

Statement of Facts and Grounds

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Statement of Facts and Grounds
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Town and Country Planning Act 1990 - Section 174 Planning Enforcement Notice Appeal

Local Planning Authority reference: HH/ENV-057341

Land at 71-73 St Margaret's Lane, Titchfield, Fareham, PO14 4BG.

Appeal by Titchfield Festival Theatre Limited

Date: 22nd December 2023

SUMMARY GROUNDS OF APPEAL

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THRINGS
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1 Introduction

1.1 This Summary Grounds of Appeal is prepared on behalf of Titchfield Festival Theatre Limited (“the Appellant”). The Appellants are the registered freehold owners and occupiers of 71-73 St Margaret’s Lane, Titchfield (“the Site”) under the land registry title: NN143623. It relates to and is submitted in support of an appeal (“the Appeal”) pursuant to Section 174 of the Town and Country Planning Act 1990, in relation to an enforcement notice (“the Notice”) issued by Fareham Borough Council (“the Council”) on 22nd November 2023 alleging breach of planning control consisting of:

“Without the benefit of planning permission, the material change of use of the Land to theatre use (*sui generis*); and an engineering operation to excavate and create an underground area beneath the land” (“the Development”)

1.2 The requirements of the Notice are set out in paragraph five of the Notice and require the Appellants to:

- 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.

1.3 The time for compliance of the Notice is two months after it takes effect for step (i), and three months after the same date for steps (ii) - (vi). The notice takes effect on 29th December 2023.

1.4 The reasons for issuing the Notice are as follows:

- a) 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.
- b) 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.

- c) 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 more 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 does not consider that planning permission should be given, because planning conditions could not overcome these objections to the development.

1.5 The Appellants have lodged an appeal against the Notice on grounds (a), (b), (e), (f) and (g). The summary basis for these grounds are set out here.

2 Summary Grounds of Appeal

Ground (a): that planning permission should be granted for what is alleged in the Notice

- 2.1 The Appellant's planning consultants, Southern Planning Practice, have provided a separate detailed submission as to the ground (a) appeal which should be read in conjunction with this document. It is available at enclosure A below.
- 2.2 In summary, the Council allege that the Site has a negative impact on a non-urban unsustainable area, due to not being easily accessible via public transport or foot, meaning patrons are reliant on motor vehicles to access the site, contrary to policy DS1 of the CS. The Appellant will demonstrate as part of this Appeal that this can be overcome by a transport report that addresses and supports the sustainability of the site. A sequential test and full impact assessment with the Appellant's submissions will address the issues the Council alleges arise at the Site due to its out-of-town location.
- 2.3 The impact of the Development on highways safety is said to be contrary to policies TIN1 and TIN2 of the FLP, due to insufficient parking arrangements and unacceptable impact on highways safety. The Appellant will offer a planning obligation agreement to overcome alleged insufficiencies in parking provision at the Site, as well as an expert highway statement addressing the issues.
- 2.4 Noise impacts are another reason for issuing the Notice. The Appellant avers that the Development is acceptable, and any noise impacts can be mitigated through an appropriate noise mitigation scheme (including acoustic insulation measures) secured by condition
- 2.5 In the event that the following grounds fail, or are insufficient to cover the alleged breach, it is respectfully submitted by the Appellants that planning permission should be granted for the alleged breach as per submitted information in the accompanying submissions by Southern Planning Practice. The Appellants consider that in the context of local and national policy and material planning considerations; planning permission should be granted.

Ground (b): that those matters have not occurred

- 2.6 The Council have mis-identified the use of the Site which is more accurately described as a mix of theatre, storage and community uses (Sui Generis) since the date of the latest permission for the Site.
Retrospective Application For Continued Use Of Unit A For D2 And Theatre Purposes And Unit B For Storage Use" APP/A1720/A/12/2186833 was granted for the Site on 20th February 2013, and condition 8 of the Permission required that:

“The use of Unit B, identified on the OS Sitemap received by the Local Planning Authority on 23rd January 2012 shall only be used for purposes defined as falling within Classes B1 or B8 of the Town and Country Planning Use Classes Order 1987 (as amended). The use for such purposes shall be limited to between the hours of 08:00-18:00 Monday to Friday, 09:00-13:00 on Saturday and not at all on Sundays and Bank Holidays. REASON: In order to protect the amenities of occupiers of nearby residential properties.”

