

SEGRO (HAYES) LIMITED

SEGRO PARK HAYES

ANALYSIS OF LEGAL STATUS OF A FILM STUDIO USE OF UNIT 1 PURSUANT TO PLANNING PERMISSION 1331/APP/2019/1666 FOR THE PURPOSES OF THE USE CLASSES ORDER 1987 (AS AMENDED)

1. INTRODUCTION

- 1.1 We have been asked to advise SEGRO (Hayes) Limited (“SEGRO”) in connection with its proposals to use Unit 1 of its permitted development at SEGRO Park Hayes as a film studio.
- 1.2 Unit 1 forms part of the “Industrial Land” element of the development of which was most recently permitted by a planning permission issued by the London Borough of Hillingdon (“the Council”) on 11 September 2020 (1331/APP/2019/1666)(“the Permission”).
- 1.3 The Permission grants permission for a range of flexible commercial uses on the Industrial Land within “Use Classes B1c/B2/B8 and Data Centre (sui generis)”.
- 1.4 In particular, we have been asked to advise on whether a film studio use with ancillary support uses principally for film production for theatrical exhibition or digital streaming would fall within the uses permitted by the Permission as a use within either Class B1(c) or Class B2 both of which are permitted by the Permission.
- 1.5 As a result of recent amendments to Town and Country Planning (Use Classes) Order 1987 (“the UCO”) a Class B1(c) use now falls within Class E(g)(iii) but the description of that use has not been amended and for the purposes of this note we have referred to Class B1(c) as referred to in the Permission. Class B2 has not been affected by the recent amendments.

2. LEGAL ANALYSIS

2.1 Introduction to Relevant Law

- 2.1.1 Section 55(1) of the Town and Country Planning Act 1990 (“the TCPA”) provides that a “material change in the use of any buildings or land” constitutes “development”, and section 56(1)(c) sets out that where development consists of a change in use, the development will be taken to have begun at the time when the new use is instituted.
- 2.1.2 Under section 57(1) of the TCPA, planning permission is required for the carrying out of any “development” of land.
- 2.1.3 The UCO, which was made pursuant to section 55(2)(f), prescribes a number of classes of use of buildings and land. Where a use does not fall within any of the specified use classes in the UCO, it will be considered a “sui generis” use.

2.2 Is a Film Studio Use a Class B1(c) Use?

- 2.2.1 As explained above, the UCO prescribes a number of classes of use of buildings and land. This includes Use Class B1(c), which is defined at paragraph 1, Part 2 of Schedule 1 of the UCO as follows:

“Class B1: Business

Use for all or any of the following purposes—

(a) as an office other than a use within class A2 (financial and professional services),

(b) for research and development of products or processes, or

(c) for any industrial process,

being a use which can be carried out in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit.”

2.2.2 On the basis of the definition above, the question of whether a film studio use falls within Use Class B1(c) involves analysis of two elements of the definition, i) whether the use is “for any industrial process”, and ii) whether the use is one “which can be carried out in a residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit.” We will examine these in turn .

2.2.3 For the first element the term “industrial process” is helpfully defined within the UCO, at Article 2, as:

“... **a process for or incidental to any of the following purposes: —**

(a) **the making of** any article or part of any article (including a ship or vessel, or **a film**, video or sound recording);

(b) the altering, repairing, maintaining, ornamenting, finishing, cleaning, washing, packing, canning, adapting for sale, breaking up or demolition of any article; or

(c) the getting, dressing or treatment of minerals;

in the course of any trade or business other than agriculture, and other than a use carried out in or adjacent to a mine or quarry;” (our emphasis added in **bold**).

2.2.4 As a starting point, when interpreting the UCO, the focus should be on the wording of the provisions themselves, rather than stretching or restricting these provisions (Foxhurst Ltd v Secretary of State for the Environment (1982) 46 P&CR 89, page 106). Further, Hodgson J in Foxhurst (at page 106) made it clear that there is no principle that unusual activities should be treated as sui generis (departing from Widgery J’s observations in Tessier v Secretary of State for the Environment (1976) 31 P & CR 161).

2.2.5 The term “process” is not defined in the UCO but in the Oxford English Dictionary its definition is “a series of actions or steps in order to achieve a particular end”. The operations in a film studio are clearly an essential step in the making of a film and so a process for the purposes of the UCO given a natural interpretation of its wording.

2.2.6 In relation to a film studio use:

a) Under subparagraph (a) of the definition of “industrial process” it can be seen that any process for or incidental to the making of a film is an industrial process.

b) A film studio with ancillary support uses is clearly a use which is a process or a process incidental to the making of a film and this means that a film studio use is a use for an industrial process.

