

FAREHAM BOROUGH COUNCIL

TOWN AND COUNTRY PLANNING ACT 1990 SECTION 174 APPEAL

APPEAL by Mr K Fraser of Titchfield Festival Theatre against the decision of Fareham Borough Council to issue an enforcement notice alleging, without planning permission: (a) the material change of use of the Land to theatre use (sui generis); and (b) an engineering operation to excavate and create an underground area beneath the Land; on Land at 71-73 St Margarets Lane, Fareham, Hants, PO14 4BG

Planning Inspectorate Reference: APP/A1720/C/23/3336046

Local Authority's Reference: ENF/26/23

STATEMENT OF CASE OF FAREHAM BOROUGH COUNCIL

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- 2 - Email from Jenna Flanagan, FBC concerning service of Notice

1.0 INTRODUCTION

1.1 The appeal is made against the decision of the Council to issue an enforcement notice alleging, without planning permission:

(a) the material change of use of the Land to theatre use (sui generis); and

(b) an engineering operation to excavate and create an underground area beneath the Land

2.0 THE ENFORCEMENT NOTICE

2.1 The land to which the enforcement notice relates is: *71-73 St Margarets Lane, Fareham, Hants, PO14 4BG* as shown edged red on the plan attached to the Notice.

2.2 The alleged breach of planning control is: *(a) the material change of use of the Land to theatre use (sui generis); and (b) an engineering operation to excavate and create an underground area beneath the Land*

2.3 Reasons for issuing this notice are:

It appears to the Council that the material change of use of the Land to a theatre use has occurred within the last ten years.

It appears to the Council that the engineering operation to excavate and create an underground area beneath the Land has occurred within the last four years.

The development is contrary to Policies DS1, R2, D2, TIN1 and TIN2 of the Fareham Local Plan 2037 and is unacceptable in that:

a) The theatre is a main town centre use located outside the urban area in an unsustainable and poorly accessible location. The development fails to promote sustainable and active travel modes, offer a genuine choice of mode of travel and reduce the need to travel by motorised vehicle;

b) It has not been demonstrated that the development meets a demonstrable need for the use in this location and that there are no alternative sites in the centres or parades that are available, suitable or viable that could be considered sequentially preferable to the development site. It has not been demonstrated that the development would not cause significant harm to, or have a significant adverse effect on the vitality or viability of, the Borough's centres or parades;

- c) The development would result in a significant increase in noise from patrons arriving and leaving the building which would have an unacceptable adverse environmental impact on neighbouring occupants. Furthermore, in the absence of details of acoustic insulation measures for the building, the noise emanating from the building would have an unacceptable adverse environmental impact on neighbouring occupants; and*
- d) Parking provision at the site is not acceptable which would have an unacceptable impact on highway safety.*

The engineering operation to excavate and create an underground area beneath the Land is not in itself harmful but is associated with and necessary to the material change of use of the Land to use as a theatre. Its continued presence undermines the ability of the Land to be restored to a lawful use.

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

It should be noted at this stage, that when considering the appeal under ground (a) the LPA will also refer to the matter of Intentional Unauthorised Development.

2.4 The requirements of the Notice are:

- (i) Cease the use of the Land as a theatre;*
- (ii) Backfill the excavated underground area beneath the Land with a suitable inert material (such as compacted aggregate, soil, or similar) to ground level;*
- (iii) Dismantle the stage;*
- (iv) Remove the seating;*
- (v) Dismantle the lighting rig and PA or other sound equipment;*
- and*
- (vi) Remove the resultant materials from carrying out steps (iii), (iv) and (v) from the Land except to the extent that those materials are solely being stored on the Land.*

2.5 The periods for compliance with the Notice are:

- Step (i): two months after this Notice takes effect; and*
- Steps (ii) – (vi): three months after this Notice takes effect.*

2.6 The grounds of appeal, as confirmed in PINS letter of 16th January 2024, are grounds (a), (b), (e), (f) and (g) as set out at Section 174(2) of the 1990 Act. In the CMC agenda note of 6 February 2024 the inspector also makes reference to a possible hidden ground (d) appeal.

3.0 REQUESTED CHANGE TO THE NOTICE

- 3.1 Following a detailed consideration of the various grounds of appeal and upon re-reading the precise wording of the Enforcement Notice it is considered that clarity could be better provided in respect of requirement (iv) in that the word 'Remove' should be replaced with 'Dismantle' in order to reflect the wording used in requirements (iii) and (v). This is because reference to 'remove' the items listed in requirements (iii) to (v) is already set out in requirement (vi).
- 3.2 If the Inspector agrees then they may amend the notice under requirement (iv) under part 5 of the Enforcement Notice. It is considered that this minor change can be done without causing injustice to the appellant.

