



Appeal Decision

Site visit made on 20 October 2020

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 November 2020

Appeal Ref: APP/U5930/C/20/3252048

Ground Floor Unit, 40 Hoe Street, Walthamstow, London E17 4PH

- 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 Istrati Group Ltd against an enforcement notice issued by the Council of the London Borough of Waltham Forest.
- The enforcement notice was issued on 10 April 2020.
- The breach of planning control as alleged in the notice is without planning permission:
 - I. The material change of use of the Land from an authorised café/restaurant (Use Class A3) and hot food takeaway service (Use Class A5) into a mixed composite use involving a café/restaurant and a shisha lounge (Sui Generis).
 - II. The associated works to facilitate the change of use, including the installation of a timber fence enclosure featuring timber supports with fabric panels, a roof canopy and raised wooden decking in the rear garden.
- The requirements of the notice are:
 - 1. Cease the use of the Land as a mixed composite use involving a café/restaurant and a shisha lounge (Sui Generis).
 - 2. Cease the sale and consumption of shisha on the land.
 - 3. Return the Land to its lawful use as a café/restaurant (Use Class A3) and hot food takeaway service (Use Class A5).
 - 4. Remove the timber supports, fabric panels, roof canopy, raising wooden decking in the rear garden as identified by the red hatched area in Appendix A, along with all material, equipment and paraphernalia brought onto the Land to facilitate the shisha lounge element of the mixed composite use including, but not limited to, the removal of all, shisha pipes, shisha tobacco, charcoal, shisha menus and shisha signage.
 - 5. Return the Land back to its former condition prior to the change of use taking place.
 - 6. Remove all resulting fixtures and fittings, materials and general detritus from the Land following compliance with step 1-4 above.
- The period for compliance with the requirements is two months.
- The appeal is proceeding on the grounds set out in section 174(2) (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of decision: the appeal succeeds in part and the enforcement notice is upheld with a variation and correction in the terms set out below in the Formal Decision.

The Notice

1. There is a right under Section 57(2) of the Act to revert to the last lawful use following the issue of an enforcement notice. The positive requirement to return the land to its lawful use as a café/restaurant (Use Class A3) and hot food takeaway service (Use Class A5) is therefore excessive, and I shall vary the notice by deleting that requirement. There is also a typographical error in requirement number four, in respect of the word 'raising' which I consider

should be 'raised' and I shall correct this. I am satisfied that this variation and correction will not cause injustice to the parties.

Background

2. In January 2018 a planning application was submitted for the wooden fence and decking to the rear garden area, which was subsequently refused and dismissed on appeal¹ for reasons relating to harm to character and appearance and the living conditions of neighbouring occupants.

The appeal on ground (f)

3. Section 173 of the Act indicates that there are two purposes which the requirements of an enforcement notice can seek to achieve. The first s173(4)(a) is to remedy the breach of planning control which has occurred. The second s173(4)(b) is to remedy any injury to amenity which has been caused by the breach.
4. It is clear from the enforcement notice that the purpose in this case is to remedy the breach of planning control. The appeal on ground (f) could only succeed if the appellant's proposed lesser steps would remedy the breach of planning control.
5. The appellant contends that the decking does not itself facilitate the use of the rear of the premises as a shisha lounge however, there is no substantive evidence to support this view.
6. They argue that whilst the previous Inspector found that the development as a whole represented an intrusive addition that caused harm to the character and appearance of the host building and the wider area, there was no specific mention of the wooden decking. They consider that as the decking is at ground level it is not therefore detrimental to the character and appearance of the property or surrounding area, as such the requirement to remove the decking goes beyond what is necessary to remedy the harm. However, this is a matter which relates to planning merits.
7. Where there is no appeal under ground (a) consequently there is no deemed application for planning permission, the Act cannot be interpreted as allowing arguments about the planning merits of the development under ground (f). The only consideration is whether the requirements exceed what is necessary to achieve the identified purpose.
8. Since the purpose of the notice is to remedy the breach of planning control which has occurred, no lesser steps other than those set out in the notice would achieve that purpose. Therefore, the appeal on ground (f) fails.

The appeal on ground (g)

9. The appeal on ground (g) is that the period for compliance with the notice falls short of what is reasonable. The appellant stated that due to the uncertainty associated with the COVID-19 pandemic a period of six months would be more appropriate.

¹ APP/U5930/W/18/3204793

10. The time period given for compliance within the enforcement notice is to allow for the unauthorised use to cease and for the physical works associated with the use to be removed.
11. In cases involving business uses, it is necessary to weigh the interests of the business, its employees and customers against the harm caused by the activities the subject of the notice. However, the appellant provided no explanation about how the business operates including details about the number of employees or the impacts on them.
12. The development enforced against is causing harm to the living conditions of nearby residents in respect of noise and disturbance and harm to the character and appearance of the area, weight must be attached to this harm. Such harm should not be permitted to continue for any longer than absolutely necessary.
13. Whilst the appellant refers to the uncertainty associated with the pandemic, there is no explanation about how this would affect their ability to comply with the notice. Consequently, there is no substantive evidence to support the appellant's request that the period for complying with the notice is extended to six months.
14. Given the relatively straightforward nature of the construction, I consider the period of two months to cease the use and for the demolition of the timber enclosure and removal of constituent materials from the land, as specified in the notice, is proportionate to the breach of planning control that has occurred.
15. Accordingly, the appeal on ground (g) therefore fails.

Formal Decision

16. It is directed that the enforcement notice is varied and corrected by the deletion of requirement number three from section five of the notice, what you are required to do and, the substitution of the word 'raised' for 'raising' in requirement number four. Subject to this variation and correction, I shall uphold the enforcement notice.

Felicity Thompson

INSPECTOR