



Appeal Decision

Site visit made on 4 February 2020

by N Thomas MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 March 2020

Appeal Ref: APP/E5900/C/19/3226285

Land at 118-120 Meridian Place, London E14 9FE

- 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 Komoto Limited against an enforcement notice issued by the Council of the London Borough of Tower Hamlets.
 - The enforcement notice, numbered ENF/18/00295, was issued on 1 March 2019.
 - The breach of planning control as alleged in the notice is the unauthorised material change in use without planning permission from a solely B1 office use into a mixed use of Class A2 professional advice services, B1 Offices and Class D1 educational use (Sui Generis).
 - The requirements of the notice are:
 - i) Cease the A2 and D1 (educational facility) elements of usage on the premises.
 - ii) Remove from the land all materials associated with the unauthorised development.
 - 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), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decision

1. It is directed that the enforcement notice is corrected by:
 - Deleting 'of Class A2 professional advice services, B1 Offices and Class D1 educational use (Sui Generis)' from the description of the alleged breach, and replace with 'of professional advice services, office use and educational use' and;
 - Deleting 'the A2 and D1 (educational facility)' from part i) of the requirements, and replace with 'professional advice services and educational use'.
2. Subject to the corrections, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the material change of use to a mixed use for professional advice services, office and educational use at land at 118-120 Meridian Place, London E14 9FE and subject to the following condition:
 - 1) The use hereby permitted shall only take place between the following hours:

8:00am and 6:00pm Mondays – Fridays; 9:00am and 1:00pm Saturdays;
and not all on Sundays or Bank Holidays.

Application for costs

3. An application for costs was made by Komoto Limited against the Council of the London Borough of Tower Hamlets. This application is the subject of a separate decision.

Preliminary Matter

4. Since the appeal was lodged, the Tower Hamlets Local Plan 2031 (LP) was adopted on 15 January 2020. The policies referred to in the enforcement notice are replaced with policies D.CF3, S.TR1, D.TR2 and D.DH8. Both parties have been given the opportunity to comment on the implications for the case.

The ground (b) appeal

5. To succeed on this ground the appellant would have to demonstrate, on the balance of probabilities, that the matters that led to the service of the notice have not occurred, as a matter of fact.
6. The allegation is that in addition to B1 uses, the premises have also been used for classroom-based tuition in class D1 and the provision of professional services in Class A2, resulting in a mixed use. My observations on site were consistent with professional advice being provided. In terms of an educational use, one of the rooms that was indicated in the Council's evidence as a classroom with rows of chairs facing a projector screen, was occupied by office desks and chairs, although the projector screen was still present, while the other was occupied by desks.
7. The Statutory Declaration of MD Ali Akbar Faruki, dated 8 April 2019, and the Final Comments provided by the appellant dated January 2020, state that no classroom-based tuition is taking place at the site. This conflicts with other submissions from the appellant which refer to some limited classroom-based tuition having been conducted from the site. The Council has referred to the layout of unit 120 as a classroom in its evidence, dating from when the officer visited the site and identified a breach of planning control. This is corroborated by photographs of unit 120, showing it laid out with rows of chairs facing a projector screen with the appearance of a classroom, which are stated to have been taken on 6 February 2019. I am aware that the Council visited the site in 2017 and found that educational activities had ceased, but they subsequently found that the use was ongoing in 2019.
8. The Statutory Declaration is classed as sworn evidence and must be given due weight. However, in this case, it is not corroborated by the Council's evidence, or the statement within the appellant's statement of case that limited classroom-based tuition took place. I have also had regard to the representations made by local residents in response to the appeal notification, some of which refer to teaching taking place at the premises. This all undermines the weight that I can give to this aspect of the Statutory Declaration. I therefore conclude, on the balance of probability, that educational activities have taken place at the premises.
9. Turning to the provision of professional services, the Statutory Declaration indicates that assistance is provided to existing and new students, principally

by telephone and emails, with some face to face meetings if necessary. The appellant's statement of case contends that this is not an A2 use, as there is no reliance on passing trade or for drop-in sessions at the appeal site, which instead runs pre-booked appointments. The Council has not provided any firm evidence to substantiate their allegation that the services provided at the premises fall into use class A2 in terms of being available to passing members of the public. This casts doubt on the allegation that the professional advice and guidance being provided fell into Class A2. However, as both parties agree that professional advice and guidance was and is being provided, this defect can be overcome by removing the references to use class in the second part of the allegation. The administrative activities taking place on the site fall within an office use. As the alleged use is a mixed use, the inclusion of specific use classes serves no purpose.

10. I have powers to correct the notice under section 176(1) of the Act, including to make significant changes to the terms of the notice to provide an accurate description of the alleged breach, provided the change would not cause injustice. I am satisfied that the deletion of the references to the use classes in the allegation would not cause injustice to either party. I shall also vary the requirements to reflect these corrections. To this limited extent the appeal on ground (b) succeeds.

