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## Appeal Decision

Site visit made on 9 May 2016

**by Paul Freer BA (Hons) LLM MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 15 August 2016**

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**Appeal Ref: APP/G5750/C/16/3144200**

**Land at 87-89 Plashet Road, Plaistow, London E13 0RA**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
  - The appeal is made by Mr E Attan against an enforcement notice issued by the Council of the London Borough of Newham.
  - The notice was issued on 15 January 2016.
  - The breach of planning control as alleged in the notice is, without planning permission, the material change of use to a community centre.
  - The requirements of the notice are:
    1. Cease the use of the property as a community centre.
    2. Remove from the property all facilities, fixtures and equipment that solely facilitate the unauthorised use.
    3. Remove from the property all external signage associated with the unauthorised use.
    4. Remove from the site all debris arising from compliance with the above steps.
  - The period for compliance with the requirements is three months.
  - The appeal is proceeding on the grounds set out in section 174(2) (a), (b), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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**Summary of Decision: The appeal is dismissed and the Enforcement Notice is upheld with corrections.**

### Background and Preliminary Matter

1. In July 1999, planning permission was granted for the change of use of 87-89 Plashet Road to a training centre (D1 Use) for local people (Council reference: P/99/0321). That permission was subject a number of conditions, one of which (Condition 9) stated that: "The permission shall not enure for the benefit of the land but shall operate for the benefit of Mr Ali of "Learning Base" only, and upon cessation of the use of the land for the purpose hereby permitted, the land shall not be used for any purpose other than its previous lawful use". The reason for the imposition of Condition 9 was that: "In the absence of careful control, the proposed use would be likely to be detrimental to the amenities of the area and is acceptable in the particular circumstances of the applicant only."
2. There is no dispute that the use of the appeal premises as a training centre by Mr Ali of "Learning Base" commenced. The personal permission granted to Mr Ali in July 1999 was therefore implemented and the requirement under Condition 9 of that permission that the land shall not be used for any purpose

- other than its previous lawful use now bites. The Council considers that the last known lawful use of the building is for storage purposes.
3. The community centre use has now ceased and, as the appellant concedes, the premises are being used for training purposes. The deemed application is for the development alleged in the notice: in other words, for the community use. However, the appellant's ground (a) appeal is effectively seeking planning permission for the training use that is currently taking place. In the event the appeal on ground (a) is allowed, the outcome would be that planning permission would be granted for the community use and not the training centre use sought by the appellant's ground (a) appeal.
  4. The breach of planning control as alleged in the notice is, without planning permission, the material change of use to a community centre. However, given that Condition 9 of planning permission P/99/0321 has taken effect, it appears to me that the breach of planning control alleged in the notice could technically also be described as a breach of condition under 171A(1)(b) of the 1990 Act. In such circumstances, the deemed application under ground (a) would then be the material change of use to a training centre (D1 Use) for local people without compliance with Condition 9 of planning permission P/99/0321. This would reflect the arguments advanced by the appellant but not the breach of planning control alleged in the notice.
  5. I sought the views of the parties on this point. Both the appellant and the Council were of the view that the description of the breach of planning control as a breach of condition would be the correct approach and agree that the notice can be amended to that effect with injustice being caused. I have carefully considered these responses. Nonetheless, it appears to me that the breach of planning control may be equally described as both a breach of a condition and a material change of use. Both are technically correct but I am mindful that the deemed planning application would, should the notice be corrected, not relate to the community use specifically referred to in the notice. Should the notice be corrected in that way, I would not be dealing with a deemed application for the material change of use to the community centre alleged in the notice as issued; rather I would be dealing with the continuation of the training centre use granted under planning permission P/99/0321 without compliance with Condition 9 of that permission. This would not deal with the breach of planning control alleged in the notice.
  6. In my view, it would not be in the public interest to determine this appeal without addressing the breach of planning control originally alleged in the notice. Consequently, I have determined this appeal on the basis of a material change of use to a community centre. It is open to the Council to issue a fresh enforcement notice alleging a breach of Condition 9 of planning permission P/99/0321 and attacking the use of the premises as a training centre without compliance with that condition, should it be considered expedient to do so. It is also open to the appellant to apply for planning permission for the use of the premises as training centre (D1 use) without compliance with the specific conditions imposed upon planning permission P/99/0321.

