



Appeal Decision

Inquiry Held on 21, 22 July and 5 November 2021

Site visit made on 23 July 2021

by M Madge DipTP, MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17/12/2021

Appeal Ref: APP/U5930/C/19/3225886

Land at Fairways, Southend Road, London E4 8TA

- 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 HY Investments Limited against an enforcement notice issued by the Council of the London Borough of Waltham Forest.
- The enforcement notice, numbered 056767, was issued on 6 March 2019.
- The breach of planning control as alleged in the notice is set out in Annex 1 attached to this Decision.
- The requirements of the notice are set out in Annex 2 attached to this Decision.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (e), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have been paid within the specified period, an application for planning permission is deemed to have been made under section 177(5) of the Act.

Summary of Decision: The appeal succeeds in part and planning permission for that part is granted, but otherwise the appeal fails, and the enforcement notice is upheld as corrected and varied in the terms set out below in the Formal Decision.

Application for Costs

1. An application for costs was made by H Y Investments Ltd against the London Borough of Waltham Forest. This application is the subject of a separate Decision.

Preliminary matters

2. The Inquiry opened on 21 July 2021, sat for 2 days but adjourned on 22 July 2021. The site visit took place on 23 July 2021. The Inquiry resumed on 5 November 2021.
3. The land to which the notice relates is discussed in detail below. However, for the purposes of the banner heading, I have taken the land to which the land relates from the appeal form as it provides a concise description.
4. Since issuing the notice, the London Plan 2016 cited in the notice has been replaced. The ground (a) appeal and the deemed planning application fall to be considered against the policies in the London Plan 2021 as it forms part of the most up-to-date development plan.
5. A signed Statement of Common Ground was handed in at the Inquiry.

Matters concerning the issued enforcement notice

6. There are a few matters concerning the notice, which I need to consider before turning to the grounds of appeal. These matters have been canvassed and I need to consider them with a view to correcting the notice subject to the essential test of injustice.
7. S173 of the 1990 Act sets out the contents and effect of a notice, with s173(10) requiring that the notice shall specify such additional matters as may be prescribed. Additional matters include those set out in Regulations 4 and 5 of the Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002 (the Regulations).
8. The appellant claims the notice is a nullity as it fails to meet statutory requirements and is hopelessly ambiguous and uncertain. *Miller-Mead*¹ established that a notice must tell a recipient what he has done wrong and what he must do to remedy it. In addition to *Miller-Mead*, my attention was drawn to *Sarodia*², where the allegation and requirements referred to different operational developments, and *Lynes*³, where a period of time for compliance was not specified. The substance of these cases differs significantly from the appellant's claim that the reasons for issuing the notice are inadequate and are, therefore, distinguishable from the facts in this case.
9. Regulation 4(a) requires the notice to specify the reasons why the local planning authority considered it expedient to issue the notice. While the reasons set out in section 4 of the notice are brief, they identify the relevant time limit, that the development causes unacceptable harm to the Green Belt and is inappropriate in this location. Relevant planning policies are also listed. The statutory requirement relating to reasons for issuing the notice is therefore met.
10. Regulation 4(c) requires the notice to specify "*the precise boundaries of the land to which the notice relates, whether by reference to a plan or otherwise*". The appellant claims that the notice fails to identify the precise boundaries of the land and that there is therefore hopeless ambiguity or uncertainty regarding the land to which the notice relates.
11. The land is described in the notice as "*a combination of the parcels of land labelled Land A, Land B and Land C on ... Site Plan A*". Reference to Land Title documents then goes on to list property addresses for each parcel of land, which are colour coded on Site Plan A. Section 2 of the notice explains that the breach of planning control involves all of Land A and sections of Land B and Land C, which have been annexed to Land A. The description goes no further in terms of identifying which sections of Land B and Land C it relates to.
12. The matters alleged state "*a section of Land B ... to provide an outdoor customer seating area and to provide a tented enclosure serving as a prayer room for customers/staff*" and "*a section of Land C ... is being used to house a steel container, a timber pergola and a tented enclosure, all for storage purposes associated with the Class A3 use on Land A...*". This identifies that the

¹ *Miller-Mead v MHLG* [1963]2 QB 196(CA)

² *Sarodia v Redbridge LBC* [2017] EWHC 2347 (Admin)

³ *The Queen on the Application of Michael Geoffrey Lynes and Sadie Lynes v West Berkshire District Council* [2002] EWHC 1828 admin

notice only relates to the sections of Land B and Land C that are being used for purposes incidental and ancillary to the use of Land A for restaurant purposes.