- 2.7 However the use of the Site has been the Sui Generis mixed use as described above since the date of that permission, and to this end, the Appellant submits that this is a case where the alleged breach of planning control in the Notice is inaccurate.
- 2.8 This was particularised in this the Appellant’s response to the Council’s Planning Contravention Notice (see enclosure B). Therefore, the alleged change of use does not accurately reflect the use of the Site and as a consequence the matters alleged in the Notice have not occurred on the Site in the form the allegations have been made.

Ground (e): the Enforcement Notice was not properly served

- 2.9 At the time of the issue of the Notice the proprietor of the land to which the land relates is the Appellant. The correct recipients are therefore the directors of Titchfield Festival Theatre Limited, and Unity Trust Bank as mortgagee. The Council was aware of this detail thanks to the Appellant’s response (dated 3rd July 2023) to the Planning Contravention Notice dated 8th June 2023, as well as the covering letter to the same. Despite this, the Council failed to serve the Notice on directors, and erroneously served it on Graham Paul Alexander, Keith Edward Welch, and MK Trustees UK Limited. As a result of this defective service, the Notice was, as a matter of law, invalid as not everyone with an interest in the Appeal Site was promptly notified, thereby causing substantial prejudice to those unnecessarily served, as well as those who were not served.

Ground (f): the steps required by the Notice to be taken, or the activities required by the Notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach

- 2.10 Paragraph 5 sets out what is required to remedy the alleged breach and requires the Appellants to cease using the Site in a Theatre (Sui Generis) use and to remove furniture and technical equipment associated with the alleged unlawful use, as well as infill the alleged unauthorised excavation works. It is submitted that the complete removal of the seating and technical rigs at The Arden Theatre would exceed what is necessary to remedy any breach of planning control which may be constituted by those matters set out in the Notice.

- 2.11 Should the ground (a) not succeed, lesser steps such as ceasing the use of part of Units B and C as an operational theatre whilst allowing the equipment to be stored in situ would constitute a lesser step that would remedy any breach of planning control. Further, given that the Council has erroneously identified the entirety of the Appeal Site as in theatre use, those rooms and areas used for community groups, storage and the Appellant's youth theatre programme, should be allowed to continue in such use.
- 2.12 Furthermore, requirement (ii) of the Notice, to 'Backfill the excavated underground area beneath the Land with a suitable inert material (such as compacted aggregate, soil, or similar) to ground level' is an unnecessary requirement and lesser steps, such as limiting use of that area as storage would overcome the Council's concerns.

Ground (g): the time given to comply with the Notice is too short

- 2.13 Insofar as paragraph 6 of the Notice is concerned, it is submitted that given the need for the Appellants to source specialist contractors skilled in the removal of technical theatre equipment, as well as materials necessary to infill the alleged unauthorised excavation works, the period of two months to cease the use of the Site and three months for the other steps is manifestly short of what should reasonably be allowed. In the circumstances, given the likely upheaval associated with the works, the Appellants submit that a period of 6 months would be more appropriate to comply with this aspect of the Notice.

