

**TOWN & COUNTRY PLANNING ACT 1990 (AS AMENDED BY THE PLANNING & COMPENSATION ACT 1991) – SECTIONS 174 and 177**

**TOWN AND COUNTRY PLANNING (ENFORCEMENT) (INQUIRIES PROCEDURE) (ENGLAND) RULES 2002**

Planning Appeal against Planning Refusal

Enforcement Notice Appeal against Enforcement Notice issued by Fareham Borough Council

Appeal by

**Titchfield Festival Theatre**

**Land at 71-73 St Margarets Lane, Titchfield PO14 4BG**

STATEMENT OF CASE FOR THE APPELLANT

APPEAL REFERENCES:

**APP/A1720/C/23/3336046**

1 March 2024

## CONTENTS

		Page
1.	Introduction	3
2.	Site Description and Background	4
3.	Planning History	8
4.	Matters Asserted to Constitute a Breach	13
5.	Reasons for Issuing the Enforcement Notice	13
6.	Steps for Compliance	14
7.	Time for Compliance	14
8.	Enforcement History	14
9.	Planning Policy Context	16
10.	Grounds for the Planning Enforcement Appeal	17
10.2	Ground A	17
10.43	Conclusion to Ground A	32
10.48.	Ground B	32
10.50.	Ground E	33
10.51	Ground F	33
10.55	Ground G	35
	List of Documents	36

## 1. INTRODUCTION

1.1. This appeal is made under Sections 174 and 177 of the Town and Country Planning Act 1990 on behalf of Titchfield Festival Theatre.

1.2. On 22 November 2023 an Enforcement Notice was issued and served on the Appellant alleging 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 alleged breach relates to land of which the Appellant is registered proprietor under title number NN143623, at 71-73 St Margaret’s Lane, Titchfield, PO11 4BG. See **Appendix 1**

## 2. SITE DESCRIPTION

- 2.1. Titchfield Festival Theatre (TFT) is a well-respected community theatre company that has grown in combination with the historic strong association of the Titchfield area with William Shakespeare. He is believed to have lived in the village and taught at a former local grammar school with the assistance of his patron the Earl of Southampton.
- 2.2. Historically, TFT started performances in Titchfield Abbey, and then occupied various sites in Titchfield (Parish Rooms, Great Barn, The Recreation Ground, Queens Head plus the Thatched Barn in Brook Lane Warsash) until taking over the lease of 73 St Margaret's Lane in 2010. The planning history to the Site is set out at paragraph 3 below. In 2021, TFT purchased the whole site from Welbro who had been using No 71 lawfully as a warehouse. At that time 71 St Margaret's Lane was separated from 73 St Margaret's Lane by a 1.5m gap. In 2022 planning permission (P/22/0255/FP) was granted to connect 71 and 73 together with alterations to the roof.
- 2.3. At the time of writing, TFT is the registered proprietor of both 71 and 73, ('the Site') pursuant to a transfer dated 30<sup>th</sup> November 2021. The Site lies on the north-eastern side of St Margaret's Lane, approximately 200m from the St Margaret's roundabout on the A27, and outside of the urban settlement boundary within the Meon Valley Strategic Gap. **Appendix 2**
- 2.4. St Margaret's Lane is a semi-rural lane with a mix of residential, commercial and agricultural uses in the vicinity.
- 2.5. The land on which the Site is located slopes from East to West with the front of the site approximately 2m. higher than the rear.
- 2.6. Development of the TFT Site has been to a very high environmental standard including significantly increasing insulation levels, the installation of 100kw

of solar panels and battery storage, a bio-mass boiler fuelled with sustainably sourced wood pellets and a rain-water recycling system.

- 2.7. The Enforcement Notice in question relates to the land identified within the red edging in the plan below:



- 2.8. The area identified has in previous correspondence between both parties, been referred to as separate areas known as unit B and C, and references in this statement to those corresponding with the below. The area of the building not edged with red is known as unit A. Units A and B together form 73 St Margaret's Lane, and unit C number 71.



## Background

- 2.9. TFT is a not-for-profit company and attracts a broad age range to its membership and audience figures. TFT do not charge a fee to join and is solely funded through their own box office receipts. The company also has an expanding Youth Theatre.
- 2.10. Current active membership is over 800 with an audience mailing list in excess of 8,000. The company employs professional Directors for its productions and owns its own technical equipment, seating, wardrobe and properties. The company does not rely on sponsorship and grants (either national or local) to ensure it continues its activities. TFT is recognised as a Charity by The Charity Commission.
- 2.11. TFT, because it is not a small amateur company, have always required considerable space for their productions, rehearsal and storage. The company has a large wardrobe, property stock and a vast amount of technical equipment including their own seating. Area B was utilised as well as off-site facilities.
- 2.12. Enshrined within the objects of the constitution TFT has the following wording:

