
Appeal Decision

Site visit made on 28 August 2019

by AJ Steen BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 September 2019

Appeal Ref: APP/Y5420/C/18/3216649

The land and building(s) known as Ground Floor Shop, 69 Tottenham Lane, London N8 9BE

- 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 Bektas Aksu against an enforcement notice issued by the Council of the London Borough of Haringey.
 - The enforcement notice was issued on 24 October 2018.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of the premises to a social club.
 - The requirements of the notice are to cease the use of the premises as a social club.
 - The period for compliance with the requirements is one month.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fee has been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act also falls to be considered.
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Decision

1. The appeal is dismissed and the enforcement notice is upheld.

Preliminary Matter

2. I understand the use as a social club has included the small yard to the rear of the shop. The description of the appeal site refers to land and building(s) known as Ground Floor Shop, 69 Tottenham Lane, London N8 9BE, shown edged red on the attached plan. It has been suggested that the yard has been used as part of the social club. However, the owner of the flat above the unit states that this belongs to the flat and is only available for emergency access to the shop. Ownership matters are a private matter between the relevant parties and not within my jurisdiction. Nevertheless, I consider that the enforcement notice affects the ground floor shop and the yard to the rear.

The Appeal on Ground (a) and the Deemed Planning Application

Main issues

3. The main issues are:
 - the effect of the change of use on the vitality and viability of the district shopping centre; and

- the effect of the change of use on the living conditions of occupiers of neighbouring residential properties with particular regard to noise and disturbance.

Reasons

Vitality and viability

4. The shop on the ground floor of 69 Tottenham Lane comprises a large room that contains tables and chairs to the front and a small kitchen area behind. Beyond that is a toilet and door to the yard at the rear. It is currently in use as a social club, without any advertising to the front elevation fronting Tottenham Lane and blank windows such that the activities within the unit are not visible from outside.
5. Policies DM1 and DM43 of the Development Management Development Plan Document (DMDPD), Policy SP10 of the Haringey Local Plan (LP) and Policies 2.15, 4.7 and 4.8 of the London Plan seek to protect the vitality and viability of local shopping centres, such as Tottenham Lane East, including core local shopping facilities and services and providing goods and services to meet the needs of the population. Policy DM43 of the DMDPD states that the number of units in non-retail use should not exceed 50% across the entire frontage, unless it can be demonstrated that the proposal will significantly enhance the vitality and viability of the centre. That policy also requires an active frontage, window display or other appropriate town centre frontage.
6. It is not in dispute that the use of this unit as a social club means that the number of units in non-retail use in Tottenham Lane East Local Shopping Centre exceeds 50%. My attention has been drawn to the history of the unit. I understand that it has previously been used as a betting office within Class A2 of the Town and Country Planning (Use Classes) Order 1987 as amended. Permission was granted for a change of use from A1 (retail) to D1 physiotherapy clinic in 2014, although it is unclear whether that was ever implemented. However, it was used as an organic health food outlet more recently, albeit that use was brief. That indicates that the last lawful use of the unit was under class A1 (retail). Consequently, the change of use of the unit to another use, including social club, would conflict with Policy DM43 of the DMDPD.
7. Whilst it is possible that significant numbers of vacant units in local shopping centres can harm vitality and viability, it is not clear that the number of vacant units in this centre is significant. Reference has been made to the marketing of the unit for two years. However, little evidence has been provided of that marketing so it is not possible to conclude whether or not the unit would be likely to return to retail use. The use of the unit as a social club provides employment such that it contributes to the local economy.
8. The existing appearance of the building does not provide an active frontage or window display. I note that the appellant would be willing to alter that and provide a window display such that this would address that element of Policy 43 of the DMDPD. However, no mechanism to do this has been suggested, so I have put limited weight on this and, in any event, it would not overcome the policy conflict arising from the proportion of units in retail use.

9. For these reasons, I conclude that the proportion of units in a non-retail use within Tottenham Lane East Local Shopping Centre, and the lack of an active frontage, results in harm to the vitality and viability of the centre. Consequently, the use conflicts with Policies DM1 and DM43 of the DMDPD, Policy SP10 of the LP and Policies 2.15, 4.7 and 4.8 of the London Plan.

Living conditions

10. I understand that the social club operates from 1300 to midnight every day and tends to be visited by around 15-20 people over the course of a day. It provides space for people to socialise over hot and cold drinks and space for studying, for which I understand there is local demand. Reference is made to it being used by the local Turkish community, although it is also stated that it is open to all.
11. The upper floors of the building comprise a residential unit that is owned and occupied separately from the ground floor. There are other residential units above surrounding ground floor uses. It has been alleged that noise and disturbance from the social club affects the living conditions of occupiers of those units.
12. The premises are located within a busy shopping centre that includes a number of related uses including public house and hot food takeaways. As a result, there is a significant level of background noise and disturbance within the area.
13. Nevertheless, the evidence demonstrates that there is significant noise from this unit including late at night. The use has also taken place in the yard to the rear and, even if that use has ceased, opening the rear door would allow noise from the unit to escape.
14. I note that it is suggested additional sound proofing of the unit could be required in order to reduce the transmission of noise from the ground floor, although it is unclear what mechanism would be used to require this. In addition, I consider that it may be possible to restrict hours of use and opening of the doors by condition.
15. Nevertheless, I conclude that the change of use of the building to a social club has resulted in harm to the living conditions of occupiers of neighbouring residential properties with particular regard to noise and disturbance. As such, the change of use conflicts with Policy DM1 of the DMDPD and Policy SP11 of the LP that seek high quality development that address issues of noise and disturbance from the use and activities of the development.

Conclusion

16. For the reasons set out above, I conclude that on balance the proposed development would not accord with the development plan. The appeal on ground (a) therefore fails.

The Appeal on Ground (g)

17. An appeal on this ground is that the period specified in the notice for compliance falls short of what should reasonably be allowed.
18. The notice requires the use to cease within one month of taking effect. The appellant suggests that this is a short period for compliance and will not allow sufficient time to find an alternative venue for pre-planned events. I note that

the appellant wasn't aware that planning permission was required for the change of use. The appellant suggests that six months would be more appropriate.

19. However, little detail of pre-planned events has been provided to enable an assessment as to what is a more reasonable period. As a result, I can only put limited weight on this factor. I have concluded above that uncontrolled operation of the premises as a social club is harmful to the living conditions of occupiers of neighbouring properties. As a result, it is unclear why a period of six months would be necessary and such an extension would extend that period of harm to those neighbouring occupiers. Consequently, I consider that the period of one month is appropriate in this instance.
20. The appeal on ground (g) therefore fails.

AJ Steen

INSPECTOR