Planning Inspectorate

Appeal Decision

Hearing held on 23 April 2025

Site visit made on 23 April 2025

by Peter White BA(Hons) MA DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 May 2025

Appeal Ref: APP/Z5060/C/25/3358386
Land and premises at 6 Highland Avenue, Dagenham RM10 7AS

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Lawrence Jegede against an enforcement notice issued by the Council of the London Borough of Barking and Dagenham.
- The notice was issued on 4 December 2024.
- The breach of planning control as alleged in the notice is without planning permission, the unauthorised use of the outbuilding at the rear of the property as a catering business.
- The requirements of the notice are:
  1. Cease the use of the unauthorised catering business.
  2. Remove all subsequent waste material from the premises.
- The period for compliance with the requirements is: 1 month.
- The appeal is proceeding on the grounds set out in section 174(2)(b), (c), (f) of the Town and Country Planning Act 1990 (as amended) ("the Act").

Summary of decision: The appeal is allowed following correction of the enforcement notice in the terms set out below in the Formal Decision.

Preliminary Matters

1. On 6 January 2025 the Planning Inspectorate advised the appellant was barred from appealing on Ground (a) as the Notice was issued during the time allowed for determining a related planning application[1]. The evidence before me at the Hearing, and in the written submissions made, related to the appeals on grounds (b), (c) and (f), and I have determined the appeal on that basis.

2. A planning application for the erection of the outbuilding was refused in December 2024, but no appeal has been made. The Notice relates to the use alleged to have occurred, and the Council acknowledged at the Hearing that the erection of the outbuilding was not a matter before me.

3. Interested parties have raised matters associated with the effects of the development. I have considered these insofar as relevant to establish whether a material change of use has occurred in association with the appeal on ground (c). I am not able to consider the planning merits of the development alleged as there is no deemed planning application before me.

The appeal on ground (b)

4. Appeals on ground (b) are made on the basis that the matters constituting the breach of planning control have not occurred.

[1] Under Section 174(2A) of the Town and Country Planning Act 1990.

5. In Section 3 of the Notice the word ‘unauthorised’ is not necessary to describe the development, and in any case follows the words, ‘Without planning permission’. At the Hearing, the parties agreed that only a material change of use constitutes development, and that the word ‘unauthorised’ should be replaced with the words “material change of”.

6. The parties also agreed that the alleged breach of planning control related to a mixed use of the planning unit. The ‘Land and premises at 6 Highland Avenue …’, as described in Section 2 of the Notice, and shown on the plan attached to it, is the unit of occupation. Although the baking and decorating occurs in part of the outbuilding, there is no independent or direct access to it, and collection and delivery occurs from the house. The alleged breach of planning control in Section 3 should therefore be corrected to, “Without planning permission, the material change of use of the Land to a mixed use as a dwellinghouse and catering business”.

7. Such a change would also necessitate amendment of the first requirement in Section 5 of the Notice to, “Cease the catering business element of the use of the Land”.

8. The parties agreed the changes were necessary and could be made without injustice to the appellant or the Council. I agree and will correct the Notice in my Formal Decision in accordance with the powers afforded to me by Section 176(1)(a) of the Act.

9. However, there is no dispute that use as a catering business, in the form of cake baking and decoration, had occurred by the time the Notice was issued. Therefore, except in relation to whether that use is a material change requiring planning permission, which I consider below in relation to ground (c), the matters constituting the breach of planning control have occurred.

10. The appeal on ground (b) therefore succeeds only to a limited extent.

The appeal on ground (c)

11. Appeals on ground (c) are made on the basis that the matters do not constitute a breach of planning control.

12. Planning permission is required for the carrying out of ‘development’ of land under Section 57 of the Act, and carrying out development without the required planning permission is a breach of planning control under Section 171A(1)(a).

13. The term ‘development’, as defined in Section 55(1) of the Act, includes any material change in the use of buildings or land. Whether a material change of use has occurred is a matter of fact and degree.

14. Section 55(2)(d) excludes from ‘development’ the use of any buildings or other land within the curtilage of a dwellinghouse for any use incidental to the enjoyment of the dwellinghouse as such.

15. The crux of the appellant’s case is, firstly, that the change of use is not a material one, and secondly, that the catering use is incidental to the use of the Land as a dwellinghouse. The Council considers a material change of use has occurred, in the form of a mixed use of the land comprising residential and catering as two primary uses.