3 Validity of the Notice

- 3.1 The Appellant submits that the Notice is defective. In particular, paragraph 1 of the Notice provides that it has been issued under paragraph (a) of section 171A(1) of the Town and Country Planning Act 1990 ("the 1990 Act"). This provides that the carrying out of development without the required planning permission constitutes a breach of planning control. However, it is submitted that the Notice should have been issued under paragraph (b) of the 1990 Act which provides that the failure to comply with any condition (or limitation) to which planning permission has been granted constitutes a breach of planning control. This is because the correct breach of planning control is a failure to carry out the development without complying with a condition, namely condition 8 of the permission dated 20th February 2013 known as "Retrospective Application For Continued Use Of Unit A For D2 And Theatre Purposes And Unit B For Storage Use" APP/A1720/A/12/2186833. The Use of Unit B has been a mix of theatre, storage and community uses (Sui Generis) since the date of the Permission granted on appeal, differently from that approved by condition 8 which prohibits the use to classes B1 or B8.
- 3.2 The Appellant therefore submits that this is a case where the alleged breach of planning control comprises "failing to comply with any condition or limitation subject to which planning permission has been granted" and therefore the Notice should have been issued pursuant to paragraph (b) of section 171A(1) of the Act. Instead, the Notice refers to paragraph (a) of section 171A(1), referring

to “carrying out development without the required permission”. The recipient of the Notice is left unsure as to the correct breach of planning control. It follows that the Notice as currently drafted fails to satisfy the statutory requirement of s173(2) of the Act and as a result is defective.

- 3.3 Moreover, the Notice has not sufficiently specified within the requirements (with or without annotation or marking of the enforcement plan) which objects and structures to facilitate the parts iii, iv and v of paragraph 5. Various theatre rehearsal facilities and equipment exist within the red line area of the Notice, as well as smaller seating and lighting, PA and sound equipment facilities. It is impossible for the Appellant to understand the implications of the Notice fully, and comply with it - as areas falling within the Notice red line plan are simply not within theatre use. The Notice is invalid due to this failure to properly identify the use of the land it applies to.
- 3.4 It is submitted that cumulatively these issues necessarily manifest concerns as to the validity of the Notice due to the Council's failure to comply with statutory requirements. It follows that the Notice should be quashed.,

4 Conclusion

- 4.1 The Council have failed to accurately describe the on-going use of the site in the alleged breach and any amendments to the Notice risk prejudice to the Appellants. Therefore the Appeal should succeed on Ground (b).
- 4.2 In the event that the Inspector is not persuaded by ground (b), there is broad policy support in both existing and emerging national policy and in local policy and material considerations therefore the Ground (a) appeal should also succeed.
- 4.3 Given the clear deficiencies in the Notice's drafting and the Council's wrongful service, ground (e) should be successful. Should the appeal fail on Ground (a) significantly less onerous steps should have been sought by the Council that would have dealt with the breach of planning control. These steps should be substituted in to the Notice.
- 4.4 Finally, in the event that the Ground (f) appeal also fails, an extended time limit for compliance should be allowed in relation to the requirements of the Notice.
- 4.5 For the avoidance of doubt, these Summary of Grounds shall be expanded upon in the Appellants' Statement to be submitted during the course of the Appeal.

ENCLOSURE A
Ground (a) particulars

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TOWN & COUNTRY PLANNING ACT 1990 (AS AMENDED BY THE PLANNING & COMPENSATION ACT 1991) – SECTION 174

TOWN AND COUNTRY PLANNING (ENFORCEMENT) (WRITTEN REPRESENTATIONS PROCEDURE) (ENGLAND) REGULATIONS 2002 (STATUTORY INSTRUMENT 2002/2683)

Enforcement Notice appeal against Enforcement Notice issued by Fareham Borough Council

Appeal by: -

**Titchfield Festival Theatre
Mr K Fraser**

In relation to: -

Land at 71-73 St Margarets Lane, Titchfield, Fareham, P014 4BG

GROUND OF APPEAL

INTRODUCTION

On 22 November 2023 an Enforcement Notice was issued and served on the Appellant for a breach of planning control.

MATTERS WHICH CONSTITUTE THE BREACH

Without planning permission: -

- the material change of use of the Land to theatre use (sui generis); and
- an engineering operation to excavate and create an underground area beneath the Land.

REASONS FOR ISSUING THE ENFORCEMENT NOTICE

The reasons given are in paragraph 4 of the 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 DSI, 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.

STEPS FOR COMPLIANCE

The steps to be taken in paragraph 5 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.

