

**WELWYN HATFIELD BOROUGH COUNCIL
EXECUTIVE DIRECTOR - PLANNING, PUBLIC PROTECTION AND GOVERNANCE**

DELEGATED APPLICATION

Application No: 6/2021/3172/FULL
Location: 51 Kentish Lane Brookmans Park Hatfield AL9 6NG
Proposal: Change of use of site (house and garden) from a dwellinghouse (Use Class C3) to a mixed-use as a dwellinghouse (Use Class C3) and for commercial film-making and photographic activities (Sui-Generis)
Officer: Mr David Elmore

Recommendation: Granted

6/2021/3172/FULL

Context	
Site and Application description	<p>51 Kentish Lane comprises a large, detached dwelling with front carriageway drive and garden and generously sized rear garden. It forms part of a long linear row of large, detached dwellings on the north-western side of Kentish Lane. The site lies within the Metropolitan Green Belt.</p> <p>This application seeks full planning permission for a change of use of the site (house and garden) from a dwellinghouse to a mixed-use as a dwellinghouse and for commercial film-making and commercial photographic activities (Sui-Generis).</p> <p>There is a history of the dwelling and site being used without planning permission as a film-set. In December 2004, the Council served an Enforcement Notice requiring part of the use of the site as a film-set to cease and an appeal against that Notice was unsuccessful – see ‘relevant planning history’ section of this report.</p> <p>In that case, shooting activity (not including still photography) took place as follows from the beginning of 2002 to the end of May 2005:</p> <ul style="list-style-type: none"> – 2002 – 10 days filming and 2 preparation days – 2003 – 15 days filming and 23 days for all activities – 2004 – 18 days filming and 22 days in total – Up to May 2005 – 10 days filming. <p>Most of the filming took place from 7.30am to 6.30pm with 4 days in 2003 and 3 days in 2005 when filming extended into the evening not later than 10.30pm.</p> <p>The Enforcement Notice was upheld due to the impact the filming use had on the living conditions of neighbours in terms of noise, disturbance, and light pollution.</p> <p>The appeal decision refers to an occasion of 30 film crew staff and another where approximately 50 people were recorded in the front garden, with the latter being observed by a Council Enforcement Officer. Noise disturbance was identified from lorries reversing into the property early in the morning, scaffolding being put up, people talking and a continuous droning noise from a</p>

	<p>generator up to 11.30pm which was positioned near to the boundary with No.47 Kentish Lane. Large and tall film-set lights were also installed (including 2 lighting masts, powerful lighting on top of scaffolding and powerful lighting emanating from the arm of a cherry picker).</p> <p>The now submitted application proposes several changes to how the filmmaking and photographic activities would operate relative to that deemed unacceptable at appeal, and these are set out in paragraph 4.28 of the submitted Planning Statement.</p>		
Constraints (as defined within WHDP 2005)	<p>GB - Greenbelt - Distance: 0 PAR - PARISH (HATFIELD) - Distance: 87.72 PAR - PARISH (NORTH MYMMS) - Distance: 0 Wards - Brookmans Park & Little Heath - Distance: 0 FM00 - Flood Zone Surface Water 1000mm (74545) - Distance: 0 FM00 - Flood Zone Surface Water 1000mm (7618410) - Distance: 0 HEN - No known habitats present (high priority for habitat creation) - Distance: 0 HEN - No known habitats present (medium priority for habitat creation) - Distance: 0 SAGB - Sand and Gravel Belt - Distance: 0</p>		
Relevant planning history	<p><u>Planning</u></p> <p>Application Number: 6/2020/2399/PN16 Decision: Prior Approval Required and Refused Decision Date: 12 November 2020 Proposal: Prior Approval for temporary use of the site (both the house and garden) for commercial film-making for no more than 9 months in any 27 month period</p> <p><u>Enforcement</u></p> <p><i>Enforcement notice</i></p> <p>Appeal reference: APP/C1950/C/05/2000866 Alleged breach: Material change of use of the land from a dwellinghouse to a mixed use as a dwellinghouse and a film set Decision: Appeal dismissed and enforcement notice upheld with corrections and variations Requirements of notice: Cease the use of the land as a film set and remove all vehicles and other materials and works associated with the unauthorised development Decision date: 22 November 2005</p>		
Consultations			
Neighbour representations	Support: 13	Object: 5	Other: 0
Publicity	<p>Site Notice Display Date: 20 December 2021 Site Notice Expiry Date: 12 January 2022</p>		
Summary of neighbour	<p><u>Objections</u></p> <p>– Disruption and hazards previously caused remain</p>		