13. Where the use of land is being considered, identifying the extent of the planning unit can be helpful. The land to which this notice relates is made up of parcels in different ownerships. However, ownership is not necessarily a defining factor in establishing the planning unit. The land is occupied by the Gokyuzu Restaurant, which is physically separated from the primary leisure uses taking place on Land B and Land C by car parking and vehicle circulation areas. The restaurant use is the single main purpose for which the land is occupied, and the activities and developments specified in the matters alleged, including the outside seating and the storage facilities, are ancillary or incidental to that main use. Having regard to the categories of distinction established in *Burdle*⁴, I find the land to which the notice relates to be a single planning unit. The extent of that planning unit coincides with the land to which the notice relates.
14. In *Koumis*⁵, Sullivan LJ emphasised in paragraph 80 of his judgement: "...Given the breadth of the current statutory power [under s176] to correct error on appeal...the Miller-Mead approach to nullity should be confined to those cases where the failure to comply with the statutory requirements in s173 is apparent on the face of the enforcement notice itself (as varied under s173A)". The notice is clear on its face as the breach of planning control relates to all of Land A and only those sections of Land B and Land C that are being occupied by the restaurant use. The fact that the plan attached to the notice identifies more than just the land affected does not render the notice a nullity or not correctable. The boundaries of the land to which the notice relates are therefore specified with sufficient precision and unambiguity within sections 2 and 3 of the notice to accord with regulation 4(c). For these reasons, the notice complies with the requirements of s173 as the land is identified in the notice.
15. For clarity, however, the description of the land to which the notice relates shall be amended so as to delete the second to fifth paragraphs, which refer to Land Registry Title No.s AGL370513, EX37717 and AGL408566, and the annexation of sections of Land B and Land C. The first paragraph shall also have the restaurant address added to it, so the land to which the notice relates shall read as follows:

Land known as the Gokyuzu Restaurant, Southend Road, Chingford, London E4 8TA, which combines Land A with sections of 'Land B' and 'Land C' (shown labelled on attached Site Plan A).
16. Having clarified and corrected the land to which the notice relates, I shall also amend the matters alleged to reflect the use of the single planning unit as a restaurant. The wording of the corrected matters alleged is set out in Annex 3 attached to this Decision. The intent behind the notice was clearly understood and the recipients knew what the notice relates to. No injustice would arise from my correction of the description of the land to which the notice relates or of the matters alleged.
17. For the reasons given above, I find that the notice is not a nullity.

⁴ *Burdle v SSE*[1972] 1 WLR 1207 (Div Court)

⁵ *Koumis v SSCLG* [2014] EWCA Civ 1723

18. Turning to the Council's concerns, amendments to the Town and Country Planning (Use Classes) Order 1987 ("the UCO") came into effect on 1 September 2020. A use falling within Use Class B1 (business) or Use Class A3 (restaurants and cafes) to the schedule has been replaced by Use Class E (commercial, business and service). S55(2)(f) of the 1990 Act and Article 3(1) of the UCO confirm that a change of use from one use to another use, falling within the same use class, shall not be taken to be development. Prior to the Inquiry opening, and due to the UCO changes, the Council reviewed the notice and sought to correct and vary the issued notice by excluding the unauthorised change of use of Land A to restaurant and the operational developments set out in section 3 (a) - (d).
19. The Council has power to withdraw an enforcement notice or to waive or relax any requirement. However, the Council declined to exercise their right to withdraw, but expressed their intention to relax the matters alleged and the requirements of the notice. S173A(1) does not convey any powers to the Council to waive or relax the matters alleged. Furthermore, the Council did not give notice of their intentions to relax the requirements to every person served with a copy of the notice, as required by s173A(3). If their relaxation of the allegation and requirements do not accord with s173A(1), the Council argue that s176(1) confers powers to the Inspector to vary the matters alleged and the requirements.
20. There is no dispute that, at the time the notice was served, a material change of use from Class B1 (business) to Class A3 (restaurants and cafes) had occurred. The Council seeks to have the allegation changed to exclude the unauthorised change of use of Land A, which was the main purpose of the notice and to which the other allegations are incidental and ancillary. The changes to the UCO did not come into effect until after the notice was issued. The Council's request does not therefore relate to the correction of a defect, error or misdescription in the enforcement notice.
21. Similarly, as the breach had occurred as a matter of fact, there is no need to change any references to Classes B1 (business) or A3 (restaurants and cafes) to Class E (commercial, business and service).
22. S176(1)(b) allows for the terms of the enforcement notice to be varied, but this power is frequently used to alter the steps required by the notice, or to extend the period of compliance. To my mind, the changes being requested by the Council would fundamentally alter the purpose of the notice, which would cause injustice to the appellant. For this reason, I shall proceed with the allegation described on the face of the issued documents, subject to my corrections. I will return to the variation of the requirements later.

Appeal on ground (e)

23. A copy of an enforcement notice must be served on the owner and on the occupier of the land to which it relates. A copy of the notice is also served on any other person having an interest in the land, being an interest which, in the opinion of the authority, is materially affected by the notice.
24. Land Registry documents confirm that The Adventure Experience Limited has a leasehold interest in the land. The Adventure Experience Limited was not served with a copy of the notice as, in the Council's opinion, they were not materially affected by the notice.

25. Other than confirmation in Land Registry documents EX37717 and EGL273242 that The Adventure Experience Limited are a beneficiary, and in AGL346443 that they are a leaseholder of Land B, I have not been made aware of their direct involvement in the operation of the restaurant or of any other interest they may have in respect of the matters alleged. In the absence of any evidence to show their direct involvement with the restaurant use, I share the Council's opinion that The Adventure Experience Limited were not materially affected by the notice. There is therefore no requirement under s172(2)(b) for a copy of the notice to have been served on The Adventure Experience Limited.
26. Even if I had found that The Adventure Experience Limited had been materially affected by the notice, they have made no representations despite being notified of the appeal. An appeal has been lodged on several grounds, and it is unlikely that The Adventure Experience Limited could have lodged an appeal on any of the grounds not currently before me for consideration. The Adventure Experience Limited has not therefore been substantially prejudiced by the failure to be served. Section 176(5) of the 1990 Act allows me to disregard the fact that The Adventure Experience Limited was not served with a copy of the notice as neither they nor the appellant, has been substantially prejudiced.
27. The appeal on ground (e) fails.

