



Appeal Decision

Site visit made on 6 January 2025

by R Satheesan BSc PGCert MSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10th January 2025

Appeal Ref: APP/G5750/C/23/3314191

75 Derby Road, Forest Gate, London E7 8NH

- 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 appeal is made by Mr Hassan Katumba on behalf of East London Community Group against an enforcement notice issued by the Council of the London Borough of Newham.
 - The enforcement notice was issued on 29 November 2022.
 - The breach of planning control as alleged in the notice is without planning permission the material change of use to a community centre.
 - The requirements of the notice are:
 1. Cease the use of the premises as a community centre.
 2. Remove all fixtures and fittings that solely facilitate the use of the premises as a community centre.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (d) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.
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Decision

1. The appeal is dismissed, and the enforcement notice is upheld.

Main Issue

2. The main issue is whether the appellant has proved on the balance of probability that the use of the site, changed to a community centre on or before 29 November 2012 (that being 10 years prior to the date of the enforcement notice) and that the use then continued without substantial interruption for 10 years after the date of the change; and if so
 - whether that breach of planning control was deliberately concealed in a manner which should result in the appellant being deprived of the immunity offered by section 171B of the Act.

The appeal on ground (d)

3. The onus is on the appellant under ground (d) to make the case that, at the time the enforcement notice was issued, it was too late to take action against the matters stated in the notice. The enforcement notice is directed at the alleged material change of use to a community centre. Therefore, the appellant needs to show that the matters alleged in the notice occurred at least 10 years before it was issued (which was 29 November 2012). If the Council

has no evidence of its own, or from others, to contradict or otherwise make the version of events less than probable, there is no good reason to dismiss the appeal, provided the appellant's evidence alone is, on the balance of probability, sufficiently precise and unambiguous.

4. The site comprises a two-storey building located to the rear of residential properties on Derby Road. The site's former use is understood to be light industrial/offices, although it is currently in use as a community centre.
5. The appellant's case is that the East Africa Muslim Community Group (EAMCG) have been in occupation and actively using the appeal premises since August 2012, in excess of 10 years, before the Enforcement Notice was issued on 29 November 2022. However, at the final comments stage, the appellant states they have been in occupation since 2011 and purchased the premises in a phased fashion whilst occupying the building.
6. The Council dispute this ground and say that the evidence indicates that the community centre use commenced after the relevant date of the 29 November 2012, and that the community use has not been continuous over this period. They further claim that even if the use has been continuous, the appellant has taken steps to deliberately conceal the existence of the breach of planning control, which should result in the appellant being deprived of the immunity offered by section 171B of the Act.
7. I shall focus on the appellant's own evidence, the starting point being statutory declarations by Hassan Katumba (EAMCG Charity Secretary), Hassan Kigenyi (EAMCG Chairman) and Sheikh Yusuf Uthuman (Executive Member of the Charity). Together, these declare that the EAMCG have been operating at the appeal site since 2012, for *"the purposes as offices, community and youth educational centre since 2012"*.
8. To corroborate this, a planning application form submitted in September 2012¹ for the *"Proposed change of use into a non-residential education centre/community centre"* has been submitted. A draft Officer's Report for this application has also been submitted which states *"The proposal seeks to retain the community centre use that is the subject of a current enforcement case (xxxx). The use is not currently authorised."* Furthermore, the East African Muslim Cultural Group purchased 75 and 77 a Derby Road on 15 June 2012. Therefore, the appellant considers that these demonstrate that the community use was in operation when the 2012 application was submitted.
9. However, an Officer site visit in June 2012 confirmed that the premises was vacant and that only internal renovation and refurbishment works were taking place. Furthermore, the Council's enforcement record indicates that a further site visit in May 2013 confirmed that the premises was vacant and therefore the enforcement investigation was closed. The appellant states that no evidence is provided to corroborate this. However, the application form dated 19 September 2012 states that the proposed change of use into a non-residential education centre/community centre has not begun² and that the building was vacant³. As such, the appellant's own application from 2012

¹ Council Ref:12/01738/FUL.

² Section 3 of the application form.

³ Section 14 of the application form.

corroborates the Council's claims that the premises was vacant, and that the change of use to a community centre had not begun at this time.

10. Furthermore, little can be inferred from the Officers Report, given that was a draft Officers report only. Furthermore, that application was withdrawn and therefore no decision was made by the Council on the 2012 application. I therefore attach limited weight to the draft Officers Report.
11. Another application (Council Ref: 13/01477/COU) was submitted in 2013 for the change the use of the premises from offices (Use Class B1) to a youth club (Use Class D1), which was refused by the Council in January 2014. No evidence was presented within the application to suggest that that the property was in active use as a community centre. Indeed, the Officer's Report for that decision clearly states that "*the building is currently vacant.*" A subsequent appeal in relation to this was also dismissed on 11 September 2014. The Inspector also stated that "*the building is currently vacant but was previously an office/light industrial unit.*"
12. In July 2014, an enforcement investigation in relation to a complaint received regarding a potential youth club revealed that the building was vacant with some building works ongoing. The agent advised the Council that the owners would be using the building for offices and conference space when the works were completed, and therefore the enforcement investigation was closed.
13. A further enforcement investigation in June 2015, in relation to a potential place of worship, revealed some evidence of the remains of prayer mats. Nevertheless, the EAMCG advised the Council that the premises was being solely used as conference and office space. The appellant also declared the above in their response to a Planning Contravention Notice (PCN) issued by the Council on 11 October 2016. Furthermore, in response to the question "*what is the state of the current use of the property?*" the appellant replied "*B1 Office*".
14. From the evidence before me, the date when community centre use commenced is therefore ambiguous. Nevertheless, the planning applications, subsequent appeal decision, enforcement records and the PCN, which includes information provided by the appellant, all strongly suggest that the use of the premises as a community centre commenced after the relevant date of 29 November 2012.
15. Furthermore, I struggle to reconcile the responses given by the appellant to the questions in the October 2016 PCN about the 'conference and office space use' of the site, which contradicts the information provided by the appellant now in their statutory declarations stating that the EAMCG have been operating at the appeal site since 2012 for "the purposes as offices, community and youth educational centre since 2012".
16. The questions, which asked the appellant about the nature of their interest in the property and what was the current use of the property was clear. I am mindful that the National Planning Policy Framework states effective enforcement is important to maintain public confidence in the planning system and the Government's Planning Practice Guidance acknowledges that this relies on accurate information about an alleged breach of planning control. It is commonplace for Councils to rely on evidence given in PCN enquiries to inform whether enforcement action is taken.

17. There is nothing in the appellant's evidence to persuade me that Council Officers were specifically informed by them that the appeal building was the subject of a change of use to community centre. Furthermore, had the appellant confirmed the community centre use when asked about this in 2016, it would, in my view, have increased the likelihood of enforcement action being taken at this time.
18. I therefore conclude that even if the continuous community centre use could be demonstrated over the relevant ten-year period, the appellant should not be able to rely on the time periods set out in S171B of the Act to claim immunity from enforcement, as a result of the concealment of information.
19. Accordingly, the ground (d) appeal fails.

Conclusion

20. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice.

R Satheesan

INSPECTOR