
Appeal Decision

Site visit made on 1 November 2016

by Mr N P Freeman BA(Hons) DipTP MRTPI DMS

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

Decision date: 15 November 2016

Appeal Ref: APP/Y5420/C/16/3146620

Land at the rear of 108 Alexandra Road, London, N8 0LJ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 by Mr G Levy against an enforcement notice issued by the Council of the London Borough of Haringey.
- The enforcement notice (LPA Ref: UNW/2015/00938) was issued on 15 February 2016.
- The breach of planning control as alleged in the notice is "Without planning permission the siting of a caravan; the erection of a timber outbuilding and the installation of a hot tub with associated raised platform and canopy".
- The requirements of the notice are:
 1. Remove the unauthorised caravan from the site;
 2. Remove the unauthorised outbuilding;
 3. Remove the unauthorised hot tub with associated platform and canopy;
 4. Remove any debris resulting from carrying out steps 1, 2 and 3.
- The period for compliance with the requirements is 2 months after the notice takes effect.
- 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 of Decision: The appeal is allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out below in the Formal Decision.

Application for costs

1. An application for costs was made by the appellant against the Council. This application is the subject of a separate Decision.

The notice

2. The allegation specified in the notice appears on its face to concern a use that is the siting of a caravan on the land and operational development in the form of the timber outbuilding and hot tub/platform installation, a single storey timber structure. The use of the caravan has not been specified by the Council, which is the recommended practice when taking action against caravans because they can be used for a multiplicity of purposes. I am aware from the detailed representations submitted by the appellant that the desired intention is to use the caravan and indeed the timber structures also referred to in the notice for the purpose of a boutique hotel accommodation under the trade name of "Silver Bullet Spa". However there is no evidence to show that this use has actually commenced and from my site inspection it appears that the caravan, an "Airstream" purpose-built caravan, is not in use for this purpose at present but simply stored on the site. I also noted that although the hot tub exists it was drained and did not appear to be in use.

3. Notwithstanding this position, the Council in their statement have sought to assert that the caravan is in fact a structure or building operation. However this is not what the notice alleges and the inclusion of the word "siting" undermines this claim. For the sake of completeness it is plainly apparent from the nature and design of the "Airstream" caravan on the land that it falls within the definition of a caravan in terms of its dimensions and characteristics. It has not been adapted or modified to constitute a building or structure. In terms of the recognised legal tests it is no larger than a typical caravan and considerably smaller than certain twin-unit mobile homes which subject to size could still be classed as a "caravan" as so defined. In terms of permanence and physical attachment to the ground it may have been on the land for some time but the wheels and chassis are still present and so it appears to retain its mobility and has not been placed on foundations. For all these reasons, not least the way the allegation is expressed in terms, I consider that it amounts to a use of land and not operational development.

Ground (c)

4. The basis for this ground of appeal is that the alleged development does not constitute a breach of planning control. This can be for a number of reasons including because what has taken place is not development or permitted development or because the use to which the land is being put is lawful by virtue of a previous planning permission, lawful development certificate or because the use does not materially differ from a lawful use.
5. From the correspondence and representations before me it is clear that the triangular piece of land which forms the appeal site was severed from the gardens of properties in Alexandra Road many years ago and has been used for a variety of commercial purposes since then. As a consequence it is not residential land and enjoys no rights which may be founded on such a use.
6. My understanding from what I have read is that prior to the purchase by the appellant the land was used as a yard, accessed from Hazel Mews the service alley to the north-east. Planning permission was granted on 5 February 1992 for the erection of a single storey building for storage and workshop purposes. No condition was imposed fettering this use. I have not been provided with a plan but the appellant asserts that this building was erected and covered the entire site before being demolished at some later date and prior to the aerial photograph dated 26 May 2012 supplied by the Council which shows a cleared site. The supporting planning application form dated 13 November 1991 describes the development as the "Construction of a single storey flat-roofed and brickwalled store for barrows and boxes from the applicant's market store and occasional workshop". From this description I consider that the land was likely to have been used primarily for storage with ancillary use for a workshop.
7. I have not been provided with any documentation which indicates that planning permission for an alternative use was granted thereafter or that there has been any intervening use other than storage use which could have become lawful due to the passage of time. The site may have become dis-used or derelict as claimed by the Council but that of itself would not amount to a material change of use of the land. Consequently from what is before me I find that the present lawful use of the land is likely to be for storage purposes. Paragraphs 7.5 and 7.8 of the Council's statement affirm this with the comments "having historically changed into use for storage" and "the authorised use for storage

