



Appeal Decision

Site visit made on 8 June 2020

by R Satheesan BSc PGCert MSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 June 2020

Appeal Ref: APP/U5360/C/19/3243974

12 Stoke Newington High Street, London, N16 7PL

- 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 Aytac Karik against an enforcement notice issued by the Council of the London Borough of Hackney.
 - The enforcement notice was issued on 28 November 2019.
 - The breach of planning control as alleged in the notice is without planning permission the unauthorised change of use from a dry cleaners (Class A1) to a social club (Sui Generis).
 - The requirements of the notice are:
 - (1) Cease the use of the property as a social club (Sui Generis)
 - The period for compliance with the requirements is one month.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (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 be:
 - corrected by deleting the words "dry cleaners" within section 3 of the enforcement notice (the breach of planning control alleged) and its replacement with "shop".
 - corrected by deleting the words "shown edged black and hatched on the attached plan" under section 2 of the enforcement notice (the land to which the notice relates) and deleting the site plan attached to the enforcement notice.
2. Subject to these corrections, the appeal is dismissed, and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Procedural matters

3. The allegation in the Enforcement Notice refers to the former use of the premises as a "dry cleaners (Class A1)", whereas the appellant states that it was a clothing shop. Both of these uses fall within Use Class A1¹. The appellant appears to have understood the allegation and, in my opinion, the

¹ of the Town and Country Planning (Use Classes) Order 1987 as amended (UCO 1987).

misdescription does not render the notice incorrect or unclear. It is necessary however to correct the allegation to remove words “dry cleaners” and replace this with “shop”. This would not cause injustice and I can therefore use my powers under the provisions of s176(1)(a) to achieve this correction.

4. “The property” shown edged black and hatched on the attached plan of the enforcement is incorrect in so far as it includes the property at 12 Glading Terrace. However, it is clear from the address on the notice what the property is and therefore the notice as a whole identifies the property correctly. The appellant appears to have understood the allegation and, in my opinion, the error on the site plan does not render the notice unclear. It is necessary however to correct the notice by deleting the incorrect site plan from the enforcement notice. This would not cause injustice and I can therefore use my powers under the provisions of s176(1)(a) to make this correction.
5. Under the heading ‘Reason for issuing this notice’ the Enforcement Notice states, “Due to the loss of A1 retail floorspace and for the other reasons noted above, the development is contrary to Policy.....”. Whilst no other reasons were stated within the Enforcement Notice, the notice refers to policies DM2 (Development and Amenity) and DM11 (Evening and Night Time Economy Uses) of the Hackney Development Management Local Plan, 2015 (DMLP), and Policy 15 (Evening and Night Time Economy) of the Hackney Core Strategy, 2010 (CS), which all relate to the amenities of neighbouring residential occupiers. It is also clear from the Council’s submissions, that they also raise concerns with regards to noise and disturbance to neighbours. Since both parties have addressed these policies in their submissions, and the appellant has had the opportunity to respond to the Council’s Officer’s Report, I am satisfied that neither party would be prejudiced by the inclusion of this and have therefore determined the appeal on this basis.

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

Main Issues

6. Therefore, I find the main issues are the effect of the change of use on:
 - the vitality and viability of the Stoke Newington Town Centre Secondary Shopping Frontage; and
 - the living conditions of neighbouring residential occupiers, with regard to noise and disturbance.

Reasons

Vitality and viability

7. The property lies within the Stoke Newington Town Centre Secondary Shopping Frontage, as defined in the DMLP. There is no dispute between the parties that the previous and lawful use of the ground floor and basement is a retail unit falling within Use Class A1 of the UCO 1987. The deemed planning application seeks the retention of this premises as a social club (Sui Generis) for members of the Turkish and Kurdish community.
8. Core Strategy, 2010 (CS) Policy 13 seeks to safeguard and enhance the vitality and viability of all Hackney's shopping centres by encouraging diversity of uses, including mixed uses with residential on upper floors, and resisting loss of

shops where this would unacceptably harm the retail function, character of the centres or shopping provision in the centres. Part B of Policy DM9 of the DMLP states that the change the use of ground floor Class A1 retail unit will not be permitted where the proportion of A1 units in the secondary shopping frontages would fall below 50% (as a proportion of total units measured across the total Secondary Shopping Frontage), taking into account unimplemented planning permission for changes of use.