4.0 SITE DESCRIPTION

- 4.1 The Council will provide a detailed description of the appeal site and its surroundings. A summary description is provided below.
- 4.2 71-73 is located on the east side of St Margarets Lane Titchfield. It is located in designated open countryside which forms part of the Meon Gap, a strategic gap between Fareham / Stubbington and the Western Wards.
- 4.3 As set out in the 2019 planning application [see details below] the land occupied by Titchfield Festival Theatre relates to a former warehouse/industrial building. Prior to the unauthorised use of the site, the site was divided into three permitted uses referred to Areas A, B and C on the plan attached as appendix 1. The property consists of a three storey office block fronting onto St Margarets Lane which is used for admin functions for the Theatre and a large warehouse structure behind (Area A) which, since they first occupied the site, was the main theatre. To the rear of Area A is Area B which is authorised for B1/B8 use (office/light industrial/storage). Finally at the eastern end of the site is Area C with a lawful warehouse [B8] permission.

5.0 RELEVANT PLANNING HISTORY AND ENFORCEMENT INVESTIGATIONS

5.1 The LPA will set out the detailed and complex history of the site but for now a summary is set out below.

5.2 Before Areas A and B were occupied by Titchfield Festival Theatre on 1st October 2010¹, the site had an established industrial use.

5.3 Since Titchfield Festival Theatre moved onto the wider site, the relevant planning permissions have been as follows:

- Area A (also known, along with Area B, as 73 St Margaret's Lane) has planning permission for Theatre use (Sui Generis) which was granted in 2012. A condition controlling the temporary use of the site for Theatre use was subsequently appealed and the appeal upheld permitting the Theatre use with no temporary conditions (P/12/0050/CU).
- Area B has planning permission for office and storage use falling within the then Use Classes B1 and B8. This use was permitted at the same time as that for Area A in 2012 (P/12/0050/CU) but is not subject to any limitation or restriction requiring it to be used in connection with the theatre use in Unit A.
- Area C (also known as 71 St Margaret's Lane) has permission for the erection of a building to provide workshop and storage accommodation, which was permitted in 1963 (FBC.3312/1). Prior to the unauthorised change of use subject of this report, Area C was most recently used as a warehouse by a construction company called Welbro.

5.4 In 2012, a retrospective application was submitted for the change of use of Area A to D2 and theatre purposes and Area B for storage use. The industrial use of Areas A and B was subdivided. Area A had undergone internal and external alterations to create an auditorium, rehearsal rooms, offices and ancillary theatre functions, and Area B had been retained for storage purposes. These uses were permitted retrospectively. At this time, Area C remained an independent detached building used as a warehouse.

5.5 In 2019 two planning applications were submitted.

5.6 The first, P/19/0510/FP, was submitted for "*Change of use of Unit B to a mixed use of storage and theatre rehearsal space, with ground floor workshop (sui generis use). Extended hours of use.*"

¹ As set out in the planning application forms for application P/12/0050/CU

- 5.7 The second, P/19/1035/FP, was submitted after the refusal of P/19/0510/FP and was for *"Rear, side & roof extensions, change of use of storage area to 567 seated theatre and industrial unit to ancillary backstage & changing rooms."* This was in respect of Areas A, B and C and was refused on 5 March 2020. The supporting statement stated *"At present Unit A comprises 2 theatres one accommodating 200 seats and the other 100 seats together with ancillary areas. To the rear is a commercial unit currently in B1/B8 use (office/light industrial/storage). Beyond that is a further commercial unit in separate ownership and in B8 use."*
- 5.8 Planning permission was granted on 17 March 2022 under reference P/22/0255/FP for *"Extensions to warehouse building and raising of the existing roof to provide additional and improved accommodation"* in respect of Area C. The permitted drawings show the western external wall of building Area C to be removed and the building to be physically attached to the eastern external wall of building Area B (which would remain).
- 5.9 On 4th April 2023 an application [P/23/0538/FP] was submitted for *"Extension To Existing Loading Bay To Provide Additional Theatre Storage"*. The planning statement contains a photograph of the existing loading bay to Area B open with storage behind. The dividing wall between Area A and B is visible, as is an access door between the two areas. This application is still under consideration.
- 5.10 In early May 2023 Officers received correspondence from an external theatre company, who were planning to use Titchfield Festival Theatre, requesting assistance with the parking of patrons for the new 450 capacity theatre, the Arden Theatre when it opens.
- 5.11 On 12th May 2023, a site visit was arranged. During the visit the external and internal building operations were observed. It was noted that window and door openings of Area C had not been built in accordance with the approved plans of P/22/0255/FP; some of the openings have been omitted, and the roof line had not been completed.
- 5.12 Officers entered Areas B and C, which were now combined. It was noted that the building in Area C had been extended to adjoin the building in Area B (which was permitted by application P/22/0255/FP). However, both the eastern external wall of Area B and the western external wall of Area C had been removed to create one large internal space. An extensive engineering operation had been undertaken to form a large pit, spanning over Areas B and C, these excavations have created an under-stage area for an orchestra

