
Appeal Decision

Accompanied site visit made on 18 October 2016

by Felix Bourne BA(Hons) LARTPI Solicitor

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

Decision date: 4 November 2016

Appeal ref: APP/L3625/C/15/3148330

9, Linkfield Corner, Redhill, RH1 1BD

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against an enforcement notice issued by Reigate and Banstead Borough Council.
- The appeal is made by Mrs Snehlata Jayantilal Vora.
- The notice was issued on 16 March 2016.
- The breach of planning control as alleged in the notice is, without planning permission, the change of use of the land, namely the 'store' edged red on the plan attached to the Notice, from a shop store used ancillary to the A1 retail unit to a separate residential living accommodation.
- The requirements of the notice are to cease using the shop store area for residential living accommodation and return it to a shop store used ancillary to the A1 retail unit.
- The period for compliance with the requirements is six months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of decision: The appeal is dismissed and the Notice upheld.

Preliminary matters

1. Whilst the stated grounds of appeal were grounds (a), (b) and (g), the argument promoted in respect of the appeal on ground (b) would have been more appropriately brought under ground (c) and, having raised the point at the site inspection, no objection was made to the possibility of adding ground (c) to the grounds of appeal. This I shall do, but as the Council's comments in relation to the appeal on ground (b) are relevant to the appellant's case with regard to ground (c), I shall consider the two grounds of appeal together.
2. Both grounds (b) and (c) are amongst what are termed the 'legal' grounds of appeal against an enforcement notice. With such grounds of appeal the burden of proof lies with the appellant to make out his or her case, the relevant test of the evidence being the balance of probability.

The appeal on ground (b) and that on ground (c)

3. Ground (b) is the appropriate ground of appeal where an appellant seeks to argue that the breach of planning control alleged by the Notice has not occurred as a matter of fact, whereas ground (c) is relevant where an appellant contends that the matters stated in the enforcement notice do not constitute a breach of planning control.

4. In their comments on ground (b) the Council indicate that it is clear from the planning history of the site, in particular from plans submitted with planning application 98/07380/F, that the area had been used as a store ancillary to the A1 use of the shop unit but that a Planning Contravention Notice (completed in December 2015) showed that it was now separate residential accommodation.
5. It is in fact the storage use on which reliance is placed by the appellant's agent so as to seek to demonstrate that there has not been a breach of planning control. Thus, it is argued that the Notice relates to a change of use from Class B8 storage to Class 3 residential and that, under the provisions of the Town and Country Planning (General Permitted Development)(England)(Amendment) Order 2016, Schedule 2, Part 3, Class P, planning permission is not required for the change of use to which the Notice relates. It is further argued that, were the Notice upheld and the residential unit converted back into a storage area, prior approval could be sought and granted for the change of use from B8 storage to C3 residential accommodation. It is therefore contended that it would not be expedient or in the interest of the public good to force the appellant to go through this process.
6. It can be seen that this argument does not fit within ground (b). However, nor does it fit within ground (c). For one thing the use commenced prior to the 2016 Order coming into force. In addition, it is important to note that the Notice does not relate to a change of use from Class B8 to Class A3 but makes it clear that the storage use was ancillary to the A1 retail unit. Thus, the Notice relates to a change of use from Class A1.
7. In the light of the above both the appeal on ground (b) and that on ground (c) must fail, I thus turn to the appeal on ground (a) and the deemed application.

The appeal on ground (a) and the deemed application

8. The main issue in determining whether planning permission should be granted for the development is whether it offers satisfactory accommodation to potential occupiers.
9. No.9 is located on the southern side of Linkfield Corner and within an area designated as a Local Shopping Centre. The site is a long and narrow, almost triangular-shaped, plot. The building forms the end of a short three storey terrace. There is a chemist's shop on the ground floor and, whilst I did not inspect the whole property, the appellant's agent indicates that the upper floors are used for ancillary retail storage and a staff kitchen. However, in a part of the site that I did inspect, a small residential unit has been created, internal access from the pharmacy having been closed off.
10. Policy Ho9 (design and layout) of the Reigate and Banstead Local Plan 2005 states that, in order to maintain and enhance the natural and built environment of the Borough, all residential development will be required to satisfy a number of criteria, including that the environment created for the residents of the proposed development must be satisfactory, in terms of outlook, privacy and adequacy of garden space. Section 7 (Requiring Good Design) of the National Planning Policy Framework (NPPF) states that the Government attaches great importance to the design of the built environment. Paragraph 56 indicates that good design is a key aspect of sustainable development, is indivisible from good planning, and should contribute positively to making places better for

people. Likewise, paragraph 57 states that it is important to plan positively for the achievement of high quality and inclusive design for all development.

11. The residential unit created at the appeal property is accessed by a pedestrian way to the side of the shop, from which a metal staircase provides access to the unit itself. This is of around 57 square metres, which more or less accords with the minimum gross internal floor area for a 1 bedroom unit referred to in the Technical Housing Standards. However, even leaving aside the relatively unattractive approach to the unit, and the fact that it is set over two floors, there are other disadvantages which render the unit unsuitable as living accommodation and mean that it could not offer satisfactory accommodation to any prospective occupier or occupiers. First, the unit has a very poor outlook, with only a high level window on the upper floor and a window looking direct over a small unkempt yard area (not within the control of the unit occupier) on the lower floor. In addition, there is no private amenity space. These are significant drawbacks, exacerbated in this case by the limited size and the situation of the unit, and bring the development into conflict with Policy Ho9 of the Local Plan as well as with the NPPF.
12. I accept that the appeal site is well served by public transport and that there is some parking provision nearby, including in car parks. The latter might not satisfactorily meet the needs of full-time residents but might be adequate for visitors and, on balance, were the absence of on-site car parking the only drawback, I am not certain that planning permission would need to be refused. Likewise, I accept that the use of the unit would be unlikely to have a serious adverse impact on the amenities of neighbouring properties. However, neither these nor other factors cited by the appellant overcome the serious objection arising in terms of the living conditions offered by the unit. Planning permission must be refused, including in relation to the deemed application.

The appeal on ground (g)

13. The Notice provides a six month period for compliance but, at the time that the Appeal Statement was submitted, in June 2016, it seems that the unit was occupied by "a vulnerable member of the community with special needs who would find it difficult to find accommodation in the area", and a 12 month period for compliance was therefore requested. However, when I made my site inspection in October, this was a matter that had clearly been resolved, as the unit was vacant. In the circumstances the period for compliance stated by the Notice appears adequate and the appeal on ground (g) will also be dismissed.

Formal decision

14. The appeal on grounds (b) and (c) are dismissed. The appeal on ground (a) is also dismissed and planning permission refused, including in relation to the application deemed to have been made under section 177(5) of the Act as amended. Finally, the appeal on ground (g) is likewise dismissed and the enforcement notice is upheld.

Felix Bourne

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INSPECTOR