responses	<ul style="list-style-type: none"> - Adverse impact on area's character and living conditions or neighbours - Statement in section 3.3 of Planning Statement untrue - "activity" period is not defined - HCC Highways do not appear to have considered impact on use on road with school traffic - Many of the support letters are from addresses outside the area - Parking arrangement unviable - Event co-ordinator is understood to be the same person as the applicant and, as such, there is no confidence in this role in view of the previous disregard of planning enforcement and refusals of planning permission - Concern regarding fire brigade access - Considerable disruption - Highway safety concern - Loss of privacy <p><u>Support</u></p> <ul style="list-style-type: none"> - Never experienced any issues with any activities taking place along this stretch of the road - No disruption locally - Great for community - Supports local causes and artists
Consultees and responses	<p>North Mymms Parish Council – Comment:</p> <ul style="list-style-type: none"> - Recommend temporary permission and any contravention will result in it being revoked <p>WHBC Public Health and Protection – Conditions recommended</p> <p>Hertfordshire Highways – Condition recommended</p> <p>Hertfordshire Fire & Rescue Service – No objection</p>
Relevant Policies	
<input checked="" type="checkbox"/> NPPF <input checked="" type="checkbox"/> D1 <input checked="" type="checkbox"/> D2 <input checked="" type="checkbox"/> GBSP1 <input checked="" type="checkbox"/> GBSP2 <input checked="" type="checkbox"/> M14 <input checked="" type="checkbox"/> Supplementary Design Guidance <input checked="" type="checkbox"/> Supplementary Parking Guidance <input checked="" type="checkbox"/> Interim Policy for car parking and garage sizes Others: Policies R19 and R20 of the District Plan	
Main Issues	
Green Belt	<p>Policy GBSP1 of the District Plan seeks to maintain the Green Belt but otherwise does not explain how development is to be managed.</p> <p>Paragraph 150 of the NPPF outlines that the material change of use of land is not inappropriate in the Green Belt provided it preserves its openness and does not conflict with the purposes of including land within it.</p> <p>Given the location of the use within a residential building and curtilage, and its proposed intermittency, it is considered that the proposal would maintain Green Belt openness and would not conflict with any of the purposes of including land in the Green Belt. The proposal is therefore acceptable in Green Belt terms.</p>
Effect on dwelling and area's character	<p>Policy D1 of the District Plan states that the Council will require the standard of design in all new development to be of a high quality and that the design of new development should incorporate the design principles and policies in the</p>