The ground (c) appeal

11. This ground of appeal is that the matters stated in the notice which give rise to the alleged breach of planning control, did not constitute a breach of planning control.
12. The concept of a material change of use is not defined in statute or statutory instrument and therefore it is a question of fact and degree in each case. For there to be a material change of use, there needs to be some significant difference in the character of the activities from the lawful use of the premises, which in this case is Class B1. The appellant refers to *London Residuary Body*¹, which established that the identity of the user does not matter, it is the character of the use of the land that is important.
13. In this case, a mixed use is alleged. There is no dispute between the parties that the premises are a single planning unit. Article 3(3) of the Town and Country Planning (Use Classes) Order 1987 (as amended) (UCO) states that a use which is included within and ordinarily incidental to any use in a class is not excluded from the use to which it is incidental merely because it is specified in the schedule as a separate use. It therefore needs to be established whether there is a primary use and incidental uses, or a mixed use.
14. It is well established by case law that the matters in an enforcement notice refer back to the alleged breach, not a different subsequent development that may have taken place. I have already concluded, on the balance of probabilities, that classroom-based tuition was taking place, even if that has now ceased. It is also clear that professional advice is being provided. The term administration relates to the running of a business or organisation.
15. The Statutory Declaration explains that the Elizabeth School of London Limited uses the premises primarily for its administrative functions, including

¹ *London Residuary Body v SSE & Lambeth LBC* [1988] JPL 637 and *London Residuary Body v Lambeth LBC* (1989) 58 P&CR 370)

preparation of student curriculum, providing photocopying and scanning facilities, structuring student courses, organising and conducting university admission. In terms of direct contact with students in helping them prepare for entry interviews by offering guidance, helping them make applications, supporting and assisting new entrants coming from overseas, this is done through phone calls, emails and face-to-face meetings. Taking into account that the evidence indicates some educational activities were taking place, it seems to me that these activities relate to the provision of education and guidance/advice. The administrative activities appear from the evidence to cover the organisation's activities on other sites as well as this one, and is thus a primary use in its own right. From the evidence before me, and from what I saw on my site visit, I conclude that the site is in a mixed use, that comprises educational, professional advice and office uses.

16. The evidence leads me to conclude, on the balance of probability, that a material change of use has occurred to a mixed use which is *sui generis* and as planning permission has not been granted is a breach of planning control. For the reasons set out above, the appeal on ground (c) fails.

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

Main issues

17. Having regard to the reasons for issuing the notice, the main issues are as follows:

- Whether the site is a suitable location for the use, having regard to the development plan.
- The effect of the proposal on the living conditions of neighbouring residents.
- Whether the site is a suitable location for the development, having regard to accessibility.

Suitable location

18. The site is located in a densely developed urban area which is characterised by a mix of residential and other uses, including a medical centre, educational facilities, restaurants/takeaways, and is accessible to public transport. It is close to the South Quay DLR and the services and facilities available at Canary Wharf. LP Policy D.CF3 states that outside town centres new community facilities will be permitted where an up-to-date and robust local need can be demonstrated.
19. While it has not been demonstrated that there is an up to date local need for the facility, given that the location of the site, the nature of the mixed use and the small scale of the premises, I do not find that the site is unsuitable for the use, having regard to the development plan. The proposal is therefore not in conflict with LP Policy D.CF3 insofar as it seeks to control the location of new community facilities.

Living conditions

20. The building at Meridian Place has commercial and other non-residential uses on the ground floor, with flats above over 6 floors. I saw that the main entrance door to the appeal premises is located in close proximity to balconies

to the flats above, with a number of windows serving the flats in the same elevation. The level of activity in terms of comings and goings to the premises, as well as students congregating around the entrance or the adjacent walkway areas, could give rise to a level of noise and disturbance that is not compatible with the residential uses above.

21. I recognise that there are other non-residential uses in the area, including restaurants/takeaways, a medical centre and D1 uses, and that the ground floor units are in commercial uses. Controlling the hours of use as suggested by the appellant and the Council would reduce the potential for disturbance in the evenings and on Saturday afternoons and Sundays. Subject to the imposition of this condition, I am satisfied that the use of the premises is not significantly harmful to the living conditions of neighbouring residents, and is not in conflict with LP Policy D.DH8, which seeks, amongst other things, to ensure that development protects the amenity of existing occupants.

Accessibility

22. The site is located within easy walking distance of the South Quay DLR station, and bus stops, with connections to the wider extensive public transport network at Canary Wharf. LP Policy S.TR1 seeks to focus development in areas with high levels of public transport accessibility, in respect of development generating significant levels of trips. LP Policy D.TR 2 sets out a requirement for major development and any development that would have a significant impact on the transport network to be accompanied by a Transport Assessment or Transport Statement.
23. The development is relatively small scale and is well below the threshold for major development. The Council has provided no detailed evidence to indicate that it has a significant impact on the transport network, or that it has resulted in significant additional car based travel. While I note that local residents have raised concerns with the lack of secure cycle parking and unauthorised car parking, I have seen no evidence that the use is of such a scale that a significant demand for car or cycle parking has been generated.
24. I consider that the site is a suitable location for the use with regard to accessibility, and is not in conflict with LP Policies S.TR1 or D.TR2, insofar as they seek to focus development in areas with high public transport accessibility and control development that has a significant impact on the transport network.

Other Matters

25. Local residents have raised concerns with the use of the private garden at Meridian Place by students, antisocial behaviour, litter and food waste. These are matters that relate to the management of the gardens and surrounding space, and as there are other commercial and community uses in the area, these concerns are not a reason to withhold permission.

Condition

26. The Council has suggested a condition restricting the hours of use. Having regard to the advice in the Planning Practice Guidance this condition is necessary and reasonable in the interests of the living conditions of neighbouring properties. I have amended the wording slightly for the purposes of certainty and clarity.

Conclusion

27. For the reasons set out above, and taking into account all matters raised, I conclude that the appeal on ground (a) should succeed. I shall grant planning permission for the development as described in the notice as corrected. The appeals on ground (f) and (g) do not therefore fall to be considered.

N Thomas

INSPECTOR