and storage.

- 5.13 Area B was no longer being used for the permitted storage use. It appeared preparations were underway to create a new theatre, to include seating in Area B, along with part of the stage and stage pit.
- 5.14 Area C was no longer in use as a warehouse. It was being prepared to site part of a new theatre stage. The northern end of Area C had been developed to comprise of a backstage area, changing rooms, a rehearsal area, with toilets and kitchenette facilities to be used by theatre staff and performers.
- 5.15 The site of Areas A, B & C is now comprised of one building. There are the two pre-existing theatres, the Oak Theatre with a capacity of 200 seats and the Acorn Theatre with a capacity of 100 seats within Area A. The works undertaken have resulted in Areas B and C becoming the new "Arden Theatre". The number of seats in the new theatre remains to be confirmed. The Titchfield Festival Theatre online booking system on the theatre website shows a seating plan of 399 seats, although the Facebook page states that it seats 450 people. To complicate matters further, the recent licensing application states 463 seats and this figure was confirmed by the Appellant, Mr Fraser of TFT Ltd at a site visit to the premises on 21st February 2024.
- 5.16 There is limited onsite parking available. A parking plan approved with application P/12/0050/CU demonstrated 30 on-site parking spaces within the parts of the car park associated with Areas A & B. The current arrangement of onsite parking follows a similar format, however the marked spaces on site are not consistent with the previously approved parking plan. There is also additional space where cars may be able to park where no markings are currently, and additional space associated with Area C which was previously used by Welbro. In all, the Council estimates there to be space for approximately 35 cars to now park on the site.
- 5.17 A summary of the relevant planning references is set out below:
- P/23/0538/FP - Extension to existing loading bay to provide additional theatre storage - Under Consideration (Area B)
 - P/23/0249/VC - Variation of Condition 1 (Approved Plans) of P/22/1338/VC to increase roof height. Approved 28th March 2023 (Area C)
 - P/22/1338/VC - Variation of Condition 2 (list of approved drawings) of approved application P/22/0255/FP- Extensions to warehouse building and raising of the existing roof to provide additional and improved accommodation. Approved 10 October 2022 (Area C)

- P/22/0255/MA/A - Non-Material Amendment to approved application (Area C)
- P/22/0255/FP - Extensions to warehouse building and raising of the existing roof to provide additional and improved accommodation. Approved 17 March 2022 (Area C)
- P/19/1035/CU - Change of use of Unit B to a mixed use of storage and theatre rehearsal space, with ground floor workshop (sui generis use). Extended hours of use. Refused 5 March 2020 (Area B)
- P/19/0510/FP - Rear, side & roof extensions, change of use of storage area to 567 seated theatre and industrial unit to ancillary backstage & changing rooms – Refused 21 August 2019 (Areas A, B & C)
- P/18/1336/FP - Mansard roof, alterations to elevations and external fire escape (alternative to P/17/1024/FP). Approved 7 January 2019 (Area A)
- P/17/1024/FP - Mansard roof and alterations to front elevation. Approved 26 September 2017 (Area A)
- P/17/1024/FP – Mansard roof and alterations to front elevation. Approved 26 September 2017 (Area A)
- P/12/0050/CU – Retrospective application for continued use of unit A for D2 and theatre purposes and unit B for storage use. Temporary permission granted – Appeal lodged against temporary permission and allowed with restrictive conditions 20 February 2013 (Areas A & B)

6 PLANNING POLICY AND LEGAL CONTEXT

- 6.1 Sections 70(2) and 79(4) of the TCPA and Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires local planning authorities to determine applications for planning permission in accordance with the provisions of the development plan unless material considerations indicate otherwise. This Section of the SoC sets out the relevant planning policy framework for the consideration of this appeal.
- 6.2 The policies detailed within the Council's reasons for issuing the Notice are detailed within this Section. Where the policies are considered particularly relevant to this Appeal they are outlined in more detail.