*The charity's objects ('the objects') are:*

- a) *The advancement of the arts, in particular the dramatic and performing arts, and the development of public appreciation of such arts by the provision of a theatre and facilities for the presentation of public performances*
- b) *To advance public education in the arts, including the theory that William Shakespeare lived and worked in Southern Hampshire.*

2.13. As a community-based theatre and educational charity, in addition to producing and performing plays for the public itself, TFT have encouraged and provided facilities for:

- More than 800 Associates, that are the active members of the theatre assisting with directing, acting, crew, technician support, box office, front of house and bar functions. The site currently employs 14 people.
- 8,000 Patrons.
- Titchfield Festival Youth Theatre Limited, that has over 350 children attending the theatre for classes every week. They use the stages for their performances.
- Titchfield Youth Theatre which includes 55 members aged 4-16
- Titchfield Youth Associates which has 35 members aged 14-21
- Act Your Age, a small group of senior actors who tour care homes, and schools.
- South Coast Symphonia, a 40 piece orchestra.
- Fareham Men's Shed who have their workshop and community hub within the Arden theatre.
- Swanwick Lions, who are supported with storage space.
- Locks Heath Rotary Club who are supported with storage space.
- 1<sup>st</sup> Park Gate Sea Scouts, who are supported with storage.
- Titchfield Festival Theatre Productions Limited, that works on outreach into local schools, supplies costumes and props to other groups.

2.14. The operation of TFT provides a positive indirect contribution to the local economy. It is supported by a local landlord who says that takings do increase on show weeks, probably by as much as 10 to 15%. The landlord will speak at the hearing.

2.15. Bearing the above in mind, it becomes apparent that for TFT to be situated anywhere else other than Titchfield defeats the company's objects. Shakespeare is now so closely associated with Titchfield that the Festival

Theatre is becoming almost part of everyday life much the same as the Festival Theatre at Stratford was in the early beginnings before it became the Royal Shakespeare Company.



### 3. PLANNING HISTORY

- 3.1. The planning history of the TFT Site is summarised below. The Statement of Case adopts the same identification lettering used by Fareham Borough Council ('FBC') in their Notice with parts of the building described as units or areas A, B and C. See plan at **Appendix 3**.
- 3.2. P/12/0050/CU – Retrospective application for continued use of Area A for D2 and theatre purposes and Area B for storage use. Temporary permission granted – Appeal lodged against temporary permission and allowed with restrictive conditions 20 February 2013 (Areas A & B) **Appendix 4**
- 3.3. P/17/1024/FP – Mansard roof and alterations to front elevation. Approved 26 September 2017 (Area A)
- 3.4. 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)
- 3.5. 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)
- 3.6. 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) **Appendix 5**
- 3.7. 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)
- 3.8. P/22/0255/MA/A – Non-Material Amendment to approved application (Area C)

- 3.9. 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)
- 3.10. 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)
- 3.11. P/23/0538/FP - Extension to existing loading bay to provide additional theatre storage - Under Consideration (Area B)

#### Summary of Planning History

- 3.12. Area A (also known, along with Area B, as 73 St Margaret's Lane) has planning permission for conversion from a Warehouse (B8) to theatre use (Sui Generis). This 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 permanent theatre use (P/12/0050/CU). (APP/A1720/A/12/2186833).
- 3.13. 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). Since 2010 this area has been used for a mix of theatre use, storage and community uses.
- 3.14. Area C (also known as 71 St Margaret's Lane or 'Welbro') 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. Up until recently this unit was separated from number 73 with a 1.5 metre gap.

- 3.15. TFT purchased the Welbro site in 2021 and in 2022 planning permission was granted in to connect Area B to Area C (P/22/0255/FP) together with alterations to the roof.
- 3.16. The current situation is as follows: -
- 3.16.1 Planning application P/22/0255/FP has been implemented and units B and C have been connected externally. Internally the western external wall of Area B and the eastern external wall of Area C have been removed and Area B has been extended to connect with Area C. In accordance with planning permission, this has created one large building on the site (Units A, B and C). The warehouse use previously carried out in Area C has ceased and 'Welbro' have vacated the site. See plans at **Appendix 26**.
- 3.16.2 The site of Areas A, B & C now comprise 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. This is as permitted under the 2012 appeal (**Appendix 4**). Area B has at all material times since 2012 been in use for scenery storage for plays in the Acorn and Oak theatre, performance rehearsals and for performances in the Oberon (a large studio space with seating).
- 3.16.3 The limited extension of Area B into Area C has facilitated the creation of a third theatre "the Arden Theatre". The Arden theatre opened in August 2023 and has been in use since that date, hosting performances like Les Misérables and The Lion the Witch and The Wardrobe. The number of seats in the new theatre is 463 with 'backstage' facilities provided in Area C. Access to the Theatre is via an existing doorway on the eastern side of the building. TFT are unaware of any complaint relating to noise, parking or anything else relevant to planning considerations during that time.

