



Appeal Decision

Site visit made on 5 September 2019

by Timothy C King BA (Hons) MRTPI

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

Decision date: 22 November 2019

Appeal Ref: APP/U5360/C/18/3216125

Land at Arch 322, Andrews Road, Hackney, London E8 4RP

- 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 Trevor Cellise against an enforcement notice issued by the Council of the London Borough of Hackney.
 - The enforcement notice was issued on 10 October 2018.
 - The breach of planning control as alleged in the notice is: Without planning permission the material change of use of a garage (use class B1) to a retail unit (use class A1) and the erection of an awning/canopy and fence adjacent to the archway.
 - The requirements of the notice are to:
 - Cease the use of the property as a retail unit (use class A1);
 - Remove all fixtures and fittings facilitating the retail use;
 - Remove the unauthorised awning/canopy from the property;
 - Make good all damage to the Property resulting from the removal of the unauthorised works;
 - Remove from the Property all materials, debris, waste and equipment resulting from compliance with the other requirements of the notice.
 - The period for compliance with the requirements is 3 (three) months after this notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2) (c), (e) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.
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Formal Decision

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

Preliminary Matters

2. The alleged breach relates to a small under-cover market, 'Hackney Furniture, House Clearance & Removals', and its occupation of a railway arch, along with the erection of an awning/canopy positioned over the area immediately outside the arch.
3. The Council issued the enforcement notice due to its consideration that the use and awning runs contrary to planning policies. However, in determining the appeal, due to the deemed planning application having lapsed, I am unable to take into account the planning merits and/or impacts of the use.

The Appeal on ground (e)

4. S172(2) of the 1990 Act requires copies of an enforcement notice to be served (a) on the owner and on the occupier of the land to which it relates; and (b) on any other person having an interest in the land, being an interest which, in the opinion of the authority, is materially affected by the notice.
5. An attachment to the enforcement notice lists the persons the notice was served upon, and this is confirmed by the Council's Certificate of Service document. Compiled in the form of a signed s9 Witness Statement under the Criminal Justice Act 1967 it says that the parties listed were each hand delivered a copy of the notice on 10 October 2018. These include the "legal owner(s) of Arch 322", "the legal occupier", "Mr Trevor Cellise (Hackney Furnisher)" who appealed the notice, and "The Manager". The Company Secretary of Network Rail is the only exception, being served instead by Registered Post. Dated photographs, showing envelopes addressed to all those parties hand delivered, with the appeal premises evident in the background, have also been provided by the Council.
6. It is unclear who the notices were hand delivered to but Trevor Cellise, the appellant, does not dispute that he was not personally served nor whether he was the recipient for the other three notices hand delivered. Instead, he makes the point, as set down on the appeal form, that the enforcement notice was 'sent to the legal occupier not the correct name'. Whether this relates to the words 'Hackney Furnisher' rather than the firm's name 'Hackney Furniture...' is unclear but, in light of my findings, I consider that the Council's method of service was comprehensive in the circumstances.
7. Accordingly, I conclude that the Council discharged its obligations under s172(2) and the ground (e) appeal does not therefore succeed.

The Appeal on ground (c)

8. The basis of an appeal on ground (c) is that the matters which are the subject of the allegation do not constitute a breach of planning control. The burden of proof is on the appellant to demonstrate this on the balance of probability. The planning merits of the development are irrelevant to an appeal on this ground.
9. The appellant indicates that the unit has been converted from a garage into a retail shop and the Council also comments that, when investigating the alleged breach, it was found that the property was no longer in use as a lawful garage. The word 'garage' would appear to be a loose term here, but some clarity is provided by a planning application submitted in July 2017 whereby the proposal is described as 'change of use from garage workshop to a1 furnishing shop'. Although this application was later withdrawn, given this description the allegation as to a change from a B1 use which comprises, amongst other things, light industrial uses, is understandable.
10. The Town and Country Planning (General Permitted Development) Order 2015 as amended does not allow for any change from Class B1 to A1 use. Such a material change would therefore require the benefit of planning permission. Therefore, on the balance of probability, the notice correctly alleges a breach of planning control. Consequently, the appeal on ground (c) must fail.

The Appeal on Ground (g)

11. The appeal on ground (g) is that the period for compliance with the notice falls short of what is reasonable. The appellant considers that a three month period is too short but does not specify what he considers to be a more reasonable period for compliance. The only representation made by the appellant in this respect is the comment that the shop is on a busy high road and there is no need for a garage. This, however, does not amount to an explanation as to why the compliance notice is unreasonably short.
12. In the absence of any convincing justification in this regard the appeal on ground (g) fails.

Conclusion

13. For the reasons given above I conclude that the appeal should not succeed, and I shall uphold the enforcement notice.

Timothy C King

INSPECTOR