### **The appeal on ground (b)**

7. The ground of appeal is that the matters alleged in the notice have not occurred.

8. The Council explains that an officer visited the site in May 2014 and recorded that a number of activities were taken place. A photograph taken at that time shows that, in addition to education, the range of activities taking place at that time included family support, marriage services and guidance, health & fitness classes, as well as youth and women programmes. The photograph also reveals that the building, described in the advertisement shown in the photograph as the "Newham United Community Centre", hosted religious and community events.
9. A second visit was undertaken in October 2014 and, according to a schedule provided to the Council during that visit, the range of activities included fitness and martial arts classes, parties and wedding gatherings, and Jumma prayers on Fridays. Photographs taken during that visit show some of the rooms on the ground floor set up for education purposes but also show the large space on the first floor largely devoid of furniture and therefore able to be used for some of the activities acknowledged to be taken place at that time. A further visit was carried out by Council officers in December 2015 and the photographs taken at that time, albeit limited in coverage, show a situation similar to that existing the previous October.
10. The appellant explains that, whilst additional uses have occasionally occurred, those uses have now ceased and that the premises are used as a training centre for the benefit of the local community, with ancillary community purposes. The different aspects of training provided at the premises include National Curriculum subjects up to GCSE level, Arabic and Quranic teaching, Esol (English as a second language for mature students) and computer training. This is consistent with the situation at the time of my site visit, at which time most of the rooms on both the ground and first floors were set up as classrooms, with desks, conference tables, computers, text books and other paraphernalia (such as whiteboards) associated with an educational use.
11. On the basis of the photographs taken and the information gathered by the Council over the course of the three visits made to the property, there is no doubt in my mind that the range of activities taking place in May 2014, October 2014 and December 2015 went beyond what may be described as a training centre. I am satisfied that, on the basis of the range of activities that were taking place, the use was then that of a community centre, as alleged by the notice. I therefore conclude that, as a matter of fact, the breach of planning control alleged in the notice has occurred.
12. There is equally no doubt in my mind that, on the basis of the room usage and the various paraphernalia associated with an educational use that I observed during my site visit, the use was no longer that of a community centre but, as described by the appellant, may be properly described as a training centre with ancillary community uses. However, the appeal on ground (b) is specifically that the matters alleged in the notice have not occurred. This is clearly expressed in the past tense. Cessation of the breach of planning control, such that the use is no longer occurring, therefore does not provide success on ground (b).
13. Accordingly, the appeal on ground (b) fails.

### **The appeal on ground (a)**

14. The ground of appeal is that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted or, as the case may be, the condition or limitation ought to be discharged. There are three substantive issues for issuing the notice, from which I consider the main issues are:

- whether the development would result in a sustainable pattern of development
- the effect of the parking arrangement on highway and pedestrian safety, as well as the convenience of other highway uses, and
- the effects of the development on the living conditions of the occupiers of nearby residential properties, specifically in relation to noise and disturbance.

#### *Whether the development would result in a sustainable pattern of development*

15. Policy INF8 of the London Borough of Newham Core Strategy (Core Strategy) indicates that the Council will ensure that a suitable range of community facilities are provided to meet existing and forecast demand by, in part, ensuring that all community facilities are located in places that are or will be accessible by a range of means of transport, prioritising town and local centre sites. This policy is one of a suite of policies in the Core Strategy, including Policies S1, S6 and INF5, that establish a hierarchy of Major, District and Local Centres and which seek to ensure that development is focused in these centres rather than occurring in a piecemeal way. This approach reflects that taken in Policy 4.7 of the London Plan and is continued as Policy INF10 of the emerging London Borough of Newham Detailed Sites and Policies Development Plan Document.

16. The appeal site is located outside of any Major, District and Local Centres identified in the Core Strategy, being some 450 metres from the closest such centre, the Green Street District Centre. The use of the appeal property as a community centre is therefore immediately in conflict with Policy INF8 and the supporting policies, insofar as it results in a piecemeal location of a community use outside of the hierarchy of Major, District and Local Centres established in the Core Strategy.

17. I therefore conclude that the development results in an unsustainable pattern of development that is contrary to the Policy INF8 and the policies set out above, as well as to the other policies cited in the notice in relation to this issue. As such, the use as a community centre does not benefit from the presumption in favour of sustainable development set out in the National Planning Policy Framework (Framework).