TIME FOR COMPLIANCE

The time for compliance as detailed in section 6 are: -

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

LOCATION AND DESCRIPTION OF APPEAL SITE AND SURROUNDING AREA

The site lies on the north eastern side of St Margarets Lane outside of the urban settlement boundary within the Meon Valley Strategic Gap.

St Margaret's Lane is a semi-rural Lane with a mix of residential, commercial and agricultural uses in the vicinity.

The building was historically a former factory. The factory space was subdivided, including external alterations to provide an auditorium, rehearsal rooms, offices and ancillary theatrical functions (this referred to as unit A). Unit B which is connected to Area A has planning permission for storage (B8). To the rear was a further storage building recently connected to units A and B (and referred to as unit C).

RELEVANT HISTORY

List of applications

- 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)

Summary

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 storage use falling within Use Class B8. This use was permitted at the same time as that for Area A in 2012 (P/12/0050/CU).

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). Area C was most recently used as a warehouse by a company called Welbro. Recent permission (P/22/0255/FP + amendments have now linked unit B to unit C)

RELEVANT PLANNING POLICY

National Legislation/Policy/Guidance

- Town and Country Planning Act 1990
- National Planning Policy Framework (NPPF)
- Planning Practice Guidance (PPG)

Fareham Local Plan 2037

- DS1 - Development in the Countryside
- DS2 - Development in the Strategic Gaps
- DS3 – Landscape
- R2 – Out-of-Town Proposals for Town Centre Uses
- TIN1 – Sustainable Transport
- TIN2 – Highway Safety and Road Network
- D1 - High Quality Design and Placemaking
- D2 - Ensuring Good Environmental Conditions

GROUNDS FOR THE APPEAL

Ground A - *That planning permission should be granted.*

The material change of use of the Land to theatre use (sui generis)

Historically Unit B has used for the following: -

- Scenery storage for the theatre (Theatre Use)
- Rehearsals space for the theatre (Theatre Use)
- Scenery storage for other theatres (B8 use)
- The provision of the 'Men's Shed' a community use (D2 use)

The proposals do not involve any external changes beyond what already has planning permission.

Location

Under the Fareham Local Plan 2037 there are approximately 1000 new houses proposed within the Western Wards and apart from the current site there are no theatres proposed within the western wards. In addition, there no late night buses from the Town Centre to either Whiteley or the wester wards. Therefore, any residents of these two areas would have to drive to Fareham.

In Fareham nowhere on the A27 corridor is not within an unsustainable location. The key issue is accessibility.

There two theatres are already in operation therefore would the operation of the third (on its own) significantly increase car movements to an unacceptable level.

The applicant will provide a transport report that addresses the sustainability of the site.

Out-of-Town Proposals for Town Centre Uses

Theatres are recognised in the Fareham Local Plan and the National Planning Policy Framework 2023 as a main town centre use. Therefore, policy R2 of the Local Plan which relates to Out-of-Town Proposals for Town Centre Uses is relevant.

In considering the sequential approach regard must be had to the Supreme Court decision in *Tesco Stores Ltd v. Dundee City Council* [2012] UKSC13, which is a material consideration in its application. This case considers the meaning of 'suitable' whereby the judgement held that 'suitable' relates directly to the development proposed by the applicant, subject to a reasonable level of flexibility and realism being shown by the developers. LPAs should not require development to be altered or reduced so that it can be made to fit an alternative site, as to do so may be to make an inappropriate business decision on behalf of the developer. The Dundee judgment is important in that it considers the focus of the local planning guidance relevant to that proposed development. It notes the focus: "...is upon the availability of sites which might accommodate the proposed development and the requirements of the developer..." (paragraph 27).

Accordingly, the principal issue is whether there are any suitable sites in an established centre or edge of centre location that are available now and can meet the same market and locational requirements to provide the space needed for the scheme proposed.

A sequential test will be provided with the full statement.

Impact assessment

As the site is over 500 sq. mts. an impact assessment on the existing town centre theatres will be provided as part of the full appeal statement.

