
Appeal Decision

Site visit made on 6 January 2026

by Paul Freer BA (Hons) LLM PhD MRTPI

an Inspector appointed by the Secretary of State for Housing, Communities and Local Government

Decision date: 5 February 2026

Appeal Ref: APP/A5840/C/25/3364196

Land at 211 Walworth Road, London SE17 1RL

- 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 Ning Li of VX Capital Limited against an enforcement notice issued by the London Borough of Southwark.
- The enforcement notice, numbered 23/EN/0344, was issued on 19 March 2025.
- The breach of planning control as alleged in the notice is, without planning permission:
 - i) The material change of use of the Land to a sui-generis mixed use of restaurant and entertainment venue with private karaoke rooms.
 - ii) The installation of ventilation ductwork to the front elevation, two extract ducts to the rear elevation, a detached cold room outbuilding, the condenser units to the rear of the land, the condenser units on the flat roof at the front of the Land, and
 - iii) The installation of a new shopfront with roller shutters and illuminated fascia and projecting signage.
- The requirements of the notice are:
 1. Cease the sui generis mixed use of restaurant and entertainment venue with private karaoke rooms at the Land;
 2. Remove all audiovisual systems, seating and tables used for the purpose of the entertainment venue including karaoke;
 3. Remove the two unauthorised extract flues from the rear elevation and the external cooking facilities;
 4. Remove the refrigeration room from the rear garden;
 5. Remove the condenser units from the rear garden;
 6. Remove the condenser units from the flat roof at the front of the Land;
 7. Remove the ventilation ductwork to the front elevation;
 8. Remove the unauthorised shop-front, roller shutter and illuminated fascia and projecting signage, replacing them with a shopfront to match that granted and installed at 293 Walworth Road, London Borough of Southwark Reference 19/AP/5439 for "Replacement of existing retail unit timber signage fascia, timber pilasters, glazed shopfront and doors with new timber framed glazed shopfront, timber pilasters, timber cornice, timber stall risers and timber fascia, a set of power assisted timber framed glazed double doors and associated signage", excluding any advertising, unless otherwise agreed by the Local Planning Authority in writing; and
 9. Remove all rubbish and debris from the Land resulting from the carrying out of steps 1 to 8.
- The period for compliance with the requirements is:

One month after the notice takes effect for step 5.1 to 5.2 and 5.9 insofar as it applies to steps 5.1 and 5.2, and

Twelve months after the notice takes effect for steps 5.3 to 5.8 and 5.9 insofar as it applies to steps 5.3 to 5.8.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary Decision: the appeal is dismissed and the enforcement notice is upheld as corrected and varied in the terms set out below in the Formal

Decision

Procedural Matters

1. The appellant has indicated that the ventilation ductwork to the front elevation of the building will be removed voluntarily, albeit the ductwork was still in situ at the time of my site visit. Accordingly, I will not consider that matter further under any of the grounds on which the appeal has been made.

The Enforcement Notice

2. The breach of planning control as alleged in paragraph 3(ii) of the notice includes, without planning permission, two extract ducts to the rear elevation, a detached cold room outbuilding, the condenser units to the rear of the land, the condenser units on the flat roof at the front of the Land. The location of the detached cold room outbuilding is not stated in that paragraph, although the appellant recognises that it is located at the rear of the building.
3. The attendant requirement at paragraph 5.3 of the notice is to remove the two unauthorised extract flues from the rear elevation *and the external cooking facilities* (emphasis added). Two points arise.
4. At the site visit, the Council pointed out that one of the extract flues links directly into the cooking equipment below and is clearly designed to extract smoke/odours generated by the use of that equipment. In that sense, the extract duct may be viewed as being an integral component of the cooking equipment, such that it could not function properly without it.
5. However, the external cooking facilities subject to the requirement at paragraph 5.3 of the notice do not form part of the breach of planning control alleged in paragraph 3(ii) of the notice. It is reasonable to conclude that if the extract duct is an integral part of the external cooking facilities (i.e. the cooking equipment directly below the extract duct) then it should properly have formed part of the breach of planning control alleged in the notice. But it does not.
6. Section 176 of the Town and Country Planning Act 1990 (the 1990 Act) provides that an enforcement notice may be corrected and/or varied if there is no injustice to the appellant or Local Planning Authority. In this case, adding the external cooking facilities to the breach of planning control which is alleged would be more onerous to the appellant. I cannot discount the possibility that the appellant may then have elected to make his appeal on different grounds and/or with a different focus to the existing grounds of appeal if the external cooking facilities had formed part of the breach of planning control alleges in the notice.
7. It follows that the appellant would be caused injustice by adding the external cooking facilities to the breach of planning control alleged in the notice at this time. In accordance with section 176 of the 1990 Act, will not correct the notice to add the external cooking facilities to the breach of planning control alleged in paragraph 3(ii) of the notice and shall vary the notice by deleting any reference to the external cooking facilities from the requirement at paragraph 5.3 of the notice. In the event that the use of these external cooking facilities results in issues relating to make and/or odours, these would be subject to control under other environmental legislation.

8. The requirement at paragraph 5.4 of the notice is to remove the 'refrigeration room' from the rear garden. I note that this requirement adopts a different wording to describe this structure from that in paragraph 3(ii), which describes this same structure as a 'detached cold room outbuilding'. It also identifies the location of the structure as being within the 'rear garden' of the property. I am not convinced that the space at the rear of this building can properly be described as a 'garden' but it is nevertheless clear to which location this requirement refers and that the appellant has understood what is meant by that requirement.
9. It is essential that the requirement of a notice match as closely as possible the breach of planning control that is alleged. I consider that the description of 'detached cold room outbuilding' more accurately describes the breach of planning control that has occurred than a 'refrigeration room'. I will therefore vary the notice to require the removal of the detached cold room outbuilding at the rear of the building. In the interest of consistency, I will similarly correct the breach of planning control alleged in paragraph of the notice to refer to the detached cold room outbuilding being at the rear of the building.
10. The breach of planning control alleged in paragraph 3(ii) of the notice includes the condenser units to the rear of the land. However, the attendant requirement at paragraph 5.5 is to remove the condenser units from the rear garden. For the same reasons set out above, I will vary the notice to be consistent with the breach of planning control that is alleged.
11. The requirement at paragraph 5.8 of the notice is, in summary, to remove the unauthorised shop-front, roller shutter and illuminated fascia and projecting signage, replacing them with a shopfront to match that granted planning permission and installed at 293 Walworth Road (Council Reference 19/AP/5439), excluding any advertising, *unless otherwise agreed by the Local Planning Authority in writing* (emphasis added). The appellant's concerns about this requirement form part his appeal on ground (f) but, because those concerns relate to a potential defect with the notice itself, it is convenient to consider them here.
12. In *Kaur v SSE & Greenwich LBC* [1989] EGCS 142; [1990] JPL 814, the Inspector varied the enforcement notice to require the re-modelling of a roof in accordance with photographs and a scheme to be agreed with the local planning authority. The court held that this made the enforcement notice uncertain and rendered it null because it did not specify with sufficient particularity what was required. This is precisely the effect of the requirement 5.8 of the current enforcement notice as originally drafted.
13. The requirement at paragraph 5.8 of the notice is one of several relating to the breach of planning control alleged in the notice. The courts have held that a degree of uncertainty does not necessarily render an enforcement notice non-compliant with statute and that the notice should be read as a whole. The courts have also held that it was open to an Inspector to conclude that while one section of a notice was too uncertain and could not stand, taken as a whole the notice did comply with the statutory requirements. That is the position here.
14. For the above reason, the defect in paragraph 5.8 of the notice does not render the notice as a whole a nullity. The notice is technically invalid as drafted but, because it is not a nullity, is capable of being corrected and/or varied.

