



Appeal Decision

Site visit made on 10 December 2024

by Andy Harwood CMS MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 February 2025

Appeal Ref: APP/E5330/C/23/3323529

Land at 7-11 Spray Street, Woolwich, London SE18 6AP

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended) (the Act). The appeal is made by Yardman Styles Ltd against an enforcement notice issued by Royal Borough of Greenwich.
- The notice was issued on 10 May 2023.
- The breach of planning control as alleged in the notice is without planning permission: the unlawful change of use from retail (Class E(a)) to hot food takeaway - class sui generis (Unlawful Use) and the installation of an extractor system (unlawful development) together the "Unauthorised Development".
- The requirements of the notice are to:
 - 5.1) Cease the use of the Property as a hot food takeaway;
 - 5.2) Remove the extraction system from the property;
 - 5.3) Remove from the property all materials and equipment used to facilitate the unauthorised development;
 - 5.4) Remove from the property all signage associated with the unauthorised development;
 - 5.5) Remove from the property all debris and spoil generated as a result of carrying out the requirements above, to an authorised place of disposal.
- The period for compliance with the requirements is: 2 months.
- The appeal is proceeding on the ground[s] set out in section 174(2)(a), (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.

Decision

1. It is directed that the enforcement notice is corrected and varied by:
 - At section 2 of the notice, delete the existing description of the land affected by the notice and replace it with "Part of the building at 7 – 11 Spray Street, Woolwich, London SE18 6AP ("The Property") shown edged with a thick red line on the attached plan ("the Plan"); and
 - At section 6 of the notice, delete "two months" and replace it with "eight (8) months".
2. Subject to the corrections and variation 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 1990 Act as amended.

Preliminary Matters

3. The notice alleges 2 types of development - a material change of use and operational development. At the time of issuing the notice, there were 2 different time-limits as set out in s171B of the Act for material changes of use

and operational developments. The notice only refers, in section 3 to the 4 year time-limit which relates to the operational development. The material change of use would have been subject to a 10 year time-limit. However, the appellant has not appealed under ground (d) that it was too late to take enforcement action within the 4 years specified and so I do not consider they could claim 10 years. No injustice has been caused by the omission.

4. Furthermore, the red-line on the plan that is attached to the notice is drawn around all the buildings at the address 7 – 11 Spray Street. However, one unit is separated off, containing a hairdressing salon which is accessed from a door in the end of the building rather than through the shop-front. I consider that I can make the allegation more accurate by correcting it to specify that it is a change of use of 'part' of the building. That would not cause injustice particularly as the other use would not be affected given that the notice only requires the cessation of the hot-food take-away.
5. The revised National Planning Policy Framework (the Framework) was published after my site visit. I have therefore given both main parties an opportunity to comment upon any changes that they may consider are relevant to this case.
6. Given that the notice was issued in 2023, I also asked for an update of the status of the Local Plan Site Allocations document which is referred to within the reasons for issuing the notice and which was indicated as being at an advanced stage towards adoption. The Council have confirmed that the document has been withdrawn and should be of no weight in decision making. I have not therefore taken that into account.

The Appeal on Ground (a) and the deemed planning application

7. Under this ground of appeal, planning permission is sought for what is alleged on the notice. There are 2 elements of the allegation, the use as a hot food takeaway and the physical development of the extractor system. However, the Council has not referred to any development plan policies with respect to impacts caused by the extractor system although their objection is confirmed in their appeal statement to relate to the equipment enabling the ongoing use.

Main issues

8. The main issues are therefore:
 - i. The effect of the use on the health of local people, in particular school-aged children; and
 - ii. The effect of the use on the wider redevelopment of this part of Woolwich Town Centre.

Reasons - health

9. The appeal site is within a group of commercial properties on the northern side of Spray Street within Woolwich town centre where there is a general mix of uses including some residential properties. The other commercial properties nearby fronting onto the road, include shops and hot-food take-aways. There is no appeal pleaded on the basis that the use as alleged is not a hot-food take-away [ground (c')]. The layout with prominent counter opposite the shop window and main entrance does give the appearance of hot-food being for sale

for consumption mostly off of the premises, even though clearly some people do sit and eat inside.