	<p>Plan and the guidance contained in the Supplementary Design Guidance (SDG).</p> <p>One such design principle is ‘character’ and Policy D2 of the District Plan states that the Council will require all new development to respect and relate to the character and context of the area in which it is proposed, and that development proposals should as a minimum maintain, and where possible, should enhance or improve the character of the existing area.</p> <p>The SDG outlines, amongst other things, that: new development must be sensitive to local character and not detrimentally affect the townscape and landscape; and that new developments may create their own distinctive identity whilst respecting and enhancing local character.</p> <p>This part of Kentish Lane is characterized by large dwellings set within generously sized plots. Frontages generally have large areas of hard surfacing but are also well landscaped.</p> <p>Suggested condition 4 in paragraph 4.28 of the submitted Planning Statement attempts to limit the number of film making and photographic activities per month. However, this wording could equally allow for the continuous use of the site for such activities all year round. Such a scenario would result in a use of the site which would severely detract from the established character of the area.</p> <p>Acknowledging that the suggested condition could allow a year-round mixed use, the applicant is agreeable to limiting the use of the site for filmmaking and photographic activities to 2 days each per-month, with no overlap of activities from one month to another.</p> <p>It is noted that there will be no changes to the internal layout of the property, and the filming and photographic activities will operate alongside the residential use. Furthermore, no equipment or machinery of any kind associated with the proposed filmmaking and photographic activity use will be stored outside.</p> <p>The submitted Events Management Plan (by Pulsar Transport Planning, dated August 2022), hereby referred to as ‘EMP’, includes a parking space arrangement for up to 16 cars within the front garden area. While the EMP outlines that this represents the very worst-case scenario, there is concern that the site’s frontage could be dominated by vehicles on filmmaking/photoshoot days which may detract from the area’s character, even on the limited days indicated.</p> <p>Other planning considerations pertinent to character are discussed below.</p>
<p>Living conditions of neighbouring properties</p>	<p>Ensuring development protects the living conditions of neighbouring properties is a key part of good design.</p> <p>Paragraph 130 of the NPPF outlines that planning decisions should ensure that developments create places with a with a high standard of amenity for existing and future users.</p> <p>The Council’s SDG states that a reasonable degree of privacy should be afforded to the back and sides of existing and proposed units, however the same degree of privacy should not be expected at the front.</p> <p>Policy R19 of the District Plan states that proposals will be refused if the development is likely to generate unacceptable noise or vibration for other land uses.</p> <p>In addition to the above restriction in terms of frequency of use for filmmaking</p>

	<p>and photographic activities each month, the following measures are also proposed to mitigate the impact of such activities on nearby residents. These include:</p> <ul style="list-style-type: none"> – Generators not permitted at any time; – No use at weekends, or on public holidays or outside the following times: 07:30 hours to 19:30 hours Monday to Friday; – No more than a total of 20 people are to be on or around the premises at any one time; – No artificial lighting within 2 metres of the boundary, limit of 2.5 metres in height and light spillage protectors always fitted; – Front driveway/garden to be used only for parking and vehicle movements; and – Compliance with the submitted Event Management Plan <p>The submitted EMP includes measures and initiatives, as well as monitoring and review with the aim of reducing both local disturbance and impact on the local highway network. Measures and initiatives include, amongst other things: event recording, use of marshals, access arrangements (including emergency and service vehicle access) and a parking plan. An event co-ordinator will be appointed to be responsible for implementing and administering the EMP for the site.</p> <p>Bordering the site on both sides are No. 47 and No. 53 Kentish Lane which are large single dwellings set within large plots.</p> <p>Well established trees and hedging are present along both shared boundaries in the rear garden of the application site which provide a good screening and prevent overlooking.</p> <p>It is considered that the above measures, in combination, could be effective in ensuring that the mixed use would not have an adverse impact on the living conditions of neighbouring properties in terms of noise and light pollution, disturbance and privacy. However, mindful of the issues identified by the Inspector for the upheld enforcement notice at the site, issues raised by No.47, and absence of details in terms of the type of filmmaking and photographic activities to take place, there is concern in allowing a permanent planning permission. That is not to say that the principle of the use of the site as a mixed-use as a dwellinghouse and for commercial film-making and photographic activities is unacceptable, as it is considered clear from the appeal decision resulting in the upheld enforcement notice, that it was the particular operations of the filmmaking use which led to the harms to the living conditions of neighbours.</p> <p>Taking account of the above and noting the material differences in circumstances between this application and the appeal decision upholding the enforcement notice, it is considered that a temporary permission would be appropriate in this case to allow for monitoring and so the overall impact can be properly assessed.</p>
<p>Parking and highway safety</p>	<p><u>Parking</u></p> <p>The submitted parking space arrangement plan shows that up to 16 cars could be safely accommodated within the site while also ensuring that delivery and emergency access is not affected. It is also noted that a parking marshal on site will be responsible for the appropriate parking of vehicles and to move them accordingly, where necessary. Mesh matting will also be used with the</p>

