



Appeal Decision

Site visit made on 29 July 2021

by Jean Russell MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 November 2022

Appeal ref: APP/U5360/C/20/3265400

Land at 2 Cranwich Road, Hackney, London N16 5JX

- The appeal is made by Mr Daniel Berkowitz o/b D&R Estates Ltd under section 174 of the Town and Country Planning Act 1990 (TCPA90) against an enforcement notice issued by the Council of the London Borough of Hackney on 26 November 2020.
 - The breach of planning control as alleged in the notice is: without planning permission the construction of a rear outbuilding, with attached lean-to and flue, for use as a commercial kitchen.
 - The requirements of the notice are to:
 - (1) Remove the rear outbuilding, attached lean-to and attached flue from the rear garden area
 - (2) Restore the garden area to its previous state before the development took place
 - (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 period for compliance with the requirements of the notice is three (3) months.
 - The appeal is proceeding on the grounds set out under section 174(2)(a), (d), (f) and (g) of the TCPA90. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under s177(5) of the Act.
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DECISION

1. It is directed that the enforcement notice is corrected and varied by:
 - Inserting the words 'in blue' between 'edged' and 'and' in paragraph 2.
 - The deletion of three (3) months and substitution of six (6) months as the period for compliance with the requirements.
2. Subject to the correction and variation, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under s177(5) of the Town and Country Planning Act 1990.

PRELIMINARY MATTERS

The Site and its Surroundings

3. The appeal site includes an end-terraced building known as 2 Cranwich Road. It was built as a single dwelling and I shall refer to it as the 'house' in order to distinguish it from the alleged outbuilding. However, the house is in use as four self-contained flats, enabled by rear and loft extensions.
4. The site includes a forecourt and a back yard, where in both cases there are steps to the ground floor of the house. It appears that the yard can be accessed from the ground floor flat or a drive that leads from Cranwich Road

past the side of the house. However, part of the drive is excluded from the site as shown edged in blue on the plan attached to the notice. There is a gate across the drive where it enters the site.



5. The drive is parallel to a path which serves 2B Cranwich Road plus 88-92 Dunsmure Road. A gate in the southern boundary fence of the site connects the back yard to the adjacent path and properties.
6. The alleged outbuilding, as shown on the plan, is located at the end of the yard and spans the full width of the site. It backs onto the boundaries to 45 and 47 West Bank, while its side elevations adjoin 4 Cranwich Road to the north and 84 Dunsmure Road to the south.
7. The buildings on Dunsmure Road are in retail or other business use at ground floor level and collectively form an attractive parade. At those properties, the back yards serve the shops but the upper floors seem to include flats, and residential is the predominant land use along Cranwich Road and West Bank.

Planning History and the Enforcement Notice

8. The Council has provided no information on any previous planning applications pertaining to the site. Since there is no evidence either way, I will assume strictly for the purposes of this decision letter that the extensions to the house and its use as four flats are lawful.
9. The Council closed an enforcement investigation (ref 2018/0017/ENF) about the construction of the outbuilding in 2018 after deciding that it would not be expedient to act against the works. The appealed notice (ref: 2020/0217/ENF) was issued following a separate investigation of the commercial kitchen use.
10. As shown above, the plan attached to the notice shows the site edged in blue. Paragraph 2 of the notice omits to mention the colour but I would do so in the interests of clarity. I can correct the notice, in exercise of the powers set out under s176(1)(a) of the Town and Country Planning Act 1990 (TCPA90), because doing so will cause no injustice to the appellant or the Council.

The Grounds of Appeal and Evidence

11. The appellant has raised issues that do not necessarily fit into the made grounds of appeal, namely (d), (a), (f) and (g). Firstly, the appellant states that the alleged lean-to has been removed¹. However, he does not dispute that the structure was there once, and so it may be enforced against even if the requirement to remove it has already been complied with.
12. The appellant claims that there was no construction of an outbuilding as alleged but, rather, a pre-existing garage was refurbished, extended and subject to a change of use. He also suggests that the outbuilding is used for domestic storage as well as a commercial kitchen. He is right that any question as whether development occurred as alleged could be treated as a hidden

¹ I saw a wooden shed-type structure attached to the rear of the house. It resembled the lean-to as described in my reasoning on ground (c) but I will not speculate as to whether it was the same structure or what use it was in.

appeal on ground (b). In this case, however, I shall look at 'what happened' in the context of 'when it took place' and the already-pleaded ground (d).