Appeal on ground (c)

28. An appeal on this ground is that, if the matters alleged have occurred, they do not constitute a breach of planning control. The onus of proof is on the appellant. As I have already said elsewhere, there is no dispute that a material change of use had in fact occurred at the time the notice was issued, and the focus of this ground is on some of the operational development. I shall proceed on that basis.
29. The appellant claims that the tented enclosure, identified in Photograph H attached to the notice, has been relocated on to land outside that occupied for restaurant purposes, this is disputed by the Council. I saw that there is no longer a tented enclosure in the position shown in Photograph H. A tented enclosure is however located on land occupied by the adjacent pavilion. While that land is part of Land B, it is outside the section being used for restaurant purposes. In its revised location it does not therefore fall within the planning unit affected by the notice. While the tented enclosure referred to in 3(h) of the notice and shown in Photograph H has been removed from the land, there is no doubt that it was on the land affected at the time the notice was served.
30. The appellant also claims that the tented enclosure is not development within the meaning of s55 of the 1990 Act and drew my attention to relevant case law. *Cardiff Rating Authority*⁶ established the three-fold test for identifying whether something is a building. These are: (1) that it is of a size that would normally be constructed as opposed to being brought ready-made onto the site, (2) it would cause a physical change of some permanence, and (3) there would be physical attachment to the ground.
31. The tented enclosure is small in size and is constructed of canvas supported by poles. I acknowledge that it was erected on site. However, it is a light-weight structure which can be easily moved, as evidenced by the relocation that has

⁶ *Cardiff Rating Authority v Guest Keens* [1949] 1 KB 385

occurred since the notice was issued. I saw no evidence that the tented enclosure had caused any physical or permanent change to the land. It is also not physically attached to the ground. Having regard to the three-fold test, I find that the tented enclosure is not a building and therefore is not development within the meaning of s55 of the 1990 Act. The tented enclosure referred to in 3(h) does not constitute a breach of planning control.

32. Railings and gates have been erected between the car parking area and the land occupied for restaurant purposes. The appellant claims that the railings and gates fall within Class A, Part 2, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the GPDO). There is no dispute that the railings and gates meet the limitations set out in this class. However, Article 3(5) of the GPDO states:

The permission granted by Schedule 2 does not apply if -

(a) in the case of permission granted in connection with an existing building, the building operations involved in the construction of that building are unlawful;

(b) in the case of permission granted in connection with an existing use, that use is unlawful.

33. Permitted development rights which are attached to specific uses of land can be relied upon only where that use is a lawful use. Similarly, permitted development rights which are attached to buildings are not available where the building operations involved in the construction of that building are unlawful. In *RSBS*⁷ Lang J held that “the principle of excluding permitted development rights where the “host” development is unlawful is well-established”.
34. In this case the “host” building is unlawful, as is the use of the land as a restaurant. Permitted development rights set out in Class A, Part 2 are not however attached to uses or buildings. Furthermore, the definition of “building” in article 2(1) of the GPDO does not include, in schedule 2, “any gate, fence, wall or other means of enclosure”. Article 3(5) does not therefore apply here, and I find that the railings and gates benefit from planning permission granted under article 3(1) of the GPDO.
35. The appeal on ground (c), in respect of the tented enclosure and the railings and gates, succeeds to this limited extent.

Appeal on ground (a) and the deemed planning application

36. The terms of the DPA are directly derived from the breach of planning control. Therefore, permission is sought for the matters as corrected and set out in Annex 3. The appeal parties focus is on the operational developments that have been undertaken to facilitate the restaurant use. The **main issues** are:
- Whether the development is inappropriate development in the Metropolitan Green Belt having regard to the revised Framework and any relevant development plan policies.
 - The effect on the openness of the Metropolitan Green Belt.
 - The effect of the development on the character and appearance of the area.

⁷ *RSBS Developments Ltd v SSHCLG & Brent* [2020] EWHC 3077

- If the development constitutes inappropriate development, will the harm by reason of inappropriateness, and any other harms, be clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the proposal.