- 3.16.4 The remainder of Unit C is used for ancillary purposes related to the theatre purposes including rehearsal space and changing rooms.
- 3.16.5 There are minor external changes to the building for example re-alignment of windows however these have not been identified within the enforcement notice.
- 3.16.6 Externally, the site has space for the parking of up to 43 cars (see plan at **Appendix 6**). In addition to this there is parking available in the garden centre opposite (40 spaces) and at the Holiday Inn (up to 90 spaces). See plan at **Appendix 7**. The highways statement provides more detail.
- 3.16.7 A planning application will be submitted to provide additional parking off St Margaret's Lane in a field opposite the site that TFT has an option to lease for 10 years. This would provide 97 spaces opposite the theatre.
- 3.16.8 Historically TFT have tried to secure use of the field on the western side of the site for car parking. However, Hampshire County Council who own the field will not support the proposal. Also, historically TFT have sought to use the unoccupied car park owned by Hampshire County Council off the St Margaret's roundabout.

#### Other relevant planning permissions

- 3.17. P/12/0120/FP and P/13/0575/FP - Locks Heath Free Church - Alterations and extensions to existing church to provide new worship area, provision of an auditorium that could be used for conferences, an activity hall for third parties with additional car parking. In this case, while the application was refused on other grounds, officers did not agree that the proposal should be subject to a 'sequential test' given the community use of the location. An inconsistent approach is being applied to Titchfield Festival Theatre. **Appendix 8 and 8a.**

### Current Operation

- 3.18. At present there are three theatres operating from the site

Acorn - Capacity 96

Oak - Capacity 188

Arden - Capacity 463

- 3.19. The TFT winter brochure is attached at **Appendix 9** Showing the planned productions from January to October 2024. It is the Theatres intention to provide productions on 150 days in 2024.

### Timeline of the Development of Titchfield Festival Theatre Unit B

- 3.20. The proof of evidence from Kevin Fraser will provide a timeline for the use of unit B from 2010 up until the creation of the Arden Theatre. This will include a history from the date of purchase and will include plans showing how the layout of unit B changed over the period as it became increasingly linked to the use of unit A
- 3.21. The proof of evidence by Kevin Fraser will demonstrate that over the past 12 years, Area B of 73 St Margaret's Lane has been continuously in a use ancillary to the lawful permitted use of unit A. More specifically for scenery storage, rehearsal space, a meeting space for the Fareham 'Men's Shed' a community use and for performances in the Oberon rehearsal room. Current plans of the building are attached at **Appendix 26**.

#### 4. MATTERS ASSERTED TO CONSTITUTE THE BREACH

- 4.1. The breach alleges that a material change of use of the land to a theatre use has occurred within the last ten years. Further, that an engineering operation to excavate and create an underground area beneath the Land has occurred within the last four years.

#### 5. REASONS FOR ISSUING THE ENFORCEMENT NOTICE

- 5.1. The reasons given are in paragraph 4 of the notice are: -

*"It appears to the Council that the above breach of planning control has occurred within the last 10 years.*

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

*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.*

*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.*

*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*

*Parking provision at the site is not acceptable which would have an unacceptable impact on highway safety.*

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

## **6. STEPS FOR COMPLIANCE**

6.1. 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.

## **7. TIME FOR COMPLIANCE**

7.1. 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.

## **8. ENFORCEMENT HISTORY**

8.1. On 8th June 2023 Fareham Borough Council issued two Planning Contravention Notices in respect of alleged unauthorised material change of

use operations at the Application Site. Notice A related to 71 St Margaret's Lane (identified as Area A) and Notice B to 72 and 73 (identified as Area B) and responses were provided on 3rd July.

- 8.2. The Council's response on 18th July identified the following outstanding issues:

Area A – which the Council did not expand on and commented that their solicitor would contact TFT regarding this. No further communication was received.

Areas B and C – engineering works to create a pit for the stage to accommodate a 450- seat capacity theatre, and material change of use to theatre.

- 8.3. Importantly, the Council invited the theatre to make a Certificate of Lawfulness application to regularise the position at Unit B on the basis that it has been in operation with a mixed use (within use class Sui Generis) for over 10 years, acquiring immunity from enforcement action.

- 8.4. In 2023 the Council served a Planning Contravention Notice in relation to the Application Site. The Council invited a formal application to regularise the use of the Site in planning terms.

