
Appeal Decisions

Site visit made on 27 April 2017

by Simon N Hand MA

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

Decision date: 03 May 2017

Appeal A: APP/A5840/W/16/3152665

6 London Road, London, SE1 6JZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by MAJ Property Ltd against the decision of the Council of the London Borough of Southwark.
 - The application Ref 15/AP/4110, dated 9 October 2015, was refused by notice dated 28 January 2016.
 - The development proposed is retrospective application for a change of use of the rear part of the ground floor shop (A1 use) to create a studio flat (C3 use), reduction of floorspace of existing shop and retention of the replaced timber sash windows at first floor level.
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Appeal B: APP/A5840/C/16/3152664

6 London Road, London, SE1 6JZ

- 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 MAJ Property Ltd against an enforcement notice issued by the Council of the London Borough of Southwark.
 - The enforcement notice, numbered 15/EN/0244, was issued on 12 May 2016.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of the property from a shop to a shop and residential dwelling.
 - The requirements of the notice are 5.1 Cease the use of any part of the ground floor as residential accommodation; 5.2 Remove the kitchen from the ground floor (including but not limited to any hobs, kitchen sinks, microwave/combination ovens, supporting shelves, kitchen work tops, cupboards, wall tiling, sockets and switches at work top level); 5.3 Remove the two bathrooms from the ground floor (including but not limited to any showers, hand basins, toilets, plumbing and electricity connections, partition walls and doors); 5.4 Reinstate the ground floor to reflect the layout shown on the drawing attached hereto and labelled 101 Ground Floor Plan (Pre-Existing); and 5.5 Remove from the Property any material and debris arising from compliance with the requirements of 5.1 to 5.4 above.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) of the Town and Country Planning Act 1990 as amended.
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Appeal C: APP/A5840/Y/16/3152667

6 London Road, London, SE1 6JZ

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to grant listed building consent.
- The appeal is made by MAJ Property Ltd against the decision of the Council of the London Borough of Southwark.

- The application Ref 15/AP/4111, dated 9 October 2015, was refused by notice dated 28 January 2016.
 - The works proposed are alterations to the layout of the ground floor to create a single flat (C3 use), and retention of timber sash windows at first floor level.
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Appeal D: APP/A5840/F/16/3152670
6 London Road, London, SE1 6JZ

- The appeal is made under section 39 of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by MAJ Property Ltd against a listed building enforcement notice issued by the Council of the London Borough of Southwark.
 - The enforcement notice, numbered 16/EN/0103, was issued on 12 May 2016.
 - The contravention of listed building control alleged in the notice is the conversion of the ground floor from a shop to a shop and residential dwelling including the insertion of a kitchen, bedrooms, en-suite bathrooms and partitions.
 - The requirements of the notice are 1.1 Cease the use of any part of the ground floor as residential accommodation; 1.2 Remove the kitchen from the ground floor (including but not limited to any hobs, kitchen sinks microwave/combination ovens, supporting shelves, kitchen work tops, cupboards, wall tiling, sockets and switches at work top level); 1.3 Remove the two bathrooms from the ground floor (including but not limited to any showers, hand basins, toilets, plumbing and electricity connections, partition walls and doors); 1.4 Reinstate the ground floor to reflect the layout shown on the drawing attached hereto and labelled 101 Ground Floor Plan (Pre-Existing); and 1.5 Remove from the Property any material and debris arising from compliance with the requirements of 5.1 to 5.4 above.
 - The period for compliance with the requirements is 3 months.
 - The appeal is made on the grounds set out in section 39(1) (e) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended.
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Decisions

Appeal A - 3152665

1. The appeal is dismissed.

Appeal B - 3152664

2. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal C - 3152667

3. The appeal is allowed and listed building consent is granted for alterations to the layout of the ground floor to create a single flat (C3 use), and retention of timber sash windows at first floor level at 6 London Road, London, SE1 6JZ in accordance with the terms of the application Ref 15/AP/4111, dated 9 October 2015 and the plans submitted with it.

Appeal D - 3152670

4. The appeal is allowed and the listed building enforcement notice is quashed. Listed building consent is granted for the retention of the works for conversion of the ground floor from a shop to a shop and residential dwelling including the

insertion of a kitchen, bedrooms, en-suite bathrooms and partitions at 6 London Road, London, SE1 6JZ.

Preliminary Matters

5. I have use the Council's descriptions of the development for appeals A and C as they better describe the matters at issue.

Appeals C and D

6. The listed building appeals turn on the single issue of the sub-division of the ground floor. No 6 London Road is a shop in a terrace of similar units built in the early 19th Century. London Road is one of the roads radiating out from St George's Circus and was laid out as part of what is agreed to be a notable piece of late Georgian town planning. The buildings on both sides of the road at the top of London Road are survivors from this period, and although different in detail, both sides retain large arched window recesses at first floor level with smaller sash windows which are the single dominant feature of the road and create a sense of unity and rhythm.
7. The terrace was listed for its group value, reflected in the part it plays in the unity described above. The terrace on the opposite side has been renovated in recent times which has created a certain uniformity to the ground floor frontages, housing mostly non-retail uses. The terrace containing No 6 is still subdivided into separate units with many shops and cafes, all with individual frontages. No 6 is an antique/junk shop and plays its part in maintaining an active frontage in this visually busy side of the road.
8. The listing notes the interiors of the terrace have been much altered, but certain details of value are retained in the upper floors. The ground floors were originally domestic, with a spine wall splitting them into two rooms. Not long after their completion, in the early Victorian period, they were turned into shops which was typical for areas such as this as London expanded outwards. The appellant's historic advisor argues there is no date for the removal of the spine wall, but it was certainly gone by modern times when an extension was added to the rear to create one large ground floor space. They speculate the removal of the wall would not have been typical for a Victorian shop, which is most likely to have retained the two room configuration. The Council say that research into the buildings undertaken when the terrace opposite was converted suggests the spine walls were removed during the original Victorian conversion to a shop.
9. Whichever version of events is the most accurate, there is no dispute that nothing remains of the historic shop interior to No 6. The Council argue the large space is part of the character of the building and its loss, by the subdivision into a flat and small shop, would be harmful.
10. The Planning (Listed Buildings and Conservation Areas) Act 1990 places a duty upon the decision-maker, to have special regard to the desirability of preserving the listed building or any features of special architectural or historic interest which it possesses. There is a clear presumption in this duty that preservation is desirable. The Framework further states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation.

