



Appeal Decision

Site visit made on 24 July 2023

by M. P. Howell BA (Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15TH AUGUST 2023

Appeal Ref: APP/K0425/C/22/3297822

Land at 42 Mill End Road, High Wycombe, Buckinghamshire HP12 4JN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Raqib Hussain against an enforcement notice issued by Buckinghamshire Council – West Area.
- The notice, numbered 21/00061/CU, was issued on 31 March 2022.
- The breach of planning control as alleged in the notice is without planning permission a material change of use to a mixed use, comprising residential (C3) and takeaway (Sui Generis).
- The requirements of the notice are:
 1. Cease the use of the Land as a takeaway (Sui-Generis);
 2. Remove from the outbuilding (approximately located by the hashed area on the attached Plan) the kitchen and food preparation areas used in connection with the unauthorised takeaway use (Sui Generis);
 3. Remove from the Land all materials and debris resulting from compliance with Steps 1 and 2 of this Notice.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2)(c) and (g) of the Town and Country Planning Act 1990 as amended.

Summary Decision: The appeal is dismissed, and the enforcement notice is upheld with corrections in the terms set out below in the Formal Decision.

Matters Concerning the Enforcement Notice

1. The allegation refers to a mixed use, but the first requirement does not require that mixed use to cease. The wording of the requirement should match the allegation. A requirement to 'Cease the mixed use of the Land' would match the allegation and provides more clarity. As there is no dispute that the lawful use of the appeal site is as a residential dwellinghouse, no injustice arises to any party as a result of the amendment. I will amend the notice accordingly.
2. In paragraph 5 (2), for clarity and conciseness, it is not necessary to define the fact that the kitchen and food preparation areas to be removed are used in connection with the unauthorised takeaway use (Sui Generis). As such the words 'used in connection with the unauthorised takeaway use (Sui Generis)' can be deleted. This correction would cause no injustice to either party.

Background and Preliminary Matters

3. This Enforcement Notice relates to the material change of use of the building. It is accepted by the Council that the outbuilding was built sometime in 2017 and was used for storage prior to the takeaway kitchen being installed.

4. Following the initial investigation into the use at the site, a 2021 planning application¹ was submitted, proposing a material change of use of the outbuilding from C3 (Residential) storage to takeaway (Sui generis) dessert takeaway (Retrospective). The Officer Report and Decision Notice for the 2021 refusal have been provided, but I do not have the full details, such as the application form and plans. Nevertheless, there is no indication in the appeal evidence that the use refused as part of the 2021 application is the same use as the one alleged and being carried out at the time the notice was served.
5. As no ground (a) has been plead, issues such as noise and disturbance to neighbours, the impact on character of the area and implications for highway safety are not matters before me for consideration. For the same reasons, I am unable to consider whether conditions can be applied to the alleged mixed-use scheme to make it acceptable.

The Appeal on Ground (c)

6. An appeal on this ground is made on the basis that the matters alleged in the enforcement notice, if they have occurred, do not amount to a breach of planning control. When making an appeal on this ground the onus rests with the appellant to make their case. That evidence does not need to be corroborated by independent evidence to be accepted, provided the evidence alone is sufficiently precise and unambiguous on the balance of probability.
7. The appellant's case is that the introduction of the dessert takeaway use did not amount to a material change of use which requires planning permission. They state that the takeaway use is ancillary to the residential use like any other scenario where someone operates a business from home.
8. From what I saw on site, the outbuilding is situated in the garden of the residential property and there is no physical separation of the land between them. The outbuilding can be accessed via the dwellinghouse, but it is also possible to access the garden and outbuilding externally to the side of the property. Having regard to the layout of the site, I am of the view that the dwelling, the garden and outbuilding are a single planning unit.
9. As a matter of fact and degree, a takeaway use is materially different in character to a use as a residential dwelling. This is because of the nature of a takeaway use and the resulting increase in comings and goings, operating times and potential noises and smells that would be materially different to a residential dwelling and any associated garden building. As such, the size of the kitchen in the outbuilding, the scale and type of the activities being carried out and the extent to which it is associated with the residential use of the host dwelling is crucial in determining whether a material change of use has occurred.
10. The outbuilding is single storey, has two windows and a single person door. It contains kitchen cupboards and counters, two stainless steel sinks, two fridges, a combined fridge freezer, a large chest freezer, two microwaves, a cash till and several commercial kitchen appliances for making desserts, such as doughnut, ice cream and waffle making machines. The cupboards and shelves were mainly being used for storage of takeaway packaging, packaged sweets, dessert toppings and sauces.

