
Appeal Decision

Site visit made on 28 November 2016

by Katie Peerless Dip Arch RIBA

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

Decision date: 13 December 2016

Appeal Ref: APP/L5240/C/16/3145967

The Ship Public House, 55 High Street, South Norwood, London SE25 6EF

- 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 ZB Investment Limited against an enforcement notice issued by the Council of the London Borough of Croydon.
 - The enforcement notice, numbered 14/00782/C was issued on 9 February 2016.
 - The breach of planning control as alleged in the notice is the conversion of the basement, ground, first and second floors of the building formerly known as The Ship public house (the premises) into 8 self-contained flats, the erection of a mansard roof extension over the single storey rear element and alterations to the window fenestration and change of windows to white UPVc units to the side and to the rear of the premises.
 - The requirements of the notice are (1) Cease the use of the ground floor and basement of the premises as flats. (2) Return the basement and ground floor of the premises to a space fit to be used for the purposes within use class A4 by removing the kitchen and bathrooms and all associated appliances and fixtures and fittings from the basement and ground floor associated with the unauthorised use. (3) Remove the raised ground floor created and reinstate the original split ground floor level throughout the premises to facilitate the use of the space under use class A4. (4) Remove the mansard roof extension above the single storey rear element and return to that which was in place prior to the breach taking place. (5) Remove the white UPVc windows from the side and rear of the premises. (6) Remove the brickwork placed within the window fenestration on the first floor side and rear elevation of the premises to re-establish the previous opens. (7) Remove all resultant debris from the site following compliance with steps (1) to (6) inclusive listed above.
 - The period for compliance with the requirements is 5 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. I direct that the enforcement notice be corrected by the deletion of the words "*8 flats*" and the substitution of the words "*7 flats and 1 office*" in the allegations and the substitution of the word "*openings*" for "*opens*" in requirement (6) and the appeal is allowed insofar as it relates to the change of use and the rear mansard extension and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for the conversion of the basement, ground, first and second floors of the building 7 self-contained flats and 1 office and the erection of a mansard roof extension over the single storey rear element at the former Ship Public House, 55 High Street, South Norwood, London SE25 6EF subject to the conditions attached as annex A to this Decision.
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2. The appeal is dismissed and the enforcement notice is upheld as corrected in respect of the alterations to the window fenestration and the change of windows to white UPVc units to the side and to the rear of the premises and planning permission is refused in respect of this part of the development, on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Enforcement notice

3. There appears to be a typographical error in requirement 6 where the word 'opens' is used rather than 'openings'. I consider I can correct this without injustice to either party, so will do so.

Appeal site

4. The appeal site was in a public house use until converted by the works that are the subject of the enforcement notice but, I am told, it has not been open to the public since mid-2014. It is situated on the High Street among other commercial and residential properties within the South Norwood Conservation Area. It is locally listed as a building of architectural and historic interest but is not included on the statutory list of such buildings.
5. The Council's statement, submitted on 20 April 2016, confirms that a nomination to register the pub as an Asset of Community Value (ACV) was approved in January 2016. This is a material consideration in the determination of any planning application where a change of use is proposed.
6. The building appears to date back to the early 1800s but has been much altered, particularly at the rear. It was constructed at the time of the Croydon Canal, to which it was closely linked. Its interest relates to this era of the area's history and for its role as a public house serving the canal workers, a use that continued even after the loss of the canal, until its closure in 2014. The earliest site plan, dating from 1890 shows 2 cottages and a blacksmith's shop on either side of the rear yard. These have been demolished and the cottages replaced with the later extension to the rear of the pub, over which the mansard roof has now been erected. This has replaced a dual pitched asbestos sheet roof over the single storey extension.
7. The front part of the building has 3 storeys and a basement and the elevation fronting the High Street is in a poor state of repair externally. The rear section has 2 storeys and a basement and the rear extension was previously single storey but now has first floor accommodation within the mansard roof. Internally the whole building has been converted into the 'office' space and 7 flats, 6 of which were occupied at the time of the site visit, with the remaining flat having personal belongings within it that suggested tenants were in the process of either moving in or out.
8. All the flats had 1 or 2 bedrooms, a kitchen/living area and shower room. Access to the flats is via 2 doors in the front elevation of the building or through a door in the rear extension. The flat on the first floor within the mansard roof has 4 dormer windows in each roof slope. In order to obtain sufficient headroom in the front basement room, part of the original ground floor has been raised.

