



Appeal Decision

Site visit made on 21 December 2022

by **L Perkins BSc (Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 4 January 2023

Appeal Ref: APP/B5480/C/21/3287855

Land known as Edge Gym, Units H & I, 23 Danes Road, Romford RM7 0HL

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
 - The appeal is made by Mr Lewis March of Edge Gym Limited against an enforcement notice issued by the Council of the London Borough of Havering.
 - The notice, numbered ENF/285/17, was issued on 27 October 2021.
 - The breach of planning control as alleged in the notice is: Without planning permission, the material change of use from class (B1) Offices to use as a Private Fitness Gym.
 - The requirements of the notice are:
 1. Cease the use of the land including units H & I as a gym;AND
 2. Remove all facilities associated with the gym from the premises.
 - The periods for compliance with the requirements are three months for requirement 1 and three months and two weeks for requirement 2.
 - The appeal is proceeding on the grounds set out in section 174(2)(c) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is allowed and the enforcement notice is quashed.

Reasons

2. An appeal on ground (c) is that the matters stated in the notice do not constitute a breach of planning control. In a ground (c) appeal the onus is on the appellant to make out their case to the standard of the balance of probabilities.
3. Section 174(2)(c) is worded in the present tense, ie ‘...do not constitute a breach...’ This means that an appellant may rely on matters occurring since the date of issue of an enforcement notice, to show that, at the time of the decision on an appeal, what is alleged does not amount to a breach of planning control.
4. The appellant has drawn my attention to Class E of The Town and Country Planning (Use Classes) Order 1987 (the Use Classes Order), as amended. Class E was brought about by The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 (the 2020 Regulations). These amend the Use Classes Order.
5. The Use Classes Order specifies classes for the purposes of section 55(2)(f) of the 1990 Act. Section 55(2)(f) provides that a change of use of a building or other land does not involve development for the purposes of the Act if the new use and the former use are both within the same specified class.

6. The 2020 Regulations incorporate both former Class B1 offices and former Class D2 gymnasiums into the new Class E (Commercial, business and service), specifically, its subclasses (g) and (d) respectively.
7. As such, since the 2020 Regulations came into force on 1 September 2020, a change of use from one of the above uses to the other is no longer a material change of use. Whilst the matters stated in the notice may well have constituted a breach of planning control at the time the notice was issued, on the evidence before me that is no longer the case.
8. I appreciate that the change of use alleged has previously been dismissed in a section 78 appeal, Ref APP/B5480/W/19/3239600, dated 18 March 2020. But that decision pre-dated the 2020 Regulations and the question in that appeal was whether planning permission should be granted. That is an entirely separate question to that before me in this section 174 appeal of whether the matters stated in the notice constitute a breach of planning control.
9. The Council has said that 'the development' cannot benefit from a permitted use change under the 2020 Regulations. But it has not explained why. It has also said that 'the development' does not benefit from the 'permitted development' use changes under Class E of the Use Classes Order.
10. But this case has nothing to do with permitted development rights. It is a question of whether the change of use is 'material' now, for the purposes of section 55 of the 1990 Act. The 2020 Regulations mean that now the change of use is not material. Nothing has been provided by the Council to lead me to a different conclusion in this regard, or to indicate why the appellant in this case cannot benefit from the effect of the 2020 Regulations.

Conclusion

11. For the reasons given above, I conclude that the appeal should succeed on ground (c). The enforcement notice will be quashed.

L Perkins

INSPECTOR