



Appeal Decisions

Site visit made on 7 March 2025

by Simon Hand MA

an Inspector appointed by the Secretary of State

Decision date: 21 March 2022

Appeal A Ref: APP/A5840/X/23/3314716

138 Rye Lane, London, SE15 4RZ

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Jason Hoffman against the decision of the Council of the London Borough of Southwark.
 - The application ref 22/AP/4009, dated 23 November 2022, was refused by notice dated 28 December 2022.
 - The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 (as amended).
 - The use for which a certificate of lawful use or development is sought is that the ground floor of a premises is now in Class E use.
-

Appeal B Ref: APP/A5840/W/22/3311196

138 Rye Lane, London, SE15 4RZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Jason Hoffman against the decision of the Council of the London Borough of Southwark.
 - The application Ref is 22/AP/3015.
 - The development proposed is retrospective application for the use of first and second floors as ancillary management accommodation area for ground floor restaurant use (E(b)); Retention of rear bi-folder doors.
-

Decisions

Appeal A – 3314716 (the LDC)

1. The appeal is dismissed.

Appeal B – 3311196 (the planning appeal)

2. The appeal is allowed and planning permission is granted for retrospective application for the use of first and second floors as ancillary management accommodation area for ground floor restaurant use (E(b)); Retention of rear bi-folder doors at 138 Rye Lane, London, SE15 4RZ in accordance with the terms of the application, Ref 22/AP/3015, subject to the conditions in the attached schedule.

Application for costs

3. An application for costs has been made by the appellant against the Council and is the subject of a separate decision.

Preliminary Matters

4. The sole reason for refusal in Appeal B was that the bi-fold doors to the rear of the property would allow noise to disturb local residents. Since then the Council have been involved in enforcement action against the bi-fold doors but have accepted that they were in place before April 2018 and so are immune from enforcement. The Council have thus withdrawn their reason for refusal. I shall allow Appeal B subject to conditions.
5. Appeal A was made under s192 for a proposed use. However, it is clear the appellant argues the use has always been Class E and was so at the time the LDC application was made. It is therefore more correctly made under s191(a) to determine whether the existing use as Class E is lawful.

Appeal A – Reasons

6. The appellant argues the use has long been Class E (or its forebears) and planning permission was granted for such a use back in 2013. Notwithstanding that none of the conditions were discharged for that permission the Council accept the principle of Class E on the site. Similarly their only reason for refusal in the application for a Class E use (subject to appeal B) was the bi-fold doors. The Council accepted the Class E use was acceptable. Consequently, a certificate should be issued that the use is lawful.
7. The Council have set out the planning history which is not disputed. The unit was originally in retail use until 2013 when planning permission was granted for a café/takeaway business (13/AP/2510). However that use was begun without discharging any of the conditions on the planning permission and so was unlawful. In 2019 a different café/bar use began and permission was applied for. This was refused and an appeal dismissed. An enforcement notice was issued and also upheld at appeal. The use had to cease by November 2022.
8. When an enforcement notice is issued there is a right to revert to the last lawful use of the building. However, in the case of the 2019 enforcement notice, the use before that enforced against was the unlawful café/takeaway, so there was no last unlawful use. The retail use has been lost due to the unlawful material changes of use and the building now has no lawful use.
9. The LDC seeks to determine that Class E is a lawful use. It clearly isn't. There is a difference between a lawful use (the subject of Appeal A) and an acceptable use (the subject of Appeal B) which the appellant has failed to grasp. Just because the Council are happy to grant planning permission for a Class E use does not mean that it currently is lawful. Therefore this appeal must fail.

Appeal B – Conditions

10. The Council have suggested 8 conditions. A condition that the development is carried out according to the plans is needed. As is a condition to control noise. Hours of use are restricted and the use of the garden is prevented, both to protect neighbours' amenities. A condition controlling use of the rear bi-fold doors is required because of fears for the disruption of neighbours amenity if the doors allow access to the rear garden during opening hours, and one to control disposal of waste for the same amenity reasons. Finally an extraction system is required for the kitchen.

11. I shall adjust some of the conditions to take account of the fact the use has already begun.

Simon Hand

INSPECTOR

Schedule of Conditions

- 1) Unless within 3 months of the date of this decision schemes for the control of noise and kitchen extract systems, are submitted in writing to the local planning authority for approval, and unless the approved schemes are implemented within 3 months of the local planning authority's approval, the use of the site for the purposes of Class E of the UCO shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as both schemes are approved and implemented.

If either scheme in accordance with this condition is not approved within 9 months of the date of this decision, the use of the site shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme approved by the local planning authority is implemented.

Upon implementation of the approved schemes specified in this condition, those schemes 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.

- a. The control of noise scheme shall ensure that the LFmax sound from amplified and non-amplified music and speech shall not exceed the lowest L90 5min at 1m from the facade of nearby residential premises at all third octave bands between 63Hz and 8kHz. The scheme shall include a written acoustic report detailing the scheme of noise control and the results of a validation test that shall have been carried out.
 - b. Furthermore, the rated noise level from any plant, together with any associated ducting shall be 10 dB(A) or more below the lowest relevant measured LA90 (15min) at the nearest noise sensitive premises. The scheme shall include a written acoustic report and the method of assessment is to be carried out in accordance with BS4142:1997 '*Rating industrial noise affecting mixed residential and industrial areas*'. The plant and equipment shall be installed and constructed in accordance with the approval given and shall be permanently maintained thereafter.
 - c. The kitchen extract systems scheme shall include details as to how all kitchen extract systems shall meet the standard required by DEFA Guidance on the control of odour and noise from commercial kitchen exhaust systems (2011), and full particulars and details of a scheme for the ventilation of the kitchen to an appropriate outlet level, including details of sound attenuation for any necessary plant, filtration systems and the standard of dilution of exhaust air expected.
- 2) The development hereby permitted shall be carried out in accordance with drawing nos:01 - proposed first and second floor plans; 02 - proposed ground floor plan; 03 – pre-existing and existing rear elevation; 09 - existing and proposed roof plans.

- 3) The use hereby permitted shall only take place between the following hours:
06:30-01:00 (the next day) – Friday and Saturday
06:00-00:00 (midnight) Sunday to Thursday.
- 4) The rear garden shall not be open to customers for any purpose on any day.
- 5) The doors located between the rear garden and the customer area within the premises shall remain closed during the hours of operation except for access required by staff employed at the premises for refuse disposal and collection, and for means of escape (based on the approved the ground floor plan ref: 02).
- 6) No outdoor activity of disposing and collecting waste, bottles and glasses shall be carried out outside 09:00 – 21:00 on any given day.