The Development Plan

- 6.3 The development plan policies that are referenced in the Council's Enforcement Notice as being relevant for the Appeal are as follows:

Adopted Fareham Local Plan 2037:

- Strategic Policy DS1: Development in the Countryside
- R2: Out-of-Town Proposals for Town Centre Uses
- D2: Ensuring Good Environmental Conditions
- Strategic Policy TIN1: Sustainable Transport
- TIN2: Highway Safety and Road Network

- 6.4 The 2037 Local Plan was adopted on 5th April 2023. The following policies were listed in the Reasons for Issuing the Notice and are relevant to the determination of this appeal:
- 6.5 Strategic Policy DS1: Development in the Countryside states, inter alia:

Proposals for development in the countryside, which is defined as land outside the Urban Area boundary as shown on the Policies map, will be supported where the proposal:

- b) Is proposed on previously developed land and appropriate for the proposed use, or*
- c) Is for retail, community and leisure facilities, tourism or specialist housing where it can be demonstrated that there is a local need for the facility that cannot be met by existing facilities elsewhere; or*
- i) Can demonstrate a requirement for a location outside of the urban area.*

6.6 R2: Out-of-Town Proposals for Town Centre Uses states:

Proposals for main town centres uses outside of the Borough's centres or parades will be permitted where they can demonstrate there is no significant harm, to the centres and parades where:

- a) the proposal meets a demonstrable need for the use in the proposed location, a full sequential test has been carried out demonstrating that there are no sites in the centres or parades that are available, suitable or viable; and*
- b) appropriate levels of parking are provided; and*
- c) the site is located inside the defined urban area and is accessible, particularly by public transport; and*
- d) the scale and design of the buildings are appropriate to their surroundings in line with Policy D1; and*
- e) the proposal would not have any unacceptable environment, amenity or traffic implications in line with Policy D2.*

Where a proposal for main town centre use over 500 sq.m (gross), or an extension which increases overall floorspace beyond 500 sq.m (gross) is proposed outside of the defined retail centres, an impact assessment shall be carried out in accordance with the NPPF in order to demonstrate that there is no significant adverse effect on the vitality or viability of existing or proposed retail centres and parades.

The Glossary defines Main Town Centre Uses as:

Retail development (including warehouse clubs and factory outlet centres); leisure, entertainment and more intensive sport and recreation uses (including cinemas, restaurants, drive-through restaurants, bars and pubs, nightclubs, casinos, health and fitness centres, indoor bowling centres and bingo halls); offices; and arts, culture and tourism development (including theatres, museums, galleries and concert halls, hotels and conference facilities).

6.7 D2: Ensuring Good Environmental Conditions states:

Development must ensure good environmental conditions for all new and existing users of buildings and external space.

Development proposals, including changes of use, will be permitted where they:

- a) Do not have an unacceptable adverse impact on the environmental conditions of future occupiers and users or on adjacent/nearby occupants and users through ensuring appropriate outlook and ventilation and providing adequate daylight, sunlight and privacy; and*

- b) Do not, individually, or cumulatively, have an unacceptable adverse environmental impact, either on neighbouring occupants, adjoining land, or the wider environment; and*
- c) Can demonstrate that the future occupants and users of the development site will not be unacceptably adversely impacted from existing activities in the surrounding area.*

6.8 Strategic Policy TIN1: Sustainable Transport states that:

New development should reduce the need to travel by motorised vehicle through the promotion of sustainable and active travel modes, offering a genuine choice of mode of travel.

Development will be permitted where it:

- a) Contributes to the delivery of identified cycle, pedestrian and other non- road user routes and connects with existing and future public transport networks (including Rapid Transit), giving priority to non-motorised user movement; and*
- b) Facilitates access to public transport services, through the provision of connections to the existing infrastructure, or provision of new infrastructure through physical works or funding contributions; and*
- c) Provides an internal layout which is compatible for all users, including those with disabilities and reduced mobility, with acceptable parking and servicing provision, ensuring access to the development and highway network is safe, attractive in character, functional and accessible.*

6.9 TIN2: Highway Safety and Road Network states:

Development will be permitted where:

- a) There is no unacceptable impact on highway safety, and the residual cumulative impact on the road networks is not severe; and*
- b) The impacts on the local and strategic highway network arising from the development itself or the cumulative effects of development on the network are mitigated through a sequential approach consisting of measures that would avoid/reduce the need to travel, active travel, public transport, and provision of improvements and enhancements to the local network or contributions towards necessary or relevant off-site transport improvement schemes.*

