



Appeal Decision

Site visit made on 20 May 2024

by Chris Baxter BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 September 2024

Appeal Ref: APP/N5660/C/23/3334240

Arch 140 Newport Street, London SE11 6AQ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 (the Act).
- The appeal is made by Kolamba at Home Limited against an enforcement notice issued by London Borough of Lambeth.
- The notice was issued on 20 October 2023.
- The breach of planning control as alleged in the notice is without planning permission, the unauthorised material change of use of the premises to use as a commercial kitchen and delivery centre ('the unauthorised commercial kitchen and delivery centre').
- The requirements of the notice are to:
 - a) Cease the use of the premises as an unauthorised commercial kitchen and delivery centre; and
 - b) Remove from the premises all cooking, food preparation and fume extraction apparatus and equipment that facilitates the unauthorised use of the premises as a commercial kitchen and delivery centre.
- The period for compliance with the requirements is six months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (f), (g) of the Act. 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.

Decision

1. 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 Act.

Procedural Matter

2. The appeal was lodged on the grounds (a), (f) and (g) only. However, part of the appellants case is also that a change of use has not taken place as the alleged development falls within the use class E(g)(iii). I consider that this argument properly falls to be considered as an appeal under ground (c); that there has not been a breach of planning control. The Council have responded to this matter in their statement of case. It would not therefore prejudice the Council's case for me to also consider the appeal on ground (c).

Appeal on ground (c)

3. An appeal on ground (c) is that the matters alleged at Section 3 of the enforcement notice, if they occurred, do not constitute a breach of planning control. The onus of proof in a ground (c) appeal is on the appellant and the test of the evidence is on the balance of probability.
4. The appellant contends that the alleged development falls within use class E(g)(iii) which the appellant implies was the previous use of the appeal site and therefore there is no breach of planning control.

5. Class E of the Town and Country Planning (Use Classes) Order (UCO) relates to commercial, business and service, with class E(g)(iii) specifically being uses for any industrial process, being a use, which can be carried out in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit.
6. The UCO states that 'industrial process' means a process for or incidental to any of the following purposes:— (a) the making of any article or part of any article (including a ship or vessel, or a film, video or sound recording); (b) the altering, repairing, maintaining, ornamenting, finishing, cleaning, washing, packing, canning, adapting for sale, breaking up or demolition of any article; or (c) the getting, dressing or treatment of minerals; in the course of any trade or business other than agriculture, and other than a use carried out in or adjacent to a mine or quarry.
7. The use of the site, under multiple tenants, is described as kitchens which have regular deliveries that supply customers. The delivery part of these businesses is fundamental to the operations and the use of the site. The frequency of the deliveries to the site which is a fundamental part of the operations does not fall within the meaning of 'industrial process' as described in the UCO. Therefore, the alleged development does not fall within use class E(g)(iii).
8. The appeal on ground (c) therefore fails.
9. I have had regards to the appellants statement of case including reference to an application¹ at Tower Hamlets. Insufficient information has been provided on this application and I am not satisfied that it is directly comparable to this appeal scheme, particularly with regards to frequency of deliveries and location within a residential area.

Appeal on ground (a)

10. The ground of appeal is that planning permission should be granted for the change of use of the premises to use as a commercial kitchen and delivery centre.

Main issues

11. The main issues are the effect of the development on highway safety with regards to deliveries and the effect of the development on the living conditions of occupiers of neighbouring properties in terms of noise and odour.

Reasons

Highway safety

12. A Delivery and Servicing Management Plan and a Transport Statement (TS) both dated December 2023 have been submitted. These documents detail delivery, servicing and parking arrangements at the site as well as providing information on trip generation.
13. There are a number of operators from the site with delivery times ranging from as early as 09:30 and as late as 23:00. The survey data from the TS, which was undertaken on a Friday and Saturday evening, details that the site generates an average of five two-way vehicle movements per hour with 97% of

¹ Local Planning Authority Reference: PA/21/01044/NC

these movements being pedal and motor cycles. From these movements, around five vehicles were observed to have not entered the site but stopped on Newport Street itself.

14. The appeal site contains a sizeable parking area which provides ample space for vehicles to enter and manoeuvre to allow egress from the site in a forward manner. Given the frequency of vehicle movements and the layout of the parking area in the site, I am satisfied that the operations at the premises do not have an adverse effect on highway safety in the area.

