



Appeal Decisions

Site visit made on 15 August 2023

by James Blackwell LLB (Hons) PGDip

an Inspector appointed by the Secretary of State

Decision date: 19th October 2023

Appeal A Ref: APP/E5900/C/22/3298761

73 Wentworth Street, London E1 7TD

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
- The appeal is made by Mr Azzam Barhamji of Shawarma Brick Lane against an enforcement notice issued by London Borough of Tower Hamlets.
- The notice was issued on 21 April 2022.
- The breach of planning control as alleged in the notice is "The material change of use of the ground floor and basement of the premises, shown in the approximate location outlined in red on the attached site plan in Appendix 1, from retail to two units for the preparation and sale of hot food to be consumed off the premises".
- The requirements of the notice are to: (1) Cease the use of the ground floor and basement of the premises, shown in the approximate location outlined in red on the attached plan, for the preparation and sale of hot food to be consumed off the premises; (2) Remove the ground floor entrance door to the premises, shown in photograph 5A outlined in blue on Appendix 2.
- The period for compliance with the requirements is three months from the date the notice takes effect.
- The appeal is proceeding on the ground set out in section 174(2)(a) 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 and the enforcement notice is upheld in the terms set out in the Formal Decision.

Appeal B Ref: APP/E5900/C/22/3298669

73 Wentworth Street, London E1 7TD

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
- The appeal is made by Mr Azzam Barhamji of Shawarma Brick Lane against an enforcement notice issued by London Borough of Tower Hamlets.
- The notice was issued on 21 April 2022.
- The breach of planning control as alleged in the notice is "The installation of an extraction flue on the east elevation of the premises shown in the approximate location outlined in red on the attached site plan in Appendix 1".
- The requirement of the notice is to: (1) Remove the extraction flue, shown in photographs 2A and 2B of Appendix 2, from the side elevation of the building, shown in the approximate location outlined in red on the attached site plan in Appendix 1.
- The period for compliance with the requirement is three months from the date the notice takes effect.
- The appeal is proceeding on the ground set out in section 174(2)(a) 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 and the enforcement notice is upheld with a correction and variation in the terms set out in the Formal Decision.

Appeal C Ref: APP/E5900/W/23/3314439
73 Wentworth Street, London E1 7TD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Azzam Barhamji against the decision of London Borough of Tower Hamlets.
- The application Ref PA/22/00125, dated 24 January 2022, was refused by notice dated 25 July 2022.
- The development proposed is the sub division of existing property into two units. Use of ground floor as restaurant and takeaway (Class E). Use of basement as takeaway (sui generis). Works to shop front to install two new doors and retention of existing extraction system.

Summary Decision: The appeal is dismissed.

Appeal D Ref: APP/E5900/Z/22/3306641
73 Wentworth Street, London E1 7TD

- The appeal is made under Regulation 17 of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 against a refusal to grant express consent.
- The appeal is made by Mr Azzam Barhamji against the decision of London Borough of Tower Hamlets.
- The application Ref PA/22/0132, dated 24 January 2022, was refused by notice dated 20 July 2022.
- The advertisement proposed is the retention of x1 non-illuminated fascia sign and x1illuminated projected hanging sign.

Summary Decision: The appeal is dismissed.

Background and Preliminary Matters

1. In terms of Appeal B, there are two connected flues on the side of the appeal premises, as opposed to just one. From the photos submitted alongside the notice, it is clear that these were both in place at the time the notice was issued. I have therefore made a minor correction and variation to the notice, to ensure the allegation refers to both flues, and that the requirements of the notice require the removal of both. It is clear from the reasoning in the notice that the Council considered neither part of the flue acceptable, so I am satisfied that these alterations would not cause injustice to the appellants.
2. The appeals relate to a material change of use (MCU) of the appeal site from retail use to use as a hot-food takeaway, together with associated operational development and signage. More specifically, Appeal A concerns an enforcement notice issued by the Council in respect of an alleged MCU to a hot-food takeaway use. Appeal B concerns an enforcement notice issued by the Council in respect of the flues constructed in association with this MCU. Appeal C relates to a retrospective planning application which has been refused by the Council for the MCU and associated construction of the flues. Finally, Appeal D concerns the refusal of advertisement consent for signage which has been implemented in connection with the MCU.
3. The appeal premises have been subdivided into two separate units. Whilst both units operate as hot-food takeaways, there is some limited seating within the westernmost unit which allows food to be consumed within the premises. With regard to Appeal A, this restaurant element of the use does not form part of the matters alleged to constitute the breach, a position which the Council has confirmed was accurate when the notice was issued. Whilst this factor does not materially impact on my reasoning with regard to the main issues in these

appeals, Appeal A therefore concerns the MCU to a hot-food takeaway use only.