Planning history

9. The appellant has made a number of planning applications for development at the appeal site. The first¹ was for 9 flats and an office in the building as already extended by the mansard roof construction.
10. The second² was for 7 flats and an office and the mansard extension and appears to be for the same layout as I saw at the site visit. The third³ was for the use of the lower ground and ground floors of the building as a public house, the mansard roof and the use of the rear extension and the upper floors rear as 5 flats. All of these were refused by the local planning authority.

Reasons

Ground (b)

11. The appellants submit that the enforcement notice is incorrect as the 2 rooms at the front of the building at ground floor and basement level are not, and were not at the time of issue of the notice, being used as a flat. Rather, they claim that these rooms are an office. The Council visited the site on 16 June 2015 and found evidence that the rooms were being occupied. They contained a bed, which photographs appear to show had recently been used and personal belongings in the shower room and there is a sink, hob, oven and fridge installed.
12. The appellants say that the rooms were being used as an office by day whilst building works were being carried out but were also used by a guard who stayed on site to provide security at night but that the use ceased in July 2015. A subsequent visit by Council Officers on 14 January 2016 confirmed that the rooms were vacant and this was the case at the time the site visit took place.
13. I have no specific evidence other than the appellants' statement to confirm how the rooms were used at the time the enforcement notice was issued and as there is nothing to contradict the appellants' claim that it was not being used as a flat at that time, I conclude that, on the balance of probabilities, the notice is incorrect in that respect.
14. However, the appellants clearly wish the appeal on ground (a) to proceed on the basis that the front rooms would have an A2 office use and I have nothing that contradicts the claim that it had previously been put to that use and that the appellants consider that that was the use at the time the enforcement notice was issued. The Council has addressed this issue in its statement and will therefore not be disadvantaged if I vary the wording of the allegation so that the development considered for planning permission is 7 flats and an office. The appeal on ground (b) succeeds to this extent.

Ground (a)

15. The Council agrees in its appeal statement that the loss of the public house is not sufficient reason to warrant refusal of planning permission for the development. It has also agreed that there is no objection to the introduction of an office use in this location, as the property is not a designated frontage where retail uses would be protected. It has also confirmed that the proposal would have the benefit of providing much needed housing and help to meet its housing targets.