Nevertheless, it is a defect with the notice and cannot be allowed to stand as drafted.

15. It was also accepted on *Kaur* that a building can be restored to its former state as far as practicable in accordance with available documentation and the recollections of the appellant. But there is no support in *Kaur* or any other legal authority for the proposition that a local planning authority can impose a specific design of shopfront on the appellant that did not previously exist, as the Council seeks to do in this case. I fully appreciate the Council's desire to secure a replacement shopfront that preserves or enhances the character or appearance of the Walworth Road Conservation Area. However, the most that the notice can require is either to remove the shopfront subject to the breach of planning control or revert to the design that existed immediately prior to breach of planning control took place or.
16. In this case, the appellant has provided photographic and documentary evidence of the shopfront that existed prior to the breach of planning control taking place. If he so wanted, the appellant could replicate that previously existing shopfront. I will vary the notice to give the appellants the option of either removing the shopfront subject to the breach of planning control, together with the roller shutter and illuminated fascia and projecting signage, or reverting to the shopfront that existed immediately prior to breach of planning control took place.
17. The breach of planning control as alleged in paragraph 3(iii) of the notice includes, without planning permission, the installation of a new shopfront with roller shutters and *illuminated fascia and projecting signage* (emphasis added). The use of land or a building for the display of advertisements is controlled under the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 (as amended). However, the links between the planning and advertisement regimes through sections 55(5) and 222 of the 1990 Act suggest that there is nothing in law to prevent a local planning authority from issuing an enforcement notice against an unlawful advertisement display. I am therefore satisfied that the notice does not need to be corrected and/or varied in this respect.
18. I am satisfied that no injustice would be caused by correcting and/or varying the notice in these respects.
19. In paragraph 2.1 of the Council's amended Appeal Statement, reference is made to an external kitchen on the rear elevation being part of the breach of planning control alleged in the notice. Although reference is made in the reasons for issuing the notice to "unauthorised external cooking facilities", an external kitchen forms no part of the breach of planning control alleged in the notice. For the avoidance of doubt, I have not considered the external kitchen as part of this appeal. The appellant considers the lack of reference of the external kitchen in paragraph 3 of the notice renders both the kitchen and the roof above it immune from action through the enforcement notice, but it is more correct to say that the notice does not attack the external kitchen or roof above it. Consequently, subject to the time limits set out in section 171B of the 1990 Act as amended, it remains open to the Council to initiate enforcement action against the external kitchen and roof above it through a separate enforcement notice, should it be considered expedient to do so.

The appeal on ground (c)

20. The ground of appeal is that, in respect of any breach of planning control that may be constituted by the matters stated in the notice, those matters do not constitute a breach of planning control. An appeal on this ground is one of the 'legal' grounds of appeal, in which the burden of proof is on the appellant to show, on the balance of probability, that the matters alleged in the notice do not constitute a breach of planning control.
21. The appellant's case on this ground of appeal relates primarily to the use of the premises but also includes the principal extraction flue. It is convenient to consider the use of the premises in the first instance.

The use of the premises

22. The breach of planning control alleged in the notice is the material change of use of the Land to a sui-generis mixed use of restaurant and entertainment venue with private karaoke rooms. The use alleged to be taking place is therefore a mixed use of two primary uses: the restaurant and the entertainment venue. On my reading, the Council considers the private karaoke rooms to be part and parcel of the entertainment venue.
23. Where an enforcement notice alleges a material change of use, it is first necessary to identify the relevant planning unit. It is settled case law that the planning unit is usually the unit of occupation, unless a smaller area can be identified which, as a matter of fact and degree, is physically and/or functionally separate and distinct, and/or occupied for different and unrelated purposes. The courts have established three broad categories of distinction:
- a) A single planning unit where the unit of occupation has one primary use and any other activities are incidental or ancillary;
 - b) A single planning unit that is in a mixed use because the land is put to two or more activities and it is not possible to say that one is incidental to another;
 - c) The unit of occupation comprises two or more physically separate areas which are occupied for different and unrelated purposes. Each area that has a different primary use ought to be considered as a separate planning unit
24. In this case, the whole property is occupied by the appellant. This is therefore the unit of occupation. The premises were a retail store (Use Class E(a)) of the Town and Country Planning (Use Classes) Order 1987 as amended (UCO) until around 2017, with the upper floors previously being used for ancillary storage associated with the primary retail use. I therefore consider that, as a matter of fact and degree, prior to the alleged breach of planning control taking place the premises comprised single planning unit where the unit of occupation had one primary use to which the other activities were incidental or ancillary.
25. The appellant maintains that the current use of the premises falls within Use Class E(b) of the UCO. This Use Class is for the use, or part use, for the sale of food and drink principally to visiting members of the public where consumption of that food and drink is mostly undertaken on the premises. It is therefore the appellant's view that there has not been a material change of use of the premises, as both the current and previous use fall within Class E of the UCO.

26. There is no dispute that for the sale of food and drink at the premises is principally to visiting members of the public and that the consumption of that food and drink is mostly undertaken on the premises. The area of dispute is whether the 'entertainment venue' (hereafter the use for karaoke) is ancillary to use of the premises as a restaurant.
27. In support of his position, the appellant explains that the business trading at the appeal premises is 'Galaxy', which he describes as a restaurant with ancillary private karaoke rooms. The appellant maintains that the primary use is as a restaurant, with the serving of food being the main activity and source of revenue. The appellant indicates that over the previous six months, approximately 70% of Galaxy's revenue comes from food sales, with the remainder from drinks and the nominal karaoke fees.
28. The appellant goes on to explain that the business often runs a minimum spend per room model where the karaoke room hire itself is free with customers only paying for food and drink. It is explained that customers cannot simply book karaoke alone; patrons must book a room and dine, and staff ensure that food orders are placed for each booking. This policy is stated on the appellant's website/booking info and relayed during enquiries by potential customers. In the appellant's view, this underscores that the income is driven by dining, not charging for karaoke and that the use for karaoke and alcohol sales is strictly ancillary to the dining experience.
29. It was held in *Hertfordshire County Council v Secretary of State for Communities and Local Government* [2012] EWHC 277 (Admin), [2012] JPL 836 that for a material change of use to have occurred there must be a material change in the definable character of the use of the land. The test in this case therefore goes beyond simply the proportion of income generated by the restaurant use compared to the use for karaoke. It is necessary to consider the characteristics of the use.
30. At ground floor level, the layout of the premises comprises a dining area at the front with a dedicated karaoke room towards the rear. The room is fitted out with audio and visual equipment. The décor is mirrored glass and strip lighting, with the furniture being a black/dark colour. The latter comprised a seating around the perimeter of the room, tables and some bar stools. I understand that this room typically accommodates some 10 customers when used for karaoke, albeit it seemed to me that the room was easily capable of accommodating more. The Council records this room as having a capacity of 15 people, which to me appears more representative.
31. The first and second floors of the premises each contained two dedicated karaoke rooms: rooms 2 and 3 on the first floor, with rooms 4 and 5 on the upper floor. These rooms are similarly equipped and furnished to that on the ground floor and have a similar décor. The appellant indicated that rooms 2 and 4 typically accommodate some 8 customers when used for karaoke, with rooms 3 and 5 accommodating some 15-20 customers. The Council records rooms 2 and 4 as having a capacity of 8 with rooms 3 and 5 having a capacity 20 people.
32. The rooms on the upper floors are accessed by an internal staircase with landings at each floor. The customer toilets are located at ground floor level, thereby necessitating customers to navigate the internal staircase to avail themselves of these facilities. Although the doors to the karaoke rooms are

typically kept shut when in use and food/drinks brought to the room(s) by staff, customers can open the doors at any time access the toilets and/or congregate on the landings of the internal staircase.