Impact on neighbours

Policy D2 of the Fareham Plan states development must ensure good environmental conditions for all new and existing users of buildings and external space. The policy goes on to state development proposals, including changes of use, will be permitted where they do not have an unacceptable adverse environmental impact on neighbouring occupants.

When the Planning Inspector considered the previous appeal (P/12/0050/CU) which was for a much smaller theatre (210 seats), he concluded any disturbance from patrons coming and going from the theatre would be mitigated by the limited number of cars accommodated and by the restricted opening hours and performance days.

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. The full statement will demonstrate that together with the existing theatres on site the introduction of an additional theatre would not result in a significant increase in noise from patrons arriving and leaving the building.

A report indicating how the site will be managed together with an acoustic report will demonstrate that there would not be material harm to the living conditions of the neighbouring residential properties.

Parking

The now withdrawn County parking standard is 1 space per 5 seats for theatre development. Which provides a useful benchmark.

At present the site is able to accommodate 50 cars when managed plus 35 at the garden centre opposite. This would give a total of 85 spaces. Only 5 short of the required amount. Added to this there is an agreement with the Holiday Inn for car parking.

The appellant is exploring other options, and a car parking management plan will be provided with the full appeal statement. As such it is argued therefore that there is sufficient accessible parking available for the proposed use.

This will be covered in a highway statement.

A section 106 will be submitted as part of the full appeal statement in relation to parking matters as the parking is outside of the red line of the plan attached to the enforcement notice,

An engineering operation to excavate and create an underground area beneath the Land.

If the inspector considers that the use as a theatre is acceptable then it goes hand in hand that the engineering operations to create the underground area should be retained.

Notwithstanding this even if the theatre use is considered unacceptable the underground areas could be retained for use in connection with storage.

SUMMARY OF GROUND A APPEAL

A sequential test will demonstrate that there are no alternative sites in the existing centres or parades which could have accommodated the facility and that this is an acceptable location for a theatre.

An impact assessment will demonstrate that the development does not have a significant adverse effect on the vitality or viability of existing or proposed retail centres and parade.

The addition of the Arden theatre will not result in a significant increase in noise from patrons arriving and leaving the building and as such there would be no detrimental impact on the living conditions of the occupiers of the neighbouring residential properties.

An acoustic report will confirm any noise emanating from the building would not be at levels that would harm the living conditions of the neighbouring residential properties.

A management plan together with the highways report will confirm that there will be adequate accessible available parking spaces which will not result in unacceptable harm to the safety of users of the highway.

As such the development would comply with National Planning Policy and Policies DS1, R2, D2, TIN1 and TIN2 of the Fareham Local Plan 2037.

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Southampton, Fareham and Havant Legal
Partnership
Southampton City Council
Civic Centre
Southampton
SO14 7LY

By email only to: rwright@fareham.gov.uk

3rd July 2023

Your Reference: DP/PET/19/71575/B
Our Reference: RST/T4090-13

Direct Line: 0117 930 9577
Direct Fax: 0117 929 3369
Email: rstanton@thrings.com

Dear Mr Wright

Planning Contravention Notice Re: Land at 71-73 St Margarets Lane, Titchfield, Fareham.

I am instructed by Titchfield Festival Theatre Limited who received two Planning Contravention Notices dated 8th June 2023 (“PCNs”) in respect of the use of the 71-73 St Margarets Lane, Titchfield, Fareham.

My client’s interest in 71 St Margaret’s Lane stems from a lease granted by the former proprietors (trading as Paultons Properties) on 29th September 2010 (see enclosure A to this letter). From that date they occupied 73 and they purchased numbers 71 and 73 on 30th November 2021; please see Enclosure B to this letter for an email from their solicitors confirming the completion of that transaction.

We have set out the responses to the PCN in the attached document in so far as my client is able to answer them. We have not dealt with the period prior to 29th September 2010 which pre-dates my client’s occupation of the number 73 for the reasons outlined above. Given the nature of the information requested in the PCNs, we trust the Council is interested in the period of occupation of the Property from 29th September 2010 onwards.