- 8.5. Responses to all PCN's are attached at **Appendix 10**



## 9. PLANNING POLICY CONTEXT

### 9.1. National Legislation/Policy/Guidance

- Town and Country Planning Act 1990
- National Planning Policy Framework (NPPF)
- Planning Practice Guidance (PPG) See **Appendix 23**

### 9.2. Fareham Local Plan 2037 (see **Appendix 11** for policies)

- DS1 - Development in the Countryside
- DS2 - Development in the Strategic Gaps
- DS3 - Landscape
- R2 - Out-of-Town Proposals for Town Centre Uses
- R4 - Community and Leisure Facilities
- TIN1 - Sustainable Transport
- TIN2 - Highway Safety and Road Network
- D1 - High Quality Design and Placemaking
- D2 - Ensuring Good Environmental Conditions

### 9.3. Supplementary Planning Documents

- Fareham Borough Council Non-Residential Parking Standards SPD

## 10. GROUNDS FOR THE PLANNING ENFORCEMENT APPEAL

10.1. The following grounds support the appeal: -

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

10.2. In considering whether planning permission ought to be granted for the deemed planning application, the main issues are:

- whether the site is a suitable location for the use, having regard to its accessibility by sustainable modes of transport,
- the effect of the development on the vitality or viability of the Borough's centres or parades,
- the effect of the development on the living conditions of neighbouring occupiers with regard to noise and disturbance, and
- whether the development makes adequate provision for parking provision in terms of highway safety.
- Whether the site is a suitable location for the use, having regard to its accessibility by sustainable modes of transport.

10.2. Accessibility and sustainability issues are covered in the proof of evidence prepared by Tom Fisher from Paul Basham Associates.

10.3. It is not disputed that the site is located outside of the urban settlement boundary as recognised within the Fareham Local Plan, therefore, it is important to have regard to policy DS1: Development in the Countryside of the Council's Local Plan. Policy DS1 states: -

*'a) 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:*

Note only the relevant caveats of the policy have been detailed below: -

*b) Is for development associated with an existing lawful dwelling, or 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*

*d) Is for a new small-scale employment development to convert or extend an existing building, or replace a redundant or derelict structure, or*

*i) Can demonstrate a requirement for a location outside of the urban area'*

10.4. Consideration has been given to part b) of the policy which relates to previously developed land. The development relates to internal work within an existing. As such it is considered that the development has taken place on previously developed land. Policy DS1 aims to resist encroachment of development into non-urban unsustainable areas. However, as the transport statement points out there is already an acceptance of the Theatre use in this location. In addition, if the new theatre is not run on the same nights as the other two then the increase in vehicle movements is not significant as such the site is considered appropriate for its use.

10.5. The theatre could be considered a community and leisure facility and therefore, consideration has also been given to part c) of policy DS1 which states development for community and leisure facilities or tourism will be supported where it can be demonstrated that there is a local need for the facility that cannot be met by existing facilities elsewhere.

10.6. Below is a list of existing Theatres in the Solent Area: -

- Berry Theatre - Hedge End,
- The Point -Eastleigh,
- Kings Theatre - Portsmouth,
- New Theatre Royal - Portsmouth,
- Groundlings Theatre - Portsmouth,
- The Guildhall - Portsmouth.
- Guildhall- Southampton,
- Turner Sims- Southampton,
- Mayflower - Southampton,
- The Maskers- Southampton.
- MAST -Southampton,
- Plaza - Romsey,
- The Station-Hayling Island, The Spring- Havant

10.7. In Fareham

- Ashcroft Theatre (which FBC will no longer support)
- Fareham Live – No opening date other than 2024
- Titchfield Festival Theatre.
- The Great Barn -The company already operate from Titchfield providing Shakespeare plays.

10.8. In Gosport

- None

10.9. A map showing the broad location of the *nearby* Theatres is shown at **Appendix 12**. It should be noted that the nearest Theatre to the West is the Berry Theatre at West End and to the East, in Portsmouth. It is evident that there is a cultural hole within the centre of the map where there is a dearth of Theatres.

- 10.10. In addition to this under the new local plan there are approximately 1000 new houses proposed within the Western Wards (Area from Meon Valley to the western edge of Fareham Borough). To the north in Whiteley a further 3000 new houses are proposed (Winchester Local Plan) and at a later stage Welbourne (approx. 6000 houses) (to the north of Fareham will start to be developed. See local plan policy - **Appendix 13**. The local plan does not propose any additional theatres.
- 10.11. There are no late night buses to or from the western wards or Whiteley to Fareham centre. To enable usage of The Ashcroft and Fernham Hall neither are there any leisure or community facilities being proposed. This will be covered in the proof of evidence covered by Tom Fisher from Paul Basham Associates.
- 10.12. It is argued therefore that there is a need for an additional Theatre as such the development would comply with part c) of policy DS1 of the Local Plan.
- 10.13. Also, as part of policy DS1, proposals will need to demonstrate that they: -
- j) Protect and enhance landscapes, sites of biodiversity or geological value and soils, and*
  - Recognise the intrinsic character and beauty of the countryside and, if relevant, do not significantly affect the integrity of a Strategic Gap, and*
  - k) Maintain the character of the undeveloped coast, and*
  - l) Demonstrate a preference for the development of poorer quality agricultural land rather than that of higher quality'.*
- 10.14. As the proposal does not extend the building beyond the existing footprint, there is not conflict with criteria j) – m)

**The effect of the development on the vitality or viability of the Borough's centres or parades,**

10.15. Theatres are recognised in the Fareham Local Plan (hereinafter referred to as the 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. Policy R2 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;*
- f) or traffic implications in line with Policy D2.*

*Where a proposal for main town centre use over 500 m<sup>2</sup> (gross), or an extension which increases overall floorspace beyond 500 m<sup>2</sup> (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'.*

10.16. In relation to the Sequential Test the inspectors' attention is drawn to paragraph 93 of the NPPF which states: *This sequential approach should not be applied to applications for small scale rural offices or other small scale*

*rural development*. There is no definition in the JLP, PPG or the Framework of 'small scale rural development'.