Whether inappropriate development

37. The site lies in the Metropolitan Green Belt and is previously developed land. Policies GG2 and G2 of the London Plan (March 2021) (the LP 2021) reflect the approach taken in the revised National Planning Policy Framework (the Framework), which identifies that one of the fundamental aims of Green Belt policy is to prevent urban sprawl by keeping land permanently open. The Framework states that inappropriate development is harmful to Green Belt and should not be approved except in very special circumstances. Development should be regarded as inappropriate in the Green Belt, subject to the exceptions set out in paragraphs 149 and 150 of the Framework.
38. The roofed timber pergola, which provided shelter to the customer seating area (item 3(g) in the corrected matters alleged), has been removed in compliance with the notice.
39. The development includes the use of the building and land within its curtilage as a restaurant, extensions and alterations to the original building carried out to facilitate the restaurant use, and the steel container, timber pergola and tented enclosure identified in 3(j) of the corrected matters alleged provide ancillary storage facilities. Paragraph 150(d) provides for the re-use of buildings, provided that the buildings are of permanent and substantial construction, the re-use preserves openness, and does not conflict with the purposes of including land within the Green Belt. Paragraph 149(c) provides for the extension and alteration of a building, providing that it does not result in disproportionate additions over and above the size of the original building.
40. The original building is of permanent and substantial construction and sits at one end of a large area of previously developed land used for leisure and recreation purposes. The re-use of the original building for restaurant purposes would preserve openness and would not conflict with any of the purposes of including land in the Green Belt. Furthermore, as set out above, the re-use of the original building for restaurant purposes is no longer development, having regard to s55(2)(f) of the 1990 Act and Article 3(1) of the UCO. The re-use of the original building is not therefore inappropriate development in the Green Belt.
41. The '*original building*' is the building as it stood prior to the unauthorised development taking place. The original building has projecting eaves and whether the area over sailed by them should be included or excluded from the original footprint calculation is in dispute. Its inclusion or not will, however, make little difference to my overall assessment of whether the extensions are disproportionate additions over and above the size of the original building.
42. The alterations and extensions include the provision of a glazed entrance, an 'L' shaped ground floor extension, a dormer window and alterations to a roof slope to provide a gable window. The alteration to the roof slope to accommodate the gable window has reduced the building's volume. The dormer window is inset from the extremities of the roof slope and is therefore of a size that is not, of itself, disproportionate to the original building.

43. For the purposes of this appeal, the volume increase of the extended building is agreed at 67%. The 'L' shaped ground floor extension is constructed of a metal framework with retractable canvas roofs and glass walls, which can also be opened and folded back along their entire length. The 'L' shaped ground floor extension wraps around 2 full sides of the original building and the mono-pitched roof abuts the original roof slopes, above the projecting eaves. The dark grey colour finish to the metal framework and glazing frames, emphasises the size and bulk of the 'L' shaped ground floor extension. The glazed entrance also has a metal framework with glazed walls, which projects further forward than the original building, contributing further to the built mass of the extensions. The 'L' shaped ground floor extension and glazed entrance are therefore disproportionate additions over and above the size of the original building and do not therefore fall within exception 149(c) of the Framework. The ground floor extensions are inappropriate development in the Green Belt.
44. The provision of the steel container, timber pergola and tented enclosure for storage purposes do not fall within the exceptions identified in paragraph 149. They are therefore inappropriate development in the Green Belt.

Openness and the purposes of Green Belt

45. The Framework indicates that openness is an essential characteristic of Green Belt. Openness has both a visual and a spatial dimension, and therefore the lack of visual intrusion does not necessarily mean there is no impact on openness.
46. The site is screened by fencing and established landscaping from Southend Road and by development at Jurassic Falls Adventure Golf, including the Skytrail. While the ground floor extensions are visible from elsewhere within the adjacent car park and recreation ground, they are seen against a backdrop of the original building, which is visible through the glazed walls of the 'L' shaped ground floor extension. The steel container, timber pergola and tented enclosure, all used for storage purposes, are screened by high fencing and mature landscaping. The development therefore causes limited visual harm.
47. The 'L' shaped ground floor extension and glazed entrance in conjunction with the steel container, timber pergola and tented enclosure combine to significantly increase the footprint and mass of the development. The land is not isolated. The land is an integral part of a significant leisure and recreational development, located adjacent to Southend Road, with its pedestrian foot bridges and plethora of road signs and lights. In this built-up, urban context, I find the development causes limited spatial harm.
48. Unlike the 'L' shaped ground floor extension and glazed entrance, the storage facilities are located beyond the area of previously developed land. This part of the development does therefore result in urban sprawl, in conflict with one of the Green Belt purposes; to check the unrestricted sprawl of large built-up areas.
49. In this context, while the development causes limited harm to openness and only minor conflict with Green Belt purposes, it nonetheless adds to the harm resulting from the development's inappropriateness.

Character and appearance

50. The original building may be single storey, but its roof construction is not a conventional dual pitch. The ridge runs the length of the longest part of the building and a dual pitched roof slopes down away from that ridge. Part way down the slopes, the roof splays out to wrap around each end of the building, like a hipped roof. There are no other buildings of this design within the immediate locality.
51. The Council raises no objection to the dormer window, which is of a sympathetic design and scale, and I see no reason to disagree. While part of the hipped element of the roof has been cut out to accommodate the new gable window, parts of the hip remain, thereby preserving the integrity of the design. These interventions to the roofscape do not significantly detract from the original character and appearance of the roof or the building as a whole.
52. Increasing the building's footprint without affecting the unusual roof configuration would not be straightforward. The 'L' shaped ground floor extension and glazed entrance are disproportionate additions, of a modern design. However, their method of construction has resulted in little physical change to the original building. Visually, they appear tacked on to the building, with the original roof and eaves detail largely retained. The outer walls of the original building are also visible through the extensions' glazed walls.
53. While there may have been other design solutions to achieving the increased footprint, the one utilised has allowed the integrity of the original building to be maintained. The ground floor extensions are also of a similar appearance to the building erected on the adjacent Jurassic Falls Adventure Golf development. The 'L' shaped ground floor extension and glazed entrance do not therefore have a significant adverse effect on the character and appearance of the host building or the wider area.

