



Appeal Decision

Hearing held on 16 April 2024

Site visit made on 16 April 2024

by N Thomas MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 May 2024

Appeal A Ref: APP/U5360/C/23/3334111

Appeal B Ref: APP/U5360/C/23/3334112

**Ground Floor 6 Redchurch Street (including internal mezzanines),
Hackney, London E2 7DD**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. Appeal A is made by Shoreditch Arts Club and Appeal B is made by Buckley Gray Yeoman against an enforcement notice issued by London Borough of Hackney.
- The notice, numbered 2023/0103/ENF, was issued on 12 October 2023.
- The breach of planning control as alleged in the notice is material change of use from use class E to private members club (use class Sui Generis).
- The requirements of the notice are to:
 1. Cease the use of the property as a private members club.
 2. Remove the kitchen.
 3. Remove the bar.
 4. Remove the café.
 5. Remove the screening lounge and the cinema.
 6. Remove the two private hire rooms.
 7. Removal all fittings and fixtures associated with the use of the kitchen, bar, café, screening lounge, 24-seat cinema, and two private hire rooms.
 8. Make good all damage to the Property resulting from the removal of the unauthorised works as listed above.
 9. 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 period for compliance with the requirements is six months.
- Appeal A is proceeding on the grounds set out in section 174(2)(b), (c), (f) of the Town and Country Planning Act 1990 as amended.
- Appeal B is proceeding on the grounds set out in section 174(2)(a), (b), (c), (f) 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.

Decisions

Appeals A and B

1. It is directed that the enforcement notice is corrected by:
 - Adding 'and first floor' to the address,
 - The substitution of the plan annexed to this decision for the plan attached to the enforcement notice,

- The deletion of the words 'use class' from the alleged breach of planning control in the brackets before the words '*sui generis*'.

Appeal B

2. Subject to the corrections, Appeal B is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under Section 177(5) of the 1990 Act as amended for the development already carried out, namely the use as a private members club (*sui generis*) at Ground floor and first floor, 6 Redchurch Street (including internal mezzanines), Hackney, London E2 7DD, as shown on the plan annexed to this decision and subject to the condition in the attached schedule.

Appeal A

3. Subject to the corrections, Appeal A is dismissed.

Preliminary Matters

4. During the event the Council advised that it no longer considered that a transport assessment was required and that their concerns regarding highway safety could be overcome through a planning condition requiring a site management plan, to control deliveries and servicing of the premises. I have no reason to disagree and I have not therefore dealt with highway safety as a main issue.

Matters concerning the Notice

5. It would be more accurate to describe the address as including the first floor of No 6. The plan attached to the enforcement notice indicates the entire block bounded by Shoreditch High Street, Bethnal Green Road, Ebor Street and Redchurch Street. It would be appropriate to substitute this with the plan annexed to this decision which shows only the appeal premises. I am satisfied that no injustice would be caused if I correct the notice accordingly.
6. As 'private members club' does not fall within a use class, it can be described as *sui generis*, meaning that it is of its own kind. It is incorrect therefore to describe it as 'use class' *sui generis*. It will not cause injustice if I delete 'use class' from the notice.

The appeals on ground (b)

7. The ground of appeal is that the matters alleged in the notice have not occurred. The burden of proof lies with the appellant and the standard of proof is the balance of probabilities.
8. The appeal site forms part of the large block known as The Tea Building and the Biscuit Building. The appellant initially argued that the use as a private members club has not occurred and that the premises form part of Buckley Gray Yeoman's (BGY) offices, located elsewhere within the Tea Building. There was no dispute however that the appeal premises are a separate planning unit from the BGY offices. The two uses are physically and functionally separate and are both self-contained. I have therefore considered whether the appeal premises were in use as a private members club when the notice was served or whether, as argued by the appellants, they were in use as Class E offices¹.