10.17. In relation to 'small scale' it is important to consider: -

- Two theatres already exist on site which could be used together and would cater for approximately 300 people. The new theatre if operated at full capacity would cater for 465 people. If the other theatres do not operate on the same day, then the increase is only 165 people. This is not considered significant.
- Existing parking could accommodate the use (On site, holiday inn and garden centre).
- Potential future parking would remove the need for the holiday inn and potentially the garden centre.
- Due to the distance from Fareham Town Centre and other centres it is unlikely to have any material impact on Town and district shopping centres.
- There are no external alterations to the building.
- With regard to unsustainability the site is already a destination in a rural area, which is generally less accessible and where travel by car would be the primary means of travel.
- It should be noted that policy R2 (**Appendix 11**) of the local plan does not refer to paragraph 93 nor is there a definition of small scale in relation to policy R2. If it is the council's contention that the threshold of 500 m<sup>2</sup> refers to small scale then I draw the inspector attention to paragraph 11.7 of the Fareham Retail and Commercial Leisure Study Update Report 2020 (**Appendix 25**). It is clear that the reason for reducing the threshold to 500m<sup>2</sup> was for the retail impact on the shopping centres not for leisure uses. The supporting paragraphs to policy R2 only refer to retail not leisure. **Appendices 11 and 14**

On this basis it is argued that the development is small scale and therefore sequential test is not required.

10.18. If it is considered that a sequential test is required then it is important to have regard to the following: -

- 1) I draw the inspectors attention to the comments by officers and planning policy that the sequential test was required for Titchfield only. In granting the permission the sequential test was considered under the policy at the time under policy CS3 of the previous local plan and the now withdrawn PPS4. The case officers report (**Appendix 15**): -

*The proposed use is a town centre use, as defined in PPS4 and should ideally be located in one of the Borough's centres, unless it can be demonstrated why other similar venues in town and local/district centres are inappropriate. In light of this, a sequential test has been undertaken by the applicant, which looks at alternative sites across the Borough. Whilst the list is not exhaustive, it is considered appropriate that the Titchfield Festival Theatre look for units primarily in Titchfield and the surrounding area. The test considers other venues such as Ferneham Hall, the Ashcroft Centre, community centres, church halls and other industrial buildings. These venues are discounted on the basis of one or more of the following issues; their limited availability, cost, limited space, inadequate facilities and inappropriate location. It has been established that there is little in the way of usable units of the size required within the vicinity of Titchfield and therefore, re-use of this unit would appear to be one of the few options available to the applicant. The former warehouse offers adequate space for performance and ancillary facilities. The location of the use outside existing centres, while not considered the most sustainable of locations, is considered the best practicable solution available to the applicant, given the significant lack of viable or available alternatives. In light of the above, the proposal*



*would not adversely impact upon the vitality or viability of existing centres, in accordance with Policy CS3 of the Core Strategy.*

Although it is 12 years since the permission the situation has not changed. TFT are still very much a local community theatre. In addition the offices which manage the theatre production are already on site, together with storage and rehearsal rooms. TFT want to keep all facilities in one place. The applicants sequential test from 2012 has been included. **Appendix 16.**

- 2) I also draw the inspectors attention to a planning application in 2012 at Locks Heath Free Church for a 500 seat auditorium was considered by planning officers not to require a sequential test. See Appendix 17 for decision notice and officers report. The site is not in an established centre or parade. Notwithstanding this the officers stated that a sequential test was not required for the following reasons: -

*The scale of the auditorium has been called into question by objectors to the scheme and it is suggested that the building will compete with Town Centre facilities such as Ferneham Hall, such that the proposal should be subject to a 'sequential test' to justify its provision and location. Officers do not agree with this view. First the primary function of the auditorium is to provide for increasing congregation size. Whilst there are those who raise issue with how 'local' the Church is, nonetheless it is evident that the majority of attendees are from the western wards area. Some travel from Whiteley and from Fareham but the majority are what might reasonably be considered as 'local'. The area continues to be subject to further residential growth and there is no reason to believe that the enlarged capability of the building will not be ultimately used by those mainly from the surrounding wards so that the primary function of the building is to serve those people and not to 'compete' with similar facilities elsewhere.*

Although the application was refused a subsequent resubmitted application) was permitted on the basis that the applicant states that *no commercial organisations will be hiring the worship area for non-church activities*. However, the authority did not place a restrictive condition on the use (see decision notice at **Appendix 8a**). As such the churches web site (now known as Waypoint Church) are advertising the use of the auditorium for commercial use.

