



Appeal Decision

Site visit made on 11 May 2023

by Peter Willows BA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 May 2023

Appeal Ref: APP/U5360/C/21/3288746

468 Kingsland Road, Hackney, London E8 4AE

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
 - The appeal is made by Mr Berke Ozer against an enforcement notice issued by the London Borough of Hackney.
 - The notice was issued on 12 November 2021.
 - The breach of planning control as alleged in the notice is:
 1. The unauthorised change of use of the property to a Hot Food Takeaway (Sui Generis).
 2. Alterations to the shop front including the installation of a retractable awning, the installation of an internally illuminated fascia sign and projecting sign, the installation of a board on the lower part of the shopfront and the relocation of the door to the right hand side of the shopfront.
 3. The extension of the previously existing single storey rear extension by an additional 3m and the installation of a flue and HVAC unit on the roof.
 - The requirements of the notice are:
 - (1) Cease the use of the premises as a Hot Food Takeaway (Sui Generis).
 - (2) Remove all of the fixtures and fittings that facilitate the use of the property as a Hot Food Takeaway.
 - (3) Remove the internally illuminated projecting and fascia signage in addition to the black sheet billboard displayed on the stall riser; AND
 - (4) Remove the retractable awning and reinstate the door to its previous position in the centre of the shopfront; AND
 - (5) Reduce the size of the rear extension to reinstate the previous form and appearance prior to the works; AND
 - (6) Remove the flue and extractor unit that is installed onto the roof of the rear extension; AND
 - (7) 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 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(c) and (d) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act have lapsed.
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Decision

1. The appeal is dismissed and the enforcement notice is upheld.

Preliminary Matter

2. The appellant was not available at the site at the time arranged for my site visit. Consequently, I was unable to see the extension and flue/extraction unit, which are to the rear of the property. However, given the issues before me in

this instance, in particular the fact that the appeal on ground (a) has lapsed and that there is no dispute regarding the nature of the development that has taken place, I am satisfied that I can decide the appeal without the need to inspect the rear of the property.

Ground (c)

3. Under ground (c) it is argued that the matters stated in the notice do not constitute a breach of planning control. The burden of proof falls on the appellant and the standard of proof is the balance of probability. On this ground the appellant refers only to the change of use and makes no claim that the operational developments cited in the notice are not a breach of planning control.
4. There is no claim either that the change to use as a hot food takeaway is not a material change. However, the appellant states 'The property has an existing *Sui generis* use class therefore the change of use to A3 (which has been revoked) is permitted development'.
5. It is important to appreciate that there is no *sui generis* use class. *Sui generis* is a Latin term which signifies that something is unique or of its own kind. In a planning context it is used as an umbrella term for uses that do not fall within a planning use class. Thus, the principle that changes of use within a use class are not development¹ is not relevant to *sui generis* uses.
6. It is not disputed that the appeal site was in use as a hot food takeaway when the enforcement notice was issued, as it appeared still to be when I visited the property. The appellant has not provided details of the previous use of the property. The Council says that the previous lawful use was as a taxi office and that it was subsequently used, without planning permission, as an estate agent's office. Neither party has identified any permitted development rights that would enable change from a taxi office to a hot food takeaway use. In any event, the evidence before me indicates that the use of the property changed to an estate agent's office prior to changing to a takeaway. Since it appears that the estate agency use was unlawful, there is no prospect of any rights arising from that use. Thus, it has not been shown that any relevant permitted development rights apply in this case.
7. I conclude that there is no evidence to support the claim that the change of use of the property to a hot food takeaway was not a breach of planning control. The hot food takeaway is clearly a materially different use to those previous uses drawn to my attention and therefore amounted to development. Accordingly, the appeal on ground (c) fails.

Ground (d)

8. Under ground (d) the appellant argues that, by the time the notice was issued, it was too late to take enforcement action against the rear extension which, it is said, was built in May 2016. It is for the appellant to demonstrate this, on the balance of probability.
9. The time limits for taking enforcement action are set out in s171B of the Act. In accordance with s171B(1), no enforcement action may be taken against

¹ A change of use between uses within the same use class is not development in accordance with s55(2)(f) of the Town and Country Planning Act 1990 (as amended)

operational development such as this extension after the end of the period of four years beginning with the date on which the operations were substantially completed. Since the notice was issued on 12 November 2021, it follows that the extension would need to have been substantially completed not later than 12 November 2017 in order to have been immune from enforcement action.

10. However, the appellant's claim regarding the timing of the building works is disputed by the Council, which says that the extension was built in 2020. The appellant has not provided any further evidence to support the claim that the extension was built in May 2016. An affidavit referred to in the grounds of appeal has not been provided. The Council's evidence regarding the date of construction is not conclusive either, with room for doubt as to the precise date of some of the photographs submitted in support of its case. However, the burden of proof falls on the appellant and I conclude that it has not been demonstrated, on the balance of probability, that the extension was substantially completed 4 years before the enforcement notice was issued. Accordingly, the appeal on ground (d) fails.

Conclusion

11. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice.

Peter Willows

INSPECTOR