Other Material Policy Considerations

6.10 Other material policy considerations relevant to the determination of this planning appeal may include the following documents:

- National Planning Policy Framework (2023)
- Planning Obligations Supplementary Planning Document for the Borough of Fareham (excluding Welborne) (2016)
- Hampshire Local Transport Plan (2011-2031)
- Dft's Gear Change – A bold vision for cycling and walking;
- DfT's Manual for Streets (2007);
- Design Manual for Roads & Bridges;
- DfT's LTN1/20 Cycle Infrastructure Design (July 2020);
- CIHT Planning for Walking guidance (April 2015);
- CIHT Bus in Urban Developments (January 2018);

7 S174 GROUND (e) - The notice was not properly served on everyone with an interest in the land.

- 7.1 The facts regarding the service of the Enforcement Notice are set out in the email dated 21st February 2024 from Jenna Flanagan, Planner and Compliance Officer at Fareham Borough Council. This is attached as Appendix 2.
- 7.2 On this basis the LPA contend that the Notice was served properly on everyone with an interest in the land. In fact, more people were served than was necessary.
- 7.3 For these reasons it is considered that the appeal under ground (e) must fail.

8 S174 GROUND (b) – Namely that the breach of control alleged in the enforcement notice has not occurred as a matter of fact.

- 8.1 The Appellants' case on this ground appears to be that the LPA should have alleged a breach of condition 8 of planning application P/12/0050/CU, which limits the use of Area B to use classes B1 or B8.
- 8.2 However, the Notice relates to units B and C both of which have been combined to create the new, additional, Arden theatre. Since the breach of planning control is not limited to Area B, a Breach of Condition Notice would not be sufficient to remedy the breach of planning control that has occurred.
- 8.3 For these reasons the LPA considers that the appeal in respect of ground (b) should be dismissed.

9 S174 – HIDDEN GROUND (d)? That, at the time the enforcement notice was issued, it was too late to take enforcement action against the matters stated in the notice

- 9.1 As set out in respect of the appeal under ground (b) above the breach of planning control alleged relates to the change of use of Areas B and C which have been combined to create a new large [463 seat] theatre known as 'Arden'.
- 9.2 The operations necessary to create this change of use were undertaken during 2023 and it is understood that the theatre use commenced in September 2023. This is clearly a period well short of the required ten years necessary to gain immunity.
- 9.3 For these reasons the LPA considers that if there is a hidden appeal in respect of ground (d), then for the above reasons it should be dismissed.

10 S174 – GROUND (a) – whether planning permission ought to be granted

10.1 The Council will set out that it is considered the main issues in the ground (a) appeal are as follows:

- The sustainability of the site;
- The issues concerning a lack of parking and impacts on the safe flow of traffic on the highway;
- The issues concerning noise disturbance arising from the new theatre use with particular regard to patrons arriving and leaving the premises;
- Whether the proposal is in accordance with the development plan and,
- Intentional Unauthorised Development.

The Council's case on each issue is outlined below.

Issue 1 – The Sustainability of the Site

10.2 The Council will present evidence to demonstrate that the unauthorised material change of use of Areas B and C to facilitate the unauthorised theatre use places undue reliance on private vehicles and is located at a site with limited sustainable travel options for theatre visitors.

10.3 The Council will demonstrate the development does not accord with Strategic Policy TIN 1 of the Fareham Local Plan. The Council will prove in evidence that the site is poorly accessible via sustainable travel options, walking, cycling and public transport. The opportunities to walk and cycle are limited and not attractive to most users as set out in DfT's LTN1/20 Cycle Infrastructure Design (July 2020), CIHT Planning for Walking guidance (April 2015) and DfT's Manual for Streets (2007). Public Transport service levels will also be presented, and demonstrated to not provide a suitable opportunity for theatre visitors.

Issue 2 - Parking

10.4 The Council will present evidence to demonstrate that the level and location of parking provision is unacceptable and the surety of its availability cannot be relied upon. The on-site parking arrangement results in a layout which is not safely accessible for all users as set out within Strategic Policy TIN1 of the Fareham Local Plan. The Council will show the shortfall in parking will result in an unacceptable

impact on the highway network including highway safety, due to overspill queuing and indiscriminate parking. This is contrary to Strategic Policy TIN2 of the Fareham Local Plan and inconsistent with DfT's Manual for Streets (2007) and Design Manual for Roads & Bridges.