Other considerations to justify the development

54. The site sits within an area of ribbon development that extends along both sides of the Southend Road, which consists of commercial, industrial retail and business development. The site is mainly previously developed land, with established landscaping to its periphery and it forms an integral part of a larger leisure and recreation development.
55. Significant structures, such as the Skytrail and the pavilion, have been permitted on adjoining land. While such leisure development would not be inappropriate in the Green Belt, they nonetheless are visible and are significant built developments within the Green Belt. The 'L' shaped ground floor extension and glazed entrance, while being disproportionate additions to the original building, are modest in size and scale in comparison to the leisure and recreation developments to the south and east of the site.
56. My attention was drawn to policies S5, E10 and HC5 of the LP 2021, which seek to enhance and strengthen sports, recreation and visitor attractions and their supporting infrastructure, particularly in parts of outer London, well-connected by public transport. The restaurant use complements the adjacent leisure and recreation facilities and widens the offer available at this location, which is accessible by public transport. As the cessation of the restaurant use of the

- original building is no longer being pursued by the Council, restaurant facilities could remain at the site, albeit at a smaller scale.
57. While policy CS11 of the Waltham Forest Core Strategy relates to visitor accommodation and visitor attractions, it makes no reference to supporting infrastructure or facilities. Therefore, I find it has no direct relevance to the development.
58. The appellant claims the restaurant makes a significant contribution to the local economy, employing 20 full time staff and 20 part-time staff. The appellant further claims that staffing levels would be reduced to 8 full time staff and 4 part-time staff if the ground floor extensions were to be removed.
59. The appellant also claims the long-term impacts of the Covid 19 pandemic show a tendency for customers to prefer visiting well ventilated premises. The design of the ground floor extensions allows for the roof and glazed walls to be retracted, providing extensive ventilation. This could allow the business to carry on trading should Covid 19 restrictions be reintroduced.
60. If the notice is upheld, s57(4) confirms that planning permission is not required for the land to be used for purposes that would have been lawful had the development not been carried out. The use of the original building could therefore revert to use as an office. Once the lawful use is reinstated, the use of the original building as a restaurant, with ancillary waste storage, collection and recycling, and outside seating, would no longer be development, having regard to s55(2)(f) of the 1990 Act and Article 3(1) of the UCO. This represents a realistic fallback position.
61. S177(1) provides that planning permission may be granted "in relation to the whole or any part of those matters or in relation to the whole or any part of the land to which the notice relates". While there is no alternative scheme before me for consideration, it is within my power to issue a split decision where parts of the development are clearly severable, both physically and functionally.
62. As the material change of use would no longer be development, the Council concedes that it is no longer expedient to take enforcement action against the restaurant use or the works and some of the operational developments that facilitate that use. They have also sought to have me vary the notice to exclude its main purpose and the works and some of the operational developments that facilitate that main purpose.
63. I have also found that the dormer window and alterations to the roof to accommodate the gable window are not, of themselves, inappropriate development. These elements of the development, and the use of the original building as a restaurant, are severable both physically and functionally from other elements of the development.
64. The Framework states that local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions. Planning conditions should only be used where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.
65. The effect of the refuse storage, collection and recycling on the purposes of Green Belt could be mitigated through the imposition of a condition requiring details of these facilities, including their location within the land, to be

submitted for approval. Such a condition is necessary to make the development acceptable in planning terms.

Green Belt Balance

66. I have found the development to be harmful to the Green Belt by reason of inappropriateness and loss of openness. I attach substantial weight to this harm.
67. The re-use of the original building for restaurant purposes would not now be development requiring planning permission, which represents a realistic fallback position. Even if it were still development, it and the alterations to the roof, are not inappropriate in the Green Belt. These elements do not harm openness or cause any other harms. They would not therefore need to be justified by very special circumstances in their own right. Furthermore, the use of the original building and the alterations to the roof are severable. The ancillary refuse storage, collection and recycling facilities could be made acceptable through the imposition of a suitably worded condition. I give these factors great weight.
68. I also give significant weight to the Council's concession on the use of the original building as a restaurant and the associated facilitating works.
69. The restaurant use does complement the wider leisure and recreation site and it is accessible by a variety of transport methods. Any commercial enterprise would have the potential to create employment and while the scale of the restaurant would be reduced by the loss of the ground floor extensions, some employment would be retained. While the Covid 19 threat remains, the retraction of the ground floor extensions' roofs and walls is not dissimilar to the provision of outdoor seating. I give each of these factors limited weight.
70. Except for a minimal encroachment of the storage elements on to greenfield land, generally the development does not conflict with the purposes of Green Belt. The development does not have a materially harmful effect upon the character and appearance of the locality. These factors neither weigh in favour nor against the development.
71. In my planning judgement, the advanced considerations in support of the appeal, taken together and on balance, do not clearly outweigh the conflict with planning policies designed to protect the Green Belt so as to justify the grant of planning permission for the glazed entrance and 'L' shaped ground floor extensions, the steel container, timber pergola and tented enclosure on the basis of very special circumstances. However, the great weight I have attributed to the fallback position and the alterations to the roof of the original building, in conjunction with the significant weight attributed to the Council's confirmation that it is no longer expedient to enforce against the restaurant use does justify the grant of planning permission for these elements on the basis of very special circumstances. These elements are clearly severable, and it is proportionate to grant planning permission for the re-use of the original building as a restaurant and for the alterations to the roof. It is proportionate to refuse planning permission in respect of the ground floor extensions, the steel container, timber pergola and tented enclosure, all used for storage purposes.

