



Appeal Decisions

by V Bond LLB (Hons) Solicitor (Non-Practising)

an Inspector appointed by the Secretary of State

Decision date: 21 July 2025

Appeal A Ref: APP/V5570/X/24/3350821

131 - 132 Upper Street, Islington, London, N1 1QP

- 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 Sager House (Islington) Ltd against the decision of the Council of the London Borough of Islington.
 - The application ref 2024/1965/COL, dated 25 June 2024, was refused by notice dated 23 August 2024.
 - 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 use of basement, ground and first floor as a restaurant (use class E(b)).
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Appeal B Ref: APP/V5570/W/24/3352244

131 - 132 Upper Street, Islington, London, N1 1QP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant approval required under Article 3(1) and Schedule 2, Part 3, Class MA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Sager House (Islington) Limited against the decision of the Council of the London Borough of Islington.
 - The application Ref is P2024/0247/PRA.
 - The development proposed is Change of use of part of the ground, first, second, and third floors of 131 - 132 Upper Street from a use falling within Class E to a use falling within Class C3 (dwellinghouses) to form five self-contained apartments.
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Appeal A Decision

1. The appeal is dismissed.

Appeal B Decision

2. The appeal is dismissed.

Applications for costs

3. The appellant has made applications for costs against the Council in respect of both Appeal A and Appeal B. These are the subject of separate decisions.

Preliminary Matters

4. I have taken the Appeal A description of development from the supporting statement submitted with the lawful development certificate ('LDC') application since the application form referred only to the use class.

5. Due to the nature of these cases, supporting evidence submitted and representations made, it was not necessary for me to conduct a site visit. The main parties were made aware of this fact, and no objections were received.

Appeal A – LDC Appeal

Main Issue

6. The main issue is whether or not the Council's refusal is well-founded. This will turn upon whether the development described was lawful as at the date of the LDC application. Planning merits are not relevant and the onus is on the appellant to make their case on the balance of probability. If the Council has no evidence of its own to contradict or otherwise make the appellant's version of events less than probable there is no good reason to refuse the application, provided that the appellant's evidence alone is sufficiently precise and unambiguous.
7. Since s195(2) of the Town and Country Planning Act 1990 ('1990 Act') refers to whether or not the Council's refusal is well-founded, rather than the reasons for that decision, it is appropriate that I consider new evidence included with these appeals.

Reasons

Background

8. The appeal premises is the basement, ground and first floor of 131-132 Upper Street. Planning permission was granted in 1999 for 'Erection of a roof and rear extension and change of use and associated alterations to provide a restaurant (A3 use) at basement, ground and first floors and B1 offices at second and third floor levels'¹ subject to a condition stipulating operating hours of 10:00 to 23:30.
9. Variation applications were made in 2004, 2005 and 2008 for changes to the opening hours condition to enable late night opening. These operated as new permissions for the same development set out in the 1999 Permission but subject to amended opening hours conditions. The 2008 Permission² stipulated hours of 10:00-03:00 the following day Fridays and Saturdays, 10:00 to midnight Sundays and Wednesdays, and 10:00-01:00 the following day on Thursdays.
10. At the time of the 1999 Permission, restaurants and public houses/bars fell within the same use class (A3). In 2005, these uses were separated into use classes A3 and A4 respectively. In 2020, public houses/bars became a sui generis use and use class A3 was revoked and replaced by use class E(b).

Legislative position and parties' submissions

11. Section 191(2) of the 1990 Act states that uses and operations are lawful at any time if (a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission, because the time for enforcement action has expired, or for any other reason); and (b) they do not constitute a contravention of the requirements of an enforcement notice³.
12. As regards the appeal premises then, it is clear that the 2008 Permission took effect as a new permission and included a restaurant use. While a grant of

¹ Ref: 990746 ('1999 Permission')

² Ref: P072964

³ There is no suggestion in this case of any contravention of an enforcement notice

planning permission for a particular use offers prima facie evidence of lawfulness, plainly it is possible to rebut that presumption. The Council suggests that this is rebutted here by evidence pointing to bar/pub use following the grant of the 2008 Permission and indicates that the bar/pub use could have acquired immunity (i.e. thereby becoming the lawful use of the premises).

13. The appellant contends that the primary use following the 2008 Permission was as a restaurant⁴. The appellant suggests that on the basis that independent evidence indicates a restaurant use as at June 2013, even if there had been a change of use to a bar/pub use post 2008, that bar/pub use could not have acquired immunity (being for a period of less than ten years). The consequence, the appellant contends, is that a bar/pub use cannot have become lawful and supplanted the restaurant use allowed by the 2008 Permission.
14. I will therefore proceed to assess the evidence as to the use of the premises in the years following the grant of the 2008 Permission. It is in principle possible that the use was: as a restaurant potentially with an ancillary pub/bar use; as a pub/bar use potentially with an ancillary restaurant use; or in mixed use as a pub/bar and restaurant use (with neither element ancillary to the other).

