

Appeal Decision

Site visit made on 17 October 2016

by Sukie Tamplin DipTP Pg Dip Arch Cons IHBC MRTPI

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

Decision date: 25 October 2016

Appeal Ref: APP/Q1445/C/16/3155569

2 Stoneham Road, Hove BN3 5HJ

- 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 Miss Anongnat Romchai (Hungry Monkey) against an enforcement notice issued by Brighton & Hove City Council.
- The notice was issued on 27 July 2016.
- The breach of planning control as alleged in the notice is Without planning permission the material change of use from A1 (retail) to a mixed A1/A3 (retail/café).
- The requirements of the notice are:
 1. Cease the unauthorised mixed use of the property as an A1(retail)/A3(café) and return the property to its authorised use as solely retail.
 2. Completely remove from the property the tables and chairs provided for customer seating for the A3 use.
 3. Completely remove from the property all kitchen and cookery apparatus that facilitate the heating and reheating of food for customers.
- The period for compliance with the requirements is 2 weeks.
- The appeal is proceeding on the ground set out in section 174(2) (f) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The requirements are varied, the appeal is dismissed and the enforcement notice as varied is upheld.

Procedural matter and background

1. I also made an unaccompanied visit on 16 October 2016 so that I could view Hungry Monkey during evening hours. At the time of my visit, at about 8.30pm, the premises were closed and in darkness.
 2. No 2 Stoneham Road is a single storey commercial unit to the north of Portland Recreation Ground. There is a newsagent a short distance to the west and a café in the park but otherwise the character of the area is residential and at the time of both of my visits was very quiet. The premises are attached to Nos 2 & 4 Stoneham Road which appear to be occupied as 2 maisonettes.
 3. It seems that the use of the premises has altered since the enforcement notice was issued and the appellant says that she now operates as a Thai grocery, delicatessen and gelato shop. However I must consider the use of the premises at the time the enforcement notice was issued.
 4. Planning permission was refused in August 2015 for the use of the premises as a cookery club (Ref BH2015/01148). This decision was upheld on appeal in
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March 2016¹. This cookery club use forms no part of the allegation before me and although I saw that the premises displays prominent signage regarding the availability of cookery classes this is a matter that I cannot take into consideration.

The appeal on ground (f)

5. The sole ground of appeal is that the requirements of the notice go beyond what is necessary to remedy the breach of planning control. In these circumstances the appellant does not dispute that the change of use has or did occur.
6. In particular the appellant says that that a limited amount of seating is necessary in association with the A1 use and thus the requirement to remove all the tables and chairs is overly onerous.
7. The single storey premises is currently laid out as a retail shop and goods are on display for sale. In addition there is a kitchen to the rear with a single hob and microwave. Within the commercial unit there is an ice cream or gelato fridge and several other fridges that appear to be used in conjunction with the preparation of food. There is one table and 5 chairs available for customers. In addition there are a small number of 'floating chairs' stacked or tucked under the central counter which probably doubles up as a food preparation area.
8. However the photographs and statements submitted by third parties indicate that around the time, or shortly before, the notice was issued the premises was in use as a restaurant and up to 14 people have been eating at any one time in the premises in addition to 'take-away' trade. Screen-shots from the internet describe the operation as a restaurant specialising in Thai street food. Trading hours are variously described as Thursday-Saturday or also including Sunday evenings. The evidence suggests that hot food is or was served and there is a total absence of any ventilation equipment. Consequently the A3 use resulted in noise, pollution and disturbance to neighbours.
9. The notice has three requirements and in the interests of clarity these require variation. Step 1 requires the cessation of the mixed use and a return to its 'authorised use'. I have not been provided with any evidence of whether the previous use was authorised or not and it is not reasonable in any event to require the premises to be returned to an active retail use. In these circumstances I propose to vary this step so that it simply requires the cessation of the A3 use. This variation will not prejudice the parties as it is clear that it is the A3 element that has caused harm and needs to cease. Moreover the appellant will know what she has done and what she needs to do to remedy the breach.
10. Step 3 requires the removal of all kitchen and cookery apparatus and this will prevent the preparation of hot food which gives rise to the A3 use. Thus the combination of Steps 1 and 3 would remedy the breach of planning control because the premises could no longer operate as an A3 use. These requirements would in themselves overcome the reasons for issuing the notice namely concerns of pollution, noise and harm to the living conditions of adjoining occupiers.

¹ APP/Q1445/W/15/3137027

11. In these circumstances, Step 2 is not necessary because it is the use of the table and chairs that facilitates the A3 use rather than the presence of the furniture itself that is causing harm. It is not unreasonable that an A1 use has a table and a few chairs and this is a common feature of many retail premises. Consequently I will delete Step 2 in full.
12. Accordingly, the notice will be upheld but the appeal on ground (f) is successful in part to the extent described above.

Formal Decision

13. It is directed that the requirements in Section 5 of the notice are varied as follows:
 - 1 The deletion of the following words in Step 1 "and return the property to its authorised use as solely retail" and their substitution by the words "by ceasing A3 use (café)".
 - 2 The deletion of Step 2 in full.
14. Subject to these variations, the appeal is dismissed and the enforcement notice as varied is upheld.

Sukie Tamplin

INSPECTOR