



Appeal Decision

Site visit made on 25 August 2020

by Andy Harwood CMS MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 September 2020

**Appeal Ref: APP/E5900/C/19/3226148, 3226149, 3226150 & 3226151
Land at ground floor, 159 Cannon Street Road, London E1 2LX**

- 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 appeals are made by Mr Syed Musharraf Hussain, Mr Narinder Singh Rana, Mr Mohammed Humayan Kabir and Mr Mohammed Javed Iqbal against an enforcement notice issued by the Council of the London Borough of Tower Hamlets.
 - The enforcement notice was issued on 12 March 2019.
 - The breach of planning control as alleged in the notice is without planning permission, "change of use the premises from an A1 sweet shop with ancillary cooking facilities to a sui generis mixed use incorporating A1 retail and a commercial kitchen at rear, with associated unauthorised flue, ducting and plant items."
 - The requirements of the notice are:
 1. Cease the use of the commercial kitchen to the rear of the ground floor as shown outlined in red on Plan B and in photographs in appendix below;
 2. Remove all internal and external plant equipment and other fixtures fittings and furniture which facilitate the unauthorised use, including kitchen equipment used for preparing and cooking food, all parts of internal and external extractor units and ducts and the exterior flue stack, as shown outlined in red on Plan B below; and
 3. Make good damage to the building and remove from the site all resulting debris caused by compliance with Steps 1 and 2 above.
 - The period for compliance with the requirements is three (3) months.
 - The appeal is proceeding on the grounds set out in section 174(2)(c), (d) 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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Decision

1. The appeals are dismissed and the enforcement notice is upheld.

Preliminary Matters

2. The appellant has stated that the use within Class A1 of the UCO¹ with ancillary hot food preparation has taken place since 2008. It is not clear whether the appellant is suggesting that the use as alleged has not taken place, which would be more appropriately argued under ground (b) (that the matters as alleged have not occurred). I will therefore deal with this as a hidden ground of appeal albeit by combining it with the appeal under ground (c).

¹ of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended)

3. The operational development is referred to as being “associated unauthorised flue, ducting and plant items”. Given the use of the word “associated” as well as the lack of reference to a 4 year period of immunity [section 171B(1)], I interpret the notice as alleging that these operational developments have been installed to facilitate the alleged material change of use.

The Appeal on grounds (b) and (c)

4. To succeed on ground (b), it is incumbent on the appellant to demonstrate that the alleged breach has not occurred, as a matter of fact. On ground (c), the onus of proof is also on the appellant to demonstrate that the development does not constitute a breach of planning control.
5. I have been provided with a plethora of documents which the appellants have submitted but with very little in the way of submissions to help me understand the points that need to be made to be successful in relation to these grounds of appeal. By way of example, some of the receipts show that food may have been purchased in bulk at times. For example, 25kg sacks of sugar as well as catering equipment have been purchased. Some expensive items have also been bought from catering suppliers, such as an oven and mixer. The purchase of these and other similar items do not however assist in demonstrating that the alleged use has not taken place or that what has taken place is not a breach of planning control.
6. The submitted documents could potentially be compatible either with an argument that there has been an element of food preparation ancillary to the retail use which the appellant says has occurred. Alternatively, the documents may also support what the Council has alleged which is that the cooking is as part of a mix of primary uses, with a significant amount of food preparation aimed at supplying other premises rather than just this shop. Some of the submitted information such as utility bills, sales receipts and invoices for goods that could be sold from retail premises do not assist in proving the appellant’s case.
7. The evidence submitted by Council shows that a substantial amount of the floor area of the building has been used as a kitchen and that this has also involved the installation of a substantial kitchen extraction system. The photographs show that there appears to be a substantial volume of goods stored and also produced within the kitchen area. These also show that there were a number of cooking bowls beneath the large extraction hood. The kitchen forms a significant part of the floor area of the premises. The submitted evidence does not enable me to get any impression of respective turnover of goods produced and sold from the retail element compared with those produced and sold elsewhere. However, it appears at face value from the information provided by the Council, that there has been a significant difference made to the character of the premises compared with what I would expect if the premises were in use for retail purposes with only an ancillary degree of cooking on site.
8. The activities alleged in the notice appear to have taken place prior to the issuing of the notice. Furthermore, it appears on the balance or probabilities, that the use as alleged has involved the making of a material change in the use of the building that therefore requires planning permission. The appeals on grounds (b) and (c) therefore both fail.

The Appeal on ground (d)

9. The main issue is whether at the date that the notice was issued, no enforcement action could be taken with respect to the development enforced against. In this case, this involved a material change in the use of the building and S171B(3) dictates that the time limit for taking action is therefore 10 years beginning with the date the breach commenced. It would be necessary in this case for the appellant to demonstrate on the balance of probabilities, that the use commenced and has been continuous since before 12 March 2009.
10. In 2015, a planning application described as being for the "continuation of use of ground floor to dual Class A1 use and Class A5 use including on-site cooking facilities for the existing use as a Bangladeshi Sweet Shop". As well as retail this, at face value, would appear to indicate the use within the planning unit may have also have been mixed with hot-food take away given that Class A5 by definition of the UCO is "Use for the sale of hot food for consumption off the premises". That would be materially different from the use as now alleged on the notice and if so, would indicate an interruption by that other use within the 10 years prior to the issuing of the notice. However, it is not clear to me whether the situation is as clear-cut as that because there can sometimes be a misunderstanding of the definitions of classes in the UCO. It is necessary to look at the actual use rather than simply the description of an application.
11. The evidence submitted indicates that the appellants may have been trading at these premises well before the material date. Equipment, stock and products appear to have been purchased and sold. Various building work has taken place. Utilities and rent have been paid for. However, the evidence is not clearly set out, some of it is illegible and a narrative explaining the way in which the premises have traded referencing the evidence, has not been provided.
12. It is not clear, on the balance of probabilities, that the character of the use has been continuously as alleged over the necessary period. The appeals on ground (d) therefore fail.

The Appeal on ground (g)

13. The appeal on this ground is that any period specified in the notice falls short of what should reasonably be allowed. The appellants have requested a period of more than 12 months.
14. The harm that the Council considers is caused by the development is set out on the notice. I have not been able to reconsider the planning merits as the fee was not paid and so there is no appeal on ground (a). The harm includes suggested environmental damage to the living conditions of nearby residential properties due to noise and fumes from the cooking on site as well as due to impacts within highway.
15. It is necessary to balance that harm with difficulties that the appellants may experience due to complying with the notice in the time given. The notice requires the cessation of the use and also physical changes to the building by, for example, removing equipment, fixtures and fittings. It is not made clear by the appellant, why these matters could not be undertaken within 3 months which seems to me to provide a reasonable and proportionate balance between

the ability to comply with the requirements and overcoming the harm caused by the unauthorised development.

16. The appeals on ground (g) therefore fail.

Overall Conclusion

17. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notice.

Andy Harwood

INSPECTOR