



Appeal Decision

Site visits made on 2 August and 19 October 2022

by J Moss BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21ST NOVEMBER 2022

Appeal Ref: APP/U5930/C/21/3277076

Land at the Ground Floor of 6 Kings Road, Chingford, London E4 7EY

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Ms Donna Rose of Get to Know Animals Ltd against an enforcement notice issued by Waltham Forest London Borough Council.
- The notice, numbered 524839, was issued on 12 May 2021.
- The breach of planning control as alleged in the notice is:
Without Planning permission,
 1. The material change of use of the land from a betting shop (use class sui generis) to a mixed composite use comprising of a petting zoo/animal sanctuary (Use Sui Generis) and limited elements of retail use (use class E).
 2. The erection of a large waste storage unit to the front elevation of the land.
- The requirements of the notice are to:
 1. Cease the use of the property as a mixed composite use comprising of a petting zoo/animal sanctuary (Use Class Sui Generis) and limited elements of retail use (Use Class E).
 2. Remove all animals, reptiles, insects, birds stored on the property.
 3. Demolish and remove the caging, feeding facilities and cleaning facilities associated with the unauthorised use from the property.
 4. Demolish and remove the wooden refuse storage area located at the front of the property.
 5. Remove all associated debris and detritus from the property in respect of steps 1 to 4 outlined above.
- The period for compliance with the requirements is six months after the notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a) 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.

Summary Decision: The appeal is dismissed, the enforcement notice is upheld and planning permission is refused.

Preliminary Matters

1. I visited the site twice, but was not able to have access inside the building at either visit. Both times I was able to view the property within its context and noted all matters within the area that had been drawn to my attention. On both occasions the premises appeared to have been vacated, which was confirmed by the appellant. In view of this and the observations I was able to make on both visits, I am satisfied that I can determine the appeal without viewing inside the premises.

The Notice

2. There is reference in the allegation to use class E for one element of the mixed use alleged, which I assume is class E of Part A, Article 3, Schedule 2 of The Town and Country Planning (Use Classes) Order 1987 as amended (the 1987 Order). However, the mixed use alleged is a sui generis use and does not, therefore, fall within any use class of the 1987 Order. Reference to class E as part of the mixed use cannot, therefore, be correct. Neither can the reference to 'Use Class Sui Generis'. A use is either a sui generis use or is one that falls within a use class defined in the 1987 Order. It cannot be both.
3. In the interests of clarity and precision, I will correct the enforcement notice¹ to remove reference to 'Use Class Sui Generis' and 'Use Class E' from the allegation and the requirements. In doing so the allegation and the requirements will not change and so injustice will not be caused to either party.
4. On a separate matter, I note the appellant's objection to a 'zoo' in the description of the mixed use in the notice. It is suggested that the animals kept at the premises can be purchased, that they are not wild animals, and that the layout of the premises is similar to a pet shop.
5. Notwithstanding the above, the appellant also confirms that visitors (individuals and groups) can pay a fee to meet and handle the animals kept at the site. This is consistent with the advertising still present on the property, which refers to it being a 'mini zoo', as well as an animal therapy and care home. The Council has provided extracts of the web site relating to the premises, which also refer to an 'indoor mini petting zoo', and states that the occupiers of the premises are not a pet shop.
6. Having regard to the above, I am satisfied that one element of the mixed use is correctly described as 'a petting zoo/animal sanctuary'. In finding as I have, this would not be determinative of whether or not a specific licence would be required from Defra or the Council under other legislation.
7. As for the other element of the mixed use, the appellant appears to suggest that the service provided at the site is also a retail use as this involves the sale of a service. In land use planning terms retail is ordinarily regarded as the sale of goods; it is not regarded as involving the provision of a service. A retail use is included in the description of development, and the evidence before me demonstrates that, as a matter of fact and degree, this use is materially different to the use of the premises as a petting zoo/animal sanctuary, despite that involving a service paid for by visiting members of the public. It is, therefore, correct that both a petting zoo/animal sanctuary use and a retail use are included in the description of the development, and that these together are described as a mixed use.
8. All things considered, I am satisfied with an allegation of a material change of use to a mixed use in this case, rather than the use being a retail use alone. However, I find reference to 'limited elements' of the retail use to be unhelpful and imprecise. I will, therefore, correct the enforcement notice to remove these words. Again, this will not change the allegation and so injustice will not be caused to either party.

¹ The powers transferred to Inspectors under section 176(1)(a) of The Town and Country Planning Act 1990 as amended include to correct any defect, error or misdescription in the enforcement notice or, under section 176(1)(b), to vary the terms of the enforcement notice.

