



Appeal Decision

Site visit made on 27 September 2022

by D Fleming BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 September 2022

Appeal Ref: APP/B5480/X/21/3282985

159-161 Billet Lane, Hornchurch, ESSEX RM11 1UR

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Hason Khan against the decision of London Borough of Havering.
 - The application ref D0254.21, dated 12 April 2021, was refused by notice dated 12 July 2021.
 - The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use or development is sought is described as "Change of use of all of ground floor premises, internal works only, from E(a) display or retail sale of goods (A1 Use Class) to E(c) sale or food and drink for consumption (mostly) on the premises (A3 Use Class)".
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The appellant states he made a mistake when completing the application form and typed "E(c)" instead of "E(b)". In answer to question 5 regarding the proposed use he specifically typed "A3 – restaurants and cafes" and throughout the rest of the form he refers to "A3 Use Class" for the proposed use. This is the former reference before the law changed to describe use for the sale of food and drink for consumption on the premises- restaurants, snack bars and cafes.
3. The Council have determined the application as if it were for a material change of use from: Class E(a) For the display or retail sale of goods, other than hot food, principally to visiting members of the public to: Class E(b) For the sale of food and drink principally to visiting members of the public where consumption of that food and drink is mostly undertaken on the premises.
4. However, they have also interpreted the appellant's application as being for a mixed use as a restaurant and takeaway. I find that this was not the appellant's intention and, as he explains in his grounds of appeal, he simply made a typing mistake and his proposal is for a restaurant use. He states that some restaurants operate a discrete take-away service but this is usually regarded as an ancillary use. I shall therefore proceed on the basis that the application seeks to ask the question whether a proposed restaurant use would be lawful, given the previous use of the premises.

5. Planning merits, such as the effect of the development on the living conditions of neighbouring occupiers, as raised by third parties, are not relevant in this appeal. They are not an issue for me to consider in the context of an appeal under section 195 of the Act, which relates to an application for a lawful development certificate (LDC). My decision rests on the facts of the case, relevant planning law and judicial authority. The burden of proof rests with the appellant and the appropriate test of the evidence is the balance of probabilities.

Main Issue

6. The main issue is whether the Council's decision not to issue an LDC was well-founded.

Reasons

7. The appeal site comprises a vacant ground floor unit with a large forecourt (formerly two separate units) in a small parade of shops, with flats above (accessed separately). Signs advertising the previous businesses are still visible and the shopfronts remain in place. The appellant submits that the former established use of the premises fell within Use Class A1 Shops. The Town and Country Planning (Use Classes) Order 1987 was amended in 2020. Use Class A1 was revoked and replaced with Use Class E - Commercial, Business and Service. This combines many of the former Class A uses such as shops, restaurants and cafes. As such, express planning permission is no longer required to change from a shop to a restaurant as both uses now fall within Use Class E.
8. The appellant relies on a copy of a commercial property lease agreement to support his case that the former use of the premises was a shop. This is dated 16 August 2018 and is made between the appellant and a tenant. However, it only states "Use allowed: A1 or A2" which is not to say that this is the authorised use of the premises in planning terms. He also claims on the application form that the premises has an historic consent for use as "A1/2" but other than the lease, there is no substantiated evidence to support this claim. In addition, the appellant refers to an energy performance certificate but a copy has not been provided with the appeal.¹
9. The Council have set out the planning history of the site. This information is gathered from the Council's planning registers, which are legal documents that the Council are required to keep in accordance with planning law.² This shows that planning permission was granted in 1993 to change the use of the premises to a car showroom. Images from Google Street View show that this use was implemented in that Amery Auto's are visible as being in occupation from December 2008 until April 2018, with cars for sale on the forecourt and inside the premises.
10. The reason a planning application was made for the car showroom use is that such a use did not fall within Use Class A1³. It was therefore regarded as a *sui generis* use, which means it was in a class of its own. It appears this planning

¹ Planning Practice Guidance: "The applicant is responsible for providing sufficient information to support an application". ID: 17c – 006-20140306

² Article 40(7) of the Town and Country Planning (Development Management Procedure)(England) Order 2015

³ Circular 03/2005 Changes of use of buildings and land – The Town and Country Planning (Use Classes) Order 1987, para 33 "Shops for the sale of motor vehicles are also specifically excluded from any use class".

permission was implemented and the use operated for several years. There are no records of any other lawful uses during that time or after the showroom closed. In 2020 the Council received a complaint that the premises were being used as a gym without planning permission (as shown on Google Street View image May 2019). Their investigation was closed in June 2021 after the LDC application was submitted. So, although the car showroom permission dates back to 1993, it was implemented and appears to have operated without interruption. As such, despite the age of the planning permission, it is significant when considering the lawful use of the premises.

11. The subsequent use as a gym, which is another *sui generis* use seemingly in operation at the time of the LDC application, appears to have been an unlawful use. Planning permission is required to change from one *sui generis* use to another but the Council advise no planning application was made before or after the gym opened. As such, it has no bearing on my finding that, on the balance of probabilities, the lawful use of the premises is as a *sui generis* car showroom.
12. I find, notwithstanding the appellant's claims, the Council's planning history shows that the authorised use of the premises is a *sui generis* use which does not fall within Use Class E(a). As legislation does not permit a change of use from a *sui generis* use to Use Class E(b) without the making of a planning application, the proposed development would not be lawful.

Conclusion

13. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development described as "Change of use of all of ground floor premises, internal works only, from E(a) display or retail sale of goods (A1 Use Class) to E(b) sale or food and drink for consumption (mostly) on the premises (A3 Use Class)" was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

D Fleming

INSPECTOR