, comprehensive and rigorous review. It is of note that a recently granted planning permission for one of the strategic sites (the Surrey Canal Triangle) includes provision for a Faith Centre.
- 5.17 In conclusion, whilst the applicant may have provided some evidence of vacancy, this does not justify a change of use and the principle of the loss of B1 office space is not considered acceptable in this instance.

#### Design, character and appearance

- 5.18 No external alterations have been carried out to facilitate this change of use.

### Impact to residential amenities from the proposed use

- 5.19 An important issue is the impact of the proposed use on neighbouring amenity, given the close proximity of residential accommodation at Inwen Court to the southwest of the application building.
- 5.20 Twelve letters of objection have been received from residential neighbours, including one from the management company of the adjacent residential block, Inwen Court. Neighbours have complained about noise at unsociable hours, children playing in the car park and parking congestion in and around the application site.
- 5.21 Officers consider that the proposed D1 (place of worship) use would be a far more intensive use when services are taking place, than the lawful B1 Use. The lawful use comprises two combined commercial units which would typically be used during commercial hours during the daytime with limited evening and weekend use. While the proposed D1 use may not result in greatly increased use during usual business hours, it would result in a more intensive use of the premises in the evenings and particularly on Sundays when main services are envisaged to be held. The premises would be used for services associated with a place of worship, which could include prayers, ceremonies, rituals, music and other forms of noise generating activity associated with spiritual and cultural development. Such a use is likely to generate a significant level of noise and disturbance particularly during the evening and Sunday mornings. The application form submitted with the application does not propose opening hours, but the Planning Statement suggests officers place a condition on the decision notice suggesting opening hours of 9-5, Monday to Thursdays, 9am to midnight, Fridays and Saturdays and 9am to 6pm Sundays.
- 5.22 Whilst a condition limiting hours of use could be imposed, the hours required for a place of worship would be unsociable and therefore the operating hours necessary to protect the amenities of nearby occupiers would not be deemed reasonable for a place of worship as required by the tests referred to in Circular 11/95. It is the proposed Sunday and late evening opening hours which would be the most detrimental to neighbouring amenities. The opening hours on a Sunday and late Friday and Saturday evenings are likely to significantly compromise the quiet enjoyment of the residential neighbours. Further, any preparation and closure work would be outside of these hours, and could also compromise the amenities of the nearby residential occupiers. These concerns are exacerbated as more than one church operates within the building.
- 5.23 If officers were to consider a condition to mitigate noise emanating from the site, this would be dependent on doors and windows remaining closed, which is likely to be unrealistic in practice. In addition, whilst noise breakout could be mitigated to some degree, a church would result in high volumes of patrons coming in and out of the building, which is likely to give rise to disturbance, as it is impossible to control activities outside the building. Therefore, permitting the change of use would be contrary to the conditions as set out in saved UDP Policy LCE 1 Location of New and Improved Leisure, Community and Education Facilities.
- 5.24 Given the proximity of the site to residential dwellings and the existing B1 occupiers on the site, it is not considered that any units within Evelyn Court are suitable for the proposed D1 use as a place of worship, as this would lead to



unacceptable levels of noise and disturbance, contrary to saved policies ENV.PRO 9, ENV.PRO 11 and HSG 4 of the UDP.

### Highways and Parking

- 5.25 Neighbours have also complained about the parking congestion derived from the patrons of the church. However, the site is very close to a main road served by a high frequency of bus services and the Highways Officer did not raise any objection to the proposal.

## **6.0 Legal Implications**

- 6.1 Government Policy advice to local planning authorities on the use of their enforcement powers is set out in The National Planning Policy Framework (2012). They have been given primary responsibility for taking whatever enforcement action may be necessary in the public interest.
- 6.2 The Local Government Ombudsman can make a finding of "maladministration" if a Council fails to take enforcement action when it is plainly necessary to do so.
- 6.3 For the planning system to be robust and to fully achieve its objectives, local planning authorities should take a proportionate approach to enforcement. Where developers or individuals have proceeded without due regard to the planning process, resulting in unacceptable impacts on the local community, local planning authorities should take appropriate action.
- 6.4 Effective enforcement is important as a means of maintaining public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control. Local planning authorities should consider publishing a local enforcement plan to manage enforcement proactively, in a way that is appropriate to their area. This should set out how they will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where it is appropriate to do so.

## **7.0 Equal Opportunities and Human Rights Implications**

- 7.1 Implications in relation to the Human Rights Act 1998 (HRA) have been identified in regards to the alleged breach. Action will therefore be relevant to the occupiers' Article 8 rights and potentially their Article 1 rights under the first protocol of the HRA, as set out below:

### Schedule 1, Part I - The Convention

#### Article 8 Right to Respect for Private and Family Life

- (1) Everyone has the right to respect for his private and family life, his home and his correspondence.
- (2) There shall be no interference by a public authority with the exercise of his right 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.

Schedule 1, Part II - The First Protocol  
Article 1 Protection of Property

- 7.2 Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

- 7.3 Section 149 of the Equality Act 2010 (“the Act”) imposes a duty that the Council must, in the exercise of its functions, have due regard to:

- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act;
- (b) advance equality of opportunity between persons who share a relevant protected characteristic and those who do not;
- (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

The protected characteristics under the Act are Age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

The duty is a “have regard duty”, and the weight to attach to it is a matter for the decision maker bearing in mind the issues of relevance and proportionality.

- 7.4 It is acknowledged that the majority of the congregation is from minority groups and that there is a high demand for church premises in the area. However, officers consider that the loss of the employment premises is not justified in the light of strategic employment policies. It is considered that in this matter officers have taken account of the impact on equality and have concluded that pursuing enforcement action in the circumstances of the case is the correct course of action in view of the loss of employment premises and that such action is proportionate and appropriate. In the circumstances, it is considered expedient to take enforcement action to secure the cessation of the use for the reasons set out in the report above.

## **8.0 Conclusion**

- 8.1 For the reasons set out in the body of the report above, officers recommend that an Enforcement Notice be served to secure the cessation of the use of the premises as a place of worship on the grounds that it has resulted in a loss of employment space within a designated Strategic Employment Location and will

continue to have a detrimental impact upon the amenities of nearby residential occupiers and the existing B1 users of the site.

- 8.2 The unauthorised use is contrary to Policy 3 Strategic Industrial Locations and Local Employment Locations in the Council's Core Strategy (June 2011), and policies ENV.PRO 11 Noise Generating Development, LCE 1 Location of New and Improved Leisure, Community and Education Facilities and HSG 4 Residential Amenity in the adopted Unitary Development Plan (July 2004).

## **9.0 Requirements of Enforcement Notice**

- 9.1 To cease the use of the unit as a place of worship or any other use outside of the B1 use class.

## **10.0 RECOMMENDATION**

AUTHORISE THE HEAD OF LAW to take all necessary action to secure the cessation of the use of Unit 11a (first floor), Evelyn Court, Grinstead Road SE8 as a place of worship or any other use outside of the B1 use class for the following reasons:-

- (1) The continued use as a place of worship would give rise to significant noise and disturbance for neighbouring B1 units and nearby residential occupiers. As such the proposal would have an unacceptable adverse impact upon neighbouring amenity contrary to saved policies ENV.PRO 11 Noise Generating Development, LCE 1 Location of New and Improved Leisure, Community and Education Facilities and HSG 4 Residential Amenity in the adopted Unitary Development Plan (July 2004).
- (2) The continued use as a place of worship would result in a loss of employment use, contrary to Policy 3 Strategic Industrial Locations and Local Employment Locations in Lewisham's Core Strategy (June 2011).

Period for Compliance: 3 months