33. There are, therefore, a total of five rooms in the premises as a whole dedicated to use for karaoke. Cumulatively, these rooms could accommodate at least 42 customers although in practice it is more likely than not that this number could be comfortably exceeded. The Council indicates that the karaoke rooms can accommodate up to 71 customers, which is not disputed by the appellant. Even taking the dining area at ground floor into account (which is not used for karaoke), a sizeable proportion of the total floorspace available to customers (probably the majority) is dedicated to the use for karaoke.
34. This compounded by the décor, furniture and equipment within the rooms dedicated to use for karaoke. I accept entirely that these rooms could in theory be used to provide a conventional dining experience, particularly for larger groups. However, the setup of these rooms does not lend itself to a conventional dining experience, particularly for individual, couples and/or small groups. Notwithstanding that customers cannot simply book karaoke alone and must book a room and dine, the impression given is that the use for karaoke is the primary purpose for these rooms: any dining associated with that is ancillary to the use for karaoke.
35. The fact that the appellant often runs a minimum spend per room model where the karaoke room hire itself is free with customers only paying for food and drink is symptomatic of that. In that model, the use for karaoke is pivotal: it is offered as the key reason for dining at the premises, to which the purchase of food and drink is ancillary. It is also key that the use for karaoke takes place in rooms that are specifically equipped for and dedicated to that purpose.
36. As set out in the Statement of Common Ground, it is common ground that it is possible for people singing in groups to reach noise levels of up to 100 dB(A) within a karaoke room. It is also common ground that conversations within the stairwell of the premises are clearly audible within the adjacent noise-sensitive premises. Setting aside for now any impact on the adjoining residential properties, the character of this use is materially different from the use of a conventional restaurant in terms of the noise levels capable of being generated. Moreover, compared with periodic karaoke events in a restaurant, the use of the appeal property for karaoke is of a distinctly different intensity and character, is pivotal to the use and is far more organised.
37. The hours of operation of the premises is also a significant factor. The premises can remain open until 03:30 hours. Whilst the appellant confirms that the kitchen stays open late to serve food to every group that comes for dining and karaoke, those hours are not typical of a conventional restaurant. It is therefore unlikely that the premises would operate those hours unless the use for karaoke was the main driver behind the business.
38. The Council refers me to an appeal decision dated 1 April 2009 in relation to premises at Denmark Street in Bristol (APP/Z0116/A/08/2088419). In dismissing the appeal, the Inspector accepted the description of development as being for a change of use of basement from restaurant (Use Class A3 at the time) to restaurant (Use Class A3) with Karaoke Club (sui generis). However, the Inspector in that case was merely accepting an altered description of development to which the appellant had already agreed. The appeal was made

under section 78 of the 1990 Act and therefore the Inspector was not making a formal determination of the lawfulness of the use. For that reason, I attach only limited weight to the Inspector's conclusion that the karaoke element of the use was a *sui generis* use.

39. In summary, here we have a scenario where the majority of floorspace is dedicated to the use for karaoke; five of the six main spaces are set up specifically for and dedicated to the use for karaoke; the layout, décor and furniture of the rooms is designed to accommodate larger groups of customers participating in the use for karaoke and is not conducive for conventional dining; the levels and intensity of noise generated is different to that in a conventional restaurant; and the hours of operation are not typical of a conventional restaurant. Consequently, I consider that as a matter of fact and degree the character of the use is of a materially different character to the previous use of the premises and different to a use falling within Use Class E(b) of the UCO. I conclude that, on the balance of probability, a material change of use of the property has occurred.
40. I fully recognise that a planning officer from another local planning authority (The City of London) visited the appeal site in connection with the then intension of the appellant to open a restaurant with karaoke rooms at 3 Appold Street, within the administrative area of that local planning authority. The view of that officer (as set out in an email dated 4 July 2023) bears careful reading.
41. The officer confirmed in that email that he was of the view that the established lawful use of the premises at 3 Appold Street is a use falling within Class E of the UCO (emphasis added). I note that the officer is indicating there that the lawful use of the premises at 3 Appold Street falls within Class E, not the use at 211 Walworth Road. The officer goes on to explain that to be in accordance with the permitted use of the premises, the *primary use* must be within Class E (again emphasis added) and that other activities can only be undertaken on site if they are ancillary to the primary use. The officer then explains that any activity not ancillary to the primary use would be likely constitute a material change of use requiring planning permission. The officer concludes by confirming that he has looked at the operation of the venue at 211 Walworth Road and, although borderline, can agree that the proposed use at 3 Appold Street is likely to remain within Class E (again emphasis added).
42. On my reading of that email, the officer is simply confirming his opinion that the use of the premises at 3 Appold Street is a use falling within Class E. The email is entirely silent as to whether the use at the current appeal premises falls within Class E. As such, the email does not provide any support for the contention that the use of the appeal property falls within Class E. In any event, on the evidence that is now before me, including my own site visit, for the reasons set out above I have reached the conclusion that as a matter of fact and degree the use does not fall within Class E.

The principal extraction flue

43. The appellant contends that planning permission was granted for the principal extraction flue in August 2021 under Council reference 21/AP/1942. The development permitted was the installation of kitchen extraction system and associated ventilation. The permission was granted subject to a condition that the development was carried out in accordance with the approved plans, specifically

listed as Scale 1:100 (PROPOSED ELEVATION) Plans – Proposed, received on 22 June 2021.

44. I have been provided with a copy of what is purported to be the approved plan, albeit the plan is neither titled nor dated. The plan is very simplistic. It shows an extract ductwork edged in red but with no detailed elevation. The proposed extract system is described on a note on the plan as a 500mm circular kitchen ductwork system form (sic) the flat roof to rise to the top of the building.
45. I noted on site that the principal extract flue is generally circular in diameter and does extend from the flat roof of the single-storey projection at the rear of the building. However, the design of principal extraction flue starts from a different position to that shown on the approved plan. It also follows a far more convoluted route than the simple design shown on the approved plan to planning permission 21/AP/1942, including a significant change in direction at its base where it crosses over the secondary extract flue before rising to the top of the building. In addition, there is a large box-like structure at the base of the principal extract flue that is not shown on the approved plan.
46. I conclude that the principal extraction flue that has been installed is not, a matter of fact and degree, that granted by planning permission 21/AP/1942. It is different in several key respects. It therefore does not comply with the condition attached to that permission that development is carried out in accordance with the approved plans. For that reason, the principal extraction flue that has been installed is not granted by planning permission 21/AP/1942.

Conclusion on ground (c)

47. The meaning of development for the purposes of the 1990 Act is defined at Section 55(1) of that Act as meaning:

...the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any building or other land.

48. Section 57 of the 1990 Act states that development requires planning permission. There is no planning permission in place, deemed or otherwise, for the current use of the premises or for the principal extraction flue. I therefore conclude that, on the balance of probability, the matters stated in the notice do constitute a breach of planning control. Accordingly, the appeal on ground (c) fails.