13. However, there is a hidden ground (c) because the appellant suggests that the lean-to was intended to be temporary. I can deal with that question without prejudice to the Council because they had an opportunity to rebut the appellant's evidence. The appeal proceeds on grounds (c), (d), (a), (f) and (g).
14. Grounds (c) and (d) are 'legal grounds' where the onus is on the appellant to make his case on the balance of probabilities. His evidence should be accepted so long as it is sufficiently precise and unambiguous, and there is no evidence to contradict his version of events or make it less than probable. The 'statutory declaration' from 'CS', who has lived in the basement flat since 2010, is sworn evidence which carries significant but not necessarily decisive weight.

THE (HIDDEN) APPEAL ON GROUND (C)

15. Ground (c) is that the matters alleged by the notice do not constitute a breach of planning control. The appellant states that the lean-to was a hut or sukkah built for use by Jewish families during the Feast of Tabernacles (Sukkot). The festival takes place over one week every September or October, and sukkahs may be erected and dismantled each year.
16. A Council officer visited the site on 8 and/or 13 October 2020 and saw 'a wooden shed type building attached to [the outbuilding]' as described in the Enforcement report. The appellant agrees that 'photo 3' in the report shows the lean-to, but he says that the structure was taken down soon after the officer's visit. It is true that 8 October fell during Sukkot in 2020, and it is plausible that the tables and chairs seen in the lean-to were for use during the Feast.
17. The appellant has identified the lean-to in a Google Street View photograph dated April 2016². That submission begs the question as why the structure was in place at almost the halfway point between Sukkot festivals, but I do not need to contemplate that question further. As discussed in relation to ground (d) below, the lean-to is probably not shown in that photograph.
18. It is important, however, that the appellant has not considered whether the lean-to required or had planning permission. The operations exempted from needing permission under s55(2) of the TCPA90 do not include the construction of temporary buildings. 'Permitted development' (PD) rights to erect temporary buildings only apply to construction sites³. The provision of a building for incidental use within the curtilage of a dwellinghouse is PD but the same is not true where the property is used as flats⁴.
19. I accept the claim that the Council does not normally 'have a problem' with sukkahs. In this case, however, the Council was concerned enough to include the lean-to in the enforcement notice. The appellant has not shown that, on the balance of probabilities, the lean-to or temporary sukkah was not constructed in breach of planning control. The hidden appeal on ground (c) fails.

² Photograph 5 in the Council's enforcement appeal statement.

³ Article 3 and Schedule 2, Part 4, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO)

⁴ Article 3 and Schedule 2, Part 1, Class E of the GPDO

THE APPEAL ON GROUND (D)

20. Ground (d) is that at the date when the notice was issued, no enforcement action could be taken in respect what is alleged. The appellant's case is works took place to extend an existing garage, and they are immune from enforcement action, but the structure was then subject to a change of use.
21. Works to an existing building can be so extensive that, as a matter of fact and degree, they result in a new building. Either way, if development took place, the same immunity period applies; under s171B(1) of the TCPA90, no enforcement action may be taken after the end of the period of four years beginning with the date on which building operations were substantially completed. I shall assess what works were carried out and whether they were substantially completed four years before the notice was issued.