¹ Council reference 21/07758/FUL

11. The appellant states the outbuilding kitchen provides additional space for the occupiers to prepare the desserts. Two persons in total are employed by the business; one household member prepares the desserts and another, who owns the property, delivers the desserts. There is no customer pick up option available as part of the business.
12. The whole of the outbuilding is occupied by the kitchen, which is not excessive in size but comprises equipment and food items that are not typical of a domestic kitchen. From what I saw, it did not include a conventional oven or any day-to-day food ingredients that one might expect in a kitchen being used regularly in connection with a dwelling. Furthermore, the items of food that I saw are predominantly ingredients used in the preparation of desserts. The number of fridges and freezers would be excessive for domestic needs, and the size, number and specific function of the specialised dessert machines means you would not typically find them in a domestic kitchen.
13. The dwellinghouse also includes its own family sized kitchen, but I have no information to indicate if it is used in the preparation of the takeaway desserts and why additional kitchen space was needed in the outbuilding. This is compounded by the fact that I have limited information on the takeaway activities, such as the number of days/nights the takeaway operates, its hours of opening or the number of orders and deliveries that occur in an average week. Also, I have no details of how many deliveries of stock and supplies come to the property and if any of the specialised appliances for dessert making produce noises and/or odours.
14. Accordingly, the outbuilding kitchen is not excessive in size and its location is convenient for the occupiers of the dwelling who operate the dessert takeaway business. However, based on the specialised equipment and food ingredients it stores together with the lack of association it has with the residential use, I am of the view that the outbuilding is a primary takeaway use rather than being ancillary to the residential use. The provision of a second, commercial scale kitchen would not be a regular feature of a single dwellinghouse and there has been a distinct change to the character of the property.
15. As a matter of fact and degree, based on the available evidence, a material change of use from a Class C3: dwellinghouse to a mixed use of residential (C3) and takeaway (Sui Generis) has occurred. Such a material change of use would require the benefit of planning permission, which has not been granted. The appellant has therefore failed to show, on the balance of probability, that the material change of use does not constitute a breach of planning control.
16. In view of the above, the appeal on ground (c) fails.

The Appeal on Ground (g)

17. This ground of appeal is that any period specified in the notice falls short of what should reasonably be allowed. The period for compliance with the requirements is within three months of the notice taking effect. The appellant contends that additional time is required due to the business needing to secure an alternative location. However, no defined period has been requested.
18. Having regard to the potential disruption to the business and the time it may take to relocate, I consider that a period in excess of three months can be justified. However, extending the period significantly would prolong the identified harm to

the character of the area, neighbour's living conditions as well as parking and highway safety.

19. On this basis, I consider that a period of five months for the appellant to comply with the corrected notice would strike an appropriate balance between the need to minimise the identified harms and the need to minimise disruption to the business. To this limited extent, the appeal on ground (g) succeeds. I shall vary the terms of the notice accordingly.

Conclusion

20. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with variations and corrections.

Formal Decision

21. It is directed that the enforcement notice is corrected by:

In paragraph 5 (1) *the wording of the requirement shall be deleted and substituted with the words 'Cease the mixed use of the Land'.*

In paragraph 5 (2), *the deletion of the words 'used in connection with the unauthorised takeaway use (Sui Generis)'.*

In paragraph 6, *the deletion of the word three and the substitution with the word five.*

22. Subject to variations and corrections, the appeal is dismissed, and the enforcement notice is upheld.

M. P. Howell

INSPECTOR