¹ Of Schedule 2 Part A of the Town and Country Planning (Use Classes) Order 1987 as amended (UCO)

9. The premises include a 24 seat cinema/screening room, two meeting rooms, a bar/restaurant/cafe with several small tables and a large table in the reception area, and a kitchen for food preparation. It is clear from the evidence including the list of bookings that the premises have been used during the day and evening for a range of cultural and social activities, as well as providing a location for work related activities, including meetings with external parties and staff meetings. Individuals can also work at tables within the café/bar/restaurant area. The opening hours are stated to be 8am to 11pm Monday to Thursday, and 8am to midnight on Fridays. The premises have been available for private hire including at weekends. The premises have films and projections running as digital art as well as art for sale. There is no dispute that the premises have been run and marketed under the name 'Shoreditch Arts Club' (SAC) and that membership was required in order to access or book its facilities. Due to the nature of events that have taken place it would be reasonable to assume that its members share an interest in culture and the arts.
10. It is clear that the appellants' intention was to provide an informal space as a benefit for staff and to provide BGY with a street presence and additional space for client meetings and presentations. Marketing the premises to the public as an arts club was to maximise revenue. While the use has a similarity with a co-working facility in that members can use the facilities for working, the space has the character of a café/bar/restaurant rather than an office space. Although BGY is the tenant renting the premises, SAC constitutes a separate company with its own staff and membership and occupies the appeal premises.
11. At the time the notice was served the appellant explained that there were approximately 50 members of the SAC, while BGY has approximately 121 staff who are automatically members of SAC. Lunch is provided for BGY staff three times a week within SAC. Nonetheless, BGY has its own separate offices where staff work at desks and there is no discernible primary use as offices at the appeal premises.
12. It is not unusual for a private members club to include space for members to work, or private rooms that can be hired, whether for work or other purposes. The characteristics of the use, including the evening opening hours and the holding of a range of both external events and SAC members' events, lead me to conclude, on the balance of probabilities, that the use was as a private members club when the notice was served.
13. I have considered whether there were in fact two primary uses taking place – a private members club and a use falling within Class E, such as office use. However, the evidence indicates that the inclusion of use as workspace and for client meetings was part and parcel of the private members club and was not discernible from it. I do not therefore consider that there was a primary use as an office such that there was a mixed use of class E and private members club.
14. Class E includes the sale of food and drink principally to visiting members of the public where consumption of that food and drink is mostly undertaken on the premises. The appellants agreed that the bar/restaurant facilities were not available to visiting members of the public at the time the notice was served. I am not therefore of the view that the bar/restaurant use could be said to fall within Class E. In any event, it was part and parcel of the use as a private members club and does not indicate a mixed use.

15. The appellant refers to the Conduit Club in Westminster as operating within use class E as a mix of office and restaurant uses. I note that Hackney Council disputes that it is a Class E use. In any event, I note from the extract from the Officer Delegated Report provided by the appellants that the restaurants are open to the public and that there are areas described as offices. In the case of the appeal site, there was no area which was identifiable as an office area and the premises were not open to the public. Similarly, the premises are different from serviced co-working space as suggested by the appellant as while the premises provided space in which work can take place, in a similar way to a café or room hire venue, there was no clearly identifiable office space.
16. Details have also been provided of a planning permission² at Ladbroke Hall in the Royal Borough of Kensington and Chelsea, for, amongst other things, a commercial art gallery and a restaurant/café with public access, having previously been used as photography studios with ancillary offices. It is clear that such uses fall within use class E. As the appeal premises were not open to visiting members of the public the case is of limited assistance.
17. At the time of serving the notice, on the balance of probabilities, it was accurate to describe the alleged breach of planning control as a private members club. I am satisfied that the use alleged in the notice has occurred and it follows that the appeals on ground (b) must fail.