9. The appellant has undertaken their own survey of the street frontage between Nos 2 and 38 Stoke Newington High Street and has found that the proportion of units in A1 use would be 66.6% above the 50% threshold. However, Policy DM9 is clear that this requirement needs to be demonstrated as a proportion of total units measured across the total Secondary Shopping Frontage, and not just within a single street block. As such, I am not satisfied that the appellant's own survey is a basis for granting planning permission for the development.
10. Furthermore, whilst the Council's latest Town Centre and Retail Study 2017 shows that 51.3% of all units in the secondary shopping frontages are in Use Class A1, the Council highlight that more recent permissions for the change of use from Use Class A1² within the past 3 years have reduced this figure further to below the 50% threshold. In the absence of any evidence to the contrary, I have no reason to disagree with this conclusion.
11. Whilst I recognise that the social club serves the Turkish and Kurdish community, in accordance with policy DM5 of the DMLP, and adds to the diversity of uses within the centre, in my opinion, these do not outweigh the harm to the retail function, character and shopping provision of the frontage resulting from the loss of the retail unit. The appellant states that the social club's opening hours and creation of footfall, together with the provision of a new shop front design internally would improve the appearance of the unit and make this a suitable to the area. However, the same would apply for the lawful use of the site, and so this is not a specific benefit of the appeal development. Furthermore, the provision of a new shopfront would not be sufficient to overcome the harm identified to the retail character and function of the shopping frontage.
12. In addition, Paragraph 4.3.14 of the DMLP, in support of Policy DM9, recognises that where a shop unit has been marketed for at least one year and there is little prospect of it becoming occupied by new retail uses then its continued vacancy represents a lost opportunity for other uses which could provide accommodation for the needs of residents (e.g. social and community uses). However, no evidence of marketing of the unit has been submitted, to demonstrate that attempts have been made to market the unit for a retail use at an appropriate price. Therefore, I cannot be certain that the unit could not operate successfully as a retail unit in the future, thereby maintaining essential shopping provision in the centre.
13. I therefore conclude that the change of use harms the vitality and viability of the Stoke Newington Town Centre Secondary Shopping Frontage contrary to Policy DM9 of the DMLP and Policy 13 of the CS, as outlined above.

² Applications approved at Nos 22, 76 and 147 Stoke Newington High Street (Council references: 2017/2557, 2019/2194 and 2020/0166).

14. The change of use also conflicts with Policies 2.15, 4.7 and 4.8 of the London Plan, 2016, which amongst other things, seeks to sustain and enhance the vitality and viability of town centres, support convenience retail particularly in District centres, and that the scale of retail, commercial, culture and leisure development are related to the size, role and function of a town centre and its catchment.

