

Appeal Decision

Site visit made on 23 August 2017

by D A Hainsworth LL.B(Hons) FRSA Solicitor

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

Decision date: 05 September 2017

Appeal Ref: APP/G5750/X/17/3171441

Unit 3, 284 Barking Road, East Ham, London E6 3BA

- The appeal is made under section 195 of the Town and Country Planning Act 1990 by Olawale Alley Adiat representing Global Business Management Solution Limited against a refusal by the Council of the London Borough of Newham to grant a lawful development certificate.
 - The application Ref: 16/04063/CLP, dated 29 December 2016, was refused by notice dated 23 February 2017.
 - The application was made under section 192(1)(a).
 - The proposed use for which the certificate is sought is "use as minicab control room only no base of customers" [*sic*].
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Decision

1. The appeal is dismissed.

Reasons for the decision

2. Section 195 requires an assessment to be made as to whether the Council's refusal of the application is or is not well-founded. The assessment is based on whether or not the proposed use would be lawful if begun at the time of the application for the certificate. The planning merits of the proposed use are not relevant to the appeal and there is no planning application before me. I have therefore been unable to take into account the appellant's representations about the benefits of minicabs.
 3. The ground floor of 284 Barking Road advertises itself at the entrance from the street as a plaza with many shops inside. Internally, it has been converted into twelve small units served by a single entrance and a common corridor, with shared toilets and common utility services. Some of the units have been combined. At the time of my visit the units that were occupied were in a variety of different uses, but only Unit 1, which is next to the street, fitted the description "shop" in the sense of primarily being a business selling things directly to shoppers.
 4. The application relates to Unit 3; it gives the existing or last use of the unit as being within Use Classes Order Class A2 Financial and professional services, and the proposed use as being within Class A2 also. In the appeal, the appellant states that the lawful use of "the development site" (by which I assume he means the ground floor as a whole) is Class A1 Shops, to which the
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- proposed use would be ancillary, since it would occupy an internal area of office space and be used as a minicab call centre staffed by two persons to take orders and make bookings for the minicab company by telephone, with no customers or drivers attending.
5. The Council's view is that each of the units is a separate unit for planning purposes and that Unit 3 is a Class A1 unit. They state that the proposed use is not in Class A1 or Class A2 and that it is a sui generis use. Since the proposed use will be owned and operated independently, they maintain that it will not be ancillary to any other uses taking place here.
 6. I have not been supplied with the planning history of the property, but it is old and appears originally to have been a typical ground-floor shop with living accommodation above. At some stage, the ground floor has been extended at the rear and the whole of the ground floor has at a later stage been converted into the twelve small units that now exist.
 7. The only physical relationships between any of the units are the entrance and corridor, the toilets and the utility services. Units 1 to 5 are in the original shopping space. They have individual addresses and are separately assessed for business rates. At the time of my visit, Units 1, 2, 4 and 5 were each occupied by stand-alone businesses that had no functional relationship with each other or with any of the businesses that operate from the other units.
 8. The appellant's proposed use of Unit 3 would be no different in any of these respects. As a matter of fact and degree, I consider that the appellant's business would be occupying what is a separate unit for planning purposes and that the use would not be ancillary, because it would be a stand-alone use which was being carried on in a single planning unit and was unrelated to a primary use.
 9. Since Unit 3 is within the original shopping space and I have not been informed of any planning permissions relating to it or to the rest of this space, I have no reason to disagree with the parties' present conclusion that its authorised use is within Class A1. The proposed use would normally be regarded as a sui generis use, although it is conceivable that it could be considered to be a Class B1 office use. There is, however, no permitted development right to change a use from Class A1 to either a sui generis use or a Class B1 use.
 10. Nevertheless, it does not follow automatically that planning permission is required for the proposed use, since there would still have to be a "material change in the use" of the unit within the meaning of section 55 of the 1990 Act. This phrase is not defined. The Government's Planning Practice Guidance states, "it is linked to the significance of a change and the resulting impact on the use of land and buildings. Whether a material change of use has taken place is a matter of fact and degree and this will be determined on the individual merits of a case".
 11. In this instance, the planning concerns that arise relate to the practicality of ensuring that the use would operate without customers or drivers attending, the potential disturbance from round-the-clock working, the extent to which additional vehicle movements and on-street parking could occur and the implications of the loss of some shopping space. These are significant concerns that could have an adverse impact on matters related to land use planning. I

therefore consider, as a matter of fact and degree, that the proposed use involves a material change of use for planning purposes.

12. I have therefore concluded that planning permission is required for the proposed use and that it would not be lawful if begun at the time of the application for the certificate. I am satisfied that the Council's refusal of the application is well-founded. The appeal has therefore been dismissed, as required by section 195(3).

D.A.Hainsworth

INSPECTOR