- purposes (Use Class B8¹)". The question therefore to address is whether the alleged development falls within this Use Class; that is the use for storage purposes.
8. The caravan does not appear to be used for residential purposes at present but if it were this would constitute a domestic use which would not come within the terms of the lawful use of the land. The Council have produced no evidence to show that it has been or was on the date the notice was issued. The appellant asserts that at this time it is simply stored on the land pending the desire to use it as an element within the boutique hotel. Whilst this proposed use was the subject of a planning application, which I believe was refused in April 2016, this was for a different use and not one which is specified in the alleged breach of planning control.
 9. The Council argue that the caravan is not reasonably required for the purposes of storage or distribution but this is not the correct question to consider. The point is whether simply storing the caravan as such on the land or its siting on the land to use the Council's wording amounts to development having regard to the history of use of the land and its accepted lawfulness. I consider it does not as this would amount to the storage of a vehicle as was evidently what the yard was historically used for, including market stalls and "barrows". For this reason I find that the storage of the caravan on the land would not constitute a breach of planning control.
 10. My attention has also been drawn to an e-mail from the Council dated 16 December 2013 sent to Mr Levy in response to his e-mail of the same date enquiring about a licence to park a caravan on the land. The response was that no planning permission was required. Mr Levy argues that this is good authority for the claim that storing the caravan on the land is lawful. I appreciate that this was an informal officer's opinion and not a binding lawful development certificate and that it may have been given on the assumption that the land was part of a residential curtilage. However I cannot be sure this was the case. It adds weight to the finding that simply storing the caravan on the land, as was the case at the time the notice was issued and still appears to be so, is lawful and does not amount to a breach of planning control.
 11. Turning to the timber buildings at either end of the site there are no permitted development rights which would enable the erection of these structures without planning permission and none are relied on by the appellant. For this reason the operational development that has taken place amounts to a breach of planning control.
 12. Given these findings there is partial success on ground (c). There is no success on this ground in respect of the structures. Accordingly it is necessary to go on to consider these elements of operational development under ground (a). I should add for the purposes of clarification that this finding does not mean that the caravan can be retained for use in connection with hotel use. This is in a different Use Class and my decision relates only to the alleged breach and the nature of the use that I understand was taking place at the time the notice was issued. The appellant has pursued this alternative use by virtue of the later planning application but this was refused and consequently there is at present no permission for such a use. It is not clear whether that decision was appealed but that is a separate matter outside of my jurisdiction.

¹ The Town and Country Planning (Use Classes) Order 1987 (as amended)

Ground (a)

13. The legal position with a ground (a) appeal is that the deemed application under consideration is that which is described in the allegation. In this case, given the partial success on ground (c) it is only necessary to consider the operational development as so described. Consequently, the merits or otherwise of continuing to store the caravan on the land or indeed any alternative use of the caravan, including use in connection with a hotel, are not before me. Furthermore, I am not in a position to grant permission for the latter use as it does not form part of the allegation.
14. As regards the timber structures they are modest in size and height and effectively screened from public view by a tall, solid fence constructed along the boundary with Hazel Mews and the properties fronting Alexandra Road. The Council agree with this finding in paragraph 7.2 of their statement. Their objection centres on the visual impact on views from the rear of the adjacent houses in Alexandra Road, especially from upper floor windows and the inherent design of the buildings which it is claimed are not of a satisfactory architectural quality contrary to Policies 7.4 and 7.6 of the London Plan 2015 and Saved Policy UD3 of the Haringey Unitary Development Plan (UDP) 2006.
15. I observed that there are fences of about 2m high on the boundaries with the neighbouring residential gardens to the south and west. These provide screening at ground level and from the photographs supplied by the appellant I doubt if it is possible to see anything but the top of the structures from the neighbouring properties at this level. I noted that some bamboo has been planted along parts of these boundaries and this adds to the screening effect.
16. In terms of views from upper floor windows it is important to consider the context. The land is located in a highly urbanised environment adjacent to Wood Green Town Centre in close proximity to a major purpose-built shopping mall. It is therefore to be expected that the intensity of development will be high and that it will be possible to see buildings from rear first floor windows. The buildings in question have the character and appearance of the type of timber outbuildings that are commonly found in back gardens. Consequently they are not out of keeping with the surroundings or visually intrusive when seen from the first floor windows of neighbouring houses. As far as design is concerned the timber construction and roof materials result in buildings of an acceptable appearance in the context that I have identified. I am also satisfied that they have not led to the overdevelopment of the land.
17. For these reasons I find that the structures meet the terms of the policies set out in paragraph 14 above and that planning permission for their retention should be granted. I am aware that the planning application for the hotel use was refused on noise grounds as well as visual impact but this was not a reason given for issuing the notice and I am not considering such a use.

Conclusions

18. The appeal succeeds on ground (c) in respect of the caravan. The appeal also succeeds on ground (a) in respect of the timber structures as specified in the notice and I will grant planning permission for the same and quash the notice. The Council have not requested the imposition of any conditions in the event of planning permission being granted and I consider that none are necessary. As a consequence grounds (f) and (g) do not fall to be considered.

Formal Decision

19. The appeal is allowed and the enforcement notice is quashed. Planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the erection of a timber outbuilding and the installation of a hot tub with associated raised platform and canopy on land at the rear of Alexandra Mews, London, N8 0LJ as referred to in the notice.

NP Freeman

INSPECTOR