4. In terms of Appeal C, the description of development references use of the premises as a restaurant and takeaway, which is described as a Class E use. This description appears to be inaccurate, as use as a restaurant and takeaway would be a mixed use, and would not fall within Class E. The written evidence also indicates that the hot-food takeaway is in fact the primary use of the ground floor unit, with any restaurant use being ancillary. This reflects my own observations during my site visit.
5. Notwithstanding these potential inaccuracies with the description provided, as a retrospective application, my reasoning addresses what is now in situ, rather than the merits of any prospective use. It is also worth highlighting that I have not been asked to consider a split decision with regard to any separate element of use.
6. Given that the appeals are so closely related, I have dealt with them all in a single decision notice. In terms of structure, the main issues pertaining to Appeals A, B and C are broadly similar across all three appeals. I have therefore dealt with the reasoning for these appeals together. I have then dealt with the issues pertaining to the Appeal D advertisement consent separately, as determination of this application is governed by different legislation.
7. The appeal site is located within the Wentworth Street Conservation Area. In respect of each appeal, I have therefore had special regard to the desirability of preserving or enhancing the character or appearance of the CA, in accordance with my statutory duty under s72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.
8. Since the appeal start date, the 2021 iteration of the National Planning Policy Framework (Framework) has been superseded. I am satisfied that the updates to the Framework do not materially affect its content insofar as it is relevant to the main issues of this appeal. I have therefore determined this appeal with regard to the current version, published in September 2023.

Appeals A, B and C

Main Issues

9. The main issues are:
 - whether the loss of the pre-existing retail premises is justified, with particular regard to development plan policy;
 - the effect of the development on the character and appearance of the area, including whether it would preserve or enhance the character or appearance of the Wentworth Street Conservation Area;
 - whether use of the appeal premises as a hot-food takeaway is acceptable with regard to development plan policy, including its effect on neighbouring amenity;
 - whether acceptable provision for refuse management has been made with regard to the MCU; and

- the effect of the development on the safety of pedestrians and cyclists.

Reasons

Loss of Pre-existing Retail Premises

10. As shown on Figure 11 (Town Centre Hierarchy) of the Tower Hamlets Local Plan 2031 (Local Plan), the appeal site is coloured orange, and is therefore within a Neighbourhood Centre for the purposes of the plan. The appeal premises are understood to have previously been used as a shop, which sold baggage and associated accessories.
11. Paragraph 5 of Policy D.TC2 of the Local Plan says that within Neighbourhood Centres, the proportion of units within A1 retail use should not fall below 40% of all units within the designated centre. In this instance, whilst there are a small handful of food outlets, the vast majority of units appear to be used for retail purposes. The loss of the appeal premises for retail use is therefore unlikely to have breached this 40% threshold.
12. The Policy goes on to say that new development in such locations should be appropriate to the nature and scale of the individual Neighbourhood Centre. Within primary shopping frontages, the Policy also says that any loss of retail floorspace should be of a scale that will not materially alter the nature of the unit, its future viability nor the function of the host shopping area.
13. There are a handful of fast-food establishments pepper-potted along Wentworth Street and its immediate surrounds, which means use of the premises as a hot-food takeaway/restaurant is not a unique feature of the Neighbourhood Centre. Moreover, the appeal premises are relatively small in the context of the wider street, and the overwhelming majority of units along Wentworth Street are still used for retail purposes. Together, these factors help ensure that the loss of the former retail unit does not materially alter the nature nor function of the street as a whole. Given that the substantive floorspace within the subdivided units has not been materially reduced, the units should also remain viable for present or future occupiers, commensurate with the aims of Policy D.TC2.
14. On the available information, I am therefore satisfied that the loss of the pre-existing retail unit is acceptable with regard to Policy D.TC2 of the Council's Local Plan.