	<p>benefit of both improving safety at the site when traversing on the grass and protecting the lawn area. For events where more cars are scheduled to arrive at the site, alternative measures are identified in the EMP to prevent parking outside the site.</p> <p>The effectiveness of the EMP will however need to be tested. This aligns with a temporary rather than a permanent permission.</p> <p><u>Highway Safety</u></p> <p>The Highway Authority have been consulted for this application and are satisfied with the content of the submitted EMP and Servicing and Emergency Vehicle Plan. A condition is suggested requiring both to be submitted and agreed before each event. It is however considered that such a requirement is overly onerous. It is noted that the submitted EMP includes monitoring and review, and a planning condition can be added requiring adherence to this as well as the measures and reviews to collectively address highway safety and network issues. As above, the effectiveness of the EMP will need to be tested and this aligns with a temporary use.</p>
Other considerations	<p><i>Effect of enforcement notice</i></p> <p>In accordance with the Town and Country Planning Act 1990 (TCPA), in section 180, the grant of planning permission in this case would mean that the enforcement notice attached to the land shall cease to have effect so far as inconsistent with that permission. The fact that an enforcement notice has wholly or partly ceased to have effect by virtue of this section shall not affect the liability of any person for an offence in respect of a previous failure to comply, or secure compliance, with the notice.</p>
Conclusion	
<p>Based on the submitted information and, subject to conditions, it is considered that the proposed development is acceptable on a temporary basis. A temporary period of 2 years from the first event is deemed to be appropriate to monitor the overall situation and as it could well take some time to establish a meaningful pattern of use. Conditions are necessary to secure: the temporary permission; frequency of use; number of people on site at any one time; hours of use; submission of written records of use for monitoring purposes; compliance with EMP and Servicing and Emergency Vehicle Plan; prevention of use of generators; and controls over artificial lighting, storage and location where the filmmaking and photographic activities can occur.</p>	

Conditions:

1. The mixed use hereby permitted shall operate for a temporary period of 2 years from the date of the first commercial filmmaking or commercial photography event (whichever comes first), after which time the part of the use of the property for commercial filmmaking and commercial photographic activities must cease in its entirety. The local planning authority must be notified in writing of the date of the first event before it occurs and, for the avoidance of doubt, details of the first event must be submitted in accordance with condition 7 of this permission.

REASON: Based on the submitted information, a temporary permission is only deemed to be acceptable.

2. The use of the site for commercial filmmaking activity shall occur for no more than 24 days per year. Of these 24 days, this use shall occur on no more than 2 days

per month. In the case where commercial filmmaking takes place on either the last day of a month or the final 2 days of a month, there must be a gap of at least 5 days until the next commercial filmmaking activity. 'Activity' means actual filming days (not including commercial photography days), days during which preparation occurred prior to filming and days for dismantling any outdoor equipment and other associated outdoor paraphernalia.

REASON: To limit the frequency of the part commercial filmmaking use, in the interest of protecting the area's character and living conditions of neighbouring properties.

3. The use of the site for commercial photographic activity shall occur for no more than 24 days per year. Of these 24 days, this use shall occur on no more than 2 days per month. In the case where commercial photographic activity takes place on either the last day of a month or the final 2 days of a month, there must be a gap of at least 5 days until the next commercial photographic activity. 'Activity' means actual commercial photoshoot days (not including commercial filmmaking days), days during which preparation occurred prior to commercial photoshoots and days for dismantling any outdoor equipment and other associated outdoor paraphernalia.