The Building Operations

22. There is precise and unambiguous evidence that a garage stood in the south eastern corner of the site for many years. It occupied about one third of the width of the yard and the space beside it was used for parking. Aerial photographs taken in 1999 and 2003⁵ show that the structure had essentially the same size and shape as any conventional single garage.
23. The appellant states that, 'in the second half of 2011...the garage was enlarged to the full width of the garden...' Likewise, CS declared that 'in 2011, works were carried out on the site which included enlarging the garage to the full width of the garden'. The occupier of 6B Cranwich Road also wrote to say that the outbuilding has been on the site for more than 10 years, and so I should emphasise here that the 'substantial completion' test applies to the works begun in 2011, not to the construction of the original garage.
24. I agree with the Council that an aerial photograph taken in 2013 shows the garage still on the site, but I also agree with the appellant that the outline of what is now the alleged outbuilding was in place. The photograph suggests not that the garage had been extended, but that an enclosure had been built right across the yard in front of the garage – on the line of the front elevation of the outbuilding – to increase the depth as well as width of built development.
25. However, the outbuilding could not be described as substantially completed when the shell alone was in place. The 2013 photograph shows that, while the pre-existing garage roof was still intact, the outbuilding was otherwise uncovered. It had joists or rafters, and sheeting was draped over some of them, but that sheeting was not fixed in place and did not even cover the whole 'extension' to the side of the garage.
26. The appellant said that 'after a few years, the new part of the roof started deteriorating and caving in'. CS stated that the [2011] 'roof was built out of poor materials and got damaged within a few years'. However, there is no other evidence or explicit claim that the works were substantially completed in 2011. It strikes me that items are apparent inside the outbuilding in the 2013 photograph, as the appellant pointed out, because the sheeting did not cover

⁵ Reproduced on page 4 of the appellant's statement of case.

the whole structure and was not a 'caved in' roof. It is more probable that the roof had never been finished.

27. Aerial photographs taken in 2015, 2016 and 2017 show site in the same state, except that the sheeting had been removed and increasingly mature vegetation was growing within the four walls of the new structure. Miscellaneous items were also still inside, but storage can take place in the open air. The visibility of that use undermines the proposition that the development was substantially completed before 2017.
28. The aforementioned Street View photograph indicates that the works had not been substantially completed in 2016. The photograph, taken from the end of the drive, appears to show the front of the outbuilding as formed of timber and breeze block, but not clad in white plastic panelling as now. The photograph also shows what was probably the garage behind the new wall. The garage roof had a slight slope and was not connected to the structure at its front and side⁶.
29. The appellant stated that 'in 2018, works were carried out to repair the roof and a new roof was fitted and the structure renovated'. He has not explained what he meant by 'repair' in this context. Google Street View and aerial photographs suggest that, in 2018, the outbuilding as a whole was fitted with a new single roof and with new doors and windows as well as the white cladding.
30. The appellant has not shown that any part of the garage remains following the works that took place in 2018. It appears likely in any event that the garage was swallowed up into a new structure that is twice as wide again, deeper, higher and clad and roofed in new materials. I find that the operations which took place on the site between 2011 and 2018 probably amounted, as a matter of fact and degree, to the construction of an outbuilding.
31. I also find that, if the lean-to had been attached to the outbuilding or garage in 2016, it would have necessarily been moved during the cladding works at least. On the balance of probabilities, neither structure was substantially completed four years before 26 November 2020, being the date of the notice.

The Commercial Kitchen Use

32. The appellant does not claim that the commercial kitchen use – whether carried out on its own or with domestic storage as a mixed use of the outbuilding – is immune from enforcement action under the relevant 'ten year' rule⁷. Even so, I shall address what use or uses are made of the outbuilding and whether it was constructed 'for' such activity.
33. Going back to the history of the site, I would be surprised if the pre-existing garage had *not* been used for domestic storage⁸. The aerial photographs taken from 2013 to 2016 do not show whether items inside the then uncovered outbuilding belonged to residents or were building materials or anything else,

⁶ It is unlikely that the 2016 Street View photograph shows the lean-to, as the appellant suggests, because it had a greater depth than what I think is the front of the outbuilding, and it did not have a grey sloping roof like what I think is the garage. But even if that is wrong, the photograph would still show the outbuilding to the side of the lean-to as not clad or roofed or substantially completed in 2016.

⁷ Under s171B(3), no enforcement action may be taken in respect of any material change of use of a building, except to use a single dwelling, after the end of the period of ten years beginning with the date of the breach.

⁸ Although I don't know if that use survived the subdivision of the house into flats.