- 10.5 Moreover, if any off-site car parking locations were found to be acceptable then the Council would need to consider the suitability of the off-site parking facilities in terms of their proximity to the site and pedestrian connectivity to the theatre would need to be fully considered. Furthermore, the Council would require that their continued availability for use by the theatre is secured through a s106 agreement in order that the Council has the power to enforce any breaches of that agreement.

Issue 3 - Noise

- 10.6 There are a number of dwellings within the vicinity of the site with residential properties located approximately 31m to the west and approximately 28m to the south of the site. While it is noted there is an existing theatre use on the site, the introduction of an additional theatre has resulted in a much larger facility with unrestricted operating hours, performance days and numbers.
- 10.7 The first consideration on this issue is that in the absence of details of acoustic insulation measures for the building, the Council consider that there remains a possibility that the noise emanating from the building would materially harm the living conditions of the neighbouring residential properties.
- 10.8 Secondly, the increase in theatre capacity is considered to have the potential to result in a significant increase in noise from patrons arriving and leaving the building detrimental to the living conditions of the occupiers of the neighbouring residential properties.

Issue 4 – Compliance with the Development Plan

- 10.9 The Council will set out that the harms identified under issues 1 to 3 give rise to conflict with policies DS1, D2, TIN1 and TIN2 of the recently adopted Fareham Local Plan 2037.
- 10.10 These issues also fall into Policy R2. In this regard the Council will set out that it has not been demonstrated that the development would not cause significant harm to the Borough's centres or parades. In the absence of a sequential test to identify that there are no suitable, available or viable alternative sites that could be considered sequentially preferable to the proposed development, the

proposal is considered to be contrary to part a) of the above policy. Appropriate levels of parking are not provided contrary to criteria (b). Furthermore, the site is not located inside the defined urban area and is not easily accessible by public transport, contrary to criteria (c). There is considered to be compliance with criteria (d) in respect of the scale and design of the buildings being appropriate to their setting. However, the development is also contrary to criteria (e) due to the unacceptable amenity and traffic implications as set out in the previous issues.

- 10.11 Finally, the development is understood to constitute development over 500 sq m and so, in the absence of an impact assessment, it has not been demonstrated that it would not have a significant adverse effect on the vitality or viability of the Borough's centres and parades.
- 10.12 For the above reasons the Council will conclude that the development is not in accordance with the provisions of the recently adopted Development Plan, taken as a whole.

Issue 5 – Intentional Unauthorised Development

- 10.13 The Council will set out that IUD is a material consideration in this case. Evidence will be provided to demonstrate that the appellant had previously been involved in enforcement proceedings at The Great Barn and were prosecuted for non-compliance with the enforcement notice there. In addition, they had applied for a theatre within Areas B and C and this had been refused twice. Moreover, Council enforcement officers visited the premises during the course of the works and TFT were advised to stop. They continued regardless and are now seeking to put the Council in a bad light through press releases and YouTube videos. Had the applicant submitted an application for the development as now undertaken before the works were done and then lodged and awaited an appeal decision then there would not be the possibility of severe financial implications for TFT if the appeal is dismissed and the Notice upheld. It has been solely their decision to proceed with an unauthorised development.
- 10.14 The Council will set out why IUD is an important material consideration and that weight should be attached to it in the planning balance.

Ground (a) Conclusions

The Council will conclude with a planning balance exercise in weight it will be demonstrated that in the LPAs view the development is in direct conflict with the provisions of a recently adopted Local Plan.

This combined with the fact that the development is IUD outweigh any public benefits that may arise. For these reasons it will be concluded that the ground (a) appeal should be dismissed.

11 S174 GROUND (f) – Namely that the requirements of the Notice are excessive

- 11.1 The Council strongly refute the claim that the requirements of the notice are excessive.
- 11.2 Indeed, it is considered that the LPA have been flexible in that whilst the facilities necessary to create the additional theatre are to be dismantled, the Titchfield Festival Theatre is allowed – through requirement (vi) to store staging, lighting, seating and sound equipment since this may be required in connection with the lawful activities of the TFT. This acknowledges the lawful use of Areas B and C for B8 purposes.
- 11.3 As set out at 3.1 it is requested that requirement (iv) is amended to require the 'dismantling' of the seating, in order to match requirements (iii) and (v). The removal of items is addressed under requirement (vi).
- 11.4 Accordingly, for these reasons, and with the exception of the requested change set out at 3.1 the appeal under ground (f) should be dismissed.