Character and Appearance

15. The appeal site comprises a three-storey end of terrace building on the northern side of Wentworth Street. The ground floor and basement level were previously used as a single retail unit, but have since been subdivided. The ground floor unit is now used as a hot-food takeaway/restaurant. The other unit, which is occupied by a separate kitchen at basement level, also operates as a hot-food takeaway, and benefits from its own entrance at ground floor level. The upper storeys of the premises are used as residential accommodation, with access gained along Ann's Place to the east of the building.
16. The appeal site is within the Wentworth Street Conservation Area (CA), which has a mixed commercial and residential character. The CA has a long-standing

association with the clothing industry, which is readily apparent from the abundance of nearby clothing shops and the central street market. Whilst there are a handful of food outlets operating from Wentworth Street, the street's retail offering is central to its overarching significance, with glass fronted retail units contributing positively to the active frontage along either side of the street.

17. The subdivision of the appeal site has necessitated an additional entrance being installed on the right-hand side of the unit's frontage. This door is entirely blacked out, as is an adjacent full height panel between the subdivided units. A black roller shutter also runs along the ground floor of the eastern elevation of the building leading into Ann's Place, which is understood to remain closed at all times. This means the blacked-out effect extends around the entire street corner, which is visually imposing and hostile. This element of the frontage also contrasts with the more active shop fronts which otherwise typify the road, thereby undermining the distinct retail character of the street.
18. To facilitate the use of the hot-food takeaway/restaurant, two metallic flues have also been installed on the eastern elevation of the appeal premises. The flues are substantial in both width and height, protruding notably from the wall, and extending all the way up the side of the building from the top of the ground floor. Given their notable size, the flues appear prominent and bulky, particularly in views into Ann's Place from Wentworth Street. The metallic material also means the flues assume a semi-industrial appearance, which is at odds with the prevailing retail character of the area.
19. On account of these reasons, the development harms the character and appearance of the area. Consequently, it also fails to preserve or enhance the character and appearance of the CA. I consider this harm to be less than substantial, as it is localised to just a small part of Wentworth Street. Nonetheless, paragraph 199 of the Framework is clear that great weight should be given to a heritage asset's conservation (the heritage asset being the CA), irrespective of whether any harm is less than substantial or otherwise. Paragraph 202 of the Framework goes on to say that "where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal".
20. In terms of public benefits, the hot-food takeaway business would contribute to the evening and night time economy of the area. The appellant also suggests that the MCU has been implemented to secure the ongoing viability of the business premises. Whilst this could constitute a material benefit of the scheme, little information has been presented in respect of the financial viability of the pre-existing retail use, nor any alternative shop use. This means I am unable to determine whether or not similar benefits could arise from some other use which is less harmful to the character of the area. In turn, this benefit can only carry limited weight.
21. Taken together, these benefits would not be sufficient to outweigh the harm to the CA in this instance. The development therefore conflicts with Policy D.DH2 of the Local Plan, which says development should contribute positively to the public realm, through optimising active frontages towards public streets and spaces. It also conflicts with Policy S.DH1 which says development is required to meet the highest standards of design, which respects and positively

responds to its context and townscape. Finally, the development conflicts with the heritage objectives of Policy S.DH3 of the Local Plan and Policy HC1 of the London Plan (2021), which seek to protect the significance of heritage assets.