10. At the time of the previous appeal (Ref APP/E5330/W/21/3280397) the proposal had been to change the use from a class 'E(a)¹ retail use, to a hot-food take-away. That inspector referred to the premises having already being fitted out as a fish and chip shop. The type of food now being sold is different.
11. London Plan 2021 (LP) Policy E9 at sub-paragraph D states that proposals including hot-food take-aways should not be permitted within 400m walking distance from the entrances and exits of existing or proposed primary or secondary schools. The appellants do not dispute that the site is within 400m of 2 primary schools, Heronsgate Primary and Plumcroft Primary. They do question whether the 400m distance is effective in achieving any significant difference to the health and well being of the local population. The site is close to other existing hot-food establishments both within this same street-frontage and also nearby within the town centre. However, the walking distance is set within the LP and it is not for me to question how the policy has been derived which has involved a separate process and I do not know the circumstances leading to the establishment of the other take-aways. The policy does give scope for individual boroughs to reach their own locally defined thresholds but I have not been made aware of any alternative walking distances in the Council's Local Plan Core Strategy (CS).
12. There is agreement, and it is stated on the notice, that the premises were previously within and could revert to a retail use within Use Class E(a) of the UCO. The UCO together with the permitted changes of use regime within General Permitted Development Order² allows for some flexibility. Some hot food sales on an ancillary level may not materially change the use of shop premises. However, where the hot-food take-away is the primary use in this location, it cannot comply with LP Policy E9. The controls here, as explained in paragraph 6.9.7 of the LP relate to the generalities of take-away food being high in calories, fat, salt and sugar as well as being low in fibre, fruit and vegetables. The LP refers to an evidence base and I do not have evidence here to weigh against or dispute that.
13. The appellant suggests a personal planning condition could restrict the use, given their view that their food is healthy. The Planning Practice Guidance (PPG) makes it clear that Planning permission runs with the land and that it is rarely appropriate to provide otherwise, stating that it would be exceptional to do so. The submitted evidence does not indicate that there are such exceptional circumstances here. I have not been provided with wording for a Healthier Catering Commitment Standard planning condition as is also suggested by the appellant. It would seem extremely difficult for the Council to effectively monitor what food is sold from such a business or who it is sold to. Such a condition would fail one of the tests for planning conditions in the National Planning Policy Framework (the Framework) as it would not be enforceable.
14. Based upon the evidence before me, the location of the site is within walking distance of 2 schools and does not comply with LP Policy E9. In relation to the

¹ Town and Country Planning (Use Classes) Order 1987 (the UCO), Schedule 2, Part A, Class E(a)

² Town and Country Planning (General Permitted Development) (England) Order 2015, as amended

main issue, the continued use as alleged would have a harmful effect on the health of local people, in particular school-aged children.

15. The Framework also sets out that applications for hot-food take-aways and fast food outlets should be refused: a) within walking distance of schools and other places where children and young people congregate, unless the location is within a designated town centre; or b) in locations where there is evidence that a concentration of such uses is having an adverse impact on local health, pollution or anti-social-behaviour. The approach of the LP in these respects is largely consistent with the most recent government policy on these matters as set out in the Framework although does give some discretion within town centres. That however does not outweigh my conclusion on this main issue.

Reasons - wider redevelopment

16. There is no dispute that the appeal site falls within the Town Centre and is within a strategic development location for which the Council has a Supplementary Planning Document, the Spray Street Masterplan, adopted January 2015 (SPD). The SPD refers to the earlier version of the LP from July 2011 although I have been given no information to question that Woolwich remains an Opportunity Area where there are significant opportunities for housing, employment, retailing and social infrastructure. Current LP Policy SD10 relates to strategic and local regeneration and the SPD appears from the evidence before me, to be consistent with it and seeks to achieve its aims.
17. At the time of the previous appeal relating to this site, the inspector referred to a planning application³ for the mixed-use development comprising dwellings, commercial business and service uses, drinking establishments, a cinema, a new public square and public realm works amongst other things. At that time the Council had resolved to approve the application but it was subject to the signing of a planning obligation under the provisions of s106 of the Act. The Council has confirmed that the application was approved on 23 December 2021 with a 5-year implementation condition (not the standard 3 years). The planning permission therefore remains extant. I have no evidence about why there have been delays in carrying out that redevelopment although the longer limitation on its implementation indicates that it was not unexpected. A Compulsory Purchase Order (CPO) was confirmed on 12 July 2023 which I would expect will be a significant factor in assisting in a complex redevelopment.
18. The previous inspector felt that there was a high likelihood of that redevelopment scheme being delivered "at the earliest opportunity". There had clearly been a momentum for it which has been reaffirmed with the issuing of the CPO. I have not been provided with all of the details of the approved scheme to indicate how the current use would or would not fit within it or how it would prejudice its implementation. Notwithstanding that, the objectives of the SPD remain the same and that includes that there should be a comprehensive redevelopment of the site within the masterplan area. I can understand in common-sense terms why giving planning permission in part of an area which is targeted for comprehensive redevelopment, could be a hinderance to the implementation of an overall plan when it comes to negotiations with landowners.

