
Appeal Decision

Site visit made on 27 September 2016

by Paul Freer BA (Hons) LLM MRTPI

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

Decision date: 31 October 2016

Appeal Ref: APP/Z5060/C/16/3147971

Land at B and B Food Store, 442 Becontree Avenue, Dagenham, Essex RM8 3UB

- 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 Mrs Harindra Kier against an enforcement notice issued by the Council of the London Borough of Barking & Dagenham.
 - The notice was issued on 17 March 2016.
 - The breach of planning control as alleged in the notice is, without planning permission, the change of use of the industrial unit to a place of worship (Class D1).
 - The requirements of the notice are:
 - Cease the use of the industrial unit as a place of worship
 - Remove all fixtures and fittings from the industrial unit that facilitates this use
 - Remove all subsequent waste material from the industrial unit.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (d) and (f) of the Town and Country Planning Act 1990 as amended.
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Summary Decision: The appeal is dismissed and the enforcement notice is upheld.

Procedural Matter

1. The appeal was originally made on grounds (a) and (f) as set out in section 174(2) of the 1990 Act. However, it is apparent from the appeal form that the appellant considers the use as a place of worship to have taken place for a period in excess of ten years. Although not expressly stated as such, it is evident that the appellant contends that the use is now immune from enforcement action. This amounts to an appeal on ground (d) and accordingly I have treated it as such. The Council has commented on the appellant's claims in this respect in its appeal statement and I am satisfied that the Council would not be caused any injustice by treating this as an additional grounds of appeal.

The appeal on ground (d)

2. The appeal on this ground is that, at the date on which the notice was issued, no enforcement action could be taken in respect of any breach of planning control that may be constituted by those matters. In order to succeed on this ground, the appellant must show that the use had been continuous for a period of ten years beginning with the date of the breach. The appellant must therefore demonstrate that the use has taken place continuously since 17 March 2006. The test in this regard is the balance of probability and the burden of proof is on the appellant.
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3. Although the appellant contends that the use of the premises as a place of worship has taken place for a period in excess of ten years, no documentary evidence has been provided in support of that. By way of example, mention is made on the appeal form of business rates being paid but I have been provided with no copies of rate demands, statements or receipts to verify that.
4. The Council points out that a planning application for a new shop front submitted in 2012, but which also involved the construction of an additional rear external staircase, makes no reference to the use of the industrial unit at the rear as a place of worship. The application drawings show the industrial unit but without any notation as to use, and there is no mention of the use as a place of worship in an otherwise well-detailed Design & Access Statement that accompanied the application. Although by no means definitive in its own right, the absence of any mention of the use of the industrial unit as a place of worship does not support the appellant's case that the use has been ongoing for a period in excess of 10 years.
5. In conclusion, the appellant has therefore failed to discharge the burden of proof that is upon them and has failed to show that, on the balance of probability, the use has taken for a period of ten years beginning with the date of the breach. Accordingly, the appeal on ground (d) fails.

The appeal on ground (a) and the deemed planning application

6. 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. The Council has stated two substantive reasons for issuing the enforcement notice, from which the following main issues are raised:
 - whether, given that the site is within the consultation distance of a major hazard site, the use alleged in the notice would be acceptable on safety grounds, and
 - the effect of the use on the living conditions of the occupiers of neighbouring properties, specifically in relation noise and disturbance.

Safety

7. The reason for issuing the enforcement notice indicates that the appeal site is within the consultation distance of a major hazard site. However, the location of that major hazard site has not been identified in any of the documents submitted by the Council and I have been provided with no details regarding the nature of the hazard posed or the distance of the major hazard site from the appeal site. Furthermore, although the appeal site is said by the Council to be within the consultation distance of a major hazard site, I have not been advised whether the Health & Safety Executive have been consulted on the use of the outbuilding as a place of worship and, if so, the views expressed by the Health & Safety Executive. Moreover, the Council has not expanded upon or provided any justification in support of this reason in its appeal statement. Accordingly, I have no evidential basis on which to assess the safety implications of the use of the appeal premises as a place of worship or the level of risk, if any, that results. Had the development been acceptable in all other respects, this is a matter that I would have pursued further.

