



Appeal Decision

Site visit made on 12 January 2022

by Simon Hand MA

an Inspector appointed by the Secretary of State

Decision date: 21 January 2022

Appeal Ref: APP/U5360/C/21/3270228

103 Olinda Road, LONDON, N16 6TS

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Ms Dorothy Crick against an enforcement notice issued by London Borough of Hackney.
 - The notice, reference 2020/3104/ENF, was issued on 29 January 2021.
 - The breach of planning control as alleged in the notice is MCU TO A MIXED USE OF DWELLINGHOUSE AND HOT FOOD TAKE AWAY SERVICES.
 - The requirements of the notice are: 1. Cease the use of the property as a hot food takeaway service; 2. Remove all items which facilitate the use of the hot food takeaway service; and 3. Remove all materials, debris, waste and equipment resulting from compliance with the other requirements of the notice from the property and its premises.
 - The periods for compliance with the requirements is: 6 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. 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 have lapsed.
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Decision

1. The appeal is dismissed and the enforcement notice is upheld.

Preliminary Matters

2. There is no dispute that the appellant runs a business from her home which consists of cooking and distributing hot food. It seems the meals are either picked up from the house by the people ordering them or by couriers who deliver them to peoples' homes.
3. The appellant argues that she has an implied permission because she asked the housing association who own the property whether it was ok to run the business from her home and has been licensed by the Council as a food business. However, there is no such thing as an implied permission and it is up to the appellant to ensure she has the necessary permissions in place, including planning permission if needed.
4. There is also a hidden ground (b) in that the appellant argues she doesn't need planning permission as there has been no material change of use. There have been no alterations to the property and the business doesn't cause a nuisance. Given the evidence I have I can consider this hidden ground without injustice to either party. There clearly has been a new use introduced to the property as cooking food for sale is not a normal use that goes on in someone's house so there is a mixed use going on at No 103 of dwelling and take away. The issue

is whether the use has grown to such an extent that the change has become material. In this case alterations are not necessarily a component part of a material change of use, it depends very much on the effect of the new use on neighbours and the wider area as a whole.

5. I have on file numerous complaints from people who live in Olinda Road all raising four important issues. First, noise and smell from the cooking process itself, including the use of a wooden shed in the garden. Secondly, noise from motor-bikes, cars and vans being used by couriers and members of the public to pick up the food. Thirdly parking and traffic issues caused by the same couriers and members of the public who can block the road and fourthly, and related to the second and third issues, noise and disturbance caused by couriers and members of the public arriving late into the night, knocking on the wrong door to try and find the take-away and horns sounding and arguing caused by road blockages.
6. One of the main problems that underlies the last three issues is Olinda Rd itself. As I saw, it is a long residential road and No 103 is somewhat from the busy A10, so that this part of Olinda Rd is quiet. It was also lined by parked cars on both sides, leaving only a single carriageway for through traffic. Anyone stopping who couldn't find somewhere to pull in would have to block the road. The appellant suggests there is no evidence that all the delivery vans are linked to her business and it is true that parcel deliveries have grown considerably during the pandemic, but it seems the business operates until late at night when general courier services are much reduced. Hackney is a busy London Borough and so there will inevitably be a lot of activity in Olinda Road, but it is obvious that a successful take-away will cause a considerable increase in activity, especially in the evenings when it is much more likely to be quiet, in a residential area where such a use would not normally be acceptable. I have no reason to doubt the general thrust of the evidence from the Council and local people and I have no doubt that a material change of use has occurred.

The Appeal on Ground (f)

7. This ground is that the requirements are excessive. Given the allegation is a material change of use to a mixed use of hot food take-away and dwelling then it is not unreasonable for the requirements to be to cease the hot food take-away and to use the property solely as a dwelling and remove all the equipment that made the hot food take-away possible. The appellant argues that she has already made changes to the way the business is run that would solve the problem. This, however, is in effect introducing a ground (a) appeal, that I should grant planning permission for the business as it is now run. That ground requires a fee that has not been paid and so cannot be considered. Nevertheless, it is helpful if I point out that the changes mentioned, such as asking couriers not to rev engines, or use bicycles, have no guarantee of being effective and are not enforceable. No lesser steps have been suggested and the appeal on ground (f) fails.

The Appeal on Ground (g)

8. The appellant argues it will take 12 months to find alternative premises due to the pandemic. I'm not sure why that should be, but in any case, the compliance period is not designed to enable a smooth transition from one set of premises to another, but to provide sufficient time to stop the use and

remove the cooking facilities. To that end the 6 months provided by the Council seems very generous. The appeal on ground (g) fails.

Simon Hand

INSPECTOR