12 S174 GROUND (g) – Namely that the time given to comply with the notice is too short.

12.1 The appellants have not provided any evidence to set out why they considered that requirement (i) is too short.

12.2 With regard to requirement (ii) it is considered that a 3 month period is sufficient time in which to infill the excavated area and dismantle the said items.

12.3 The Council will set out that the periods of compliance are more than sufficient time in which to comply with the various requirements.

12.4 The ground (g) appeal should therefore be dismissed.

13 CONCLUSIONS

- 13.1 In respect of ground (e) the email at Appendix 2 demonstrates that the Notice was served properly on everyone with an interest in the land. In fact, more people were served than was necessary. For these reasons it is considered that the appeal under ground (e) must fail.
- 13.2 In respect of ground (b) it is clear that the alleged breach of planning control relates to both Areas B and C. as a result a condition that relates solely to Area B is not directly relevant to the wider breach of planning control. The appeal under ground (b) must therefore be dismissed.
- 13.3 In respect of a possible hidden ground (d) the LPA will clearly set out that the matters alleged were undertaken recently and are not immune from enforcement action by virtue of either the 4 or 10 year rules. Any (hidden) appeal under ground (d) must therefore be dismissed.
- 13.4 With regards to ground (a) the Council will emphasise the importance of planning decisions being in accordance with an up to date and recently adopted Local Plan. The Council will conclude that there is clear conflict with policies DS1, R2, D2, TIN1 and TIN2 and therefore with the Development Plan as a whole. This conflict combined with the fact that this is a damaging case of IUD are such that any public benefit that may be considered to arise from an additional theatre in this location will not be of sufficient weight to outweigh the conflict with the DP and the mater of IUD.
- 13.5 In respect of the ground (f) appeal, as set out in 3.1 it is considered that clarity could be better provided in respect of requirement (iv) in that the word 'Remove' should be replaced with 'Dismantle' in order to reflect the wording used in requirements (iii) and (v). This is because reference to removal of the items required in (iii) to (v) is set out in requirement (vi). It is considered that this minor change can be done without prejudice to the appellants.
- 13.6 Finally, with regard to the ground (g) appeal the LPA remain of the view that the periods set out are more than sufficient time in which to comply with the requirements of the Notice.
- 13.7 The inspector will, for the above reasons, be requested to dismiss this appeal.

APPENDIX 1

PLAN SHOWING AREAS A, B
AND C

FAREHAM

BOROUGH COUNCIL



71/73 St Margarets Lane
Titchfield

Scale 1:1,000



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APPENDIX 2

EMAIL FROM ENFORCEMENT
OFFICER IN RESPECT OF
SERVICE OF NOTICE

From: Jenna Flanagan <[REDACTED]>

Subject: Service of EN

Date: 21 February 2024 at 14:15:31 GMT

To: stephen jupp <[REDACTED]>, Emma Dring <[REDACTED]>

Cc: Hannah Goldsmith <[REDACTED]>

Good afternoon Steve,

It was nice to meet you for the site visit this morning, and it was good to talk though the case after the visit.

As requested, I can confirm the facts regarding the service of the Enforcement Notice.

Notices were sent with tracked delivery to the following parties, I have included the Royal Mail tracking update:

The Secretary
Titchfield Festival Theatre Limited
The Great Barn
The Lodge
Mill Lane
Titchfield
Fareham
PO15 5RB
Royal Mail reference - KD115583668GB

Track your item


Your reference number*

KD115583668GB

[Track your delivery](#)

Sorry, we're currently unable to confirm the status of your item with reference KD115583668GB . Please try again tomorrow.

[Need help with your reference number?](#)

 [Cymraeg](#)

TFT at 71-73 St Ms Lane KD115583654GB

The Secretary
Titchfield Festival Theatre Limited
71-73 St Margarets Lane
Titchfield
Fareham
PO14 4BG
Royal Mail reference - KD115583654GB

Track your item

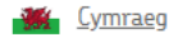
Your reference number*

KD115583654GB

Track your delivery

Sorry, we're currently unable to confirm the status of your item with reference KD115583654GB . Please try again tomorrow.

[Need help with your reference number?](#)



The Secretary
MK Trustees Limited T/A JLT Premier Pensions
Lakeside House
Shirwell Crescent
Furzton
Milton Keynes
MK4 1GA
Royal Mail reference - KD115583685GB



Delivered

Your item was delivered on **23-11-2023**.

