



Appeal Decisions

Site visit made on 23 March 2023

by Alexander Walker MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 April 2023

Appeal A Ref: APP/C5690/C/21/3288360

Land to the rear of 215 Manor Lane, London SE12 0HR

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Giulio Castorina against an enforcement notice issued by London Borough of Lewisham.
- The notice was issued on 11 November 2021.
- The breach of planning control as alleged in the notice is the material change of use from Use class B8 (Storage or distribution) to Use class E(d) Indoor Fitness Gymnasium.
- The requirements of the notice are to:
 1. Cease the use of the property as a Class E(d) indoor fitness gymnasium
 2. Make good all damage resulting from the compliance with the requirements of this notice.
 3. Remove all materials, debris, waste and equipment resulting from compliance with the above requirements of this notice from the land.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b) and (f) 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 of Decision: The appeal is dismissed, the enforcement notice is upheld with corrections and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B Ref: APP/C5690/W/21/3279980

Storage unit adjacent to 76 Holme Lacey Road SE12 0HR, also known as garage to the rear of 215 Manor Lane, SE12 0TZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission
- The appeal is made by Mr Giulio Castorina against London Borough of Lewisham.
- The application Ref DC/21/121769, is dated 6 April 2021.
- The development proposed is change of use from B8 (Storage) to E(d) Indoor Fitness. No proposed change of structure, floor plan layout or building works.

Summary of Decision: The appeal is dismissed.

Preliminary Matter

1. Despite the differences between the descriptions of the addresses in Appeals A and B, the site and development the subject of the appeals is the same.

The Enforcement Notice

2. Paragraph 4.1 of the Notice states '...the breach of planning control has occurred within the last four years'. However, the alleged breach of planning control is a material change of use and therefore the correct period of immunity

is ten years, not four. The Notice is defective in that respect. However, as the appellants have not made a ground (d) appeal I am satisfied that a correction of the Notice to include reference to the breach occurring within the last ten years, instead of four, would not cause injustice in this case.

Appeal A - The ground (b) appeal

3. This ground of appeal is that the breach of planning control alleged in the enforcement notice has not occurred. In order to succeed on this ground, it would need to be demonstrated that the material change of use to a class E(d) indoor fitness gymnasium as not occurred. The onus of proof lies with the appellant.
4. The Notice makes reference to the alleged breach of planning control taking place within the last four years (prior to the issuing of the Notice). They state this is false as the appeal property was used as a storage unit until the planning application was submitted in May 2021, which is the subject of Appeal B.
5. Notwithstanding the above, there is no evidence before me that the appeal property was not used as a gym as alleged in the Notice. Indeed, the Council state that at the time they visited the property in September 2021, prior to the Notice being issued, it was being used as a fitness studio with evidence showing that it is advertised on the internet as 'Results Mindset Fitness Studio', including membership prices. Furthermore, during my site visit, the building was fitted out with various exercise equipment indicating it is utilised as a fitness studio.
6. Given the above, on the balance of probabilities, the change of use as alleged has taken place. Consequently, the ground (b) appeal fails.

Appeal A - The ground (a) appeal and the deemed planning application; and Appeal B

Background and Main Issues

7. Appeal B has been made on the basis that the Council failed to give notice within the prescribed period of a decision on the application for planning permission. The Council state that they acknowledge the application was not determined within the 8 week period; however, the application was determined prior to an appeal start letter being received. Notwithstanding this, as an appeal against the non-determination of the application was lodged prior to the Council issuing their decision, they no longer had the jurisdiction to do so.
8. Nevertheless, the reasons for refusal set out in the Council's decision notice provide a clear indication of the objections they have to the development. Based on these, I consider the main issues are the effect of the development on the character of the area and the living conditions of the occupants of neighbouring residential properties, with particular regard to noise and disturbance.

Character and appearance

9. Holme Lacey Road is a predominantly residential street comprising two-storey, semi-detached dwellings that are similar in their scale and design. The dwellings are set back from the highway with small gardens to the front with low boundary walls abutting the pavement. The wide pavements and tree-lined road, properties set back from the road and low boundary walls create a very

open, pleasant, suburban residential character. This is further enhanced by the road being closed to motor vehicles from the junction with Manor Lane, which contributes to the peacefulness of the road.

