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# Appeal Decision

by **L Douglas BSc (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 21<sup>st</sup> November 2024**

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**Appeal Ref: APP/E5900/X/23/3330336**

**16-18 Whitechapel Road, London E1 1EW**

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) (the Act) against a refusal to grant a certificate of lawful use or development (LDC).
  - The appeal is made by Mr A Shinde against the decision of the Council of the London Borough of Tower Hamlets.
  - The application ref PA/23/00205/NC, dated 20 January 2023, was refused by notice dated 23 August 2023.
  - The application was made under section 191(1)(a) of the Act.
  - The use for which a certificate of lawful use or development is sought is the use of the Basement area ground floor as a Winebar/Cafe restaurant and Jazz Club at Night until 3 am and 7 am on Friday and Saturday.
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## Decision

1. The appeal is dismissed.

## Main Issue

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

## Reasons

3. Planning permission was granted in 1994 for the change of use of the basement and ground floor of the site to 'a winebar/café and jazz club at night', subject to conditions<sup>1</sup>. One condition attached to the planning permission states that the premises shall not be open to the public between the hours of 0200 and 1100. It is the appellant's case that the site has been used for such purposes, but had remained open beyond those hours for more than 10 years at the time the application was submitted.
4. There is no dispute that the site was formerly occupied by The Rhythm Factory between 1998 and 2016, followed by The Stable between 2016 and 2019, and then Hichki from 2019 to present. There is also no dispute that these businesses involved the playing of live music and sales of alcohol. There is, however, a lack of clear descriptions and evidence of how the site was actually used over these periods. Moreover, there is a lack of information as to the hours these businesses were routinely open to members of the public.
5. Overall, the appellant's case is confused and unclear, and the supporting evidence comprises little detail and only covers sporadic periods. It is suggested that the planning permission referred to above was implemented, but there is little evidence to show that is the case. Various websites are

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<sup>1</sup> The Council's ref: ST/93/00103

claimed to refer to the opening hours of the site, and security measures were increased following police incidents related to use of the site as a nightclub.

6. It is possible that use of the site by The Rhythm Factory between 1998 and 2016 broadly accorded with the description of the use permitted, and that the above planning permission may have been implemented. However, even if this was the case, there is minimal reliable evidence to show the site was regularly open to the public beyond the permitted hours. The same can be said for The Stable and Hichki. In any event, the Council's comprehensive analysis of the history of uses in its Officer Report leads me to doubt The Rhythm Factory, The Stable, or Hichki could reasonably be described as including wine bar, café or jazz club elements.
7. Since 2006, licences have been granted by the Council for the sale of alcohol from 1100 to 0300 the following days Sunday to Thursday, and from 1100 to 0700 the following days Friday and Saturday. It is unclear what licences, if any, were in place prior to 2006. This lends weight to claims that the site has historically been open to customers beyond the hours stated in the condition referred to above. However, it remains unlikely, on the evidence provided, that the businesses were regularly open to members of the public beyond the permitted hours for at least ten continuous years prior to the application being made.
8. The onus is on the appellant to provide the necessary evidence to support their case and show, on the balance of probabilities, that the use was lawful on the date of the application. The various documents provided in support of the appellant's case do not do this, and they lack coherent explanations of their relevance to the appellant's case. This does not mean that I find the use of the site to be unlawful, but I cannot confirm the lawfulness of the use on the limited evidence provided.
9. The appellant's evidence is not therefore sufficiently precise and unambiguous to show that it is more likely than not that the use of the basement area and/or ground floor as a wine bar/café restaurant and jazz club at night until 0300 and 0700 on Friday and Saturday was lawful on the date of the application, with regard to section 191(2) of the Act.

## **Conclusion**

10. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the use of the basement area and/or ground floor as a wine bar/café restaurant and jazz club at night until 0300 and 0700 on Friday and Saturday was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the Act.

*L Douglas*

INSPECTOR