The appeals on ground (c)

18. The ground of appeal is that the matters alleged in the notice do not constitute a breach of planning control. This is because the appellants consider that the pre-existing use and the alleged use both fall within Class E and therefore development has not taken place. However, I have found that the alleged use did occur and that it does not fall in use Class E.
19. When considering whether a material change of use has taken place, it is necessary to identify whether there has been a significant difference in the character of the activities from what has gone on previously, as a matter of fact and degree.
20. The notice states that the existing use was Class E. This was on the basis that planning permission³ was granted to use the Tea Building as a whole for B1 office use on the 1st to 7th floors and B1 business/A3 Bar/Restaurant A1 retail uses on part of ground floor and basement. The evidence indicates that the use was as a wider loading bay for the building as a whole and was thus for ancillary purposes to other uses taking place in the building.
21. It was not in dispute that the use has resulted in a new planning unit being formed. The evidence and my observations on site indicate that the use has resulted in a substantial increase in activity at the site, in terms of comings and goings due to the facilities provided and the range of events taking place through the daytime and evenings, including some events at the weekend. This would have been noticeable beyond the boundaries of the site, through an increase in visitors, with resulting noise and disturbance, including during the evenings and weekends. As a result, and as a matter of fact and degree, there has been a significant change in the character of the activities from what has gone on previously. I therefore find that a material change of use has taken

² App no. PP/20/04929/Q18

³ Planning ref 2001/1098

place to a private members club, for which planning permission is required. The appeals on ground (c) therefore fail.

Appeal B on ground (a) and the deemed planning application

22. The ground of appeal is that planning permission should be granted for the development that has been alleged in the notice.

23. Having regard to the reasons for issuing the notice, the main issues are:

- the effect of the development on the supply of Use Class E floorspace,
- the effect of the development on the living conditions of neighbouring occupiers with regard to noise and disturbance,
- whether the development makes adequate provision for cycle storage and waste management

Supply of use class E floorspace

24. The appeal site lies within a Priority Office Area (POA) as defined by Policy LP26 of the Hackney Local Plan 2020 (HLP). HLP Policy LP27H states that development involving the net loss of use class B1a office floorspace in the POA will not be permitted. Following the amendment to the UCO, offices now fall within use class E. HLP Policy LP27C requires that within POAs new development is employment-led and B1 office use is the primary use, and within Shoreditch at least 60% of floorspace across the area is B1 employment space. Part D of HLP Policy LP27 which sets out the circumstances in which leisure development in POAs will be permitted.

25. London Plan (LP) policies, adopted in 2021 are more recent. Part E of LP Policy E1 seeks to retain viable office floorspace in Central Activity Zone (CAZ) locations but releasing surplus office capacity to other uses.

26. The Council explained that it has applied HLP Policy LP27 flexibly due to the replacement of use class B1 with the wider use class E, but nonetheless seeks to provide a range of office types in this city fringe area where rents are lower.

27. HLP Policy PP8 sets out the strategic principles for Shoreditch and Hoxton. It identifies that appropriate development should intensify the use of land to optimise the capacity of Shoreditch to accommodate, amongst other things, workplaces, cultural and creative uses, and ensure that land uses are mixed to ensure a vibrant and dynamic economy.

28. I am satisfied that the pre-existing use of the premises was within use class E, but I have seen no evidence that the premises were being used as offices. Therefore, although the development has resulted in the loss of class E floorspace, it has not resulted in the loss of office floor space and does not therefore conflict with HLP Policy LP27H.

29. Policy LP27 sets out the circumstances in which other uses, including leisure uses, will be acceptable. I note the support for a mix of uses in Policy PP8. The use as a private members club cannot be considered to be employment-led as required by LP27 Part D, although it provides employment and a space for members to work and hold business meetings and events. It is clear however that the use adds to the capacity of Shoreditch to accommodate cultural and

creative uses and is in line with the requirement to ensure that land uses are mixed to ensure a vibrant and dynamic economy.