- 3) In considering the sequential test, the inspectors attention is drawn to two appeal decisions relating to the sequential test and also that the NPPF does not require consideration of the disaggregation of sites.

Tesco Stores Ltd v. Dundee City Council (see **Appendix 18**)

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).

Rushden Lakes- appeal ref APP/G2815/V/12/2190175 (see **Appendix 19**)

The key point is that sites must be available now and disaggregation of uses is not required.

- 10.19. Paragraph 7.23 of the local plan states that - *The Council will be pragmatic as to the level of evidence required in support of such proposals as this should be proportionate to the nature of the proposal under consideration.* As of the date of this statement the council have not indicated the level of evidence required or even if a sequential test is required.
- 10.20. Notwithstanding the above, a sequential test in accordance with policy R2 has been considered as part of the appeal. The sequential test requires: -
- (i) assessing whether there are any available sites that are suitable in sequentially preferable locations;
  - (ii) acknowledging the market and locational requirements of the uses concerned;
  - (iii) ensuring the assessment is proportionate and appropriate to the given proposal; and
  - (iv) being flexible to demonstrate whether more central sites have been fully considered.
- 10.21. Accordingly, the principal issue is whether there are any suitable sites in an established centre or parades that are available now and can meet the same market and locational requirements to provide the space needed for the scheme proposed. The space required would be equivalent to a warehouse of approx. 700 -1000 m<sup>2</sup> to provide for the main auditorium, rehearsal space and storage space. In addition, that there is sufficient car parking at or near that location.
- 10.22. Fareham has the following centres and parades which are identified in in paragraph 7.4 of the Local Plan 2037.

### Fareham Town Centre

- 10.23. Fareham has recently reviewed the town centre uses as part of the new local plan and it is not proposed to add any further community facilities (apart from the revamped Fernham Hall, now Fareham Live). The main additional development is an allocation for 800 houses though this is a generic allocation.

### District Centres

- 10.24. There are three district centres identified in the Fareham Local Plan 2027. These are at Locks Heath, Stubbington and Portchester. The local plan defines the extent of the centres in the local as blue as shown the plans at **Appendix 20**. The key issue is the blue line is shown tightly drawn around the buildings offering little space for development. Certainly not for a warehouse type size.
- 10.25. Welbourne is a new housing development to the north of Fareham. This has yet to be developed.

### Local Centres and Small Parades

- 10.26. As with district centres the local centres and parades would be too small to facilitate a theatre of the size required.
- 10.27. It is argued therefore that there are no sites available for a theatre of this size within centres and parades and therefore the sequential test is met. In light of the above and in particular with the existence on site the appellant would like clarification from the council on the extent of any required sequential test.

### Vitality Or Viability

- 10.28. As the proposal is for a scheme in excess of 500 m<sup>2</sup> 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.
- 10.29. It should be noted that the figure of 500m<sup>2</sup> in the local plan is far lower than the figure within the NPPF paragraph 94 (see **Appendix 23**) which is 2,500m<sup>2</sup>.

### Vitality and Viability considerations

- 10.30. With the imminent closure of the Ashcroft Centre there would be only one Theatre in Fareham (Fareham Live) that TFT would potentially be in competition with. Together with any impact on ancillary consumer choice and trade in terms of pubs and restaurants. The key elements to consider are:
- Consumer offering. The consumer offering at TFT would be different from Fareham Live. See list of events for TFT at **Appendix 9**. Fareham Live is not yet open but it will be managed by Trafalgar Entertainments. A list from one of their other venues is provided at **Appendix 21** as well as the last acts to perform at Ferneham Hall before it closed **Appendix 22**. As can be seen Fareham Live offer professional acts run in a much larger venue (700 seats). The letter of support from the Theatres Trust (see **Appendix 27**) confirms that the offerings are different.
  - TFT is a charity and is a well-respected community theatre company. Producing over 30 shows per annum in house. It is a not for profit charity and attracts a broad age range to its membership and audience figures. It has a full constitution allowing its members to choose its officers. TFT does not charge a fee to join and is solely funded through

its own box office receipts and commercial activity. Current active membership is over 805 with an audience mailing list of over 8,000. The company employs professional directors for its productions and owns its own technical equipment, seating, wardrobe and properties. The company does not rely on sponsorship, grants (either national or local) or donations to ensure it continues its activities.