- but that is of no matter. There is a problem for the appellant, however, in that there is no evidence of domestic storage activity surviving the works in 2018.
34. The appellant stated that the use of the outbuilding for food preparation, namely the making of kosher yoghurt, began 'soon after' the new roof was fitted in 2018. The yoghurt was for sale within a grocery shop or shops on Dunsmure Road and that is sufficient for me to find that the outbuilding was constructed 'for use as a commercial kitchen' as alleged. It does not matter that the cooking or packaging of food did not begin and the flue was not installed until June 2019.
35. There is some evidence that the outbuilding may now be used for domestic storage purposes as well as a commercial kitchen. The families occupying the four flats on the site have written to say that the outbuilding is so 'available' to them. At my site visit, I saw two internal doors with separate locks and handwritten sticky labels denoting storage for Flats 1 and 2/Flats 3 and 4.
36. However, the Council states that, when they visited the site on 8 and/or 13 October 2020, 'there was no evidence of any residential storage, it was just a commercial kitchen' with a range, a walk-in fridge, an open-top freezer, a sink area, metal worktops with storage space below, and a small room being used for the storage of confectionery that is packaged as part of the kitchen use. The appellant has not shown that observation to be wrong and CS did not refer to domestic storage in their sworn statement.
37. The appellant has not shown that any domestic storage use was taking place when the outbuilding was substantially completed or the notice was issued. On the balance of probabilities, the outbuilding was constructed for sole use as a commercial kitchen and the notice is not 'wrongly framed' in that regard.

Conclusion on Ground (d)

38. I have found that, on the balance of probabilities and as a matter of fact and degree, works took place which amounted to the construction of an outbuilding for use as a commercial kitchen. The appellant has not shown that the outbuilding, lean-to or flue were substantially complete by 26 November 2016. I conclude that it was not too late for the Council to take enforcement action as and when they did. The appeal fails on ground (d).

THE APPEAL ON GROUND (A) AND THE DEEMED PLANNING APPLICATION

The Description of Development

39. The appeal on ground (a) is that planning permission ought to be granted for what is alleged by the notice, namely 'the construction of a rear outbuilding, with attached lean-to and flue, for use as a commercial kitchen'. Under s177(1) of the TCPA90, I may grant planning permission for the whole or any part of what is alleged. In other words, and as indicated by the appellant, I could permit the outbuilding but not the lean-to, the flue and/or the use⁹.

⁹ Since the outbuilding was not in a mixed use on the date of the notice, I could not grant (or refuse) planning permission for any domestic storage use. If approved on its own, the outbuilding would have a nil use but I do not need to consider whether that would give rise to any unacceptable uncertainty because I find in any event that permission should not be granted for the outbuilding.

Planning Policy

40. The enforcement notice, in the reasons given for issue, referred to policies contained in the London Plan 2016. It has been superseded by the London Plan 2021, which the Council referred to in their statement of case and the appellant had an opportunity to discuss in his final comments. Both parties were invited to comment on the National Planning Policy Framework (the Framework) as revised in July 2021.

Main Issues

41. I consider that main planning issues are the effect of the appeal developments on the living conditions of nearby occupiers, and the character and appearance of the site and surrounding area.

Reasons

Living Conditions

42. The Council objects that the use of the outbuilding as a commercial kitchen, and the outbuilding itself have such an impact on the appeal yard and on adjacent residential gardens as to unacceptably harm the living conditions of occupiers of the flats and nearby properties¹⁰.
43. My starting point is that, while the yard is close and connected to the shop(s) that it serves, the lawful use of the site is residential use. That the outbuilding may be used for domestic storage affirms that the yard is shared by the occupiers of the flats. Like the Council, I saw artificial grass and children's toys in the yard. I would expect the flat occupiers to use the amenity space for sitting out, storing items such as bicycles and drying laundry as well as play¹¹.
44. I shall also stress upfront that the occupiers of the flats and of 6B Cranwich Road have all written in support of the appeal. In relation to the issue of living conditions, they say that the use gives rise to no noise or other pollution and does not infringe their enjoyment of their homes or their quality of life. I shall have regard to their representations but must consider the impacts of the appeal development on the needs of any residents, present or future, for reasonable living conditions in accordance with current planning policy.
45. The appellant points out there is no noisy kitchen machinery, but he accepts that the use is facilitated by a fume extraction system. When standing beside the outbuilding, I observed that noise from the extractor fan is barely audible when the system is operated on its lowest setting, but it sounds extremely intrusive when turned up to the maximum. It would be unreasonable and unenforceable for me to grant permission for the kitchen use but then impose a condition to prevent fume extraction on whatever setting is required.
46. A former occupier of 45b West Bank wrote to object that the 'constant mechanical drumming [of the existing fume extraction system] from roughly 9am to 7pm' on Mondays, Tuesdays and Wednesdays...for myself and my

