



Appeal Decision

Site visit made on 12 December 2023

by Andy Harwood CMS MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 January 2024

Appeal Ref: APP/U5360/C/23/3321140

Unit 10, Cleeve Workshops, Boundary Street, Hackney, London E2 7JD

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Alistair Hatton against an enforcement notice issued by London Borough of Hackney.
 - The notice was issued on 23 March 2023.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use to a drinking establishment.
 - The requirements of the notice are to:
 - 1 Cease the use of the unit as a drinking establishment use (Sui Generis Use);
 - 2 Remove all fixtures and fittings and equipment facilitating the use of the property as a drinking establishment (Sui Generis Use);
 - 3 Make good all damage to the Property resulting from the removal of the unauthorised works as listed above;
 - 4 Upon completion of the above steps, remove all materials, debris, waste and equipment resulting from compliance with the other requirements of the notice from the property and its premises.
 - The periods for compliance with the requirements is: 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (f), (g) 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.
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Decision

1. The enforcement notice is quashed.

Preliminary Matters

2. Reference is made by both parties within their representations to the appellant being a company although the appeal form has the appellant's details as Mr Alistair Hatton "trading as" The Umbrella Workshop, rather than indicating a formal company structure. I have used the details above from the appeal form.

The Appeal on ground (b)

3. To succeed on ground (b), the onus is on the appellant to demonstrate that the matters alleged, have not occurred, as a matter of fact. For instance, there is no dispute that the drinking of alcoholic drinks takes place as a matter of fact within the premises. The appellant suggests that this is as a tasting room which relates to an online shop as well as retail-off licence. The dispute in ground (b) is whether that involves a 'drinking establishment' as alleged and therefore that ground of appeal relates to whether the allegation is correct. The notice does not explicitly refer to the Use Classes Order¹ (UCO). Article 3(6)(p) and (q)

¹ The Town and Country Planning (Use Classes) Order 1987 (as amended)

respectively set out that use as “a public house, wine bar, or drinking establishment” and as “a drinking establishment with expanded food provision” do not fall within any specified class which is otherwise known as ‘*sui generis*’.

4. The appellant states that the site is used for various purposes which relate to their trading name of “The Umbrella Project” which is a collective of businesses run by a group of friends who run hospitality venues including 2 bars. As such, they say that the appeal site operates as the administrative headquarters of the group and provides workspace for the three founders and other staff, as well as being a retail off-licence with the “try before you buy” drinking. The Council does not dispute that these elements of the business take place but the allegation only refers to use as a drinking establishment. If those other uses do occur and for the allegation to be correct, those other elements could only be ancillary to a primary use as a drinking establishment. If those elements of the business are significant enough to be considered a primary use of the unit, the site may be in a mixed use.
5. The extent of the planning unit is not subject of much comment by either main party. The notice refers only to the single premises run by the appellant although the manifestations of the use appear from evidence including photographs, to have over-flowed into the area to the front of the shop which is shared by each of the businesses. The toilet facilities are within a separate building on the forecourt. It seems sales are made within the internal area of the unit notwithstanding how that affects any adjoining land.
6. This is very small unit with a seating area, bar, menu mounted on the wall and shelves with a range of bottles behind the bar. At my site visit, which only reflects a snapshot in time, the wall mounted menu included an Irish Whiskey tasting menu, there was a flip chart and some people were sitting inside. I could not ask or hear evidence about the purpose of them being in the building. The visit was at around 12.00 hours (midday) and I arrived about 30 minutes early and walked around the wider area, observing from Boundary Street. I didn’t see many people entering and leaving the entrance into the Cleeve Workshops area. The workshops were generally quiet at that time and this is somewhat separate from the hustle and bustle of the nearby high street.
7. My observations of activity when I visited are therefore inconclusive however the Council has presented evidence that the appeal site is used as a bar including a screenshot from the appellant’s website booking system. This gives the option of selecting a bar for booking with the options being the Umbrella Workshop as well as the 2 other premises within the group. Another screenshot shows that the appeal site is (or was at that time) open 7 days a week from midday until 10.00pm, 7 days a week. It also states that “our cocktail bar and shop will be open from March” although no year is given. Instagram posts are also included in evidence with the title “The Umbrella Project – Shoreditch Cocktail Bar” as well as “Off licence and cocktail bar”.
8. There are circumstances where, as the appellant refers, premises are used for multiple purposes with a main primary use with other activities which are ancillary to that primary use. The characteristics of what are primary or ancillary activities can only be looked at on a case by case basis, in the round in terms of how they affect the character of the use within the planning unit and how it is perceived from outside. As the Council say, the primary-ancillary relationship between uses is not dependent on the proportion or ratio of one

use to another, including in terms of revenue generated from each element, but is solely dependent on the functional relationship. In this case, the appeal site seems to be an individual planning unit and it is very small meaning that the amount of space given over for any activity is limited. It seems that the use over time may vary and that at one point it may be a base for off-licence sales whether in person or on-line, it may at other times be an administrative base for the owners of the business collective. At some times however, from the evidence submitted, I am satisfied that the premises are used to a significant extent as a bar. Signage has at times been directed at members of the public.

9. I am also satisfied that from the evidence presented by the Council that any use as a bar must be a very noticeable activity inside as well as outside. It would be a primary use of the building rather than ancillary to other uses. However, those other uses would also from what the appellant explains, be significant. Even though the other activities would be less obvious to nearby neighbours the small floor area means they would dominate the building at those times. I reach the conclusion therefore that the allegation should be one of a mix of the primary uses that are interconnected but which are not clearly ancillary to one another, given the individual significance of each of them and the effect they have on the character of the premises.
10. The allegation is therefore incorrect. A mix of primary uses is a specific use in itself. I have broad powers to correct any defect, error or misdescription in an enforcement notice if I am satisfied that this would not cause injustice to the appellant or the Council. In that respect, I am concerned that by changing the allegation, it would raise issues which the appellant would wish to argue within the appeal, particularly on ground (a). It could also change the way the Council would want to word the requirements of the notice as it would possibly bring about a need to consider which elements of the uses were expedient to enforce against, leaving scope for under-enforcement under the provisions s173(11) of the Act. Broadening the scope of the allegation in the way that appears to be necessary would potentially cause injustice to both main parties and I cannot carry out those changes. To quash the notice for this reason does not prevent the Council from considering the expediency of taking further action.
11. The appeals on grounds (b) therefore succeeds.

Conclusion

12. For the reasons given above, I conclude that the enforcement notice does not specify with sufficient clarity the alleged breach of planning control. It is not open to me to correct the error in accordance with my powers under section 176(1)(a) of the 1990 Act as amended, since injustice would be caused were I to do so. The enforcement notice is invalid and will be quashed. In these circumstances, the appeal on the grounds set out in section 174(2)(a), (c), (f) and (g) of the 1990 Act as amended and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended do not fall to be considered.

Andy Harwood

INSPECTOR