- c) For the purposes of the UCO it is irrelevant whether the film being produced is destined for theatrical exhibition or digital streaming.
 - d) Given the wording of the definition it is also important to note that this includes not just studio space but also any other processes incidental to the making of a film.
 - e) Whilst a growing business sector in the UK economy even if a film studio use were to be considered an unusual activity that is no reason to treat it as a sui generis use as confirmed by the case law cited above.
- 2.2.7 The second element of the definition of Class B1(c) is the limitation that the use must be one “which can be carried out in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit.”
- 2.2.8 The following points of interpretation are relevant here:
 - a) The definition lays down the emissions which are capable of constituting detriment, namely, noise, vibration, smell, fumes, smoke, soot, ash, dust or grit.
 - b) The emissions must not cause a “detriment to the amenity of that area”. There is no guidance as to the level at which such emissions will cause a detriment. This must in law be essentially a matter of planning judgment for the decision maker.
 - c) The reference to “any residential area” is general, and not specific to the actual area surrounding the site. Thus, it is irrelevant if the actual site is in a noisy area or a quiet area (*W. T. Lamb Properties Ltd v Secretary of State for the Environment* [1983] JPL 303).
- 2.2.9 In assessing the impact of the use, account can be taken of mitigating measures. In *Blight & White Ltd v Secretary of State for the Environment* [1993] 1 PLR 1, the Judge stated that:

“the definition of light industrial building allows account to be taken of the measures which can, and now customarily are, put in place to control the escape of offensive emissions and mitigate their polluting effect. Noise insulation and dust extraction are obvious examples of such measures.”
- 2.2.10 In *Blight & White* itself, the Judge found that it was not “self-evident” that the use in that case, namely the production of structural and engineering fabrications, must cause detriment to the amenity of any residential area, bearing in mind the mitigating measures which might be put in place to eliminate or reduce those emissions.
- 2.2.11 Similarly, Ministerial Decisions and decisions by Inspectors’ have acknowledged that the installation of mitigation measures can change a use from general industrial (i.e. Use Class B2) to light industrial (i.e. Use Class B1(c)) (see Ministerial Decision at [1978] JPL 781).
- 2.2.12 A film studio use would not give rise to any of the emissions specified in Class B1(c) to the extent that the required detriment would be caused. A film studio is a highly insulated and managed environment both in terms of its emissions and the controls (extensive soundproofing and other insulation) that is needed to prevent interference by emissions generated from sources from outside the studios.
- 2.2.13 In addition the Permission, pursuant to which the film studio use would operate, imposes a number of controls and elements of mitigation to eliminate unacceptable impacts which following the decision in the *Blight & White* case should also be taken into

account. On the basis that the Council has granted planning permission for a Class B1(c) use it must have been satisfied that those controls were satisfactory to ensure any use within that class would not have detrimental impacts of the sort referred to in the definition of a Class B1(c) use as mentioned at paragraph 11 above.

2.2.14 As a result such a film studio use would fall within Class B1(c) which is one of the permitted uses of Unit 1 pursuant to the Permission.

2.3 **Is a Film Studio a Class B2 Use?**

2.3.1 The UCO defines a Class B2 use as:

“Class B2. General industrial

Use for the carrying on of an industrial process other than one falling within class B1 above or within classes B3 to B7 below.”

2.3.2 From the above analysis we have established that a film studio use is an “industrial process” and Classes B3 to B7 are clearly not relevant in this case.

2.3.3 As a result even if the Council reached the view that a film studio does not fall within Class B1(c) then it would fall within Class B2 which is one of the other classes of development permitted by the Permission.

2.4 **Is a Film Studio Use a Sui Generis Use?**

2.4.1 Finally, it is necessary to address the issue as to whether a film studio use is a sui generis use.

2.4.2 As explained above, a use is only “sui generis” if it does not fall within one of the use classes in the UCO. Based on the analysis above, a film studio use clearly falls within a use specified in the UCO (namely, Class B1(c) or Class B2), therefore it is not a sui generis use.

3. CONCLUSIONS

3.1 On the basis of this legal analysis it is clear that a film studio use falls within Class B1(c) or Class B2 of the UCO and so cannot be a sui generis use.

3.2 The Permission grants planning permission for any uses within these use classes.

3.3 As a result no further permission is required from the Council for a film studio use within Unit 1.

3.4 Furthermore, on any application for a certificate of lawfulness of proposed use or development for such a use within Unit 1 pursuant to Section 192 of the Town and Country Planning Act 1990 (as amended) such use should be certified as lawful.

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