¹⁰ It appeared at my visit that only the occupiers of the ground floor flat have direct access to the yard. However, since all four families have written to say that the outbuilding is (partly) available to them to use for storage, it should follow that the yard is available to all of them to use for amenity.

¹¹ Bins are stored, however, in the forecourt on the site.

neighbours...rendered our outside space unusable'. The appellant suggests that there is no 'drumming' sound from the kitchen and cooking does not take place on all those days. However, it is clear from the objector's photographs that they identify the outbuilding as the source of disturbance. Noise will be emitted from the flue which is large and close to West Bank.

47. In my view, noise from the fume extraction system would be liable to cause unacceptable disturbance to the occupiers of the appeal flats and of adjoining residential properties if they sat or played out in their yard or garden while the kitchen use is taking place. That there are other commercial uses nearby does not change that assessment but is rather, in my view, more reason to protect local residents from excessive noise in their amenity spaces.
48. I could impose a condition requiring that a new system is installed as approved by the Council and used and maintained in accordance with the manufacturer's instructions¹². The appellant has given details of a possible replacement fan but the bump does not tell me how it would be heard in practice given background noise levels on the site and the operational needs of the kitchen. All mechanical fans make sounds and I consider that any fume extraction system designed to serve a commercial kitchen would be liable to cause unacceptable disturbance within the appeal or adjoining gardens.
49. The occupier of no. 45b also wrote 'and then there is the matter of pollution. The flue from the kitchen points directly towards mine and my neighbour's gardens'. They asked that the outbuilding is removed to give people clean air back and I therefore infer that they share the Council's concern regarding the discharge of odorous fumes from the kitchen flue.
50. The appellant says that the only cooking which takes place is of chickpeas in pressure cookers, and so the only emissions would be of steam. Nonetheless, what comes out of the flue could still smell unpleasant within nearby yards and gardens. And it would be unreasonable for me to permit a commercial kitchen use subject to only one ingredient being cooked in one way.
51. The appellant is right that permission could be granted subject to the flue being replaced, repositioned or, more improbably, screened. However, the kitchen would still have to be ventilated. On the evidence, I am not persuaded that the use could take place without cooking fumes being discharged and dispersing so as to cause unacceptable odour within adjacent residential gardens.
52. I also agree with the Council that the comings and goings of kitchen employees and visitors, whether via the drive or path, will cause unacceptable noise and overlooking to occupiers of the flats. I understand that the occupiers must share the yard with each other, and not many employees would be on site at once. However, those could not be good reasons to allow non-residents close sight of families using the yard as part of their enjoyment of their homes.
53. Again, a condition could be imposed to limit the hours and/or days when the use takes place, and it would certainly be necessary to prevent unacceptable disturbance at unsocially early or late times. However, the occupiers of the flats and adjacent dwellings will probably use their gardens mostly during daylight. I

¹² So noise levels do not increase, for example, from the system getting clogged up over time.

have seen no suggested hours of operation that would protect the living conditions of residents without making the kitchen business unviable.