#### *Highway and pedestrian safety, and the convenience of other highway uses*

18. The appeal property does not have the benefit of any on-site parking spaces. Apart from a few designated parking bays, which operate from Mondays to Saturdays during the daytime period and which are time limited, parking on Plashet Road is restricted by means of 'keep clear' road markings and double yellow lines. The residential side roads surrounding the appeal site are within

the Upton Park Residential Parking Zone, within which parking is restricted to residents only on weekdays and Saturdays between 08:00 and 18:30 hours.

19. The appeal site is located within an area having a Public Transport Accessibility Level (PTAL) rating of 4, defined as 'Good'. The site is served by two bus routes, with a bus stop immediately outside of the site, and with further bus services available from Green Street. The closest Underground station is Upton Park, although this involves a ten minute walk, with Plaistow station a further distance away. Furthermore, as the Council points out, the constrained east-west direction of the train links reduces the availability this transport option to people within the catchment area served by the community use.
20. Notwithstanding the PTAL rating, the range of activities identified by the Council as taking place when the appeal property was being used as a community centre may be expected generate a significant number of vehicular movements. Moreover, events such as parties and wedding gatherings typically take place outside or continue beyond the times when public transport is operating or when it is operating on a reduced frequency. The parking restrictions on roads surrounding the appeal site would severely reduce the number of parking spaces that may be available, particularly during weekdays. This is likely to result in haphazard or indiscriminate car parking that would prejudice highway and pedestrian safety and which would cause inconvenience to other road users.
21. In support of this ground (a) appeal, the appellant has submitted a Transport Statement, as part of which an existing travel survey was undertaken. However, the description of the use in the Transport Statement relates primarily to education-type activities. There is no explicit reference to the wider range of activities identified by the Council as having taken place there and which led the Council to identify the use as a community centre, including those that may take in the evenings or at weekends.
22. It therefore seems to me that the use described in the Transport Statement, and on which the existing travel survey and parking stress survey are based, is that of the existing use as a training centre rather than the use as a community centre alleged in the notice. On that basis, I consider that the Transport Statement provided by the appellant is not directly relevant to the use alleged in the notice and with which the deemed planning application is concerned. I therefore attach only limited weight to the findings in that Transport Statement.
23. I conclude that the use as community centre prejudiced highway and pedestrian safety, as well causing inconvenience of other highway uses. The development would therefore be contrary to Policy 6.13 of the London Plan and Policies S1, S6, SP1, SP7 and INF2 of the Core Strategy. Amongst other things, these policies promote the importance of facilitating the smooth and efficient but safe movement of traffic on specific roads in Borough in the context of an overall shift to sustainable transport. One of the roads specifically identified in this context is Plashet Road. The development also fails to accord with the Framework in terms of minimising the conflict between traffic and pedestrians.

*Living conditions*

24. The appeal property is adjoined in either side by residential properties, with further residential properties on this side of Plashet Road. These properties face directly onto a busy road, with considerable number of vehicles and pedestrians passing in front of them during the daytime period. I therefore accept that these properties are already subject to high levels of ambient noise and a degree of noise disturbance.
25. Nonetheless, the use of the premises as a community centre is likely to give rise to increased levels of activity, including the congregation of people outside the premises. This increased activity could occur during the day but particularly so during the late evening and at weekends. This increased activity is in addition to the already high ambient noise levels during the day, and also likely to occur when ambient noise levels are lower in the evenings and at weekends. I consider that this activity results in increased levels of noise disturbance to the occupiers of the properties adjoining residential properties and those close by, and that this unacceptably detracts from the living conditions enjoyed by the occupiers of those properties.
26. However, the lawful use of the appeal property is considered by the Council to be a B8 Storage and Distribution Use. A resumption of that use could also result in noise disturbance to adjoining residential properties. Furthermore, the lawful B8 use is unrestricted in terms of hours of operations and granting permission for the community centre would enable conditions to be controlled limiting the hours that the use could operate and therefore potentially minimise any noise disturbance to adjoining residential properties. On balance, and taking into account the already high ambient noise levels, I consider that a community centre limited by condition to defined operating hours would not be significantly more harmful to the living conditions of the occupiers of adjoining residential properties than would the resumption of the unrestricted lawful B8 use.
27. Whilst I conclude that the use as community centre harms the living conditions of the occupiers of nearby residential properties in relation to noise and disturbance, I consider that this is outweighed by the other considerations set out above. The development would therefore not be contrary to Policy 7.15 of the London Plan; Policies SP2 and SPs and INF2 of the Core Strategy; or Policy EQ45 of the London Borough of Newham Unitary Development Plan. These policies indicate, amongst other things, that planning permission for any development that results in unacceptable levels of noise beyond the boundary of the site will be resisted. In this respect, the development accords with the Framework in terms of securing a good standard of amenity for all existing and future occupiers of land and buildings.