The appeal on ground (a) and the deemed planning application

49. The ground of appeal is that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted. The Council has stated two substantive reasons for issuing the enforcement notice, from which the main issues raised are:
- the effect, if any, of the use on the living conditions of the occupiers of the adjoining and surrounding residential properties, specifically in relation to noise disturbance and odours, and
 - whether the shopfront, roller shutters, illuminated fascia and projecting signage preserve and enhance the character and appearance of the Walworth Road Conservation Area.

Living conditions

50. There are two aspects to this main issue: noise disturbance and odours. It is convenient to consider them separately in the first instance, before later drawing them together in a conclusion against policies in the development plan.

Noise disturbance

51. The issue of potential noise disturbance arising from the karaoke use of the premises is the subject of a bespoke Statement of Common Ground (SoCG) jointly prepared by noise consultants instructed by the appellant and the Council respectively. The SoCG is based on assessment of noise transfer from the premises into the adjoining residential premises at Nos. 209 & 213 Walworth Road jointly undertaken both noise consultants on 14 October 2025. In summary, the methodology formulated involved simulating the use of each karaoke room by groups of singers and assessing the resultant noise transfer from the room in question across the party wall into the adjoining residential dwelling.
52. I note that the appellant remains disappointed and concerned at the way the group of people from the Council participating in karaoke acted and wishes to emphasise that the noise level created by this group of people far exceeded anything he has witnessed from the normal operation of karaoke. I was not present at the assessment of noise transfer undertaken on 14 October 2025, but I have great difficulty in reconciling that evidence with the concerns expressed by the appellant. In my view, the level of noise generated by a group of adults singing karaoke on a night out, particularly having consumed alcohol, is in practice likely to be at least equal to and to probably exceed that of a group of adults in a test scenario. I also note that the SoCG records that the level of noise produced by the group fell over time which in my view is the very antithesis of what might be expected to occur when alcohol is consumed by a group of adults during the course of a night out.
53. It is helpful the record here the conclusion of the joint exercise as set out in the SoCG:
- a noise level within karaoke rooms not exceeding 80 dB(A) with the door closed generally results in acceptable levels of noise transfer into most habitable rooms (bedrooms and living rooms) of adjacent noise-sensitive residential dwellings for the time of day the testing was carried out.
 - it is possible for people singing in groups to reach noise levels of up to 100 dB(A) within a karaoke room, regardless of the volume the sound system is limited at.
 - a karaoke noise level of 100 dB(A) results in unacceptable levels of noise transfer into all adjacent noise-sensitive properties.
 - when the door to a karaoke room is opened, voices become clearly audible and intrusive at levels significantly lower than 100dB(A) within the adjacent habitable spaces within No.209 Walworth Road.
 - conversations within the stairwell of the premises are clearly audible within the adjacent noise-sensitive premises of No.209 Walworth Road.
54. In summary, both noise consultants agreed that the use of the premises for karaoke currently causes an adverse noise impact to the adjoining residents.

55. The noise consultant instructed by the Council takes the view that the premises causes an unacceptable adverse noise impact to the neighbours that cannot be eliminated through conventional control measures such as using an electronic limiter for the sound system primarily due to the fact that noise from unamplified voices alone can exceed what has been identified as an acceptable noise limit. This is irrespective of whether that sound transmission is through an open doorway into the corridor, through the karaoke room wall lining directly across the party wall or from conversations occurring within the common corridor.
56. The noise consultant instructed by the appellant takes a different view, and considers that if noise limits are established via a cut-off limiter to a level of 78 dB(A) (defined as being acceptable through the exercise process), then this would effectively stop both the amplified and unamplified components of the sound within the room, as the guests would no longer have an amplified song to sing along to.
57. I have no doubt that the exercise jointly undertaken by both consultants was helpful and informative. However, in my view there is a notable difference between the results achieved in a controlled exercise such as that undertaken compared to what is likely to occur in practice. In practice, customers are likely to be in high spirits during a night out and there will inevitably be periods when karaoke users – especially those having consumed alcohol – sing at these increased volumes.
58. I also concur with the view of the noise consultant instructed by the Council that, even if the appellant is willing to implement a cut-off limiter set at 78 dB(A), this is likely to be commonly exceeded and will quickly prove to be unviable. This could create tensions between staff and customers, particularly those having consumed alcohol, would be difficult to manage in practice. I am therefore not persuaded that a noise limiter would be effective in controlling the noise levels arising from the use for karaoke involving up to 71 customers (with most consuming alcohol) over 5 separate rooms and finishing as late as 03:30 hours.
59. Moreover, in practice, whilst the doors to the karaoke room are not routinely propped open, there would be no means by which to control the number and duration of times on which the doors were opened by customers and staff as part of the normal use of the room(s). There would also be no control (beyond the confines of the space itself) over the number of customers that might congregate on the stairwell or the number/character of the conversations that might take place there.
60. In this context, I am not persuaded that there is any opportunity within this limited space to mitigate the noise levels generated through sound insulation. I also note that it is development plan policy to mitigate and manage noise by separating noise sensitive development from major noise sources by distance, screening or internal layout in preference to sound insulation. That is not possible in this case.
61. Overarching all the above is the fact that the noise generated by the use for karaoke, whatever the source, currently takes place up to 03:30 hours. I am mindful that the hours of operation could be limited by a suitably worded condition and I have taken that into account, albeit the hours of operation that the appellant considers to be acceptable are still unsociable.

62. I take the appellant's point that the noise generated by other uses falling within the Class E of the UCO must be taken into consideration. I recognise that noise from normal conversation, whether in the rooms or in corridors and stairways outside the rooms could arise from uses falling within Use Class E and is not something exclusive to karaoke. I do not, however, accept the premise that in certain circumstances as part of a Class E restaurant scenario noise from normal conversations, etc. is more likely to be an issue.
63. In that context, I recognise that any restaurant may have function rooms with groups of 12 or sometimes more. However, it is also usual for some customers to be in smaller groups, including a proportion of individuals dining alone and couples dining together. It is also likely that the customers could include families with children, particularly during the early evening. In each case, it is likely that the character of the noise generated would be that of normal spoken conversations and not singing. The consumption of alcohol may be a factor in determining noise levels but not perhaps to the same extent as with singing in a group karaoke scenario. For all these reasons, the level, character and intensity of the noise generated by other uses falling within Class E is likely to be very different to that resulting from the use for karaoke.
64. It follows that here is a situation in which, as agreed by both noise consultants, the use of the premises for karaoke causes an adverse noise impact to the adjoining residents. I also note that the occupier of a residential property in Browning Street, to the north of the appeal property, complains that the noise intrudes on his enjoyment of his terrace and bedroom/study, and prevents him from opening the windows to his home. From his perspective, it therefore negatively impacts on his living conditions and the peaceful enjoyment of his home. The fact that the noise is evidently not only audible from that distance but causes disturbance is testament to the volume, character and intensity of the noise generated by the use of appeal premises for karaoke.
65. That adverse impact cannot be adequately mitigated and/or controlled. I therefore conclude that the use of the premises for karaoke causes unacceptable harm to the living conditions of the occupiers of the adjoining and surrounding residential properties in terms of noise disturbance and that this harmful impact could not be mitigated or controlled.
66. In terms of the noise emissions from the external building services plant and equipment, the acoustic report produced by the appellant concludes that noise emissions would meet the requirements of the Council provided that appropriate mitigation measures were implemented. Those measures are detailed in that report but to date have not been implemented. The report concludes that the external building services are not expected to cause any noise disturbance or harm to neighbouring amenity. These impacts were not considered as part of the SoCG, and the Council has not produced any technical evidence to counter that provided by the appellant.