Living condition of neighbouring residential occupiers - noise and disturbance

15. The appeal site relates to the ground floor and basement of a commercial unit located in a three storey mid terraced property. The surrounding area comprises a mix of commercial uses at ground floor level with predominantly residential uses on the upper floors above commercial units.
16. The appellant states that the social club operates from 10:00 to 00:00 on Mondays to Saturdays and 10:00 to 22:00 on Sundays. The appellant further states that the unit would be open in line with the many commercial units in the area which is in a town centre location opposite to a 24 hour police station. It is further stated that there is no cooking, eating and there is no sound system or music played within the premises. The appellant explains that users meet, chat, watch television, play card games and snooker as well as have meetings to discuss community problems.
17. The entrance to the appeal site, is located in close proximity to neighbouring residential properties on the upper floors of the High Street. Noise and disturbance associated with the social club use includes customers conversing within the premises, and 'comings and goings' of customers late at night. This is somewhat different to the majority of commercial units/shops within street block which are unlikely to be open until midnight on Mondays to Saturdays.
18. Whilst the appellant states that there are other late night uses in area, limited information of these uses have been provided. For instance, the existing parade (Nos 2 to 38 High Street) contains relatively few late night uses, and no specific information regarding the hours of use of these premises have been provided.
19. The hours of operation mean that the usage occurs late in the evenings and at night, with the high likelihood of noise and general disturbance being generated from the appeal site at times when peace and quiet would be expected to occupiers of residential properties on the upper floors of the High Street. Noise and disturbance generated from the use of the of the premises would be particularly noticeable during summer months when neighbouring residents are more likely to have windows open for ventilation.
20. In support of policy DM11, Paragraph 4.4.6 of the DMLP states that "Applicants will be required to submit management plans detailing how the operation of their proposals will be managed in ways that do not exacerbate potential adverse impacts. Management plans should demonstrate how proposals satisfy both planning and licensing issues". However, no management plans or mitigation measures have been submitted to demonstrate that neighbouring residential occupiers would not be affected by the late opening hours.
21. In the absence of any further evidence to the contrary, I therefore conclude that the change of use to a social club harms the living conditions of neighbouring residential occupiers with regards to noise and disturbance.

Accordingly, the change of use conflicts with Policy 15 of the CS, and Policies DM2 and DM11 of the DMLP. Collectively, these states that development proposals should be designed to ensure that they will not result in significant adverse impacts on the amenity of occupiers and neighbours, and the managed expansion of Hackney's diverse evening and night-time economy will be encouraged in Stoke Newington High Street (District Centre), taking account of its impact on local residential amenity.

Other Matter

22. The appellant states that the social club acts as a meeting place for the Turkish and Kurdish community. The development may therefore relate to relevant protected characteristics for the purposes of the Equality Act 2010. I am required to have due regard to the Public Sector Equality Duty as required by that legislation. However, whilst I give moderate weight to these needs, they do not outweigh the harm that I have identified in relation to the main issues and the non-compliance with the DMLP, CS and the London Plan.

Conclusion on Ground (a) and the Deemed Planning Application

23. For the reasons given and with regard to all other matters raised, I conclude that the appeal on ground (a) should fail and the deemed planning application should be refused.

The appeal on Ground (f)

24. The appeal on this ground is "that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters (i.e. the matters alleged in the notice) or, as the case may be, to remedy any injury to amenity which has been caused by any such breach".
25. The enforcement notice requires the use of the premises as a social club to cease. Therefore, the purpose of the notice is to remedy the breach of planning control rather than only remedy any injury to amenity.
26. The appellant states that the use itself is compatible to this District Centre and provision of an active street frontage would improve the appearance of the appeal site, and therefore it is suggested that the provision of a shopfront would be sufficient to comply with the notice. However, I have already found under the ground a) appeal that the provision of a new shopfront would not overcome the harm identified to the retail character and function of the shopping frontage.
27. As the notice does no more than seek remedy of the breach, it is not excessive. It is not therefore possible to vary the notice in the ways suggested by the appellant whilst achieving the purpose of the notice. I therefore consider that there are no obvious solutions which would overcome the harm identified and there is also no obvious 'fallback' position.
28. On this basis, the ground (f) appeal fails.

The appeal on Ground (g)

29. The appeal on this ground is that any period specified in the notice falls short of what should reasonably be allowed. The appellant asks that the time for compliance is extended from one month to a minimum of six months, in order

to raise funds, arrange a new suitable tenant to remove the appellant's name from the lease and his legal responsibilities.

30. I have identified under ground (a) appeal that the change of use results in harm to the vitality and viability of the Stoke Newington Town Centre Secondary Shopping Frontage and to the living conditions of neighbouring residential occupiers with regards to noise and disturbance. As such, the 6 months requested by the appellant to comply with the notice is disproportionately excessive to complete the single requirement of the notice which is to cease unauthorised use of the premises.
31. I conclude that one month would be reasonable and proportionate time to comply with the notice, in light of the harm identified above under ground (a).
32. Therefore, the appeal on ground (g) fails.

Conclusion

33. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

R Satheesan

INSPECTOR