Conditions

72. The provision of refuse storage, collections and recycling is ancillary and incidental to the operation of the restaurant use. While these facilities have been provided without objection for over 6 years, they are currently located beyond the area of previous developed land. The imposition of a condition requiring full details of facilities for refuse storage, collection and recycling to be submitted to and approved by the local planning authority, and to provide for their continued provision throughout the lifetime of the development, is necessary to prevent encroachment onto adjacent greenfield land.
73. The Council claim that the use of the outdoor seating area and the playing of amplified music in this location needs to be controlled in the interests of residential amenity. A traveller site is located within approximately 150m of the land and other residential properties are located within approximately 400m of the land. The Council is not seeking to control the hours of operation of the restaurant as a whole. Given that no conditions could be imposed in respect of the hours of operation of the restaurant use if the change of use were to be carried out now, I do not consider that conditions to control the use of the outdoor seating area or the playing of amplified music within this area are necessary or reasonable.
74. Condition (1) is imposed to ensure that the required details are submitted, approved and implemented so as to make the development acceptable in planning terms. There is a strict timetable for compliance because permission is being granted retrospectively, and it is not possible to use a negatively-worded condition to secure the approval and implementation of the refuse storage, collection and recycling scheme before the development takes place. The condition will ensure that the development can be enforced against if the requirements are not met.

Conclusion on ground (a)

75. S177(1)(a) allows for the grant of planning permission in relation to the whole or any part of the matters alleged in the notice. For the reasons given above, the re-use of the original building as a restaurant and the alterations to the original building's roof are acceptable in planning terms, and do not conflict with policies GG2 and G2 of the LP 2021, which seek amongst other things, to protect the openness of Metropolitan Green Belt. The appeal on ground (a) succeeds and planning permission is granted subject to a condition, in so far as it relates to the re-use of the original building and the alterations to the original building's roof. The appeal on ground (a) fails and planning permission is refused, in so far as it relates to the other matters alleged in the corrected notice – a split decision.

Appeal on ground (f)

76. For the appeal to succeed on this ground, it is necessary to consider whether the steps required to comply with requirements of the notice are excessive. It is clear from the requirements as originally written that the purpose of the notice is to remedy the breach of planning control, by restoring the premises to its condition before the material change of use took place.
77. The partial success of the appeal on ground (c) requires the steps to be varied. Steps 3(k) and 3(l) either do not constitute development or benefit from

express planning permission. Steps 3(k) and 3(l) are therefore excessive and shall be deleted.

78. As planning permission has been granted for the use of the land as a restaurant, the means of refuse storage, collection and recycling will need to continue. Steps 6 and 7 are therefore excessive and shall be deleted.

79. S180 of the 1990 Act confirms "*where, after the service of – (a) a copy of an enforcement notice, ... planning permission is granted for any development carried out before the grant of that permission, the notice shall cease to have effect so far as inconsistent with that permission*". In light of my split decision on ground (a), the steps required to be taken in respect of those matters granted planning permission will cease to have effect under s180 and there is no need to further vary the requirements. For clarity, this would include the steps 1, 2, 3a, 3b, 3c, 3d, 3e, 3f, 3g and 3h, which relate to items that are ancillary or incidental to the use of the original building as a restaurant.

80. The appeal on ground (f) succeeds to this limited extent.

Appeal on ground (g)

81. The issue is whether the time for compliance is reasonable. The appellant is seeking a period of 18 months, which was originally claimed to be necessary for the appellant to find and relocate the business to suitable alternative premises. However, in light of the Council's confirmation that they were no longer seeking the use of the original building to cease, a period of 18 months, to allow employees time to find alternative employment is now being sought.

82. I acknowledge concerns that some staff may lose their jobs as a result of the removal of the 'L' shaped ground floor extension and glazed entrance. However, there is nothing before me to show why it may take longer than 6 months for those staff to find alternative employment or how this would affect the appellant's ability to comply with the varied requirements.

83. The appeal on ground (g) fails.

Overall conclusion

84. On the balance of probabilities, the appeal on ground (c) should succeed in respect of the tented enclosure used for prayers, and the railings and gates. The notice shall be corrected and upheld.

85. For the reasons given above, I conclude that the appeal on ground (a) should succeed in part only, and I will grant planning permission for the use of the land as a restaurant, for the dormer window and the other alterations to the original building's roof including the gable window, but otherwise I will uphold the notice with corrections and variations and refuse to grant planning permission in respect of the other parts of the matters. The requirements of the notice shall cease to have effect so far as inconsistent with the planning permission which I will grant by virtue of s180 of the 1990 Act.

Formal Decision

86. It is directed that the enforcement notice is corrected and varied by:

- *The deletion of all the words in section 2. The Land To Which The Notice Relates and the substitution of the words "Land known as the Gokyuzu*

Restaurant, Southend Road, Chingford, London E4 8TA, which combines Land A with sections of 'Land B' and 'Land C' (shown labelled on attached Site Plan A).".