Given my client has only occupied the Property from that date, there are a number of questions that my client is unable to answer as they fall outside of their first-hand knowledge.

Please acknowledge receipt of this correspondence.

Yours sincerely,



Rebecca Stanton

Solicitor

Thrings LLP

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Response to Planning Contravention Notice dated 8 June 2023 served by Southampton City Council

(PCN Reference: HH/ENV-054525)

Town and Country Planning Act 1990 (as amended by the Planning Compensation Act 1991)
("the 1990 Act")

in relation to Land at 71-73 St Margaret's Lane, Titchfield, Fareham.

("the Site")

Our client: Titchfield Festival Theatre Limited

1. State your full name

Kevin Fraser as a director of and on behalf of Titchfield Festival Theatre Limited.

2. State the nature of your interest in the land

As a Director for Titchfield Festival Theatre Limited, freeholder.

3. State the full name and address, where applicable of:

a. The freeholder of the Land and date purchased;

Titchfield Festival Theatre Limited purchased the freehold of numbers 71 and 73 St Margaret's lane on 30th November 2021.

b. The lessee of the Land and date lease commenced;

c. The mortgagee of the Land (together with Account Number/Mortgage Roll Number);

Unity Trust Bank (see enclosure 1).

d. Any other person with an interest in the Land and what that interest is. That will include anyone you allow on site.

This question goes beyond the powers of s171C(1) as not everyone who is allowed on to site accrues an interest in the Land.

e. State your interest in the land e.g. operator, contractor, tenant, freeholder, leaseholder, mortgagee, occupier etc.

Freeholder.

f. Please provide the names and addresses of any other persons with an interest including any persons occupying the Land.

No individual persons have an interest in the Land.

4. Does anyone occupying the land have any:

a. Health needs

b. Welfare needs; or

c. Educational needs

that the local planning authority should be aware of when considering whether to take any further enforcement action?

If so, please provide details of such needs

d. Are there any children below the age of 16 on the site?

e. if your answer is 'yes' to question 5d) do they attend a local school.

The entirety of this question 4 goes beyond the powers of s 171C(2) and (3).

5. With regard to current occupants are you aware of other people who may claim a sufficient interest in the land to justify service of a copy of the notice?

This question goes beyond the powers of s171C - it is a matter for Southampton City Council to decide on whom a planning contravention notice should be served.

6. For how long have been occupying Area B as shown on the attached plan? (Please supply evidence of occupation).

Since October 2010.

7. For how long have you been occupying Area C as shown on the attached plan? Please supply evidence of occupation.

Since July 2022.

8. What is the current use of Area B shown on the attached plan?

For use relating to the theatre located at 73 St Margarets Lane, Titchfield, PO14 4BG.

9. For how long has the use of Area B described in your answer to question 8 been taking place? Please supply any evidence of the duration of this use.

Since October 2010 when Area B was acquired by Titchfield Festival Theatre Limited.

10. Prior to the current use of Area B described in your answer to question 8 above, what was the use of Area B?

Unknown.

11. For how long did the previous use of Area B described in your answer to question 10 above taken place? Please supply any evidence of the duration of this previous use.

Unknown.

12. What is the current use of Area C shown on the attached plan?

For use relating to the theatre located at 73 St Margarets Lane, Titchfield, PO14 4BG.

13. For how long has the use of Area C described in your answer to question 12 been taking place? Please supply any evidence of the duration of this use.

Since being occupied by Titchfield Festival Theatre Limited.

14. Prior to the current use of Area C described in your answer to question 12 above, what was the use of Area C?

Unknown.

15. For how long did the previous use of Area C as described in your answer to question 14 above take place? Please supply any evidence of the duration of this previous use.

Unknown.

I hereby state that the answers set out in this Reply Form are to the best of my knowledge a full, true, and correct Statement of all the information required by the said Notice.

Print Name MR K FRASER

A handwritten signature in blue ink, appearing to read 'K Fraser', is shown within a light blue rectangular box.

Signed

Date 3RD July 2023