16. The Land is the appellant's home, in which he resides with his wife and family. His wife undertakes childcare responsibilities for their children, and bakes and decorates cakes for friends, family and commercial sale. She undertakes baking and decorating, without other staff, in an outbuilding in the rear garden, part of which is also used for domestic storage.

17. The outbuilding room is not dissimilar in size to that of a domestic kitchen, and is equipped for baking and cake decoration. Since 2024 the business has been registered as a 'home baking business' and a food hygiene certificate has been issued. Customers or delivery drivers collect cakes ordered from the house, and there are no deliveries for the catering use (although baking ingredients are included in the household food deliveries occurring in any case).

18. No party has provided any evidence which significantly challenges the appellant's descriptions of the nature of the use. On average, no more than 5 cakes are produced per week. A typical week would see five hours of baking on Wednesday, and decorating on Thursday and Friday for eight hours between 9am and 6pm and on Saturday morning for four hours. No baking or decorating usually occurs on Sunday, Monday or Tuesday.

19. Some of the facilities and equipment are industrial in nature, including stainless steel work surfaces and an oven, fridge and mixer, larger in size than their domestic equivalents. But noise-generating activities are limited to elements of the baking involving use of the mixer, which take no longer than two hours per week. At my site visit the mixer, at its maximum speed, was only audible at a low level from outside the outbuilding, and was not unlike the noise from a domestic kitchen. No other equipment could be heard outside the outbuilding.

20. There is only one oven, and no extraction unit. Even if baking smells leave the outbuilding, I have not seen evidence that they are greater than could typically occur from a domestic property, particularly considering the low volume of cakes baked, and only on one day a week.

21. Cakes are typically collected or delivered on Saturdays and Sunday mornings, and occasionally weekdays, but are limited to around five per week. The appellant's log of deliveries and collections between October 2024 and March 2025 shows a maximum of six deliveries or collections per week (that being during the Christmas period), with considerably less in some weeks. It also shows no more than four collections have occurred in any one day, and visitors have stayed for only 1-5 minutes, with only two exceptions during the Christmas period. Such low levels of visits and short stays bear similarities with mail order deliveries to domestic dwellings, and are within the levels which could occur in relation to any residential dwelling.

22. Working from home is not unusual, particularly since the COVID-19 pandemic, and not every home-working use results in a material change of use. In this case, the only worker is a resident of the dwelling, and although the outbuilding is equipped for commercial baking, the use occurring is of a small scale. Noise and odour effects, if occurring, only occur for a short period of time and at a low level. With the evidence before me, they are not significantly greater than those which could occur from any dwellinghouse, and the bulk of the time spent on the business relates to cake decoration, which is neither noisy nor generates odour.

23. The main parties have each referred to the *Sage*[2] judgement, and each considers it supports their approach to the issues. Although some of the cakes baked and decorated are sold commercially, the act of baking and decorating cakes is not materially different from one typically undertaken in a dwellinghouse. Notwithstanding the industrial nature of some of the equipment used, with the evidence before me, the scale of the catering activities and the environmental effects of the use are low. Considering all the evidence, the use of the Land is not materially different in character from use as a single dwellinghouse.

24. The use which has occurred therefore does not constitute development for the purposes of the Act. Planning permission is therefore not required for the use, and it does not constitute a breach of planning control.

25. The appeal on ground (c) therefore succeeds.

Conclusion

26. From the evidence before me, I conclude that the description of the breach of planning control set out in the enforcement notice is incorrect. The appeal succeeds on ground (b) to that extent.

27. On the balance of probabilities, the appeal on ground (c) should succeed in respect of those matters which, following the correction of the notice, are stated as constituting the breach of planning control.

28. The enforcement notice will be corrected and quashed. In these circumstances, the appeal on ground (f) does not need to be considered.

Decision

29. It is directed that the enforcement notice is corrected by:

- In Section 3, the deletion of the words "the unauthorised use of the outbuilding at the rear of the property as a catering business", and their substitution with the words, "the material change of use of the Land to a mixed use as a dwellinghouse and catering business"; and

- In Section 5, the deletion of the words "Cease the use of the unauthorised catering business", and their substitution with the words, "Cease the catering business element of the use of the Land".

30. Subject to the corrections, the appeal is allowed, and the enforcement notice is quashed.

Peter White

INSPECTOR

[2] Sage v SSLGC [2021] EWHC 2885 (Admin)

APPEARANCES

FOR THE APPELLANT:

Lawrence Gegede	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Adam Rulewski	Solicitor
Terri Sinfield	Planning Enforcement Team Leader

INTERESTED PARTY
Mrs Marissa Clark