Not the signature you expected? [Find out why.](#)

Tracking number:
KD115583685GB

Service used:
Royal Mail Signed For™ ⓘ

Proof of delivery



Rotate image

Signed for by: HINE

Delivered at: 08:01, Thursday 23 November 2023

[Print proof of delivery](#)

Assistant Director Legal Services and Monitoring Officer
Hampshire County Council
The Castle
Winchester
SO23 8UJ
The Secretary
Unity Trust Bank PLC
Four Brindleyplace
Birmingham
B1 2JB
Royal Mail reference - KD115583671GB




Delivered


Your item was delivered on **24-11-2023**.

Not the signature you expected? [Find out why](#).

Tracking number:
KD115583671GB


Service used:
Royal Mail Signed For™ 

Proof of delivery

 The image is not yet available or may have been removed.

Signed for by: A BUTT

Delivered at: 07:40, Friday 24 November 2023

 [Print proof of delivery](#)

Mr Graham Paul Alexander
3 Acorn Business Centre
Northarbour Road
Cosham
Portsmouth
PO6 3TH
APP/A1720/C/23/3336046

Royal Mail reference - KD115583711GB



Delivered

Your item was delivered on **23-11-2023**.

Not the signature you expected? [Find out why](#).

Tracking number:

KD115583711GB

Service used:

Royal Mail Signed For™ [?](#)

Proof of delivery



[Rotate image](#)

Signed for by: GOBLE

Delivered at: 08:17, Thursday 23 November 2023

 [Print proof of delivery](#)

Mr Ian Charles Welch
3 Acorn Business Centre
Northarbour Road
Cosham
Portsmouth
PO6 3TH
Royal Mail reference - KD115583708GB



Delivered

Your item was delivered on **23-11-2023**.

Not the signature you expected? [Find out why](#).

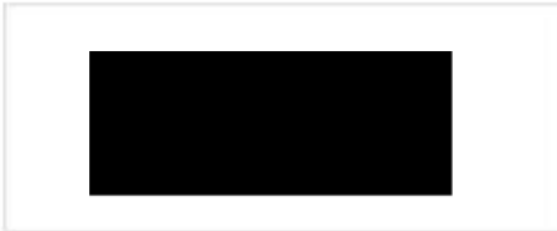
Tracking number:

KD115583708GB

Service used:

Royal Mail Signed For™ 

Proof of delivery



 [Rotate image](#)

Signed for by: GOBLE

Delivered at: 08:17, Thursday 23 November 2023

 [Print proof of delivery](#)

Mr Keith Edward Welch
3 Acorn Business Centre
Northarbour Road
Cosham
Portsmouth
PO6 3TH
Royal Mail reference - KD115583699GB
image004.png



Delivered

Your item was delivered on **23-11-2023**.

Not the signature you expected? [Find out why.](#)

Tracking number:

KD115583699GB

Service used:

Royal Mail Signed For™ [?](#)

Proof of delivery



[Rotate image](#)

Signed for by: GOBLE

Delivered at: 08:17, Thursday 23 November 2023

[Print proof of delivery](#)

Delivery was not confirmed at the following addresses:

The Secretary
Titchfield Festival Theatre Limited
The Great Barn
The Lodge
Mill Lane
Titchfield
Fareham
PO15 5RB

The Secretary
Titchfield Festival Theatre Limited
71-73 St Margarets Lane
Titchfield
Fareham
PO14 4BG

Due to the error message displayed on the Royal Mail tracking website, a copy of the Enforcement Notice was printed and hand delivered to The Great Barn and St Margarets Lane to ensure service.

On 30th November 2023, I attended The Great Barn to deliver a copy of the EN at The Lodge, however, the building I believed to be The Lodge appeared to be a derelict building. Whilst looking for somewhere to deliver the notice at The Great Barn to ensure successful service, I was approached by Mrs Kay Fraser. Mrs Fraser confirmed who she was, and I am aware of her connections with the Theatre at the Secretary. I explained I was trying to serve a notice at the Lodge. Mrs Fraser explained the Lodge was further down the track and she would take the pack from me on their behalf. At 09:19 hours, I handed the EN to Mrs Fraser, who opened the notice in my presence and suggested the Council have a vendetta against the theatre who are hardworking and community engaging.

On the same date, I visited the theatre at 71-73 St Margarets Lane, where I spoke with a builder I have previously met at the site, Mr Buchanan. He showed me to Mr Fraser's office, which was empty. No other members of staff could be located, therefore, at 09:36 hours, in the presence Mr Buchanan, I left a copy of the notice on Mr Fraser's desk.



Kind regards,

Jenna Flanagan
Planner and Compliance Officer (Development Management)
Fareham Borough Council



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