Appellant's evidence

15. Turning to the appellant's evidence, I acknowledge that the November 2012 article references a 'celebrity chef' at the appeal premises and note the appellant's submission that an operator would not recruit a celebrity chef unless food was to be the primary attraction. Equally though, this article mentions the freehold acquisition of the former 'Keston Lodge *bar*' and that the newly launched 'John Salt' would be a 'new neighbourhood *bar* and 25-seater restaurant' and that the bar would have a 'focus on cocktails and real ale' [my emphasis].
16. The Guardian article dated December 2012 is headed 'Restaurant: John Salt' and references a 'chef of considerable ability'. However, comment is also made in relation to the '*bar* food' [my emphasis]. Additionally, food serving times are indicated as 'dinner Tue-Sat, 6-10pm; Sat brunch, 10am-3pm; Sun lunch noon-4pm' meaning that food service times seem to have been far shorter than the 2008 Permission opening hours. It therefore seems likely that customers visiting outside of food service times would have been consuming only drink.
17. As regards the 'Hot Dinners' review dated January 2013, again mention is made of a 'celebrity chef'. That said, the review also refers to 'this Islington pub' and that there would be space for walk-ins 'in the pub'. The Standard's review dated 25 June 2013 is headed 'Going out: Restaurants' and again references a celebrated chef. It terms the premises as a 'gastropub' which I recognise denotes gastronomy. However, it is not uncommon for a premises known as a 'gastropub' to be primarily in use as a bar/pub if the reality is that most customers do not consume food.
18. Streetview images from 2014 to 2019 showing an external menu box indicate that food was served at the appeal premises but does little to indicate that the primary use was as a restaurant since it is perfectly possible for a primary pub/bar use to include some level of food service. A 2020 Streetview image showing customers eating on tables on the pavement similarly is not inconsistent with a primary

⁴ It follows that there is no submission that there was a change of use but that the change was not material

pub/bar use. The blackboard in this photo with the words 'order, sip, eat, repeat' shows an effort to market food (as well as drink) but does not offer substantive evidence that food was the primary reason for customers to visit the premises.

19. While I acknowledge that the menu box had been polished and menus can be seen on tables inside in a 2021 Streetview image, it is not clear whether these are food menus or, for example, cocktail menus. Again, numerous premises which are primarily bars/pubs may have food menus on tables in the bar/pub, or may do this only at particular times of day when food is being served.
20. The appellant references the 2005 changes which separated restaurant and public house uses into separate use classes, suggesting that, since a change between the two was permitted development at that time, the then operator of the premises would have taken action to bring the lawful use within an A4 pub/bar use if that was the primary use of the premises⁵. Similarly, the appellant contends that if the Officer who dealt with the 2008 Permission held the view that there was a pub/bar use, this would have been addressed. The absence of enforcement action against a pub/bar use is also highlighted. In my view, none of these matters offer any significant support for the appellant's position since there could be any number of reasons as to why action was not taken such as resourcing or expediency.
21. The appellant also references a statement in Circular 03/2005 that where a premises' pub or bar activity 'will not affect environmental amenity', it will be treated as ancillary to the primary restaurant use of the premises. However, an additional stipulation is that the pub or bar activity is 'a minor component of the business'. On the available evidence, I am not satisfied that the pub or bar activity formed a minor component of business at the appeal premises. I accept that floorspace given over to dining does not determine an A3/A4 use but the evidence presented does not show on the balance of probability that customers were primarily visiting for the consumption of food/that there was an expectation for customers to order food.

Council's evidence

22. As to the Council's evidence, while I appreciate that the Valuation Office records referenced and Non Domestic Rates Demand Notice relied on by the Council are not definitive as to the use of the premises, reference in these to use as a 'Public House and premises' likely offers some indication of the proportions of respective income streams from food and drink. The July 2012 street view image relied upon shows window advertising of 'the coldest beer in town' and advertising a £1 deal on cocktails which points again towards a primarily pub/bar use.
23. I note the appellant's comment that the Officer's Report on the withdrawn 2017 Application⁶ was accepted as factually incorrect in stating that the premises enjoyed an A4 pub/bar use (in the sense that there had been no specific grant of planning permission for this). However, the absence of a planning permission for a bar/pub does not evidence actual use of the premises primarily as a restaurant.
24. Drawings from the same application also make reference to 'bar office', 'bar seating' and 'bar storage' areas. While the appellant comments as to the existence of a kitchen at that time and submits a photograph of a kitchen in evidence, the existence of a kitchen does not bring the premises outside of a primarily pub/bar

⁵ Per advice in Circular 03/2005

⁶ Ref: P2017/0802/FUL

use. The size of the kitchen referenced by the appellant does not seem to me to be so large as to necessarily indicate a primarily restaurant use.