Odours

67. The same representation from the occupier of a residential property in Browning Street also complains that the smells emanating from the appeal property intrude on our enjoyment of his home and prevent him from opening the windows. No further detail is provided but this is nevertheless evidence that the use of the appeal property generates an adverse impact on the living

conditions within that property. I note that the objection in this respect is made notwithstanding that extraction flues are already in place.

68. I am mindful that there are other restaurants on either side of the appeal property and it is possible that the odours experienced by the occupier of that property originate (in part at least) from those other restaurants. Nevertheless, the representation is quite clear that the smells emanate from the appeal property, and I am therefore satisfied that those smells at least contribute to the harm to the living conditions within that property.

Character and appearance of the Walworth Road Conservation Area

69. There are several aspects to this main issue: the extraction flues at the rear of the property, the detached cold room outbuilding and condenser units the shopfront, the roller shutters, the illuminated fascia and the projecting signage. It is again convenient to consider them separately in the first instance, before drawing them together in a conclusion.
70. In determining these appeals, in accordance with sections 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, I have had paid special attention to the desirability of preserving or enhancing the character or appearance of the conservation area. Additionally, in line with paragraph 212 of the National Planning Policy Framework (Framework), I have given 'great weight' to the assets' conservation. The Framework makes it clear that this is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.

Special interest and significance of the Walworth Road Conservation Area

71. The Walworth Road Conservation Area Conservation Area Appraisal (March 2016) explains that the conservation area as a whole is linear in form and is mainly defined by one principal arterial road. The Conservation Area Appraisal goes on to explain that this part of the conservation area exhibits roadside buildings (housing, retail and civic) from all stages of its historical development from the late 18th century through to the mid-20th century. In contrast, the character of the streets off the Walworth Road are defined by 19th and early 20th century housing. The railway line, constructed in the mid-19th century, runs parallel with the Walworth Road and defines the western side of the conservation area.
72. The appeal site is located within Sub-Area 1 – Walworth Historic Village Centre, as defined in the Conservation Area Appraisal. The character of sub-area 1 is largely defined by the original 18th and 19th century terraces, formed of groups of almost identical 3 storey buildings, with singular shops being built out into their front gardens from the 1840s. The appeal property and the neighbouring properties appear to be examples of this.
73. I noted on my site visit that the character of Sub-Area 1 is in part derived from the hustle and bustle generated by the shops and other premises that collectively form the shopping frontage. I also noted that there was a wide variety of shop front designs but that traditional shop fronts (timber windows, stall risers and recessed doors) are not typical in this part of the conservation area, most having been replaced by more modern designs.
74. I therefore conclude that the significance of the Walworth Road Conservation Area as a whole is largely derived from its linear form, which reflects the

origins and historical development of the area, and which is still evident in the road layout and the form of the buildings that adjoin it. I also find that the significance of the Walworth Road Conservation Area as a whole derives in part from the historic establishment of the retail frontages that front onto Walworth Road together with the activity that these retail outlets generate.

Extraction flues

75. The extraction flues at the rear of the property extend the full height of the building to discharge above eaves height. They are constructed of a bright, unpainted galvanised steel or similar metallic material. At its base, the principal extraction flue follows a convoluted route including a significant change in direction at its base where it crosses over the secondary extract flue before rising to the top of the building. In addition, there is a large box-like structure at its base. For these reasons, the extraction flues on the rear of the appeal property are an incongruous addition(s) to a building of this age and character.
76. As part of my site visit, I confirmed that the extraction flues at the rear of the building are not visible from the public highway or any public space. Nevertheless, I noted on my inspection of the appeal property itself that there is a degree of intervisibility between the rear of the appeal property and the upper floors of the residential flats to the rear. To the extent the extraction flues on the rear elevation of the appeal property are visible in these semi-public views, by reason of size, design and incongruous appearance they fail to preserve or enhance the character or appearance of the conservation area.
77. The planning permission granted for the principal extraction flue in August 2021 (Council Ref: 21/AP/1942) is an indication that an extract flue(s) might be acceptable on the rear elevation of the property as a matter of principle. However, for the reasons set above that principle does not extend to the extraction flues subject to the notice.

Detached cold room outbuilding and condenser units

78. The Council's evidence is largely silent in respect of the visual impact of these elements of operational development.
79. The detached cold room outbuilding is a bulky and utilitarian structure which is nonetheless consistent in visual terms with the use of the building. It is not widely visible from outside the appeal property and for that reason at least preserve the character and appearance of the conservation area.
80. Similarly, the condenser units are utilitarian structures that are consistent in visual terms with the use of the building. Even with the addition of the mitigation measures that are proposed, they would not be widely visible from outside the appeal property and therefore at least preserve the character and appearance of the conservation area.

The shopfront

81. The shopfront to the appeal premises is of overtly modern design and appearance. In overall terms, the proportion, scale, style, colour and materials are inoffensive in the context of the surrounding shopfronts. However, the overall design is far removed from that of a traditional shopfront. Historic features appropriate to the origins of the conservation area and which could be

easily replicated, such as stall risers and/or a recessed entrance, are completely absent.

82. I recognise that the shopfronts to the surrounding retail premises typically do not exhibit such features, albeit I have not been provided with details of the planning history of those shopfronts that might explain why that is the case. There may therefore be a sound planning reason for that of which I am unaware. In any event, the appeal site is within a conservation area the character of which in part derives from the retail outlets that lined the arterial road that forms its core. The design of the existing shopfront is such that it does not make a positive contribution to the host building and fails to preserve or enhance the character or appearance of the conservation area.
83. The appellant questions the expediency of the Council's action in relation to this aspect of the breach of planning control on the basis that compliance with the notice would allow restoration of the last assumed lawful shopfront which, in his view, would look little different from that which is the subject of the notice. I do not agree. Whilst I do not hold up the previous shopfront as an exemplar of good design, it nevertheless had the benefit of more articulation and therefore more visual interest than the existing shopfront. It was also far less gaudy and, unlike the existing shopfront, was not visually obtrusive. I therefore attach no weight to the reversion of the previous shopfront as a fallback position: in fact, if anything, reverting to that shopfront would represent a marked improvement over the existing shopfront.

The roller shutters

84. The roller shutter is of the solid type. As such, in addition to being visually intrusive, it creates an area of 'dead frontage' immediately in front of the appeal premises. The character of the Walworth Road Conservation Area is in part derived from the hustle and bustle generated by the shops and other premises that collectively form the shopping frontage. I recognise that there is a difference between the visual interest of a shop frontage displaying items for sale and the frontage of a restaurant in terms of attracting passing interest and customer activity, not least in terms of the hours of operation. Nevertheless, the creation of this 'dead frontage' for any part of the day fails to preserve or enhance the character or appearance of the conservation area.

The illuminated fascia

85. The illuminated fascia extends across the full width of the property and is noticeably of greater height than the fascias to the properties on either side. The illuminated fascia also features bold and prominent lettering in tall characters, together with a prominent logo. I recognise that there illuminated fascia signs to both adjoining properties and throughout this part of the conservation area. Illuminated fascia signs therefore part of the established character of this part of the conservation area. Nevertheless, by reason of its size, height and design, illuminated fascia on the appeal premises fails to preserve or enhance the character or appearance of the conservation area.