³ 20/3385/F

19. In relation to this main issue, granting planning permission would have a harmful effect on the wider redevelopment of this part of Woolwich Town Centre. This would not comply with LP Policy SD10 and in particular its requirement to support development proposals that contribute to the renewal of town centres and it would undermine the aims of the SPD.

Other matters

20. CS Policy TC(c) permits hot-food take-aways in certain circumstances with major, district and local centres being the preferred locations. There are a number of provisions that need to be met but the Council does not dispute that the development complies with this policy and I do not have any information to dispute that. This weighs in favour of the retention of the use.
21. The building containing the unauthorised take-away has a flat roof and the shining metal extraction flue, sits on top of the roof. It is positioned immediately next to a 2 storey pitched roof building to the western side of the site and extends up to its eaves level. That adjoining building screens views of the flue from the Woolwich Conservation Area (CA) and I could not see it when I looked from the rear service lane from the direction of the covered market which is a Listed Building. The presence of the extractor does not harm views into the CA and preserves the setting of listed covered market. However, this lack of harm in visual or other terms is a neutral factor, not providing any positive weight in favour of retaining the extractor which is integral to the unauthorised use of the premises.
22. The appellants say that their take-away is the only Caribbean food establishment in the area. I did see a wide range of restaurants and take-aways nearby and the food on offer appears to be complementary to this. I also note that the premises are a meeting place for a local action planning group. The business employs 4 full-time and 6 part-time workers as well which is clearly of economic benefit to those people as well as the area. These are all positive factors giving moderate weight in favour of the ongoing use.

Conclusion

23. The use as alleged complies with one of the policies within the CS but does not comply with the development plan as a whole. These other matters do not outweigh my conclusions on the main issues. I conclude that the appeal on ground (a) should fail and the deemed planning application should be refused.

The Appeal on ground (f)

24. The appeal on this ground is that the steps required exceed what is necessary to achieve the purpose of the notice. With respect to the purposes of enforcement notices as set out in s173(4) of the act, the requirements are clearly aimed at remedying the breach of planning control by both discontinuing the use and restoring the land to its condition before the breach took place.
25. Furthermore, even if the breach of planning control had not included the installation of the extractor, it could still be legitimate to seek the removal of physical operational development. In this case, if the extractor was installed as part and parcel of the material change of use, its removal could be required even though there are no obvious planning concerns about it which I have confirmed within the above consideration of the appeal under ground (a).

26. When the previous appeal was considered in 2022, a fish and chip shop had been operating for “several months” according to that decision. The decision also refers to the presence of an extraction system at that time. The appellant company confirm that the current system is new but I have limited evidence about these matters. It seems probable to me that it was installed for the current unauthorised use or was installed previously as part of a material change of use when the fish and chip shop opened. I also have limited evidence about what had happened between the fish and chip shop closing and then the current use commenced or whether there was any interceding use or any continuity of the same hot-food takeaway use.
27. On the balance of probabilities therefore, I reach the view that the current extraction system was installed as part and parcel of the material change of use of the premises as alleged and so the notice can require its removal. That would go no further than restoring the land to its condition before the breach of planning control took place.
28. The appeal on ground (f) fails.

The Appeal on ground (g)

29. The appeal on this ground is that any period specified in the notice falls short of what should reasonably be allowed.
30. Two months may be an adequate period to cease the use although carrying out the physical works to remove the extraction system and other equipment may well take longer to organise. Furthermore, whilst I have considered that the use is unacceptable on its planning merits with respects to the appeal under ground (a), I am conscious that the business employs 10 people on either a part-time or full-time basis. The disruption to the lives of those people as well as to the owners of the business who will need to find alternative premises, will be significant. This will also have some adverse effect on the economy of the area although I recognise that the proposed comprehensive redevelopment is also planned to benefit the area.
31. In these circumstances, I consider that 2 months is insufficient to comply with the notice. A 12 month period as requested by the appellant would go too far the other way by not bringing the matter under control soon enough which could lead to ongoing concerns in relation to the main issues considered under ground (a). I therefore consider that an 8 month period would strike a more reasonable and proportionate balance between these conflicting matters.
32. To this extent, the appeal on ground (g) succeeds.

Conclusion

33. For the reasons given above, I conclude that the appeal should not succeed other than on ground (g). I shall uphold the enforcement notice with the corrections and variations and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Andy Harwood

INSPECTOR