Living conditions

8. As part of my site visit, I was able to view inside the building. The space is clearly set up as a place of worship, with one main room of rectangular plan that is well-lit and is heated with wall mounted electric fires. At one end of this main room is a raised dais on which was placed a lectern with speakers to the side. Behind this dais is a large banner depicting a religious scene. There were a total of some 50 chairs laid out in the main part of the room, but with space for more and I noted a stack of spare chairs at the other end of the room. At the opposite end of the room to the dais is a dedicated space for the operator of the sound equipment, including the control panel for the sound system and a computer. There is also a toilet and an area used for storage at this end of the room.
9. On the basis of my site visit, it is apparent that the space is capable of accommodating in excess of 50 worshipers at any one time and that services are capable of being held with benefit of amplified sound and/or music. There is no evidence that the building has the benefit of sound insulation. In any event, sound insulation of the building would not have any effect in terms of reducing noise generated by worshipers arriving at and leaving the building. I have been provided with no information in terms of the frequency at which services are held at the appeal premises, or the days and times at which services take place. I must therefore assume that services do take place or are capable of taking place outside of what might be typically regarded as normal working hours, such as in the early mornings, evenings or at weekends.
10. The nearest residential properties are the flats above the retail units fronting onto Becontree Avenue. The rear elevations of these flats face onto the appeal premises. Although I have not been advised of any complaints having been received from the occupiers of these flats, it is in my view likely that the use of the outbuilding as a place of worship causes and would continue to cause an unacceptable level of noise disturbance to the occupiers of those properties, particularly if services take place outside normal working hours.
11. I conclude that the use of the industrial unit as a place of worship unacceptably harms the living conditions of the occupiers of neighbouring properties in relation noise and disturbance. I therefore conclude that this use is contrary to Policies BP8 and BP11 of the Council's Borough Wide Development Policies DPD, that being part of the London Borough of Barking and Dagenham Local Development Framework. These policies require, amongst other things, that all developments ensure that existing occupiers are not exposed to unacceptable levels of pollution that may arise from the development, including from noise.

Other Matters

12. In its appeal statement, the Council has raised two additional concerns in relation to this development that do not form part of the reasons for issuing the enforcement notice. These concerns relate to parking and means of escape. The appellant has had an opportunity to respond to these additional concerns but has not done so. I shall consider these additional concerns in turn.
13. I am advised by the Council that the site has a Public Transport Accessibility Level (PTAL) rating of 2 which, in the context of a scale ranging from 1 to 6 where 6 is 'excellent', is regarded as 'poor'. However, I have no information in

terms of the catchment area of the appeal premises as a place of worship or the modal split of those attending services there. It could therefore be the case that the catchment area is tightly drawn around the appeal site and that a significant proportion of those attending walk to the site. Moreover, the Council has not provided any evidence, for example in the form of parking surveys, that the use as a place of worship causes haphazard or inconsiderate car parking, resulting in conditions prejudicial to highway safety.

14. Consequently, and notwithstanding the PTAL rating of 'poor', in the absence of further information relating to factors such as modal split, the catchment area of the congregation and the times at which services take place, I am not in a position to reach any informed conclusions as to whether the use of the outbuilding as a place of worship results in excessive car parking is surrounding roads.
15. The second additional concern raised by the Council is means of escape. The primary means of escape is from the door at the end of the building closest to the main retail unit. I noted that this door is clearly marked with a 'Fire Exit' sign but it is a standard-width pedestrian door and has slight step up when exiting the building. There is a second door at the opposite end of the outbuilding that opens onto the access road at the rear but, from inside the outbuilding, access to that door appears to be prevented or at least greatly hindered by the large banner behind the raised dais. However, whilst I can understand the concerns expressed by the Council in relation to the means of escape, I have been provided with no safety audits carried out by a person(s) suitably qualified in such matters. I am therefore unable to reach an informed conclusion as to whether the means of escape from the building is adequate for a place of worship with this seating capacity and any fire risk associated with the attendant electrical devices and equipment.
16. Although neither the appellant nor the Council has suggested any conditions should I be minded to allow the appeal, I have given very careful consideration as to the whether the harm that I have identified above could be controlled by suitably worded conditions. I am mindful in particular of conditions to limit the number of people attending services and/or the times at which services can be held. The difficulty is that I have been provided with no details about the number of people that typically attend services, or of any particular times that services typically take place or are required to take place for any religious reasons. In the absence of this information, I cannot be certain that the harm described above could be satisfactorily controlled by conditions. Moreover, without that information I am unable to frame any potential conditions such that they would meet the tests set out in the Planning Practice Guidance in terms of precision, reasonableness and relevance to the development that would be permitted. The imposition of conditions is therefore not something that I have considered further.

Conclusion on the ground (a) appeal

17. I have concluded that the use of the industrial unit as a place of worship unacceptably harms the living conditions of the occupiers of neighbouring properties in relation noise and disturbance. The appellant has not identified any considerations that would outweigh the harm caused in that respect. 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)

18. 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 outbuilding as a place of worship. The primary purpose of the notice must therefore be to remedy the breach albeit, given the reasons for issuing the notice, the notice also seeks to rectify an injury to amenity.
19. Although the appellant has specifically appealed on ground (f), no lesser steps than the complete cessation of the use of the outbuilding as a place of worship have been advanced. I have considered whether there are any alternatives to full compliance with the notice that would overcome the planning difficulties resulting from this development with less cost or disruption but none are obvious to me. I have already considered whether the injury to amenity caused by the use of the outbuilding as a place of worship could be overcome and controlled by the imposition of suitable conditions in relation to the ground (a) appeal.
20. I therefore conclude that the requirements of the notice are not excessive. Accordingly, the appeal on ground (f) fails.

Conclusion

21. 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

22. 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