The projecting signage

86. The projecting signage takes the form of a canopy or awning extending out from the base of the fascia and featuring the words 'Galaxy restaurant and karoake' on bold white letters against the dark background of the

canopy/awning. It extends across the full width of the property but is not illuminated.

87. The projecting signage is viewed against the backdrop of the canopy/awning. The design is inoffensive. However, by reason of its size and forward projection, the projecting signage unacceptably adds to the visual impact of the shopfront as a whole. To that extent, the projecting signage fails to preserve or enhance the character or appearance of the conservation area.

Conclusion on the effects of the development on the Walworth Road Conservation Area

88. I have no reason to believe that the use of the appeal property alleged in the enforcement notice itself causes any harm to the character and appearance of the conservation area. Nevertheless, that use manifests itself in the operational development associated with that use: the extraction flues at the rear of the property, the shopfront, the roller shutters, the illuminated fascia and the projecting signage. I have found that this operational development fails to preserve or enhance the character or appearance of the Walworth Road Conservation Area. On that basis, the development fails to meet the requirements of section 72(1) of the Act. In accordance with paragraph 212 of the Framework, I give this harm considerable importance and weight in the planning balance.
89. I consider that the harms to the significance of the Walworth Road Conservation Area are less than substantial in terms of the Framework. Under such circumstances, paragraph 215 of the Framework advises that this harm should be weighed against the public benefits of the proposal including, where appropriate, securing the asset's optimum viable use.
90. I recognise that the use of the appeal property facilitated by the operational development provides local employment opportunities and as such contributes to the local economy, albeit the extent of that contribution has not been quantified. Similarly, I recognise that the use is recreational and contributes to the vitality of the area, including contributing to the night-time economy. These considerations aside, any benefits arising from the use are purely private benefits and not public benefits for the purposes of paragraph 215 of the Framework. Furthermore, there is no evidence before me that the current use of appeal property represents the optimum viable use of the property, such that there is merit in the continuation of that use in the context of securing the significance of the heritage asset.
91. In weighing the harm caused by the development against the public benefits arising the development as required by paragraph 215 of the Framework, I conclude that the public benefits do not outweigh the harm caused by the development.

Conclusion against policies in the development plan

92. I conclude that the development subject to the notice unacceptably harms the living conditions of the occupiers of the adjoining residential properties, both in relation to noise disturbance and to odours. I therefore conclude that the development is contrary to Policies D14, E9 and SI 1 of the London Plan and Policies P56, P65 and P66 of the Southwark Plan 2022. These policies state, amongst other things, that development should not be permitted when it

causes an unacceptable loss of amenity to present or future occupiers or users, including in terms of noise and smells, and must mitigate and manage noise by separating noise sensitive development from major noise sources by distance, screening or internal layout in preference to sound insulation.

93. I further conclude that the development subject to the notice fails to preserve or enhance the character or appearance of the Walworth Road Conservation Area. I therefore conclude that the development is contrary to Policies D4, E9, HC1 and HC6 of the London Plan and Policies P13, P14, P37, P39 and P43 of the Southwark Plan 2022. These policies state, amongst other things, that development proposal affecting heritage assets should conserve their significance; that development is of a high standard of design; that the proportion, scale, style, detailing, colour and materials of shopfronts make a positive contribution to the building and its context; and that signage should be designed so that their size, scale, type and illumination are unobtrusive, taking into account site context and local character.
94. The Council has cited several other development plan policies in the reasons for issuing the notice with which in its view the breach of control is contrary. However, I consider that those identified above constitute the most relevant 'basket' of development plan policies in this case.

Other considerations

95. Section 38(6) of the Planning and Compulsory Purchase Act 2004 indicates that if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be in accordance with the plan unless material considerations indicate otherwise. I have found that the development subject to the notice fails to accord with the development plan. It is therefore necessary for me to consider whether there are any material considerations of sufficient weight to indicate that determination should be made otherwise than in accordance with the development plan.
96. The supporting text to Policy 35 of the Southwark Plan indicates, amongst other things, that Southwark's town centres are the central meeting places for residents to socialise and spend their leisure time. The supporting text recognises the importance of ensuring that town centres are lively and interesting places, providing cultural and entertainment venues that help the town centre to prosper and flourish. The supporting text goes on to confirm that town and local centres should be the main focus for new leisure facilities and entertainment venues, in part to encourage a diverse night-time economy with a range of appropriate activities throughout the evening and nighttime.
97. There is no doubt that the current use of the appeal premises provides a unique offer in the town centre which contributes to the range of entertainment venues in the centre and remains busy well into the night. It therefore contributes to the vitality and viability of the centre, and to the diversity of the night-time economy. These factors all weigh in support of granting planning permission for the use, albeit the extent of that contribution is again not quantified in any way. This reduces the weight that I can attach to this consideration. Moreover, the support provided Policy P35 itself is predicated on there being no harm to the amenity of surrounding occupiers. That is not case with the current use of the appeal property, such that the use cannot be said to comply with Policy P35 when read as a whole.

98. The appellant makes the point that prior to the current use of the appeal property commenced, far from improving or maintaining the vitality and viability of Walworth Road, the appeal property represented one of the worst examples of disuse and dereliction in the road. It is the appellant's view that the current use, on the other hand, following considerable investment in the property by the appellant can only be described as an uplift of the property.
99. There may well be merit in that argument. However, there is no evidence before me to substantiate the point: for example, 'before & after' comparative photographs of the appeal property and other properties in Walworth Road. Furthermore, as a matter of principle the same argument could be applied to any other refurbishment of the property, including for a use that did not incur harmful impacts on the living conditions of the occupiers of surrounding property and did not rely on operational development that fails to preserve or enhance the character or appearance of the Walworth Road Conservation Area. I therefore attach only limited weight to this consideration.
100. Section 57(4) of the 1990 Act provides that where an enforcement notice has been issued in respect of any development of land, planning permission is not required for its use for the purpose for which it could lawfully have been used if that development had not been carried out. The last lawful use of the premises prior to the issue of the enforcement notice was as a retail store, a falling within Use Class E(a) of the UCO. It follows that the premises could have been lawfully used for any of the uses falling Class E of the UCO if the development (use) subject to the enforcement notice had not been carried out. This includes uses falling within Use Class E(b) for the sale of food and drink principally to visiting members of the public where consumption of that food and drink is mostly undertaken on the premises.
101. The corollary is that there is a 'fallback' position available to the appellant. The appellant refers to the possibility of reverting to a restaurant with private karaoke rooms as part of his evidence, such that it is more than merely a theoretical prospect. Moreover, that use would be uncontrolled in terms of noise limits and hours of operation.
102. If the notice was fully complied with and a use initiated in accordance with Use Class E(b), the impact on the living conditions of the occupiers of the adjoining residential properties would potentially be greater than that of the use of (for example) one ground floor room for karaoke subject to conditions. For example, the appellant could on occasion elect to use a room on the first or second floor of the building as a private karaoke room and would be entitled to operate that use well into the night and the early hours of the morning.
103. It would then become a matter of fact and degree as to whether that use remained within the remit of Use Class E(b). Nonetheless, this potential 'fallback' position is a matter to which I attach significant weight.

Conditions

104. I have considered whether suitably worded conditions could overcome the harms that I identified. The Council has provided a list of suggested conditions, and I have used these as the basis for my consideration below. I have assessed these conditions against the six policy tests set out in the Planning Practice Guidance (PPG). The appellant has commented on these suggested conditions as part of his Final Comments.