10. To the rear of properties lining the northern side of the road there are large trade retail units. Whilst these units are visible through gaps between the dwellings on Holme Lacey Road, they are distinctly separate and do not detract from its residential character.
11. The appeal property comprises a small, single-storey brick building and lies adjacent to 76 Holme Lacey Road. Its small size limits the number of people it can accommodate at any one time. Nevertheless, even if the number of people is no more than three, as suggested by the appellant, this would still result in a number of comings and goings throughout the day with customers arriving for/leaving their appointments. These comings and goings would be significantly greater than one would expect from the surrounding single-family dwellings. Such comings and goings would be discernible and unduly detract from the peaceful, residential character of the area.
12. I note the findings of the Acoustic Assessment carried out by Ned Johnson Acoustic Consultants Limited, dated 23 June 2021, which concludes the activities on site would not be audible against the residual acoustic environment and would be quieter than the existing lawful storage use. Local residents have commented that occasionally the door has been left open during training sessions, resulting in undue noise emanating from inside. The Acoustic Assessment does not appear to have taken such instances into account. I noted during my site visit a large floor fan within the property. However, it is reasonable to conclude that, particularly during warm weather, there is a reasonable likelihood the door would be left open to ventilate the gym, allowing noise to emanate from inside the building, thus exacerbating the harm to the peaceful, residential character of the area.
13. I therefore find the development significantly harms the character of the area, contrary to Spatial Policy 5 and Core Strategy Policy 15 of the London Borough of Lewisham Core Strategy Development Plan Document 2011 (the CS), which seek to ensure development is sensitive to the local context and responds to local character and protects or enhances the quality of Lewisham's character. It would also be contrary to DM Policy 11 of the London Borough of Lewisham Development Management Local Plan 2014 (the DM), which seeks to ensure business uses are suitable for a residential area. Furthermore, it would fail to accord with the general design objectives of the National Planning Policy Framework (the Framework)

Living conditions

14. Given the proximity of the appeal property to neighbouring residential properties, in particular No 76, on occasions when the noise generated by the use is discernible, eg, when the door is open, this would significantly detract from their peaceful enjoyment of their homes. Similarly, the general comings and goings of customers resulting in car doors opening and closing, engines running and people conversing outside the property would further add to the level of noise and disturbance.
15. I therefore find the development significantly harms the living conditions of the occupants of neighbouring residential properties, with regard to noise and

disturbance. As such, it is contrary to Policies D13 and D14 of the London Plan, Core Strategy Policy 14 and Core Strategy Policy 15 of the CS, and DM Policy 26 and DM Policy 31 of the DM, which together seek to protect the living conditions of neighbouring residents.

Other Matters

16. I acknowledge that there has been no interest in the lawful storage use of the property and that it is in a relatively accessible location. However, these matters do not outweigh the harm I have found above.

Conclusion on the Appeal A ground (a) appeal and the deemed planning application; and Appeal B

17. For the reasons given above, having regard to the development plan as a whole and all material considerations, planning permission should not be granted in response to either the ground (a) appeal against the enforcement notice and deemed application, or to the Section 78 appeal against the Council's failure to determine the planning application. Therefore, Appeal A on ground (a) fails, as does Appeal B.

Appeal A – The ground (f) appeal

18. This ground is that the notice requirements are excessive. Depending on the purpose of the notice, this can be assessed against the question of whether the requirements exceed what is necessary to remedy the breach of planning control; or, any injury to amenity.
19. The appellant's argument under this ground is that the Council should wait until the appeal has been determined before pursuing with enforcement action.
20. However, there is no evidence before me to suggest the requirements exceed what is necessary to remedy the breach of planning control.
21. I therefore conclude the ground (f) appeal must fail.

Formal Decision

Appeal A

22. It is directed that the enforcement notice is corrected by:
- (a) The deletion of the word "four" in paragraph 4.1 and substituting "ten".
23. Subject to the correction, the appeal is dismissed and the enforcement notice is upheld.

Appeal B

24. The appeal is dismissed and planning permission is refused.

Alexander Walker

INSPECTOR