Analysis

25. Drawing all of these matters together, it seems that, at least over the fairly short period covered by the online article and reviews, some efforts were made to promote the food offering at the appeal premises which resulted in commentary and reviews in the national press. However, this independent evidence itself indicates a pub/bar use with the 2012 article mentioning a specific focus for the bar on real ale and cocktails, along with statements in the 2012 article and 2013 reviews referring to the premises as a bar/pub.
26. Late opening hours permitted by the 2008 Permission indicate a bar/pub use and the Guardian article suggests that food service times were far shorter than the premises' opening hours, meaning that customers visiting outside of those times very likely were only consuming drink. I have no detailed evidence as to the respective proportion of sales from food and drink, nor detailed evidence of the number of covers for food service over the period following the 2008 Permission. Valuation Office evidence and the Non Domestic Rates Demand Notice cited by the Council point though towards income streams having been more indicative of pub/bar use. It seems likely then that there may well have been an attempt around 2012/2013 to boost the profile of the appeal premises' food offering including through 'celebrity chefs' but the reality of the use was more akin to a bar/pub.
27. As such, there is considerable ambiguity in the appellant's evidence as to the primary use of the appeal premises following grant of the 2008 Permission. Evidence from the Council adds further doubt to the claim of a restaurant use. I find then as a matter of fact and degree on the available evidence that it is improbable that there was a primarily restaurant use at the appeal premises at any time following the grant of the 2008 Permission. It follows that the appellant's submission that a pub/bar use could not have acquired immunity does not accord with the evidence before me. I find then that the development described was not lawful as at the date of the LDC application.
28. Whilst not determinative in view of my findings above, even if I had agreed that a pub/bar use could not have become immune, a material change of use to a pub/bar use at *any stage* after the grant of the 2008 Permission would still potentially have meant that resumption of a restaurant use would have required planning permission since a planning permission is granted for the *making* of a MCU, rather than a permission for continuing that use for the future⁷. This then represents a means by which the Council could in principle enforce against a restaurant use as unlawful if considered expedient to do so.
29. Equally, the Council has in appeal representations queried whether the 2008 Permission was in fact lawfully implemented. Neither party has made detailed submissions around this issue but given my assessment above, it is not necessary to consider this further save to say that this is another means by which the Council could have enforced against the restaurant use claimed.

⁷ per s57(4) of the 1990 Act, there would only be a right of reversion to the use permitted by the 2008 Permission if the Council enforced against a non-restaurant use

Conclusion

30. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development for use of basement, ground and first floor as a restaurant (use class E(b)) is well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act (as amended).

Appeal B – Prior Approval Appeal

Background and Main Issues

31. Schedule 2, Part 3, Class MA of the Town and Country Planning (General Permitted Development) (England) Order 2015 ('GPDO') permits a change of use of a building and any land within its curtilage from a use falling within Class E to a use falling within Class C3, subject to limitations and conditions in paragraphs MA.1 and MA.2. The term 'building' includes part of a building and the Appeal B application is for a change of use of the second and third floors of 131-132 Upper Street, along with part of the first floor, with an entrance at ground floor level.
32. The main issues then are: whether the proposal would be permitted development ('PD') under Article 3(1) and Class MA of the GPDO; and (ii) if so, whether prior approval should be given as regards the prior approval matters.

Reasons

Whether or not PD

33. The only matter in contention as regards whether the proposal is PD under Class MA relates to whether it complies with the limitation in MA.1(b) which states that development is not permitted '*unless the use of the building fell within one or more of the classes specified in sub-paragraph (2) for a continuous period of at least 2 years prior to the date of the application for prior approval*'.
34. There is no dispute that the actual use of the second and third floor as offices fell within the sub-paragraph (2) permitted classes. The dispute is whether or not there was a primarily food and drink/restaurant use below (within Class A3/E(b)).
35. I found in my Appeal A decision that the claimed use as a restaurant across the basement, ground and first floors was not lawful. This was on the basis that, although a 2008 Permission for a restaurant use was in existence, it was improbable that the use since 2008 had been primarily as a restaurant. Accordingly, it follows that the MA.1(b) limitation is not complied with since on the available evidence, the use did not fall within a sub-paragraph (2) use class for a continuous period of at least 2 years prior to the date of the application.
36. The proposal is not development permitted under Article 3(1) and Schedule 2, Part 3, Class MA of the GPDO. Accordingly, it is not necessary to consider whether prior approval should be given as regards the prior approval matters.

Conclusion

37. For the reasons given above the appeal should be dismissed.

V Bond

INSPECTOR

Appendix 1

List of those who have appealed

Reference	Case Reference	Appellant
Appeal A	APP/V5570/X/24/3350821	Sager House (Islington) Ltd
Appeal B	APP/V5570/W/24/3352244	Sager House (Islington) Limited