105. The Council proposes a condition that noise from music played within the indoor area of the premises and from plant including air conditioning and refrigeration condensers shall not exceed 27 dB LAeq (5 minutes) when measured in any habitable room of any residential space in Nos. 209 and 213 Walworth Road. In principle, this condition would overcome the harms identified above and would be necessary. It would also comply with the tests of precision and enforceability set out in the PPG.
106. However, for the reasons previously stated I have concerns that with the use of up to 5 rooms by up to 71 customers (with most consuming alcohol) late into the night the noise levels could in practice be reduced to acceptable levels via a cut-off limiter. In addition, there is the noise generated by customers congregating in the stairwell, which similarly could not in practice be controlled by such a condition. I am therefore not persuaded that, in practice, such a condition could successfully mitigate the harm arising from the breach of planning control alleged in the notice.
107. A suitably worded condition could ensure that no amplified music is played externally or outdoors but, whilst this might assist and would be necessary, the evidence before me is that this is not the principal source of the noise. A condition restricting the hours of operation to between the hours of 09:00 and 23:00 Monday to Saturday and 09:00 and 22:00 on Sundays (to which I would add Bank Holidays) would be necessary and reasonable and would also meet the tests of precision and enforceability set out in the PPG.
108. I note that the appellant disputes the hours proposed in that condition and proposes as an alternative the following hours: Karaoke shall only be permitted on the premises between the hours of 09.00am and 12.30am Monday to Thursday, 09.00am and 01.30am Friday and Saturday and 10.00am and 11.30pm Sunday. I take the appellant's point that it is only the karaoke element of the use that is the source of the noise disturbance but the hours he proposes are unsociable and would still give rise to an unacceptable level of noise disturbance to the occupiers of the adjoining residential properties.
109. A condition restricting the rated sound level from any plant and associated ducting would be necessary, reasonable and enforceable, as would a condition requiring that all components of the extraction system shall be cleaned, serviced, maintained fully in accordance with manufacturer's recommendations. Similarly, a condition requiring the submission and approval of a scheme for the extraction and ventilation of the commercial kitchen would be necessary and reasonable, as would a condition to secure the noise mitigation measures for the condenser units.
110. Overall, I conclude that the harms caused are inherent to the breach of planning control that has occurred and could not be overcome by the imposition of conditions.

Part of the matters

111. Section 177(1) of the 1990 Act provides that planning permission may be granted in relation to the whole or any part of those matters or in relation to the whole or any part of the land to which the notice relates. It follows from the wording of section 177(1) that I must consider whether planning permission could be granted for part of the matters stated in the notice.

112. The appellant considers that in the event of neither the appeal on ground c) nor the appeal on ground a) being successful, the description of the use should be revised to read "restaurant with ancillary private karaoke rooms". That 'restaurant' use forms part of the matters stated in the notice, as does an element of karaoke use. I have therefore considered granting planning permission for a restaurant use but with a single room for use for karaoke.
113. For the avoidance of any doubt, I do not consider that in this case the restaurant use but with a single room for use for karaoke would be one falling with Use Class E(b) of the UCO, given that as a matter of fact and degree the karaoke use would still form an integral part of the overall use rather than being ancillary to the restaurant use. Specifically, the premises currently operates with fully equipped rooms specifically dedicated to the karaoke element. Consequently, even if the use for karaoke was confined to just one of those dedicated rooms, as a matter of fact and degree it would still be a *sui generis* use. For that reason, I have omitted the word 'ancillary' from the description of development for present purposes.
114. The difficulty in this respect is that both noise consultants agreed that the use of the premises for karaoke currently causes an adverse noise impact to the adjoining residents. On my reading of the evidence, this applied individually to each of the five rooms being used for karaoke as well as cumulatively.
115. It is therefore necessary for me to specify which room, if any, could be used for karaoke as part of a planning permission for part of the matters stated in the notice, that being the room least likely the use of which for karaoke would give rise to the least noise disturbance to the occupiers of the adjoining residential properties. The noise generated by customers congregating in the stairwells would logically suggest that the room used for karaoke on the ground floor would be the most appropriate choice, thereby obviating that source of noise. This ground floor room also does not directly adjoin the living areas of either of the neighbouring residential flats.
116. I therefore consider that the use of the ground floor room (identified as 'VIP1' in the 'Statement of Common Ground pertaining to noise only' dated 4 November 2025) would have the *least* impact on the occupiers of the adjoining residential properties. However, that is not say that the impact would necessarily be an acceptable one.
117. The SoCG records that the noise level within 'VIP1' measured during the testing of this room ranged between 85-95 dBA. The SoCG goes on to explain that the noise impact from this room was only assessed within the first floor flat of No. 209 Walworth Road, because by that stage in the test it had been established that this flat experienced the highest noise impact of all. Within this flat, the SoCG noted vocals to be just audible within the bedroom. The SoCG concluded that, at times when background noise levels are lower, this level of noise could become disturbing.
118. The Council does not support its continuation of the karaoke use at ground floor because in its view the logical conclusion of the notice is that the upper floors should be converted to residential use and that a karaoke room on the ground floor would then share a ceiling with the ground floor of a future residential use. However, the lawful use of the appeal property is retail across all floors of the building, such that the conversion of the upper floors to a

residential use is likely to constitute a material change of use requiring planning permission. The use of the upper floors of the building would therefore be part of the overall use of the unit of occupation. The use of the ground floor room for karaoke would have an acceptable impact on the upper floors of the premises.

119. Nevertheless, for the same reasons as stated above, I have no confidence that the impact on the living conditions of the occupier of No.209 Walworth Road resulting from the use of just room VIP1 for karaoke could be safeguarded through the imposition of conditions. In particular, for the reasons previously stated I have no confidence that a noise limiter would be effective in this scenario. Furthermore, the appellant rejects the opening hours suggested by the Council but the alternative opening hours that he proposes are unsociable and would give rise to an unacceptable level of noise disturbance to the occupier of No.209 Walworth Road at times when ambient noise levels are at their lowest. This would typically be during the night, when the occupier of that property would be entitled a noise environment consistent with the opportunity to enjoy peaceful and undisturbed sleep.
120. For these reasons, I am not prepared to grant planning permission for that part of the matters comprising the use of a single room (room VIP1) for karaoke.
121. I am also mindful that the use of the appeal property just as a restaurant (absent any element of a karaoke use) would also constitute part of the matters and have considered whether I should grant planning permission for that. However, the appellant could revert to a restaurant use falling within Use Class E(b) without the need for express planning permission. This would be an unfettered use not subject to conditions. Consequently, there is no merit in granting unconditional planning permission for a restaurant use and a conditional planning permission would be more onerous to the appellant, and as such is unlikely to be implemented.
122. I have found that the detached cold room outbuilding and condenser units to front and rear at least preserve the character and appearance of the Walworth Road Conservation Area. I am satisfied that any adverse impacts in terms of noise disturbance could be adequately mitigated through the imposition of suitable worded conditions in association with the use of the appeal property as a restaurant with a single private karaoke room.
123. However, even though the detached cold room outbuilding to the rear of the building and condenser units to front and rear would be required in association with a restaurant use falling within Use Class E(b) with or without an ancillary element of karaoke use, there can be no guarantee that the appellant would choose to implement that use. Other options would be available to him. Moreover, even if the appellant did revert to a use falling within Use Class E(b), it would first be necessary for the appellant to fully comply with the notice before he could revert to that use. It would therefore first be necessary to remove the detached cold room outbuilding to the rear of the building and condenser units to front and rear. Consequently, there is no reason to grant planning permission for detached cold room outbuilding to the rear of the building and condenser units to front and rear as part of the matters stated in the notice.