- In terms of sustainability, it should be noted that the last bus to Fareham from areas to the west of TFT (western wards) is 19:45 and the last one from Fareham to the western wards is 18:42. (This will be covered in the proof of evidence covered by Tom Fisher from Paul Basham Associates). Therefore, anyone from the western wards wanting to see an event at Fareham Live would have to travel by car.
- The nearest train station to Fareham Live is Fareham Station which is a 20 minute (0.9) mile walk. Although trains run later than the buses the nearest station is at Swanwick which would require a taxi service or a car ride to most residential properties in the western wards.
- Analysis from TFT indicates that visitors to the theatre tend to eat in restaurants/pubs along The Avenue, Mill Lane and centre of Titchfield. Cast members all eat in these locations. None of this is taking trade from the centre but increasing it locally. TFT are also providing a nearby entertainment venue to the local Hotels most of which are located in the western area of Fareham Borough (Holiday Inn, Premier Inn, Solent Hotel, Travel Inn).
- As two theatres and associated community activities already exist on the site it would not make commercial sense to split the theatres across two sites and as the space is available on the site then the most practical option is to extend on the site. As mentioned earlier in this statement, historically unit B has always been used in association with the theatre, Unit C has replaced Unit B. The new theatre would also provide additional theatre space in the western wards and areas beyond the Fareham area to the west.

- Two theatres already exist and subject to suitable conditions then the operation of the third theatre would have a negligible impact on Fareham Town Centre. There is a benefit to Titchfield.

#### Conclusion to sequential test and vitality and viability

- 10.31. The sequential test has identified that there are no suitable, available or viable alternatives that could be considered sequentially preferable to the proposed development. In addition, operation at TFT entails that the Arden Theatre would not affect the vitality and viability of Fareham Town Centre.
- 10.32. The NPPF at paragraph 85 (**Appendix 23**) requires planning decisions to help create the conditions in which businesses can invest, expand and adapt, stating that significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development. There are now 14 full time employees at the site of which 5 are as result of the new Arden Theatre.
- 10.33. Paragraphs 88 and 89 (**Appendix 23**) specifically give support to a prosperous rural economy, with the former requiring planning decisions to enable the sustainable growth and expansion of all types of business in rural areas, including through the conversion of existing buildings. The new theatre encourages economic growth and would benefit local businesses and hotels as evidenced by appellant and third-party letters of support. The proposal would accord with the Framework objectives in respect of rural enterprise.

#### **The effect of the development on the living conditions of neighbouring occupiers with regard to noise and disturbance**

- 10.34. These matters will be covered in the proof of evidence prepared by Rueben Peckham of 24 Acoustics. The proof will cover: -

- Break-out of noise to the community from the auditorium;
- Noise impact associated with the additional traffic accessing the site for rehearsals/ performances;
- Noise impact associated with the access and egress of patrons arriving at and leaving the venue.

10.35. There is no formal technical guidance that provides a definitive means of assessing the noise impact from these activities. Objective and subjective assessment will be undertaken. This will be based on guidance from the Institute of Acoustics' publication 'Good Practice Guide on the Control of Noise from Pubs and Clubs' which addresses the management of noise from similar sources to those experienced at the Arden Theatre. In addition, in the absence of specific technical guidance from Fareham Borough Council, reference will be made to Manchester City Council's guidance 'Planning and Noise' which provides objective means of assessing noise impact from music noise in particular.

**Whether the development makes adequate provision for parking provision in terms of highway safety.**

10.36. These matters will be covered in the proof of evidence prepared by Tom Fisher of Paul Basham associates.

10.37. The statement will refer to the following documents: -

- Fareham Borough Non-Residential Parking Standards Supplementary Planning Document – September 2015.
- Hampshire Parking Strategy and Standards – 2002 – Now Withdrawn.
- NPPF – December 2023.
- Manual for Streets- 2007.



- Inclusive Mobility – A guide to best practice on Access to Pedestrian and Transport Infrastructure – December 2021.
- Guidelines for Providing Journeys on Foot IHT – 2000 - Fareham Local Cycling and Walking Infrastructure Plan – 2022
- Hampshire County Council Technical Guidance Note 3 2021-

### **Other matters**

#### Impact on the Character and Appearance of the Area and the Meon Strategic Gap

- 10.38. The application site is recognised within the Council's Local Plan as being located within the countryside and within the Meon Strategic Gap. Policy DS2 of the Local Plan states development must recognise the intrinsic character and beauty of the countryside and not significantly affect the integrity of a Strategic Gap.
- 10.39. In this instance, the development has resulted in the conversion of an existing commercial building that had previously been used for manufacture and then storage. The unauthorised use and the engineering operations have not resulted in any significant changes to the external appearance of the building when compared to the permission previously granted for additions and alterations to Area C. For these reasons it is not considered the development has a harmful impact on the character of the surrounding countryside or the integrity of the Strategic Gap.
- 10.40. Strategic policy R4 (appendix 11) supports development proposals for Community and Leisure Facilities (includes cultural) subject to the following caveats (only and a) and d) considered relevant: -
- There is a need for the facility. This is evidenced by the amount of support for the Theatre which includes a petition.

- The site is accessible to the local community it serves. The site is clearly accessible to the people of Titchfield and the Western Wards.

