



Appeal Decision

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 December 2023

Appeal Ref: APP/A5270/X/23/3315701

Reef Lounge, 44b Bideford Avenue, Perivale, Greenford UB6 7PP

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Waleed Al-Seadi of Reef Lounge Limited against the decision of the Council of the London Borough of Ealing.
 - The application ref 225016CPE, dated 9 November 2022, was refused by notice dated 20 January 2023.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use or development is sought is café, shop-restaurant (Use Class Order E).
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description in the banner heading above is an abbreviated version of that given on the appellant's original application form, which described the use as follows; *The current use of the place is Café, Shop-Restaurant (Use Class Order E), therefore the Unit B at 44 Bideford Avenue - Ground Floor should be lawful for that use. The evidence submitted such as 1. Historical Google Map Street Views, certify the activity is existing since 2012 2. Invoice and receipt of a good suppliers that testify a goods supply to that address since 2012.*
3. In reviewing the file, it appeared that the appeal could be determined without a site visit – without causing prejudice to any party. This is because the parties have submitted sufficient evidence to understand the nature of the site given the points in dispute.

Main Issue

4. The main issue is whether the Council's decision to refuse to grant an LDC was well-founded.

Reasons

Background

5. Section 191(2) of the 1990 Act states that uses are lawful at any time if no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and, they do not constitute a contravention of any of the requirements of any enforcement notice then in force.

6. The issue to be determined in this appeal is whether the use as a café, shop-restaurant was lawful on the date the application was made, that is, 9 November 2022 (the material date).
7. For the appeal to succeed, the appellant would need to demonstrate that the ground floor of the premises has been used as a café, shop-restaurant on a substantially uninterrupted basis for not less than ten years before the material date (s.171B(3) of the Act).
8. Where an LDC is sought, the onus of proof is on the appellant and the standard is the balance of probabilities.
9. An enforcement notice was issued on 4 December 2020 in respect of the material change of use of the premises, then known as Sippar, to a mixed-use café and shisha lounge. An appeal was made and subsequently dismissed on 25 August 2022¹, when the notice came into effect (in force).

The appellant's evidence

10. The appellant's evidence consists of Google Street View images dated each year between 2008-2022. The images dated 2008-2012 inclusive, show the ground floor in use for car sales/repairs/M.O.Ts. The image from 2014 shows advertisements on the building advertising Sippar café and supermarket coming soon.
11. The appellant also submitted two invoices, one from Peace Valley Ltd for food stuffs addressed to Sipeer Café at 44 Bideford Avenue dated 17 June 2012, and the other from the director of Al-Sultan Trading Ltd stating that Sipper Café was a regular customer, as they were supplying them with sausages and turkey bacon from the period from 2012-2014.
12. Notwithstanding these invoices, and the appellant's comments about Google imagery, the images indicate that the use as a café and supermarket began in 2014. This is consistent with the previous Inspector's findings that the Sippar café use began in late 2014. Accordingly, I find that the use as a café, shop-restaurant, did not commence before 2014.
13. It is evident from that Inspector's decision, that the Sippar café ceased trading in 2017 and was re-opened in 2018, by a previous occupant, as a café/restaurant/snack bar but with shisha smoking in the front area. The Inspector concluded that the premises was in use as a mixed-use café and shisha lounge on 9 December 2020, as alleged in the enforcement notice.
14. Consequently, even if I had found that the use, subject of this appeal, commenced in 2012 as alleged by the appellant, if the premises were in use as a mixed-use café and shisha lounge between 2018 and December 2020, then the use subject of this application cannot have existed, uninterrupted, throughout the relevant ten-year period.
15. Moreover, the enforcement notice required the café use of the premises to cease. As already stated Section 191(2) of the Act states that uses are lawful at any time if no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any

¹ APP/A5270/C/21/3266918

other reason); and, *they do not constitute a contravention of any of the requirements of any enforcement notice then in force.* [my emphasis]

16. Since the use subject of this appeal includes a café, which is in contravention of a requirement of an enforcement notice that is in force, it cannot be lawful.
17. On the basis of the evidence before me, I find, as a matter of fact and degree, that the appellant has failed to provide sufficiently precise and unambiguous evidence to demonstrate, on the balance of probability that the use as a café, shop-restaurant is lawful.

Other matters

18. My decision rests on the facts of the case. As such, the appellant's misgivings about the Council's advice and handling of the application have no bearing on my decision.

Conclusion

19. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of a *café, shop-restaurant (Use Class Order E)* was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Felicity Thompson

INSPECTOR