Ground (a) and the deemed application for planning permission

Main Issues

9. The appeal on ground (a) is that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted.
10. I note the substantive reasons for issuing the enforcement notice. From these I have identified the following main issues with regard to the material change of use:
 - The effect of the development on the living conditions of the neighbouring residents with regard to noise and odour; and
 - Whether or not the development results in inconveniences for road users and is prejudicial to highway safety as a result of any additional demand for on-street parking.
11. As for the operational development that is the subject of the notice, the main issue is the effect of the development on the character and appearance of the site and the surrounding area, with particular regard to the site's location close to the Chingford Green Conservation Area.

Relevant Policy and Guidance

12. Policy DM1 (Sustainable Development and Mixed Use Development) of the London Borough of Waltham Forest Development Management Policies Local Plan adopted October 2013 (WFLP) reinforces the presumption in favour of sustainable development, set out in the National Planning Policy Framework (the Framework).
13. Policy CS13 (Promoting Health and Wellbeing) of the Waltham Forest Local Plan Core Strategy adopted March 2012 (WFCS) requires, amongst other matters, new development to ensure satisfactory amenity is provided for surrounding occupiers. The Policy refers to environmental standards that include noise pollution.
14. Although referred to in the supporting text, I cannot see reference to the matter of odour (smell) in the body of Policy DM24 (Environmental Protection) of the WFLP. Nevertheless, the Policy deals with the matter of noise pollution, stating that noisy new development should normally be located away from noise sensitive uses. This is supported by Policy D14 (Noise) of the London Plan dated March 2021 (LP), which states that development proposals should manage noise by, amongst other matters, avoiding significant adverse noise impacts on health and quality of life.
15. Policy DM32 (Managing Impact of Development on Occupiers and Neighbours) of the WFLP is relevant to the provision of facilities for the storage, collection and disposal of refuse for new development. Amongst other matters, this Policy requires regard to be had to visual amenity, as well as the impact of the provision on the health and amenity of neighbouring occupiers.
16. The above mentioned policies are supported by the Framework. Section 8 in particular promotes healthy and safe communities.

17. My attention has been drawn to criteria C) and E) of Policy DM16 (Parking) of the WFLP. The first of these lists the circumstances where development proposals will be resisted. The second requires development proposals to consider the provision of parking spaces in accordance with the parking needs hierarchy. There is also reference to Policy T6 (Car Parking) of the LP. The Policy promotes car free or 'car-lite' development, on-street parking controls and maximum car parking standards. The aim is to carefully control parking provision in the interests of promoting the use of more sustainable modes of transport.
18. The requirements of Policy DM29 (Design Principles, Standards and Local Distinctiveness) of the WFLP include that development is of a high standard of design that reinforces and/or enhances local character and distinctiveness. This Policy is supported by Policy CS15 (Well Designed Buildings, Places and Spaces) of the WFCS, as well as design guidance provided in section 12 of the Framework.
19. Whilst I have seen reference to Policy D4 (Delivering Good Design) of the LP, this policy relates more to the process for delivering good design, rather than specifying the elements of a development that contribute to it, as the above-mentioned Policies do. The Council has not pointed to any particular part of Policy D4 that is relevant to the matters before me and I am unable to identify any part of the policy that might be relevant to the main issues in this case.

Reasons

Living Conditions

20. The appeal site comprises the ground floor of a property within a short row of commercial premises. There is also a row of commercial premises on the next block, to the north west of the site. The first floor of 6 Kings Road is in residential use and is accessed via a door to the side of the ground floor premises. There is also a row of dwellings to the side of the appeal site, set back from the front elevation of No 6. Although the site is on the edge of what appears to be a commercial centre, it is in close proximity to a number of residential properties.

- Noise

21. The Council's concerns relate to noise from the animals kept at the appeal site, the volume of which it says increased at feeding times or when they were stimulated by visitors. There is, however, no evidence to substantiate the Council's concerns on this matter. Noise is referred to by interested parties, but not to that generated by animals kept at the site.
22. The correspondence from the occupier of the dwelling above the appeal premises refers to noise from building works during the refitting of the premises. These works are, however, likely to have only been for a temporary period.
23. Having regard to the above, I have no reason to conclude that the development has an unacceptable effect on the living conditions of neighbouring residents by reason of noise generated by the use. Accordingly, I do not find conflict with the development plan policies referred to above, in particular Policy CS13 of the WFCS, Policy DM24 of the WFLP and Policy D14 of the LP.