10.41. In terms of the NPPF (**Appendix 23**) the following paragraphs are relevant

- Para 96. Planning policies and decisions should aim to achieve healthy, inclusive and safe places and beautiful buildings which:
  - a) promote social interaction, including opportunities for meetings between people who might not otherwise come into contact with each other – for example through mixed-use developments, strong neighbourhood centres, street layouts that allow for easy pedestrian and cycle connections within and between neighbourhoods, and active street frontages.
- Para 97 d) ensure that established shops, facilities and services are able to develop and modernise, and are retained for the benefit of the community.

10.42. It is argued that the new theatre would meet the aims of policy RT4 and the paragraphs of the NPPF.

#### **Conclusion to ground A**

10.43. The sequential test has demonstrated that there are no alternative sites in the existing centres or parades which could have accommodated the facility. Furthermore, the impact assessment, has demonstrated that the development does not have a significant adverse effect on the vitality or viability of existing or proposed retail centres and parade.

10.44. The increase in theatre capacity and the noise from within the building will not result in significant increase in noise from patrons arriving and leaving the building detrimental to the living conditions of the occupiers of the neighbouring residential properties.

- 10.45. Adequate provision of accessible and available parking spaces is available. There is no unacceptable harm to the safety of users of the highway.
- 10.46. Therefore, the development would comply with policies DS1, R2, R4, D2, TIN1 and TIN2 of the Fareham Local Plan 2037 and as such planning permission should be granted for the development as it exists. This includes the: -
- Retention of the basement area if deemed to require planning permission.
  - Hours of operation to match unit A.
  - The new entrance in the eastern flank loading bay.
  - The use of unit C for Theatre related purposes.
  - An increase in the number of days per year to 150.

#### Other Grounds of Appeal

**Ground B:** *that those matters have not occurred – This Ground is no longer pursued in view of the response by Fareham Borough Council.*

- 10.48 It was asserted that 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. This was evident from the 2019 application (which was an application the uses identified above – see Appendix 5). The Council rejected the 2019 application but chose not to take any action against the use of Area B. It is now four years later and the use has continued/is continuing. The Appellant submitted that this is a case where the alleged breach of planning control in the Notice is inaccurate and that the breach alleged should properly have been particularised as a breach of condition.
- 10.49 Fareham Borough Council's position appears to be that the creation of the Arden theatre that uses Area B for seating and most of the stage area,

together with Area C that is principally a back-stage area supporting the Arden theatre taken together amounts to the use of both Areas B and C as a theatre. If that is correct then, as identified by the Inspector in the CMC agenda, it follows that both areas A and B both fall within Ground D and (in particular Area B) is immune from enforcement action in respect of any breach of planning control.

**Ground E** *the Enforcement Notice was not properly served. This Ground is no longer pursued.*

- 10.50 While Fareham Borough Council were made fully aware by the Appellant of the correct parties to serve the enforcement notice on, and inexplicably chose to serve the notice on the wrong people, no prejudice has been identified.

**Ground F - 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.*

- 10.51 Paragraph 5 of the enforcement notice 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.

- 10.52 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. If the appeal is only dismissed on lack of parking, then if in the future the appellant is able to provide suitable parking, then a 'mothballed' theatre could be re-opened.

10.53 Alternatively, if the key issues for the inspector are noise and parking then the use of units B and C for ancillary theatre purposes including rehearsals and storage would not generate noise or car parking. On this basis there would be no need to remove the elements listed in the enforcement notice.

10.54 Should the ground (a) not succeed, lesser steps such as ceasing the use of part of Area C (and possibly B) 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.

10.55 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.

10.56 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. The currently required steps are likely to create a water drainage issue.

10.57 **What has not been asked for in the enforcement notice**

- (i) The re-instatement of the wall between units B and C
- (ii) The removal of any internal alterations to unit C
- (iii) The fenestration changes to unit C

It is presumed therefore that these matters amount to enforcement.

**Ground G:** *the time given to comply with the Notice is too short.*

- 10.58 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 9 months would be more appropriate to comply with this aspect of the Notice.
- 10.59 Details of the time required to complete the work are set out in (**Appendix 24**)

## List of appendices referred to in the statement

Appendixes	Description
1	Enforcement Notice
2	Site Location
3	Units A, B, C
4	2012 Appeal
5	2019 Application
6	On site car parking
7	Other nearby parking
8	Locks Heath Free Church decision Locks Heath Free Church decision 2013 documents
9	2024 Programme TFT
10	Response to PCN's
11	Local Plan Policies
12	Nearby Theatres
13	Housing Policy
14	Paragraphs 7.22 and 7.23 of Fareham Local Plan
15	TFT Officer report and policy comments 2012 application
16	TFT Sequential Test from 2012 application
17	Locks Heath Free Church Officer report and refusal 2012
18	Tesco Stores Ltd v Dundee Council
19	Rushden Lakes Retail Park Appeal decision
20	District plan maps
21	Trafalgar entertainment programme
22	Ferneham Hall programmer prior to closing
23	NPPF
24	Work Programme
25	Fareham Retail study
26	Plans
27	Letter from Theatres Trust