- *The deletion of all the words in section 3. The Matters Which Appear To Constitute the Breach of Planning Control and the substitution of the words:*

"Without planning permission, the material change of use to a Class A3 (restaurants and cafes) use including the provision of outdoor customer seating area and several waste bins.

In addition to the material change of use, without planning permission the following operational development:

- a) The installation of ventilation ducting, flues and associated fixtures and fittings installed on the restaurant building, both internally and externally (as shown in attached Photograph A);*
 - b) The installation of air conditioning units on the restaurant building (as shown in attached Photograph B);*
 - c) The installation of a metal staircase and associated guardrails, railings, security doors at the top of the stairs and passageway at the rear of the restaurant building (as shown in attached Photograph C);*
 - d) The installation of a dormer roof extension at rear first floor level of the restaurant building (as shown on attached Photograph D);*
 - e) The removal of a section of the roof and its replacement with glazing on the southern side of the restaurant building (as shown in attached Photograph E);*
 - f) The installation of glazed extensions at ground floor level on the northern and eastern sides of the restaurant building and the glazed entrance to the restaurant created to the southern side of the restaurant building (as shown in attached Photograph F);*
 - g) The erection of a roofed timber pergola to provide a sheltered customer seating area to the south side of the restaurant building (as shown in attached Photograph G);*
 - h) The installation of a steel container, a timber pergola structure and a tented enclosure, used for storage purposes (as shown in attached Photograph J)."*
- *The deletion of all the words in steps 3(k), 3(l), 6 and 7 in section 5. What You Are Required to do.*

Subject to the corrections and variations, the appeal is allowed in so far as it relates to the specified part of the development being permitted 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 use of the original building as a restaurant and the alterations to the original building's roof, including the provision of a gable window and dormer window at land known as the Gokyuzu Restaurant, Southend Road, London E4 8TA and subject to the condition set out in the attached condition schedule.

The appeal is dismissed and the enforcement notice is upheld as corrected and varied insofar as it relates to the specified part of the development being refused and planning permission is refused in respect of the glazed extensions

at ground floor level and the steel storage container, a timber pergola and a tented enclosure, all for storage purposes associated with the restaurant use at land known as Gokyuzu Restaurant, Southend Road, London E4 8TA on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

M Madge

INSPECTOR

CONDITION SCHEDULE

- 1) The restaurant use hereby permitted shall cease and all facilitating development shall be removed within 30 days of the date of failure to meet any of the requirements set out in (i) to (iv) below:
 - i. Within 3 months of the date of this decision, full details of facilities for refuse storage, including facilities for the storage of materials for recycling and details of the enclosure(s) to be provided, along with collection procedures shall be submitted to and approved by the local planning authority. The development shall be carried out solely in accordance with the approved details and shall be fully retained and maintained for the lifetime of the development.
 - ii. If within 6 months of the date of this decision the local planning authority refuse to approve the details required by (i) or fail to give a decision within the prescribed period, and appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - iii. If and appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the submitted details shall have been approved by the Secretary of State.
 - iv. The details approved in respect of (i) shall have been carried out, completed and managed in accordance with the approved timetable.

In the event of legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

APPEARANCES

FOR THE APPELLANT: Mr James Burton of Counsel

He called: Mr Stanley Haines; and
Mr Anthony Keen.

FOR THE LOCAL PLANNING AUTHORITY: Miss Melissa Murphy of Counsel

She called: Mr Zia Sarkar.

DOCUMENTS

IN01 Authorities, Statutory & Other Materials Bundle.

IN02 Land Registry Documents - Title Numbers: EX37717, AGL370513, EGL408566, AGL346443 EGL273242.

IN03 Core Documents Bundle – CD1 to CD12.

IN04 Prengate Properties Ltd v Secretary of State for the Environment [1973]
25 P & CR 311.

IN05 Statement of Common Ground.

IN06 Correspondence from A Keen to the Council dated 3 September 2021.

IN07 Correspondence from A Keen to the Council dated 15 September 2021.

Annex 1 to appeal decision App/U5930/C/19/3225886

The breach of planning control as alleged in the notice is without planning permission, the material change of use of Land A (as shown on attached Site Plan A) from a Class B1 (business) use as an office to a Class A3 (café/restaurant) use; the material change of use of a section of the adjacent Land B (as shown on attached Site Plan A) which has been annexed to the unauthorised Class A3 use to provide an outdoor customer seating area and to provide a tented enclosure serving as a prayer room for customers/staff; and the material change of use of Land C (as shown on Site Plan A) which has been annexed to the unauthorised Class A3 use and is being used to house a steel storage container, a timber pergola and a tented enclosure, all for storage purposes associated with the Class A3 use on Land A, as well as several waste bins associated with the unauthorised use.