54. Turning to the outbuilding itself, it is large enough to seriously reduce the amount of amenity space available for the occupiers of the flats. It is not unusual for flats to be served with modest gardens and I also deal below with the possibility of occupiers benefitting from domestic storage space. On any count, however, the outbuilding is the size that it is primarily to accommodate the commercial kitchen. The harm caused by the use will be compounded by the loss of garden space caused by the outbuilding¹³. The yard has been made cramped as well as blighted by noise, smells and overlooking.
55. I conclude that the commercial kitchen use will cause unacceptable harm to the living conditions of occupiers of the flats by reason of noise, odour and loss of privacy, and those impacts will be aggravated by the loss of amenity space caused by the outbuilding. I also find that noise and odour from the use will unacceptably harm the living conditions of occupiers of nearby properties.
56. Thus, the outbuilding, flue and use conflict with Policy LP2 of the Hackney Local Plan 2033, which expects that new development is designed to ensure there are no significant adverse impacts on the amenity of occupiers or neighbours, in respect of visual privacy, overlooking and pollution from noise or fumes and odour. They conflict with Policy LP26, which does not permit employment space that has an unacceptable impact on residential amenity in locations (such as 2 Cranwich Road) outside of designated employment areas.
57. There is also conflict with Policy D3 of the London Plan 2021, which requires that development delivers appropriate amenity, prevents or mitigates the impacts of noise and poor air quality, and achieves outdoor environments that are comfortable and inviting for people to use. They conflict with Policies D13 and D14, which do not normally permit development where it is not clearly demonstrated how noise nuisance will be mitigated or managed.
58. Similarly, there is conflict with the Framework, which expects development to create places with a high standard of amenity for existing and future users and avoid noise giving rise to significant adverse impacts on quality of life.

Character and Appearance

59. I have already noted that there are no PD rights to construct outbuildings in the curtilage of properties in use as flats¹⁴. There is also no 'fallback position' to rebuild the former garage. Nonetheless, it is not unusual to see such structures and the surrounding area is densely developed. The appeal outbuilding does not cause any 'in principle' harm to the character and appearance of the area.
60. However, I have found that the outbuilding adjoins the northern, eastern and southern boundaries of the site, and is large enough to occupy around one third of the back yard. It is higher, even with its flat roof, than any wall or fence which could be erected without express planning permission. I also

¹³ The lean-to would further reduce outdoor space on the site if it was a permanent building but the appellant has made no case that it should be permitted on that basis.

¹⁴ That is not to say the outbuilding would be PD if it was within the curtilage of a single dwellinghouse; since the house is not such use, I will not make that assessment.

consider that the white plastic cladding to the front of the outbuilding is incongruous in an area where most properties are formed of buff or red brick. The change is for the worse because the cladding appears conspicuous, unsightly and more perishable than more traditional local materials.

61. By reason of its size, height and materials, the outbuilding looks unacceptably obtrusive from within the site and from Cranwich Road as and when the gate across the drive is opened. It looks discordant when seen through or above the gate to the path and properties to the south and, with regard to the (albeit zoomed) photographs taken from 45b West Bank, from adjoining properties. That it does not look 'out of place' to the occupier of 6B Cranwich Road does not alter my assessment
62. As the appellant suggests, planning permission could be granted subject to a condition that the outbuilding is taken down unless it is clad within a specified timescale in brick to match the house. However, such works would not remedy my concerns about the size of the outbuilding. Indeed, brick could add to the perceived bulk of this structure within the yard.
63. At my visit, the appellant showed me that an outbuilding or extension to a property on Dunsmure Road is similarly large, clad in white plastic and accessed and visible from the path by the site. However, I do not know the circumstances in which that or any other structure was approved or built. I conclude that the appeal outbuilding caused unacceptable harm to the character and appearance of the site and surrounding area.
64. I would find the same in respect of the lean-to, simply because it would add further bulk to the outbuilding and was formed of unfinished and poor quality timber. I also find that the existing flue appears industrial in scale and design, and unacceptably dominant and intrusive from the yard and nearby gardens.
65. I conclude that the outbuilding, lean-to and flue conflict with Hackney Local Plan Policy LP1, which expects development to be compatible with the existing townscape and use attractive, high quality durable materials which complement local character. They conflict with London Plan 2021 Policy D3, which expects development to respond to local distinctiveness in scale and appearance, and use attractive, robust materials which weather and mature well. And they conflict with the Framework, which similarly requires development to be visually attractive and sympathetic to the surrounding built environment.