¹ Ref: 14/04841/P

² Ref: 15/00954/P

³ Ref: 15/03553/P

16. The objections to the proposal relate to the quality of the design with particular reference to the location of the building within the conservation area, the use of UPVc in the windows and the living conditions of future occupiers of the flat in the basement of the main building. The Council considers that there would be insufficient natural light, ventilation and outlook provided by the windows to these rooms. The mansard roof is claimed to be unsympathetic and out of keeping with the rest of the building and the wider conservation area.
17. The addition can be seen in views from the rear car park/amenity area and from the rear windows of the adjacent properties on the High Street. However, I see no benefit in requiring the reinstatement of a lower, dual pitched roof as the mansard still remains subservient to the main, historic core of the building. It seems to me to be relatively low key and the mansard form of the roof is not particularly obvious. It is clearly a modern addition, as indicated by the use of artificial slate and UPVc windows, but this, to my mind, serves as a useful distinction between it and the original parts of the building, telling the story of how it has evolved.
18. The rear of the buildings in the High Street have little cohesion and are more altered than their front elevations, which is typical of the less prominent service areas of such properties; in this context the addition is, I consider, raising the standard of the surroundings and contributing positively to the character of the area. However, the main body of the building is more cohesive and serves as a reminder of its origins and is, I consider, a valuable example of a 19th Century public house exterior. I therefore have concerns about the impact of the replacement windows in the main building which include a reduction in some of their heights and the introduction of UPVc substitutes.
19. Although the appellants consider that UPVc windows are now commonplace within the conservation area, The Ship is a heritage asset and I consider that the original parts of the building should be maintained in traditional materials, to preserve its architectural character, and these would not have included UPVc. Whilst I have found that UPVc is appropriate for the new extension, I consider that, in the main building, the windows should be retained in traditional materials such as timber. Similarly, I consider that the architectural character of the building has been harmed by the blocking of the upper sections of the windows to the side and rear at first floor level. Although their original opening size can still be seen, the changed proportions of the windows in question appear out of place in the context of the historic building.
20. These alterations conflict with policy 7.8 of the London Plan 2011 (LP), policy UC3 of the Croydon Replacement Unitary Development Plan (The Croydon Plan 2006) Saved Policies 2013 (CRUDP), policies SP 4.12 – SP 4.14 of the London Borough of Croydon Local Plan: Strategic Policies 2013 (CLP) and the National Planning Policy Framework (the Framework) where they seek to protect heritage assets and the character and appearance of conservation areas.
21. To this end, I will refuse planning permission for these alterations, whilst granting it for the remainder of the development. Nevertheless, the appellants also contend that the notice is unclear in respect of these windows, specifically pointing to the fact that there is no indication of how the UPVc windows and the blocked window openings should be dealt with, other than by removing them. They say that there is no indication of what would be acceptable replacements, meaning that planning permission would need to be sought to clarify what the Council would accept. For this reason they suggest that the notice should be quashed for uncertainty.

22. To provide clarity and overcome this problem, the grant of retrospective planning permission will be subject to a condition requiring a scheme for the replacement of the UPVc windows in the main building and the unblocking of the closed openings to be submitted for approval.
23. Turning to the living conditions of the occupiers of the basement flat, the appellants have provided Average Daylight Factor (ADF) calculations which show that the levels would just meet the requirements if an alternative layout was adopted. This would entail the bedroom being located in what is now the living room and a previous doorway opened up to allow more light into what would then become the living room. However, the Council questions the accuracy of the calculations and the basis on which they have been made.
24. While the daylight levels might not be ideal, I consider that if the suggested alterations were to take place, this factor alone would not be sufficient to warrant refusal of planning permission. The benefits of providing additional housing units and ensuring the refurbishment and long term viability of the heritage asset are, I consider sufficient to outweigh this concern and I will secure these alterations through a condition.

Other Matters

25. I have noted the objections from local people to the loss of the public house and have had regard to its status as an ACV. However, it seems that the application to nominate the ACV was made in November 2015, over a year after the pub closed and well after it was first put up for sale in 2011. The status as an ACV does not restrict to whom the owner of a listed asset can sell his property, or at what price. It does not confer a right of first refusal to the community but rather gives them a chance to raise money and make a bid for the property on the open market.
26. The appellants have challenged the nomination on the basis that the decision was made outside the specified time limit, so there is still some uncertainty over the status of the building. If not confirmed, and the enforcement notice was upheld, there would be nothing to prevent the reinstated Class A4 use on the lower and ground floors being changed to one within classes A1 (shops), A2 (financial and professional services) or A3 (restaurants and cafes) as this would be authorised by the Town and Country Planning (General Permitted Development) Order 2015.
27. In any event, the appellants have listed another 9 public houses within the SE25 postcode and The Ship is not, therefore, the only choice that was available for local visitors. I have also noted the support for the proposal to provide housing in this location from nearby residents. In conclusion I find that, whilst a material consideration, the designation as an ACV does not outweigh the advantages of the development in providing additional housing and securing a viable future for the building.

Conditions

28. In addition to the conditions discussed in preceding paragraphs, I consider that it is also necessary to secure the external refurbishment works to the locally listed building, which are part of the justification for the works. The Council also ask for conditions to secure the provision of cycle storage, refuse storage and an outdoor amenity area for residents. As these are shown on the proposal drawings for the planning application for the scheme, they are presumably acceptable to the appellant and I consider they are necessary to ensure that the development is acceptable in these regards.