*Conclusion on the ground (a) appeal*

28. Paragraph 70 of the Framework indicates that policies and decisions should plan positively for community facilities to enhance the sustainability of communities. The London Plan and the Core Strategy are also both supportive of the creation of new community and worship facilities, and recognise that community uses provide a valuable and important contribution towards ensuring a cohesive society. I therefore acknowledge that the use of the appeal property for a community use benefits from this support and, in that

respect, accords with the development plan and the Framework. This benefit is enhanced by the recent closure of the Upton Community Centre nearby.

29. However, the support for community uses in the development plan is caveated in terms of being in appropriate locations. The appeal site is not within an appropriate location for a community use as defined in the development plan, being outside of any Major, District or Local Centre. Furthermore, notwithstanding the PTAL rating, the particular characteristics of a community use are such that it is likely to result in haphazard or indiscriminate car parking, prejudicial to highway and pedestrian safety and causing inconvenience to other road users.
30. I accept that the use as a community centre is likely to have caused noise disturbance to the occupiers of adjoining properties when operating but, if controlled by a suitably worded condition, would not give rise to any greater level of noise disturbance than would a resumption of the lawful B8 use. Nevertheless, on balance, I consider that the use of the appeal premises as a community centre resulted and, if resumed, would result in an unsustainable pattern of development, contrary to the development plan and the principles of sustainable development that underpin the Framework. I therefore conclude that planning permission ought not to be granted for this use. Accordingly, the appeal on ground (a) fails.

### **The appeal on ground (f)**

31. The appeal on ground (f) is that the requirements of the notice exceed what is necessary. When an appeal is made on ground (f), it is essential to understand the purpose of the notice. Section 173(4) of the Town and Country Planning Act 1990 sets out the purposes which an enforcement notice may seek to achieve, either wholly or in part. These purposes are, in summary, (a) the remedying of the breach of planning control by discontinuing any use of the land or by restoring the land to its condition before the breach took place or (b) remedying any injury to amenity which has been caused by the breach. In this case, the requirements of notice are to cease the use of the property as a community centre. The purpose of the notice must therefore be to remedy the breach.
32. The essence of the appellant's case on ground (f) is that, whilst the notice requires the removal from the property of all facilities, fixtures and equipment that solely facilitate the unauthorised use, some of these would have been used to facilitate the previous lawful use of the premises as the "Learning Base" operated by Mr Ali under the temporary planning permission granted in July 1999 and now facilitate the current use of the premises as a training centre. The appellant therefore considers that the requirements of the notice are not clear.
33. However, the notice relates to the use of the property as a community centre. Whilst that use did include an element of educational use, the entire use of the property as a community centre is unauthorised, including any educational element of that use. It follows that the removal from the property of all facilities, fixtures and equipment that solely facilitate the unauthorised use is necessary to achieve the purpose of the notice.
34. I therefore conclude that the requirements of the notice are not excessive. Accordingly, the appeal on ground (f) fails.

### **The appeal on ground (g)**

35. The ground of appeal is that the time given to comply with the requirements is too short. The period for compliance with the requirements stipulated in the enforcement notice is three months.
36. The appellant claims that a period of three months is not sufficient time to find alternative premises and to re-locate the training facilities provided by the appellant, citing the importance of minimising any interruption in the continuity of the training provided. However, this position again assumes that the use being enforced against is that of the current use as a training centre, whereas the breach of planning control alleged in the notice in fact relates to the use as a community centre. The appellant has not provided any evidence to show that the period of nine months sought is necessary to cease the use as a community centre and to remove from the property of all facilities, fixtures and equipment that solely facilitate that use. Indeed, I noted on my site visit that the premises were set up as a training centre and that there was no evidence of the community use taking place at that time. This would suggest that the period of three months would be sufficient to comply with any residual requirements of the notice.
37. Accordingly, the appeal on ground (g) fails.

### **Conclusion**

38. For the reasons set out above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice and dismiss the appeal, and refuse to grant planning permission on the deemed application.

### **Formal Decision**

39. The appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

*Paul Freer*

INSPECTOR