The appeal on ground (a) and the deemed planning application: conclusion

124. I have found that the breach of planning control that has occurred conflicts with the development plan when read as a whole. I have not been advised of any material considerations of sufficient weight taken individually or cumulatively to indicate that determination should be made otherwise than in accordance with the development plan. Neither could the imposition of conditions overcome the harm that I identified above in relation to the breach of planning control as stated in the notice.
125. I therefore conclude that planning permission ought not to be granted for the matters stated in the notice, in whole or in part. Accordingly, the appeal on ground (a) fails.

The appeal on ground (f)

126. The appeal on ground (f) is that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach requirements of the notice exceed what is necessary. When an appeal is made on ground (f), it is essential to understand the purpose of the notice. Section 173(4) of the Town and Country Planning Act 1990 sets out the purposes which an enforcement notice may seek to achieve, either wholly or in part.
127. These purposes are, in summary, (a) the remedying of the breach of planning control by discontinuing any use of the land or by restoring the land to its condition before the breach took place or (b) remedying any injury to amenity which has been caused by the breach. In this case, the requirements of notice (as I propose to vary them) include to cease the *sui generis* mixed use of restaurant and entertainment venue with private karaoke rooms: to remove all audiovisual systems used for the purpose of the entertainment venue: to remove the two unauthorised extract flues from the rear elevation: to remove the refrigeration room: to remove the condenser units: to remove the ventilation ductwork to the front elevation: and to remove the unauthorised shop-front. The purpose of the notice must therefore be to remedy the breach of planning control that has occurred.
128. As indicated above, the appellant considers that in the event of neither the appeal on ground c) nor the appeal on ground a) being successful, the description of the use should be revised to read "restaurant with ancillary private karaoke rooms", to which the appeal premises could revert to that use through the provisions of section 57(4) of the 1990 Act. I have approached the appeal on ground (f) with that firmly in mind.
129. The requirement at paragraph 5.1 of the notice is to cease the *sui generis* mixed use of restaurant and entertainment venue with private karaoke rooms. Nothing more and nothing less. Compliance with that requirement would be necessary to achieve the purpose of the notice. The requirement is not excessive in that respect.
130. There is a similar consideration with the requirement to remove all audiovisual systems, seating and tables used for the purpose of entertainment venue including karaoke. The retention of the seating and tables would be

necessary for a restaurant use falling within Use Class E(b), a use to which the appeal premises could lawfully revert. However, because it would be necessary for the appellant to fully comply with the notice before he could revert to a restaurant use falling within Use Class E(b), it would be first necessary to remove the seating and tables. For that reason, I shall not vary the notice in this respect.

131. Given that an element of karaoke could be ancillary to a lawful restaurant use and integral to the permission for part of the matters stated in the notice that I am minded to grant, I have carefully considered whether it would be excessive to require the audiovisual systems to be removed or whether some could be retained. The difficulty is that the karaoke use is spread across five dedicated rooms on three different floors of the building. It is the presence of audiovisual systems in rooms dedicated to the use karaoke is one of the factors that lead me to the conclusion that the use for karaoke is not ancillary to the restaurant use. Consequently, it is necessary to remove the audiovisual systems from all the rooms in the premises used for karaoke to achieve the purposes of the notice.
132. I have found that the two unauthorised extract flues from the rear elevation fail to preserve or enhance the character or appearance of the Walworth Road Conservation Area. Even though they might be required for the use of the premises as a restaurant (with or without an ancillary element of karaoke), I am not prepared to grant planning permission for them under the appeal on ground (a). Their removal is necessary to achieve the purpose of the notice. The requirement is therefore not excessive.
133. Even though the detached cold room outbuilding to the rear of the building and condenser units to front and rear would be required in association with a restaurant use falling within Use Class E(b) with or without an ancillary element of karaoke use. As with the seating and tables, it would first be necessary for the appellant to fully comply with the notice before he could revert to a restaurant use falling within Use Class E(b). Consequently, the removal of the detached cold room outbuilding to the rear of the building and condenser units to front and rear is necessary to achieve the purpose of the notice.
134. Subject to the variations set out above, I conclude that the requirements of the notice are not excessive and are necessary to achieve the purpose of the notice. Accordingly, the appeal on ground (f) fails.

The appeal on ground (g)

135. The ground of appeal is that the period for compliance specified in the notice falls short of what should reasonably be allowed. The periods for compliance specified in the notice is one month after the notice takes effect for step 5.1 to 5.2 and twelve months after the notice takes effect for steps 5.3 to 5.8.
136. My task in relation to this ground of appeal is to balance the public interest in securing expeditious compliance with enforcement notice against the private interest bound up in the development subject to the notice. In so doing, the starting point is that the use of the land subject to the enforcement notice does cause the harm alleged in the reasons for issuing the notice.
137. The cessation of the use alleged in the notice within one month of the notice taking effect is essential in the interest of safeguarding the living conditions of

the occupiers of the adjoining residential properties. I am not persuaded on the evidence before me that the almost immediate closure of the business will be damaging to the viability and vitality of the Elephant and Castle town centre or this part of Walworth Road. In that respect, the appellant's assertion that the cessation of the use will accomplish nothing other than another vacant unit is contrary to the suggestion made elsewhere in his evidence that the property could continue as restaurant to which the karaoke use would be ancillary. I recognise that the cessation of the use could result in some staff redundancies but again this needs to be viewed in the context of the potential use of appeal property as a restaurant.

138. The period of compliance of twelve months after the notice takes effect for steps 5.3 to 5.8 is sufficient for the lawfulness of a potential restaurant use of the property to be determined (if necessary) and for the details of the replacement shop front, extraction flues, condenser unit noise mitigation, etc to be submitted and approved. I therefore see no reason to extend the period of compliance in this respect.

139. In weighing the balance between public and private interests, for the reasons set out above I consider that the public interest in expeditious compliance with the remaining requirements of the enforcement notice outweighs private interest in extending that period of compliance. I am, therefore, not persuaded that there is need to extend the period for compliance with the notice and am satisfied the period of compliance of two months stated in the notice is a proportionate response to the breach of planning control that has occurred.

Conclusion

140. For the reasons given above I conclude that the appeal should not succeed. I will uphold the notice with 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.

Formal Decision

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

- in paragraph 3(ii) of the notice, inserting the words 'at the rear of the building', after the words 'a detached cold room outbuilding'
- in paragraph 5.4 of the notice, deleting the words 'Remove the refrigeration room from the rear garden' and substitute there the words 'Remove the detached cold room outbuilding located at the rear of the building'
- in paragraph 5.5 of the notice, deleting the words 'Remove the condenser units from the rear garden' and substitute there the words 'Remove the condenser units located at the rear of the building'

142. It is directed that the enforcement notice is varied by:

- in paragraph 5.3 of the notice, deleting the words 'and the external cooking facilities'
- deleting paragraph 5.8 of the notice in its entirety, and substituting there the words 'Either: remove unauthorised shopfront, roller shutter

and illuminated fascia and projecting signage **or** revert to the shopfront that existed immediately prior to breach of planning control taking place’.

143. Subject to the corrections and variations, the appeal is dismissed and the enforcement notice is upheld as corrected and varied and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Paul Freer
INSPECTOR