REASON: To limit the frequency of the part commercial photographic activities use, in the interest of protecting the area's character and living conditions of neighbouring properties.

4. No more than a total of 20 people are to be present at the site at any one time in association with the commercial filmmaking/commercial photographic use hereby permitted.

REASON: To protect area's character and the living conditions of neighbouring properties in terms of noise and disturbance.

5. The use of the site as a commercial filming/commercial photographic location shall not occur at weekends, or on public holidays or outside the following times: 07:30 hours to 19:30 hours Monday to Friday.

REASON: To protect area's character and the living conditions of neighbouring properties in terms of noise and disturbance.

6. The use of generators associated with the commercial filmmaking/commercial photographic activity is not permitted at any time.

REASON: To protect the living conditions of neighbouring properties in terms of noise and disturbance.

7. The commercial filmmaking and commercial photography use must be operated in accordance with the submitted Events Management Plan (by Pulsar Transport Planning, August 2022), save for paragraph 2.7.

3 months following implementation of the part of the use of the property for commercial film-making and commercial photographic activities, a written record of each event which has taken place for that period must be submitted to the Local Planning Authority. The record must include the following details:

- Nature of the event;
- Date(s) of commercial filming/commercial photography days and hours of use;

- Number of people present;
- Number and type of vehicles;
- Details of deliveries;
- Any issues or complaints received, and action taken; and
- Progress on the implementation of the following measures and initiatives: Use of Marshals; Access Arrangements and Parking; Off-Site Parking/Waiting Area; and Emergency Access

The above process must then be repeated every 3 months for the length of the temporary permission.

REASON: Monitoring is required so the overall impact of the development can be reviewed in terms of effect on area's character, highway safety and living conditions of neighbouring properties.

8. The commercial filming and commercial photography use must be operated in accordance with the submitted Servicing and Emergency Vehicle Plan (by Pulsar Transport Planning, August 2022).

REASON: In the interest of highway safety.

9. No equipment or machinery of any kind associated with the commercial filmmaking/commercial photographic location use shall be stored on the site other than within the buildings on the site.

REASON: To protect the residential use of the site and area's character.

10. No lighting or other equipment is to be used externally within 2 metres of the boundary of the property as marked on the 'Lighting Exclusion Zone Plan Ref – TDC058/PL2/001'. Any artificial lighting or other equipment used externally must not exceed 2.5 metres in height, and any artificial lighting equipment used externally must be always fitted with spillage protectors.

REASON: To protect the living conditions of neighbouring properties in terms of light spill.

11. The front garden and driveway must not be used for commercial filmmaking or commercial photography, and shall be used as car parking and for vehicular movements only.

REASON: To ensure that the front garden and driveway area is maintain for such uses.

DRAWING NUMBERS

12. The development/works shall not be started and completed other than in accordance with the approved plans and details:

Plan Number	Revision Number	Details	Received Date
		Location Plan	5 November 2021
TDC058/PL2/001		Site Plan/Lighting Exclusion Zone	5 November 2021

REASON: To ensure that the development is carried out in accordance with the approved plans and details.

1. POSITIVE AND PROACTIVE STATEMENT

The decision has been made taking into account, where practicable and appropriate the requirements of paragraph 38 of the National Planning Policy Framework and material planning considerations do not justify a decision contrary to the development plan (see Officer's report which can be viewed on the Council's website or inspected at these offices).

Informatives:

1. This permission does not convey any consent which may be required under any legislation other than the Town and Country Planning Acts. Any permission required under the Building Regulations or under any other Act, must be obtained from the relevant authority or body e.g. Fire Officer, Health and Safety Executive, Environment Agency (water interest etc.) Neither does this permission negate or override any private covenants or legal interest (easements or wayleaves) which may affect the land.

Determined By:

Mr Derek Lawrence
25 November 2022