- Odour

24. The Council suggests that its concerns regarding odour result from the food and waste from over 100 animals kept at the site. The occupier of the dwelling above the site refers to her experience of odours in her dwelling, in the kitchen in particular. She says this prevented her from using her kitchen to eat. Other interested parties have also referred to the matter of odour, which has been experienced when the door to the premises is open and from the waste that has been stored in the forecourt.
25. Having regard to the number of animals that have been kept at the site, it is clear that this is an odour generating use. Although the number of neighbouring residents effected by odour is limited, I find the evidence of the effect of odour from the site persuasive in demonstrating that the use has a detrimental effect on the living conditions of neighbouring occupiers. That action has not been taken by the Council's environmental health department under other legislation does not change my findings on this. The threshold for such action to be pursued might well differ from that considered under the planning regime.
26. Notwithstanding this, I note that the occupier above the appeal site acknowledges that the odour problem improved with the use of an extractor fan. I do not, however, have any details of the equipment installed. I have, therefore, considered whether the deemed planning application could be granted with a condition requiring the submission of odour extraction equipment within a set time period.
27. No conditions have been suggested for me to consider. Furthermore, I have limited information before me to indicate what type of ventilation or extraction equipment might be appropriate, and where this would be located within the premises and on the building. If it is necessary to provide an external flue for the extraction equipment, this may have an effect on the character and appearance of the building and the surrounding area, which ought to be considered. There is also nothing before me to indicate that the impact of odour on the amenity of neighbouring occupiers from the waste storage to the front of the site can be adequately mitigated.
28. Having regard to the above, I have insufficient evidence to conclude it is likely that the harmful effects of the development could be acceptably mitigated and that there are appropriate conditions that would achieve this. For this reason, I conclude that the development has an unacceptable effect on the living conditions of neighbouring residents, with regard to odour generated by the use. The use of the appeal site subject of this appeal fails to ensure that satisfactory amenity is provided for surrounding occupiers. For this reason I find the development in conflict with Policy CS13 of the WFCS and Policy DM32 of the WFLP. The use is also in conflict with the well-being objectives of the Framework, particularly as it does not achieve a high standard of amenity for existing users, in accordance with paragraph 130, criterion f).

Parking

29. The Council suggest that the use generates a need for parking. It points to the provision of only one off-street parking space to the front of the site, although it does not suggest that the use of this space is harmful in any way, such that there is conflict with the first and second bullet point of criterion C) of Policy

DM16. The Council point to the lack of on-street parking along Kings Road in the vicinity of the appeal site. This was noted during my site visits, along with the limited availability of on-street parking on the nearby side roads. In particular, I noted limited availability on Pretoria Road and Scholars Road at the time of my site visits; these are the side roads closest to the appeal site.

30. I have no reason to disagree with the Council, that a portion of those visiting the appeal site arrive by car and that this has resulted in demand for on-street parking in the vicinity of the appeal site. However, despite observing a high demand for on-street parking in the area, it has not been suggested that the existing on-street spaces do not meet the existing demand (third bullet point of criterion C) of Policy DM16 of the WFLP). Neither do I have any evidence of the amount of demand for parking generated by the use, such that I could conclude on the effect of this demand on the existing parking situation in the area.
31. I must also take into account that the former use of the site is likely to have generated a demand for on-street parking in the area. This demand may well have been less than that generated by the use subject of this appeal. However, I have insufficient evidence to make an informed comparison between the two, or to conclude that the difference between the two is material.
32. I note the appellant's reference to two public car parks within 100 metres of the site. Although the location of these is not specified by the appellant, an interested party has referred to a nearby Council owned car park, which charges a fee for parking. Furthermore, the Council has also acknowledged that the site is in an area with a Transport for London PTAL rating of 3. As such, the Council says the site benefits from an average level of connectivity to public transport infrastructure. The site is on a main road and close to bus stops on Station Road.
33. Having regard to all of the above, I do not find the lack of off-street parking provision to serve the use in this case in conflict with Policy T6 of the LP, particularly as the Policy restricts car parking and promotes the use of more sustainable transport modes. Furthermore, I have not found conflict with any of the bullet points set out in criterion C) of Policy DM16 of the WFLP. Although criterion E) of the Policy has been drawn to my attention, the Council have not explained in what way the development fails to comply with it. Whilst a parking space is provided at the site, the Council have not pointed to any minimum parking standards that might apply to the development in this case. I cannot, therefore, find the development in conflict with criterion E).
34. All things considered, I have insufficient evidence to conclude that the use of the site subject of this appeal causes inconveniences for road users and is prejudicial to highway safety as a result of any additional demand for on-street parking. I do not find the development out of accord with the development plan, neither can I find conflict with the Framework.

Character and Appearance

35. As I note above, the appeal site is on the edge of what appears to be a commercial centre. Of the commercial premises along the appeal site side of Kings Road, most have the benefit of an open forecourt. Some of these have

been enclosed with low fences, low walls or planting boxes, which on the whole add to the pleasant character of the area.