30. Furthermore, I have no reason to question the appellant's estimate that 82% of the floor space in the Tea Building is in office use, nor that 69% of the floorspace of the Tea and Biscuit Building taken together is in office use. While this does not relate to floorspace across the entire POA, it indicates that the majority of the floorspace of the building as a whole is in office use. That the development is not employment-led, does not therefore mean that less than 60% of the building will be in office use. While the use as a private members club means that the premises are not available for an alternative office use, there is no development plan policy requiring that land or buildings should remain vacant for a future office use, and I note that LP Policy E1 specifically seeks to release surplus office capacity to other uses.
31. I therefore conclude that, although the development results in a loss of Class E floorspace, it is not in conflict with the relevant development plan policies, insofar as they seek to intensify the use of land in Shoreditch with a mix of uses to ensure a vibrant and dynamic economy. The development does not therefore conflict with HLP Policies LP26, LP27 and PP8, or LP Policy E1.

Noise and disturbance

32. Shoreditch High Street and Bethnal Green Road are busy commercial roads with high levels of traffic noise. The site is set back from Shoreditch High Street at the junction of Redchurch Street with Boundary Street. Redchurch Street is one way and relatively narrow. In the vicinity of the appeal site, there are generally commercial uses such as shops, cafes and restaurants on the ground floor, with some residential uses and a hotel on the floors above.
33. Therefore, although the area in the immediate vicinity of the site is considerably quieter than Shoreditch High Street, there is still a range of uses, including uses associated with the nighttime economy and traffic noise. It would therefore be reasonable to expect that the area is relatively lively in the evenings, with associated noise and disturbance. Nonetheless, due to the close proximity of residential uses and overnight accommodation, the use as a private members club has the potential to increase noise and disturbance, particularly through customers coming and going later in the evening.
34. It was suggested that a suitably worded condition could control matters such as opening hours and noise levels in order to minimise disturbance to residential occupiers in the area. I am satisfied that noise and disturbance to neighbouring residential uses could be adequately controlled through a planning condition, and that this would be justified to make the development acceptable.
35. Subject to a condition therefore, the development would not be harmful to the living conditions of neighbouring residential uses. It is not therefore in conflict with HLP Policies LP2 and LP38 and LP Policies D13 and D14, which seek, amongst other things, to ensure that development does not have a negative impact on the amenity of nearby residential accommodation, through managing noise and other potential nuisances.

Cycle storage and waste

36. HLP Policy LP42 sets out a requirement to ensure that development provides cycle parking for building users and visitors in accordance with the Council's parking standards. Although there is no specific parking standard for a private member's club, the Council is satisfied that based on the floor area of the premises the 7 internal secure cycle parking spaces is sufficient for staff of SAC. I have no reason to disagree. Their retention for the use of SAC can be secured by condition.
37. In terms of visitor cycle parking, I saw that on street space outside the premises for motorcycles was very well used with both motorcycles and bicycles. However, on Boundary Street a short distance from the site are cycle stands and further opportunities for short term on street cycle parking suitable for visitors. On that basis, I am satisfied that there is adequate provision for cycle parking, such that the development is not likely to give rise to a nuisance to other users of the area.
38. I saw that there is dedicated waste storage within the building with a separate external access. I have seen no evidence that this provision is not adequate to serve the use as a private members club and its retention can be secured by condition.
39. I therefore conclude that, subject to conditions, the development makes adequate provision for cycle storage and waste management. It does not therefore conflict with HLP Policies LP42 and LP57 or LP Policy T5, insofar as they require that development makes appropriate provision for cycle parking and waste storage and collection.

Other Matters

40. The site is in the South Shoreditch Conservation Area (SSCA). The SSCA Management Plan indicates that there are listed buildings on the opposite side of Shoreditch High Street from the appeal site.
41. I have statutory duties under Sections 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990. In considering whether to grant planning permission for development which affects a listed building or its setting, I must have special regard to the desirability of preserving the setting of the building. Similarly, with respect to buildings in a conservation area, I must pay special attention to the desirability of preserving or enhancing the character or appearance of that area.
42. As the development does not involve any external alterations to the building, I concur with the views expressed by the main parties that the development does not affect the setting of the listed buildings or the character and appearance of the SSCA.