29. The Council has suggested that the rear dormer windows in the first floor extension should be obscure glazed, but these look out onto a brick wall and do not appear to cause any loss of privacy to adjoining owners. I therefore consider that this condition is not necessary. Similarly, the new flats will be required to meet the standards set by the Building Regulations in terms of sound insulation, so a planning condition relating to this will be unnecessary.

Ground (f)

30. The appellants' submissions on this ground of appeal are largely dealt with through the grant of planning permission. However, the concerns on how to deal with the requirements to replace the UPVC windows and restore the original window openings have also been discussed in previous paragraphs. The appellants state that the restoration of the windows and opening were discussed with planning officers and agreed as a revision to planning application 15/03553/P.
31. The Council has confirmed in its appeal statement that the refusal of planning permission did not relate to proposals to replace them with timber sash windows of the original size. Drawing 1485-005 Rev B2 appears to show the layout prior to the works being carried out, so there should be no difficulty in providing satisfactory details as required by condition 1 of the planning permission granted through this Decision. The appeal on ground (f) does not, therefore, need to be considered further.

Ground (g)

32. The appellants claim that the time to comply with the notice is too short. However, this relates to the time needed to relocate the existing tenants and this will not now be required. The works to be carried out are limited to the windows and openings and there is no claim that these could not be carried out within the time scale given. In any event, I have ensured that the conditions also give a reasonable amount of time to submit a scheme for the work and this scheme will have to include a proposed time scale for carrying out the alterations. There is consequently no need to amend the enforcement notice and the appeal on ground (g) fails.

Conclusions

33. For the reasons given above I consider that, with the imposition of the conditions discussed above, the development enforced against, with the exception of the window alterations to the main building would broadly comply with the relevant policies from the CLP, the CRUDP, the LP and the Framework. Any minor conflicts with these policies would not outweigh the benefits of the scheme in terms of the provision of housing and the restoration of the locally listed heritage asset.
34. The change of use and the mansard extension will therefore be granted planning permission but the enforcement notice will be upheld in respect of the window alterations, the replacement of which will also be linked to the planning permission through a condition.

Katie Peerless

Inspector

Annex A

Conditions

- 1) The use hereby permitted shall cease and all alterations carried out to the building to enable the use and any equipment and materials brought onto the land for the purposes of such use shall be removed within 5 months of the date of failure to meet any one of the requirements set out in i) to iv) below:
 - i) Within 3 months of the date of this decision a scheme for the replacement of the new UPVC windows in the building (excluding the dormer windows in the mansard roof) and the reinstatement of the original window openings shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.
 - ii) If within 6 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
 - iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be retained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 2) The use hereby permitted shall cease and all alterations carried out to the building to enable the use and any equipment and materials brought onto the land for the purposes of such use shall be removed within 5 months of the date of failure to meet the requirement set out below:
 - i) The works to flat 7 shown on drawings 145-PP-10A-B1 and 145-PP-22A -B1 are to be implemented within 6 months of the date of this decision.

Upon implementation of the approved drawing specified in this condition, that layout shall thereafter be retained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 3) The use hereby permitted shall cease and all alterations carried out to the building to enable the use and any equipment and materials brought onto the land for the purposes of such use shall be removed within 5 months of the date of failure to meet any one of the requirements set out in i) to iv) below:
 - i) Within 3 months of the date of this decision schemes for the provision of (a) cycle storage, (b) refuse storage and (c) an external

amenity area shall have been submitted for the written approval of the local planning authority and the schemes shall include a timetable for its implementation.

- ii) If within 6 months of the date of this decision the local planning authority refuse to approve the schemes or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
- iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
- iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be retained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 4) The use hereby permitted shall cease and all alterations carried out to the building to enable the use and any equipment and materials brought onto the land for the purposes of such use shall be removed within 5 months of the date of failure to meet any one of the requirements set out in i) to iv) below:

- i) Within 3 months of the date of this decision a scheme for the refurbishment of the front (High Street) elevation of the building shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.
- ii) If within 6 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
- iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
- iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be retained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.