In addition to the material changes of use, without planning permission the following operational development:

- a) The installation of ventilation ducting, flues and associated fixtures and fittings installed on the restaurant building, both internally and externally (as shown in attached Photograph A);
- b) The installation of air conditioning units on the restaurant building (as shown in attached Photograph B);
- c) The installation of a metal staircase and associated guardrails, railings, security doors at the top of the stairs and passageway at the rear of the restaurant building (as shown in attached Photograph C);
- d) The installation of a dormer roof extension at rear first floor level of the restaurant building (as shown on attached Photograph D);
- e) The removal of a section of the roof and its replacement with glazing on the southern side of the restaurant building (as shown in attached Photograph E);
- f) The installation of glazed extensions at ground floor level on the northern and eastern sides of the restaurant building and the glazed entrance to the restaurant created to the southern side of the restaurant building (as shown in attached Photograph F);
- g) The erection of a roofed timber pergola to provide a sheltered customer seating area to the south side of the restaurant building (as shown in attached Photograph G);
- h) The erection of a tented enclosure located to the south side of the restaurant (as shown in attached Photograph H);
- i) The installation of railings and gates which demarcate the outdoor seating area to the south side of the restaurant building (as shown in attached Photograph I);
- j) The installation on Land C of a steel container, a timber pergola structure and a tented enclosure, used for storage purposes in association with the unauthorised Class A3 use (as shown in attached Photograph J).

Annex 2 to appeal decision App/U5930/C/19/3225886

The requirements of the notice are:

Steps to be taken in connection with Land A and Land B (as shown on attached Site Plan A) with Land Registry Title Nos. AGL370513 and EX37717:-

- 1) Cease the unauthorised use of Land A as a Class C3 (café/restaurant) use;
- 2) Cease the unauthorised use of the section of Land B which has been annexed by the unauthorised Class C3 use of Land A and which facilitates this unauthorised Class A3 use;
- 3) Remove from the Land any and all items brought on to the Land A or Land B, or any development undertaken on Land A or Land B, which facilitate the unauthorised Class A3 use of Land A, including:-
 - a) All tables and chairs for customer use inside the restaurant at both ground floor and first floor levels;
 - b) All cooking, food preparation and food storage equipment on both the ground and first floors of the restaurant;
 - c) All tables, chairs and any parasols from the outdoor seating area;
 - d) All ventilation ducting, flues and associated fixtures and fittings installed on the building, both internally and externally (as shown on attached Photograph A);
 - e) All air conditioning units from the building and any associated fixtures and fittings (as shown on attached Photograph B);
 - f) The metal staircase and associated guardrails, railings, security doors at the top of the stairs and passageway (as shown on attached Photograph C);
 - g) The dormer and all roof extensions at first floor level (as shown on attached Photograph D);
 - h) The glazed section of the roof on the southern side of the restaurant building (as shown on attached Photograph E);
 - i) The glazed extensions at ground floor level on the northern and eastern sides of the restaurant building and the glazed entrance to the restaurant created on the southern side of the restaurant building (as shown on attached Photograph F);
 - j) The roofed timber pergola erected to provide a sheltered customer seating area to the south side of the restaurant building (as shown on attached Photograph G);
 - k) The tented enclosure located to the south side of the restaurant and any carpeting and flooring within the tented enclosure (as shown on attached Photograph H); and
 - l) All railings and gates which demarcate the outdoor seating area to the south side of the restaurant building (as shown on attached Photograph I).
- 4) Following compliance with the requirements of Step (3) (a) – (i), restore the building back to its former condition, including the roof, in materials and detailing to match the existing fabric of the building.

Steps to be taken in connection with Land A and Land C (as shown on attached Site Plan A) with Land Registry Title Nos. AGL370513 and EGL408566.

Cease facilitating the unauthorised material change of Class A3 use of Land A by taking the following steps:-

- 5) Remove from Land C, the steel container and all items contained therein, the roofed timber pergola and all items stored under this structure and the tented enclosure and all items contained therein and dispose of all these items away from the Land (as shown on attached Photograph J);
- 6) Remove from Land C all waste bins associated with the restaurant use and dispose of these items away from the Land; and
- 7) Following compliance with the requirements of Steps (5) – (6), remove the timber door which provides access from the outdoor seating area to the south side of the restaurant to Land C and infill with fencing to match in materials and detailing the existing section of fencing on which this door is located.

Annex 3 to appeal decision App/U5930/C/19/3225886

The corrected allegation is:

Without planning permission, the material change of use to a Class A3 (restaurants and cafes) use including the provision of outdoor customer seating area and several waste bins.

In addition to the material change of use, without planning permission the following operational development:

- a) The installation of ventilation ducting, flues and associated fixtures and fittings installed on the restaurant building, both internally and externally (as shown in attached Photograph A);*
- b) The installation of air conditioning units on the restaurant building (as shown in attached Photograph B);*
- c) The installation of a metal staircase and associated guardrails, railings, security doors at the top of the stairs and passageway at the rear of the restaurant building (as shown in attached Photograph C);*
- d) The installation of a dormer roof extension at rear first floor level of the restaurant building (as shown on attached Photograph D);*
- e) The removal of a section of the roof and its replacement with glazing on the southern side of the restaurant building (as shown in attached Photograph E);*
- f) The installation of glazed extensions at ground floor level on the northern and eastern sides of the restaurant building and the glazed entrance to the restaurant created to the southern side of the restaurant building (as shown in attached Photograph F);*
- g) The erection of a roofed timber pergola to provide a sheltered customer seating area to the south side of the restaurant building (as shown in attached Photograph G);*
- h) The erection of a tented enclosure located to the south side of the restaurant used as a prayer room by customers/staff (as shown in attached Photograph H);*
- i) The installation of railings and gates which demarcate the outdoor seating area to the south side of the restaurant building (as shown in attached Photograph I);*
- j) The installation of a steel container, a timber pergola structure and a tented enclosure, used for storage purposes (as shown in attached Photograph J).*