Conditions

43. I have considered the condition suggested in the Statement of Common Ground in the light of the tests set out in the Planning Practice Guidance (PPG). I have concluded that a condition is necessary to control matters such as the hours of opening and measures to minimise disturbance to neighbouring uses. The suggested condition includes ventilation equipment and a scheme for deliveries and dispatches to and from the site. In view of the need to protect

the amenity of nearby residential uses and the need to ensure adequate provision for servicing the premises by vehicles in the interests of highway safety, I consider that these requirements are justified and could be included in a Servicing and Management Plan. The Council suggested that the retention of the cycle parking and waste storage could be secured through a separate condition. However, their inclusion in the Servicing and Management Plan would ensure that their provision and retention is secured.

44. The condition is imposed is to ensure that the required details are submitted, approved and implemented so as to make the development acceptable in planning terms. There is a strict timetable for compliance because permission is being granted retrospectively, and so it is not possible to use a negatively worded condition to secure the approval and implementation of the matters before the development takes place.
45. The condition will ensure that the development can be enforced against if the required details are not submitted for approval within the period given by the condition, or if the details are not approved by the local planning authority or the Secretary of State on appeal, or if the details are approved but not implemented in accordance with an approved timetable.

Conclusion in relation to Appeal B on ground (a)

46. For the reasons given above I conclude that the appeal should succeed on ground (a). I shall grant planning permission for the development as described in the notice as corrected.

Conclusion

47. Appeal B succeeds on ground (a) and the deemed planning application is approved. The notice will be quashed, and it follows that Appeals A and B on ground (f) do not fall to be considered.

N Thomas

INSPECTOR

APPEARANCES

FOR THE APPELLANTS:

Richard Turney KC, instructed by DP9 on behalf of both appellants

Caroline McIntyre – DP9

Matt Yeoman – Founding director of Buckley Gray Yeoman

FOR THE COUNCIL:

Mark Beard Barrister, instructed by Louise Humpreys, Acting Director of Legal, Democratic and Electoral Services, London Borough of Hackney

Rune Brorsen MA(Architecture), Planning Enforcement Officer

Peter Rathmell BA(Hons) MPlan, Planning Enforcement Team Leader

DOCUMENTS

Received during the hearing from the appellants:

