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## Appeal Decision

Site visit made on 28 June 2022

**by Timothy C King BA (Hons) MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 23 September 2022**

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### **Appeal Ref: APP/U5930/C/21/3280890**

### **Turkish Food Centre, 647-661 High Road, Leytonstone, London E11 4RD**

- 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 Ercan Ucur against an enforcement notice issued by the Council of the London Borough of Waltham Forest.
  - The enforcement notice was issued on 23 July 2021.
  - The breach of planning control as alleged in the notice is: Without planning permission:
    - 1) The installation of four air conditioning units.
    - 2) The installation/construction of freestanding steel framed structure to support air conditioning units.
    - 3) The installation/construction of a steel mesh cage.
  - The requirements of the notice are to:
    - 1) Remove from the land, the four air conditioning units, including a freestanding steel framed structure and a steel mesh cage (see attached appendix B).
    - 2) Restore and reinstate the external rear elevation and surrounding area hatched in red in appendix B (for identification purposes only) back to its original condition prior to the unauthorised works.
    - 3) Restore and make good the relevant parts of the site.
    - 4) Remove all resulting fixtures and fittings, materials and general detritus from the Land following compliance with step 1 above.
  - The period for compliance with the requirements is within (3) three months after the notice takes effect.
  - The appeal is proceeding on the ground set out in section 174(2) (a) of the Town and Country Planning Act 1990 as amended. Since the prescribed fee has been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended falls to be considered.
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### **Decision**

1. The appeal is dismissed, 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.

### **Background**

2. The premises are in use as a Mediterranean food supermarket. In February 2021 planning permission was refused under ref 202994 for the retention of the air conditioning units to the rear and side of the premises due to their massing, layout, height and scale. Despite this decision, the units subsequently remained in situ.
3. In the circumstances the Council, in July 2021, saw it expedient to issue an enforcement notice requiring for the units' removal.

## **Preliminary Matter**

4. The Council, in its wording on the reasons for issuing the enforcement notice, refers to policies from the forthcoming replacement Local Plan which, at the date of issue, had only just been submitted for examination. I now understand that the examination has yet to take place, and the LP is not therefore close to adoption. In the circumstances I intend only to apply policies from the Council's current development plan, which includes the Core Strategy (2012), the Development Management Policies document (2013) and the London Plan (2021).

## **The appeal on ground (a) and the deemed planning application (DPA)**

### **Main Issue**

5. This is the effect of the development on the character and appearance of the surrounding area.

### **Reasons**

6. The sizeable and prominent air conditioning units are positioned to the rear of this three-storey building whose ground floor commercial and upper floor residential uses typically characterise a large part of the High Road. However, this character filters out along Joseph Ray Road which, beyond the property's return frontage, has views across to the railway arches, and then takes on a somewhat industrial character. That said, the units, the freestanding steel-framed structure and mesh cage are all unsightly and compound to visually detract from the host building.
7. The appellant indicates that the reason for issuing the enforcement notice did not raise objections on noise related matters. This is not strictly true as, whilst the text refers to an adverse impact on the character and appearance of the Joseph Ray Road street scene, the policies cited include DM24 and DM29 of the Council's Development Management Policies (DMP) and also policy D14 of the London Plan (LP). These policies are concerned with noise disturbance and the protection of amenity or living conditions.
8. Besides, the appellant acknowledges that no noise assessment was undertaken to accompany either the application previously refused planning permission or now the deemed planning application on the current appeal. Such an assessment, preferably by a specialist consultant, is necessary. It is insufficient for the appellant to merely assert that the air conditioning units will not have an adverse impact on the surrounding area as they have a low operational sound level and there are no vibration issues. These claims need to be demonstrated with reference to technical specifications and reasoning. The indication that the nearby windows are double glazed is only one factor to be taken into account.
9. Nonetheless, given the supermarket use, the need for air conditioning units is obvious and the fact that the Council has taken enforcement action against those installed is, instead, due to the method of installation taken and the consequent visual appearance. Accordingly, their appearance needs to be addressed.
10. I have had regard to the proposed mitigation measures shown on drawings nos LE-001-PL-210/211/500/501 (all Revs B) which, whilst retaining the air

conditioning units, would physically screen them by means of a timber framed support structure. The structure's height would fully encase the units, and would have demountable partitions to allow for access. There would also be a separate polycarbonate enclosure for access to the storage area beyond.

11. However, these physical alterations constitute development which would require the benefit of planning permission, and these proposals have not been formally submitted to the Council for determination. Accordingly, neighbouring occupiers and usual consultees, including environmental health officers, have not had the opportunity to comment, or make representations to the local planning authority, on the proposals.
12. In therefore applying the Wheatcroft principles, which are concerned with good consultation practice, I am not here able to take the said measures into account, as they must accompany a planning application to this end. This is without prejudice to the Council's decision making process and, as such, should the appellant intend to go down this route I would encourage him to enter into pre-application discussions with the Council officers.
13. I note that the appellant has not made an appeal on ground (g), such that the stated compliance period of 3 months is considered unreasonably short. Should negotiation with the Council now ensue this might indeed prove to be the case. However, in circumstances such as these, the Council does hold powers to extend the time period for complying with the requirements of an enforcement notice in effect; this, though, being at the authority's discretion.
14. To conclude, therefore, I find that the development is harmful to the character and appearance of the area, and is contrary to the requirements of DMP DM24 and DM29, Core Strategy Policy CS15, and LP policies D4, D13 and D14. The proposal also conflicts with relevant advice contained within paragraph 130 of the National Planning Policy Framework.
15. The appeal therefore fails, planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended, and the enforcement notice is upheld.

*Timothy C King*

INSPECTOR