36. The waste storage unit subject of this appeal is larger than most forecourt structures in the close vicinity of the appeal site. It is a bulky unit that dominates the forecourt and the setting to the appeal premises. It also appears poorly constructed. At the visit I noted broken sections of timber and a door off its hinges. The unit is not, therefore, of the high standard of design envisaged by the policies of the development plan mentioned earlier in this decision.
37. Whilst the Council refers to the Chingford Green Conservation Area being within the context of the appeal site, details of the location of the boundary of the conservation area in relation to the site have not been provided. I cannot, therefore, conclude on the effect of the development on this heritage asset. Furthermore, as the site is not within the conservation area, the duty imposed under section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 does not apply. Nevertheless, having regard to the size of the unit, its appearance and poor means of construction, the unit detracts from the otherwise pleasant character of the area and, therefore, fails to reinforce or enhance local character and distinctiveness.
38. For the reasons given above, I conclude that the waste storage unit has an unacceptable effect on the character and appearance of the site and the surrounding area. Accordingly, the development conflicts with Policy DM29 and Policy DM32 of the WFLP, Policy CS15 of the WFCS, and the Framework.

Other Matters

39. Section 38(6) of the Planning and Compulsory Purchase Act 2004 indicates that if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts, the determination must be in accordance with the plan unless material considerations indicate otherwise.
40. With regard to the material change of use that is the subject of the deemed planning application, whilst I have not identified any conflict with the development plan with regard to the matter of parking and noise, I have not concluded the same with regard to the matter of odour. I have also identified conflict with the development plan with regard to the operational development that is also the subject of the deemed planning application. It is, therefore, necessary for me to consider whether there are any material considerations of sufficient weight to indicate that my determination of the ground (a) appeal should be made otherwise than in accordance with the development plan.
41. The appellant suggests that, in view of its location, the use of the premises for a conventional shopping use would not be viable. Whilst I note that the premises may have been vacant for a time prior to the use subject of this appeal, there is insufficient evidence before me to demonstrate the lack of demand for this premises. The use of a vacant property is a benefit in the planning balance, but is one that carries limited weight in this case.
42. I have no evidence to substantiate the appellant's claim that the enforced against use is preferred in replacement of the former betting shop use. It has not been suggested that the former betting shop caused any harm, whereas harm has been identified with regard to the enforced against use. The

evidence before me does not demonstrate that the replacement of the betting shop with the use subject of this appeal weighs in favour of the grant of permission.

43. I acknowledge that the use of the appeal site has been popular, and that the mobile service provided from the site to schools and care homes has been a benefit to those involved. However, I have no evidence to demonstrate that this service can only be provided from the appeal site, or that it would not continue if the enforced against use were to operate from another more suitable premises.
44. I have considered whether conditions would overcome the harm caused in this case. Having regard to the evidence before me, I can only conclude that they would not.

Planning Balance and Conclusion

45. All things considered, I have no reason to conclude that my determination of this ground (a) appeal and the deemed planning application should be made otherwise than in accordance with the development plan. Accordingly, I conclude that planning permission ought not to be granted and that the ground (a) appeal should fail.

Ground (g)

46. An appeal on ground (g) is that the period specified in the notice falls short of what should reasonably be allowed. The notice specifies a period of 6 months from the date it takes effect.
47. The appellant suggests that a 6 month period is not sufficient to rehome 100 plus animals that have been rescued over a considerable period. Whilst I acknowledge the difficulty the appellant may have in rehousing rescued animals, 6 months is a substantial period. The appellant has also confirmed that the appeal site is now vacant, indicating that most, if not all of the animals have been removed from the site.
48. Having regard to this, I have no reason to conclude that the requirements of the notice cannot be complied with within 6 months. As such, I do not find that the period specified in the notice falls short of what should reasonably be allowed. For this reason, the ground (g) appeal should fail.

Conclusion

49. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections and refuse to grant planning permission on the application deemed to have been made under section 177(5) of The Town and Country Planning Act 1990 as amended.

Formal Decision

50. It is directed that the enforcement notice is corrected by:
- The deletion of the words '(Use Class Sui Generis)' after the words 'from a Betting Shop' and their substitution with the words '(a sui generis use)' in part 3.1.;

- The deletion of the words '(Use Class Sui Generis) and limited elements of retail use (Use Class E)' after the words 'petting Zoo/animal sanctuary' and their substitution with the words 'and a retail use' in part 3.1.; and
- The deletion of the words '(Use Class Sui Generis) and limited elements of retail use (Use Class E)' after the words 'petting Zoo/animal sanctuary' and their substitution with the words 'and a retail use' in part 5.1..

51. Subject to the corrections, 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 Town and Country Planning Act 1990 as amended.

J Moss

INSPECTOR