Hot-food Takeaway Use

22. As mentioned, the appeal premises are within a Neighbourhood Centre for the purposes of the Local Plan. The appeal site also falls within the Central Activities Zone.
23. Policy D.TC5 of the Local Plan says development of hot-food takeaways will only be supported within a Neighbourhood Centre or within the Central Activities Zone, where certain criteria are met. These criteria state there must be a separation of at least four non-A5 units between each new hot-food takeaway; the percentage of A5 units must not exceed 5% of the total number of units within the respective Neighbourhood Centre; the unit must not be within 200 metres of a school or leisure centre; and the proposal must not harm the amenity of surrounding properties.
24. Given that the appeal premises have been subdivided into two separate hot-food takeaway units, the required level of separation between hot-food takeaway units would not be met. Moreover, limited evidence has been presented with regard to other hot-food takeaway units within the Neighbourhood area, which means I cannot determine whether the development breaches the 5% threshold for such uses. The development therefore fails to meet a number of the criteria for a hot-food takeaway use to be considered acceptable within a Neighbourhood Centre or within the Central Activities Zone.
25. In terms of local amenity, several neighbours have highlighted that the hot-food takeaway use leads to delivery drivers and riders clustering outside of the premises late into the evening. This can lead to noise and disturbance during anti-social hours, thereby harming the living conditions of nearby residents.
26. The flues from the kitchens, which have been installed on the eastern elevation of the premises, also run alongside the windows to several residential premises. The noise assessment submitted by the appellant also notes that the associated extraction fans are located at high level on the outer wall, beneath the first floor flat above. Whilst the noise assessment indicates that the noise impact on the residential upper floors is negligible, no detailed assessment has been submitted to demonstrate the specific noise impact attributed to the flues/fans, nor how this compares to pre-existing background noise levels. Without this detail, I am unable to rule out the possibility that the noise impact from this equipment has a harmful impact on the living conditions of the occupiers above, which is problematic given its very close proximity to the residential accommodation above.
27. Moreover, given the close proximity of the top of the flues to the windows of some of the residential properties above, there is also significant likelihood of fumes and odour causing harm to the living conditions of these occupiers. This is again an issue which has been raised by local residents, which led to the Council issuing an abatement notice in March 2022. Whilst not determinative in itself, I am also unable to determine the impact of the development with regard

to surrounding air quality, without a greater level of technical detail with regard to the extraction system.

28. On account of these factors, the development also harms the amenity of surrounding properties, so again falls foul of the criteria for a hot-food takeaway use to be considered acceptable within a Neighbourhood Centre or within the Central Activities Zone. The principle of the hot-food takeaway use is therefore unacceptable with regard to Policy D.TC5 of the Local Plan. The development also conflicts with Policy E9 of the London Plan (2021), which says the concentration of hot-food takeaways needs to be carefully managed, and more generally that new development should promote good physical health and wellbeing for the locality.
29. The harm to the living conditions of neighbouring occupiers is also contrary to the aims of Policies D.DH8 and D.ES9 of the Local Plan, which seek to protect neighbouring occupiers from unacceptable levels of noise, odour and fumes. Specifically with regard to noise, the development conflicts with Policy D.ES9 of the Local Plan and Policies D13 and D14 of the London Plan, all of which seek to ensure the noise arising from development does not have any significant adverse impact on the health or quality of life, and that mitigation is properly secured where appropriate. Without information to indicate otherwise, the development also conflicts with the air quality objectives set out in Policy D.ES2 of the Local Plan and Policy SI 1 of the London Plan (2021), which seek to ensure new development does not lead to any further deterioration of local air quality.

Refuse Storage

30. It is reasonable to expect that the waste generated from the hot-food takeaway/restaurant use would be notably greater than the levels of waste generated from the pre-existing retail use. However, very little information has been provided by the appellant to set out how much waste is generated by the hot-food takeaway/restaurant use, nor how refuse and recycling is managed. Without this information, I am unable to determine whether the waste management arrangements are effective, including whether adequate provision for recycling has been made. The appellant has also said that waste is left on the street for daily collection by private contractors, which could be indicative of on-site storage of waste and recycling being overly limited.
31. For these reasons, I am not persuaded that adequate arrangements for waste management and collection have been made in connection with the appeal businesses. The development therefore conflicts with Policy D.DH2 of the Local Plan, which says refuse and recycling facilities should be integrated within a building's envelope. It also conflicts with Policies S.MW1 and D.MW3 which set out the overarching waste management and collection strategies for the Borough. The development conflicts with Policy D.DH8 which seeks to protect neighbouring amenity, and Policy D.TR4 which seeks to encourage sustainable collection arrangements. Finally, the development fails to meet the objectives of Policy SI 7 of the London Plan, which promote development that provides adequate, flexible and easily accessible storage space and collection systems, that support, as a minimum, the separate collection of dry recyclables and food.

