Appeal Decision

Site visit made on 3 February 2020

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 march 2020

Appeal Ref: APP/V5570/C/19/3236444
Basement and Ground Floor 35 Camden Passage, London N1 8EA

- 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 London Grace Limited against an enforcement notice issued by the Council of the London Borough of Islington.
- The enforcement notice was issued on 31 July 2019.
- The breach of planning control as alleged in the notice is without planning permission, the change of use of the ground floor and basement from an A1 retail unit to a sui generis nail bar with ancillary retail.
- The requirements of the notice are cease the unauthorised sui generis use of the ground floor and basement 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], [b], [f] and [g] of the Town and Country Planning Act 1990 as amended.

Decision

1. The enforcement notice is quashed.

Matters concerning the notice

2. It is asserted by an interested party that the site has a mixed use. The concept of a mixed use is one of two or more primary uses existing within the same planning unit or unit of occupation. The breach alleges the change of use of the ground floor and basement from an A1 retail unit to a sui generis nail bar with ancillary retail.

3. The Council asserts within its Statement of Case that the primary function with the planning unit is that of a nail bar, a use which is sui generis, and other functions, coffee, cocktails and retail, which are ancillary. The appellant confirms within its Statement of Case that the basement can be rented for a range of occasions with food ordered into the site. The site also has an alcohol licence.

4. During my visit I saw that the window of the appeal site contains a coffee making machine, a bag of coffee, a bottle of syrup and advertising paraphernalia relating to the nail bar use of the premises. When you walk in, the till area is set up with a bar area behind with spirits and a drinks price list. A range of products are laid out for sale on the ground floor, including clothing, accessories and nail varnishes. At basement level, seating is set out around a series of tables.

5. My attention has been drawn to extracts of the London Grace website which sets out that London Grace is a nail bar, café and bar offering nails and coffee and cocktails. Details regarding parties, including food and drinks packages and the type of music played are also provided. Whilst I consider it would be usual

for drinks to be offered at a nail bar, the sale of drinks, including alcoholic drinks, and the hosting of parties appears to be a fundamental part of the offering at the appeal site which goes beyond the functional relationship between the uses that would normally be found at a nail bar. Whilst drinks would be consumed by customers purchasing a nail service, on the evidence before me, I do not consider the café and bar element to be ancillary to the nail bar use.

6. In drawing this conclusion, I have also had regard to the likely off-site impacts of the café and cocktail bar elements of the site. My attention has been drawn to complaints which have been made regarding noise from music and shouting from the premises. Whilst matters relating to noise are disputed, I agree a café and bar is likely to have far greater off-site impacts compared with a nail bar.

7. Given the above, I conclude that the appeal site comprises a mixed use site. I note that the Council also refer to the use as 'mixed use' within its Statement of Case[1]. Where a notice alleges a mixed use, it should not refer to a use class but describe the mixed use with its component parts as it existed when the notice was issued. The notice does not accurately describe the breach, as it does not fully reflect all the components of the mixed use of the planning unit.

8. The appellant has appealed under ground (a) which is made on the basis 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, or as the case may be, the condition or limitation ought to be discharged. Despite the wide powers of correction, there is no power to grant planning permission for something completely different from that enforced against.

9. It is evident from the Council's Statement of Case that the Council considers the café and cocktail bar elements form part of the overall mixed use and are contrary to Policy. I have considered whether it would be possible to correct the allegation and requirements to refer to all elements of the mixed use. Were I to amend the notice to include the café and cocktail bar elements within the breach and require the cessation of their use, this would enlarge the scope of the requirements which would cause injustice to the appellant. Furthermore, the appeal made under ground (b) was made on the basis of the breach identified in the enforcement notice and not on the basis of a mixed use.

10. I do not consider that the imprecision is such as would necessarily render the Notice a nullity. This is because the matters that appear to the Council as constituting a breach of planning controls are generally stated. Nevertheless, I conclude that the notice is invalid beyond correction, and should be quashed due to uncertainty.

Conclusion

11. For the reasons give above, I consider the enforcement notice is invalid. In these circumstances, the appeal under the various grounds (a), (b), (f) and (g) as set out in s.174(2) of the 1990 Act as amended do not fall to be considered.

M Savage

INSPECTOR

[1] Paragraph 7.1.9 of the Council's Statement of Case