1. Table of floor areas and uses of premises at Tea Building and Biscuit Building



The Planning Inspectorate

Plan

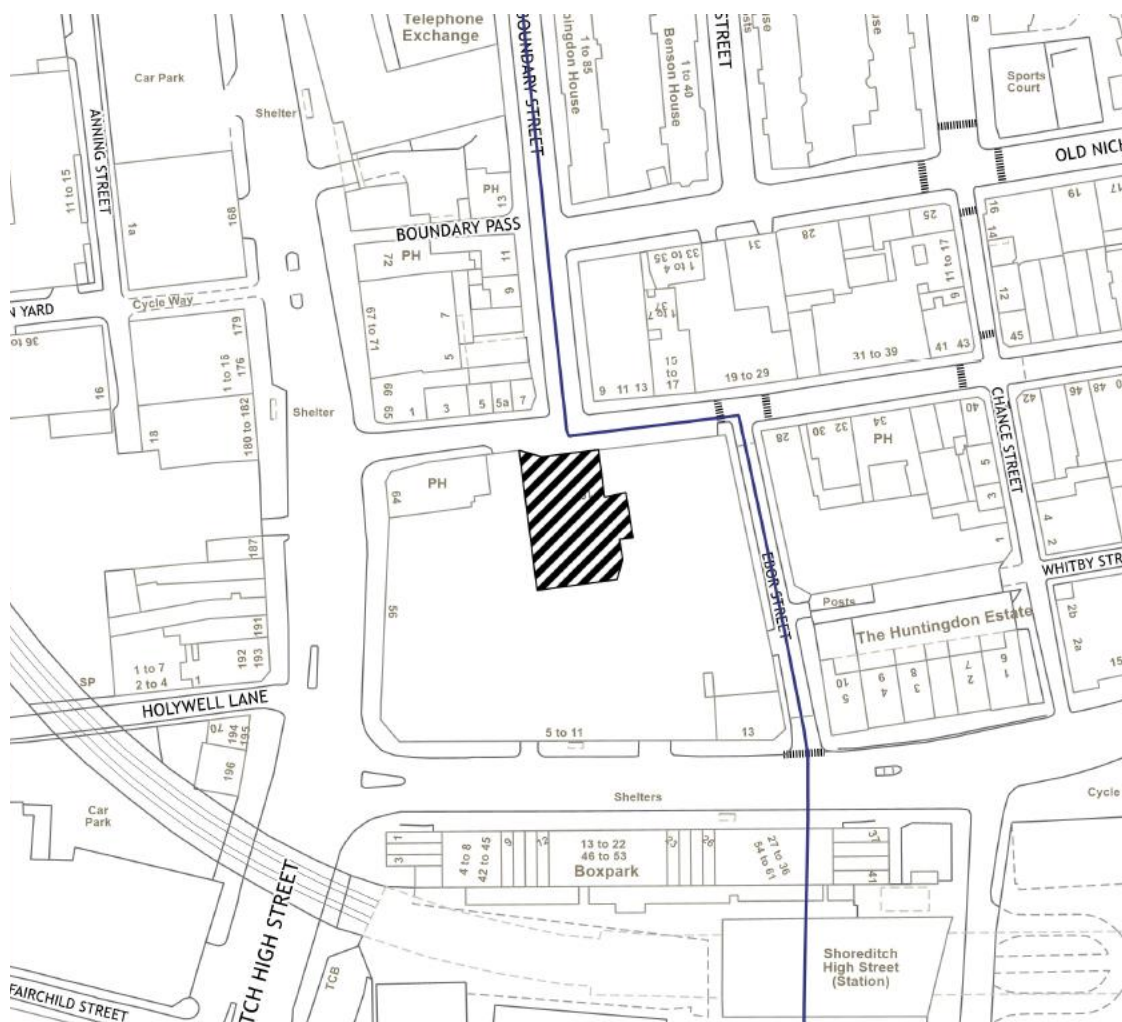
This is the plan referred to in my decision **dated**:

by N Thomas MA MRTPI

Appeal Refs: APP/U5360/C/23/3334111 and APP/U5360/C/23/3334112

**Ground floor and first floor, 6 Redchurch Street (including internal mezzanines),
Hackney, London E2 7DD**

Scale: Not to scale



SCHEDULE OF CONDITIONS

1. The use hereby permitted shall cease and all equipment brought onto the land for the purposes of such use shall be removed within 28 days of the failure to meet any one of the requirements set out in i) to iv) below:
 - i) Within 3 months of the date of this decision a Servicing and Management Plan (SMP) to include a scheme for deliveries and dispatches to and from the site, hours of operation, cycle parking, waste store, specifications and maintenance regime of any ventilation equipment and measures to prevent disturbance to residential occupiers and other users of the local area, and a timetable for the implementation of the SMP, shall have been submitted for the written approval of the local planning authority.
 - ii) If within 6 months of the date of this decision the local planning authority refuse to approve the SMP or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted SMP shall have been approved by the Secretary of State.
 - iv) The approved SMP shall have been carried out and completed in accordance with the approved timetable.

Upon implementation of the approved plan specified in this condition, that plan shall thereafter remain in use.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.