Public Safety

32. The Council has suggested that the overhanging flues could obstruct and endanger the safety of pedestrians and cyclists along Ann's Place. However, the flues sit above head height, so are unlikely to obstruct pedestrian or cyclist movements. Moreover, the safety and stability of the flues would be addressed through any associated licensing regime and/or building regulations approval, had the development been acceptable in all other respects.
33. There is also an external door to the appeal premises along Ann's Place, which provides access to a WC. Given this door opens outwards, it could pose safety concerns if the door were to be opened into the path of a pedestrian or cyclist. Nonetheless, an alternative solution, such as an inwards opening door, could be secured by condition which would overcome this safety risk, again had all other elements of the development been considered acceptable.
34. I am therefore satisfied that the development would not unduly endanger pedestrian and cyclist safety. In this regard, the development is consistent with Policies D.DH2 and D.TR2 of the Local Plan, both of which seek to promote safety and the perception of safety for pedestrians and other road users. However, this finding would not outweigh the other harms identified, nor the other conflicts with the development plan.

Conclusions

Appeals A and B

35. For the reasons given, I conclude that the appeals should not succeed. Subject to the correction and variation set out in the Formal Decision to Appeal B, I shall uphold the enforcement notices and refuse to grant planning permission on the applications deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal C

36. The development conflicts with the development plan as a whole and there are no other considerations, including the provisions of the Framework, which outweigh this finding. Therefore, for the reasons given, the appeal should be dismissed.

Appeal D

Main Issue

37. The main issue with regard to Appeal D is the effect of the development on amenity.

Reasons

38. In conjunction with the MCU from retail to hot-food takeaway/restaurant use, a new fascia sign has been installed across the top of both of the subdivided units. An illuminated projected hanging sign has also been added. The signage is predominantly black, but includes white text detailing the types of food on offer, together with a red text motif.

39. In conservation areas, the Council's Signs and Advertisement Guide (Advertisement Guide) says that fascia signs should be sign written painted timber and externally luminated with a sensitive light source. This is intended to help preserve and enhance the special character and appearance of the CA. Given the prevailing retail character of Wentworth Street as a whole, this guidance is especially important, as shop hoardings and signage are so prevalent.
40. In the present case, the fascia sign is not painted timber. The projecting sign is also internally luminated, rather than externally luminated. In these respects, the new signage falls foul of the guidance. I do acknowledge that the appeal premises are not unique in this respect, as many other units along the road display comparable signage. However, the departures from the guidance further compound the discordance between the hot-food takeaway/restaurant use of the appeal premises, and the retail premises elsewhere along the road which have adhered more closely to the Advertisement Guidance. This means that the signage fails to integrate effectively with the retail character of the CA, thereby undermining its prevailing character and significance.
41. In turn, I consider that the new signage harms the visual amenity of the street. In reaching this conclusion, I have taken into account a number of policies of the Local Plan, insofar as they raise amenity considerations material to the appeal. In particular, I have taken account of Policies D.DH10 and D.DH2, which say signage in conservation areas should complement the special character of the area, and that development should optimise active frontages towards public streets. I have also considered Policy S.DH1, which seeks to ensure a development's detailing, including elements and materials on external elevations, complements and enhances its immediate surroundings. Finally, I have taken account of Policy S.DH3, which says development should protect and enhance the special character and significance of the Borough's heritage assets, including conservation areas. Given that the development harms visual amenity, the signage, at least in part, conflicts with each of these policies.

Other Matters

42. Subject to an oversailing licence and technical approval, the Council does not consider that the signage gives rise to any particular concerns with regard to public safety. Given that the structural characteristics of the signage are broadly typical of other shop signage, I have no reason to disagree with this conclusion. However, this factor does not alter my conclusions with regard to visual amenity.

Conclusion

43. For the reasons given, and having had regard to all other matters raised, I conclude that the appeal should be dismissed.

Formal Decisions

Appeal A

44. 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 1990 Act as amended.

Appeal B

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

- (a) the deletion of the words "an extraction flue" and the substitution with the words "two extraction flues" in paragraph 3;

and varied by:

- (b) deletion of the word "flue" and the substitution with the word "flues" in paragraph 5(1).

46. Subject to this 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 section 177(5) of the 1990 Act as amended.

Appeal C

47. The appeal is dismissed.

Appeal D

48. The appeal is dismissed.

James Blackwell

INSPECTOR