Other Matters

66. I accept the appellant's claim that the commercial kitchen use serves local shops and is important for the local community. The appellant described the area as 'occupied by many Jewish Religious families who have strict kosher food requirements [and so] most shops on Dunsmere Road sell mostly kosher foods which have to be prepared under strict supervision by local rabbis'. I also note that the kitchen provides local employment.
67. From that description of the area, however, and the evidence regarding the sukkah, Jewish families are likely to live on the site and it is their living conditions that I am concerned with. Notwithstanding the support for the appeal from the occupiers of the flats and 6B Cranwich Road, the economic and social benefits of the use do not justify locating the business within a garden.

The benefits do not outweigh the harm that the use in particular will cause to families through noise, odour, overlooking and loss of garden space.

68. I also accept the point made by the occupiers of the appeal flats that they benefit from the provision of domestic storage space. However, since the outbuilding was not constructed for that purpose, I cannot bring the storage use within the ambit of the notice or grant permission for it. In any event, the storage rooms take too little floorspace for me to allow the outbuilding as it is.
69. As noted above, the Council decided that it would not be expedient for them to enforce against the construction of the outbuilding in 2018. They did not issue the notice until they had learned of the commercial kitchen use, but it does not follow that the outbuilding is acceptable. Whether it is expedient to enforce is not the same question as whether development is unlawful or harmful. I cannot comment on whether it is ever expedient for a local authority to issue a notice and my decisions are not bound by their deliberations on expediency.

Conclusion

70. I conclude that the commercial kitchen use, outbuilding and flue cause harm to the living conditions of nearby residents which is unacceptable and could not be overcome by conditions. The outbuilding, lean-to and flue cause unacceptable harm to the character and appearance of the site and surrounding area. The development conflicts with planning policies as described and the development plan when taken as a whole. Its economic and social benefits do not justify or outweigh the harms identified.
71. Since the commercial kitchen is used to prepare, cook and package kosher food for the local Jewish community, I shall treat the appellant as having the protected characteristic of religion for the purposes of this appeal and for the Public Sector Equality Duty that is set out under s149 of the Equality Act 2010.
72. However, because the harm caused by the use and outbuilding outweigh their economic and social benefits, permission should not be granted for the whole or any part of what is subject to the notice. Dismissing the appeal is necessary and proportionate in order to eliminate discrimination against persons with the protected characteristic of religion, to advance equality of opportunity for those persons and to foster good relations between them and others. The appeal fails on ground (a) and the DPA must be refused.

THE APPEAL ON GROUND (F)

73. Ground (f) is that the requirements of the enforcement notice exceed what is necessary to remedy the breach of planning control or, as the case may be, any injury to amenity. In this case, the notice requires the removal of the outbuilding, the lean-to and the flue from the garden area. Since the commercial kitchen use could not survive the removal of the buildings and installations which sustain it, the purpose of the notice is to remedy the breach.
74. The appellant argues that the notice should simply require that the kitchen use is ceased, and it is excessive to require the removal of the outbuilding. I have found, however, that what took place was the construction of an outbuilding, and that permission for both the outbuilding and use should be denied. In order to remedy the breach, it is not excessive but necessary for the notice to require that the unauthorised outbuilding is removed. The appeal fails on ground (f).

THE APPEAL ON GROUND (G)

75. Ground (g) is that the period for compliance with the requirements of the notice falls short of what is reasonable. The notice as issued requires the removal of the works and restoration of the site within three months.
76. The appellant seeks six months to comply with the requirements so that the owner or manager of the kitchen business can 'find' and if necessary refurbish alternative premises. I cannot give any assurances that new premises will be secured within any period of time, but the notice should give reasonable time for the proprietor to look and thereby try to save their business with its economic and social benefits.
77. Notwithstanding that the outbuilding was not constructed for this purpose, it may be that any flat occupiers now storing domestic effects in the structure would need to make other arrangements. I find that three months does fall short of what is reasonable to comply with the requirements of this notice, and it would be proportionate to extend the period to six months. The appeal succeeds on ground (g).

Jean Russell

INSPECTOR