Living conditions

15. A Plant and Activity Noise Assessment November 2023 (PANA) has been submitted which concludes that the noise emissions from deliveries does slightly exceed existing background levels.
16. Noise measurements were only recorded from the west of the site with measurements from the east of the site being terminated due to equipment failure. It has been described that data has been extrapolated from the measurements taken from the west of the site. There also does not appear to be any specific residential receptors identified in the PANA, although numerous residents do have rooms that directly overlook the appeal site including the east of the site. I therefore have concerns of the robustness of the submitted noise data, particularly on noise emissions to the east of the site where deliveries are undertaken.
17. The appeal site is located within an area of a mix of different uses, which include residential and commercial as well as the railway line that sits above part of the site. Residential properties on Newport Street are immediately adjacent the appeal site to the east and border the access and parking area of the site. Whilst it is noted that the area surrounding the appeal site is influenced by noise from passing trains on the railway line, residents living in the area will be accustomed to that. There is minimal evidence before me identifying the exact uses of commercial properties in the area and subsequent noise emissions from these properties.
18. As stated above, the site generates an average of five two-way vehicle movements an hour. The majority of these vehicle movements are pedal and motor cycles. Motorcycles have a distinct character compared to other vehicles, being particular noisy due to engines being revved, acceleration of the motorcycles and the manoeuvres required when entering and leaving a site. Whilst some of the vehicles visiting the appeal site maybe pedal cycles, the noise levels omitted from motorcycles that enter and leave the site would be distinctive and at a level which would adversely disturb residents of surrounding nearby properties.
19. General activities at the appeal premises including opening and closing of doors, employees and delivery drivers talking can create unacceptable noise, particularly during quieter times of the day such as the evening. The car park area of the site is surrounded by walls, however, these walls would not completely dampen noise emissions, particularly to those residential properties at higher levels in the buildings on Newport Street.
20. The site has various tenants with different customer and delivery patterns with only one operator delivering hot food. The appeal premises does not include

sales to the visiting general public. Conditions have also been suggested including requirements for an anti-idling scheme and installation of an attenuator to existing ventilation. Nevertheless, given the frequency of deliveries, the proximity of residential properties and nature of noise omitted from delivery vehicles, the use of the appeal premises does adversely affect the living conditions of neighbouring occupiers in terms of noise.

21. The appellant has also suggested a planning condition restricting evening delivery service to either 21:00 or 22:00. Surrounding residents would still be adversely affected by noise from the site prior to these times, during the evening when noise levels are generally expected to be lower.
22. The development does have a harmful effect on the living conditions of occupiers of neighbouring residential properties with regards to noise. The development fails to accord with Policies ED5 and Q2 of the Lambeth Local Plan which seeks development to ensure the adverse impact of noise is reduced to an acceptable level and that development affecting railway arches improve the immediate environment.
23. A Kitchen Odour Assessment November 2023 has been submitted which states that whilst the residual odour impact is considered to have a very high risk, the development does abide with the minimum requirements of a commercial kitchen and no mitigation is deemed necessary. Given the location of surrounding residential properties in relation to the appeal site, I am satisfied that the development does not adversely effect residents living conditions in terms of odour.

Appeal on ground (f)

24. An appeal on ground (f) is that the requirements of the notice exceeds what is necessary in order to remedy the breach of planning control or, as the case may be, the injury to amenity that is caused by the breach.
25. There are multiple tenants operating from the appeal premises and the appellant argues that the only concern relates to the tenant that operates a delivery service for hot food. A condition restricting delivery service to before 21:00 or 22:00 has been suggested and I have discussed this in detail above.
26. Given that in respect of the breach of planning control the notices requirements are to completely remove all of the apparatus and equipment from the premises and cease the use, it is clear that the requirements clearly go no further than remedying the breaches. Anything less than removal would not fully remedy the breaches.
27. Accordingly, I conclude that the requirements of the notice are not excessive and the appeal on ground (f) fails.

Appeal on ground (g)

28. Ground (g) is that the period for compliance with the notice falls short of what is reasonable. The time to comply with the requirements of the notice is six months. The appellant is seeking a period of nine months.
29. The appellant states that occupiers of the building are subject to tenancy agreements which have minimum notice periods. It is also argued that the tenants would have to find alternative units with a six-month timescale being

unreasonable in order to fit out alternative premises which may require planning permission.

30. Minimal details of the tenancy agreements have been provided and there is limited evidence with regards to alternative premises for the operators. A six-month period to comply with the requirements does not fall short of what should reasonably be allowed to cease the unauthorised use and remove all apparatus and equipment from the premises.

31. The appeal on ground (g) therefore fails.

Overall Conclusion

32. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the Act.

Chris Baxter

INSPECTOR