



Appeal Decision

Site visit made on 13 October 2022

by Elaine Gray MA(Hons) MSc IHBC

an Inspector appointed by the Secretary of State

Decision date: 16 November 2022

Appeal Ref: APP/U5360/C/21/3288346

Land at 10-22 Lamb Lane, Hackney, London E8 3PL

- 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 Kwabena Frimpong against an enforcement notice issued by the Council of the London Borough of Hackney.
 - The enforcement notice is dated 5 November 2021.
 - The breach of planning control as alleged in the notice is: Without planning permission the change of use of the property at ground floor, first floor and part of the second floor from Class E into Class F1 (f), places of worship and religious instruction.
 - The requirements of the notice are (1) Cease the use of the ground and first floor as a place of worship and religious instruction. (2) Cease the use of the rooms on the second floor labelled and shaded dark grey on the attached plan, Appendix 1 of the notice, as a place of worship and religious instruction. (3) Remove all partitions, doors, facilities, fixtures and equipment that facilitate the unauthorised use of the ground, first and part of the second floor as a place of worship and religious instruction. (4) Remove all materials, debris, waste and equipment resulting from compliance with the other requirements of the notice from the property and its premises.
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (d) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decision

1. It is directed that the enforcement notice be amended by the deletion from the allegation of the text 'Without planning permission the change of use of the property...' and its substitution with the text 'Without planning permission the material change of use of the property...'.
2. Subject to this correction, the enforcement notice is upheld, the appeal is dismissed, and the deemed planning application is refused.

The enforcement notice

3. With regard to the wording of the enforcement notice, it alleges '... the change of use of the property...'. The allegation is imprecise in that it refers to a 'change of use', whereas to reflect the definition of the term 'development' in s55(1) of the Act, it should state a 'material change of use of the property...'. I am satisfied that this amendment does not cause any injustice or make the notice more onerous.

The appeal on ground (d)

4. Ground (d) is that at the time the notice was issued, it was too late to take enforcement action against the matters stated in the notice. The onus of proof lies with the appellant, and the test is on balance of probabilities.
5. The time limits for taking enforcement action are set out in s171B of the Act. In respect of a breach of planning control involving the material change of use of land, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.
6. The appellant states that there are several religious organisations present in the building, who have occupied the building for over 15 years. The notice was issued on 5 November 2021, and so in order to succeed, the appellant needs to demonstrate that the new use began on or before 5 November 2011, and continued for an uninterrupted period of ten years.
7. The kind of evidence that would assist the appellant on this ground might include such items as: leasing agreements for the premises; copies of utility bills covering the ten year period in question; copies of notices of the various services and community events; statements from any attendees who can attest to using the facilities over the ten year period. Such documents can build up a picture of the commencement and continuity of use that must be established in order for lawfulness to accrue.
8. In the absence of sufficient detailed or substantive evidence, I cannot be certain that the unauthorised use has continued for ten years so as to have acquired lawfulness and immunity from enforcement action.
9. The appeal on ground (d) therefore fails.

Ground (a) and the deemed planning application

10. Ground (a) is that planning permission should be granted for the development.

Main Issues

11. The main issues are the effect of the development on:
 - The provision of employment floorspace in the area; and
 - The living conditions of nearby residents, with particular regard to noise and disturbance.

Reasons

Provision of employment floorspace

12. The appeal site is in the Mare Street Priority Office Area (POA). Policy LP27 of the Hackney Local Plan (HLP) states that new development in designated POAs will be permitted where it is employment-led and where B1 use is the primary use. No new floorspace has been created in this case. However, the entire building in which the unauthorised use is located was previously in commercial use. It has been changed to use for as a church and for religious instruction.
13. The appellant contends that most of the religious bodies using the building have pastors, trustees and administrators who are employed. He says that these individuals may either be full-time or part-time workers. However, he

does not give any specific details or documentary evidence of the number and nature of the jobs created by the unauthorised use that is the subject of the notice. In the absence of any detailed or quantified evidence, I am unable to be certain that the new use could be described as 'employment-led'.

14. I take into account the appellant's statement that the church provides a community service. HLP Policy LP27(D) does allow for community uses within POAs, but these must meet all the criteria set out. The first criterion is that the development should form part of an employment-led, mixed-use scheme. It is apparent from the evidence that the development does not contain a mix of uses, and so it conflicts with HLP Policy LP27(D) on that point alone.
15. In the absence of convincing evidence to the contrary, the development has resulted in the loss of employment floorspace, contrary to HLP Policy LP27. The appellant produces little evidence to justify the setting aside of the policy requirements detailed above. I therefore conclude that the development has resulted in the unacceptable loss of employment floorspace.

Living conditions

16. With regard to the effect on living conditions, the Council state that residents living near the appeal site have been affected by noise disturbance late into the night arising from the use of amplified musical equipment, and by the comings and goings of attendees using the premises.
17. The appellant states that the property is enclosed, with no outside indication of its use. Nonetheless, to address noise issues, he says that sound-proof boards have been installed inside the units, and furthermore, that late night church activities have been stopped.
18. Of concern, however, is the lack of evidence submitted by the appellant in relation to the levels of comings and goings at the premises. He gives no details of the times when the site is in use, or the nature of the sessions, how often music is played and at what volume. On my visit, I saw that the sound-proof boarding was quite rudimentary in nature, and so I cannot be certain of how effective it is.
19. It also seemed to me that having the majority of the windows boarded over in this way could be problematic for attendees during spells of hot summer weather. Furthermore, I saw an open window in the stairwell that could potentially allow noise to escape from the building whilst it is in use.
20. The appellant states that well over 600 people use the building, which is a significant number. In view of this intensity of use, it would be expected that a Noise Impact Assessment would be produced, giving a basis for a full and proper assessment of the issues at hand.
21. However, on the limited evidence before me, I conclude that it has not convincingly been demonstrated that the development has an acceptable impact on the living conditions of nearby residents.
22. Conflict thus arises with HLP Policy LP2, which requires development to be designed to ensure there are no significant adverse impacts on the amenity of neighbours.

Conclusion on ground (a)

23. For the reasons above, the appeal on ground (a) fails, and the deemed planning application is refused.

The appeal on ground (g)

24. Ground (g) is that the time given to comply with the notice, in this case three months, is too short.

25. The appellant seeks an extension of up to 24 months to carry out the requirements on the basis that this time could be needed for an appropriate new location to be found. He argues that, in view of the community services that are offered at the premises, a new venue should be within commuting distance for users.

26. Whilst I take into account the difficulties the appellant describes, it would not be tenable to allow up to two years for compliance. This would be tantamount to granting a temporary permission for the development. To allow the harm I have identified to persist for such a long period would not be justified, would call into question whether it was expedient for the Council to enforce in the first place, and would erode the confidence of the public in the efficacy of the planning system.

27. It seems to me that three months is sufficient for the requirements to be done, and I find this time scale to be reasonable. I am mindful that the Council has powers to extend the time period, and they have indicated that they will consider this as an option if it is justified.

28. The appeal on ground (g) therefore fails.

Conclusion

29. The appeal is dismissed, the deemed planning application is refused, and the enforcement notice, as corrected, is upheld.

Elaine Gray

INSPECTOR