11. In my view the significance of No 6 lies in the role it plays in the terrace as a visual reminder of the Georgian town planning scheme. Any internal historic features are of course important and form part of its historic interest, but I do not think this extends to the ground floor shop space. Prior to the conversion to a flat, the space was considerably larger than the original Victorian shop, assuming the Council are correct and the ground floor was opened up in the 19th Century. Several other shops in the area had open ground floor spaces, but none retained any sense of the original Victorian space. These are simple shops in a terrace, of a sort found all over London. Whether they are small or large does not have any impact, positively or negatively on their historic interest. I also note the conversion work consists of partition walls and a suspended ceiling, so there has been little or no interference with the historic fabric of the walls and ceilings.
12. The Council are also concerned that the resulting shop unit is too small which affects the vitality and viability of the shopping area. I deal with vitality and viability below but regardless of the outcome of that issue I do not think the potential loss of vitality and viability affects the listed building or its setting. There is no evidence before me that the commercial use of the ground floors of these buildings is integral to their significance or their historic interest. Even if the whole terrace were to return to residential use this would bring it back to the original Georgian plan for the area and would represent another phase in the historic evolution of the area.
13. The Council accepts the replacement timber sash windows are an improvement over the previous upvc versions. In my view the internal space at ground floor level has no historic significance and the subdivision into a flat and small shop does not harm the significance of the listed building and preserves its features of special architectural or historic interest. I shall allow appeals C and D, grant listed building consent and quash the listed building enforcement notice. No conditions have been suggested and none are required as the works have already been carried out.

Appeals A and B

14. The conversion works have already been undertaken. The plans show a one bed flat with a separate sitting room and kitchen diner, but as I saw on my site visit the sitting room could be used as a second bedroom. This leaves a shop unit at the front of the premises of 9.8m². The application was made retrospectively, and during the discussions on site the appellant suggested doubling the shop size and reducing the living space to a studio flat. Plans were submitted some months before the application was determined. These show a retail unit of 18.5m², with one corner partitioned off to allow for a sink and toilet. I shall consider both these alternatives.
15. The Council oppose the conversion works on the basis the resulting shop unit is too small and is likely therefore not to be viable. The loss of the shop would harm the vitality and viability of the Elephant & Castle Major Town Centre shopping area contrary to policy 1.7 of the 2007 Southwark Plan which resists the loss of Class A uses in town centres and Strategic Policy 3 of the Core Strategy which seeks to provide for well used and vibrant centres. They are also concerned about overlooking of the private amenity space of the basement flat from the windows at the rear of the conversion, and the lack of natural

light/ventilation into the two bed flat version, contrary to policy 3.2 of the Local Plan and policy 13 of the Core Strategy.

Vitality and viability

16. London Road is on the edge of the town centre, and as I saw on a sunny Thursday lunchtime, not particularly busy. However, it still supports a range of shops and cafes on the western side, despite several of the units already being turned into houses. I consider this is a relatively marginal area where small changes could make a considerable difference and the loss of a further shop unit could well harmfully affect vitality and viability contrary to the Council's policies and paragraph 23 of the NPPF.
17. I agree that the existing 9m² shop is tiny. It has been made even smaller as a false back wall has been introduced to create a toilet and sink area at the back of the shop. This results in the creation of what is little more than a kiosk, with room for a shop keeper and a small number of items for sale. This may suit the appellant whose business is now mostly on-line, but it hardly provides an active frontage encouraging shoppers to the area. It is also highly unlikely to be attractive to any other potential occupiers and I consider it is unlikely to be viable in the long term.
18. The larger shop unit is potentially a different matter. The appellant has provided evidence for shop unit sizes in the area and suggests there is no evidence that the survival of small units is an issue. In fact the evidence shows that at 60m², the appeal site was already one of the smallest units in London Road. The other units mentioned are in other parts of the town centre. Of those only one, Laughland Records, is comparable to the 18m² of the proposed unit, and that is only 15.39m². The others mentioned are all larger than 18m². A fashion retailer with 23.29m², a jewellers with 21.5m², a news agent with 35.8m² and a café with 22.4m². This does not amount to evidence that shops (or kiosks as some are described in the VoA reports) as small as 18m² are viable options.
19. As noted above the small shop may suit the appellant's current business model, but that does not provide for any long term security. If in the future the unit was shown to be too small to be viable the Council would have little choice but to allow it to be subsumed into the residential unit behind. I agree this could therefore set an undesirable precedent which would lead to a gradual domestication of the shopping street.
20. For all these reasons I consider there is little or no evidence before me that the resulting shopping unit, in whatever form it takes, would be viable, and that its loss could well harm the vitality and viability of the area contrary to the Council's policies and the NPPF.

Amenity issues

21. The main issue is overlooking from the rear windows of the new flat. These provide the only daylight or outlook for the flat. The fixed high level glazing unit that would have provided light into the kitchen/diner of the 2 bed unit has been covered by the false wall at the back of the small shop unit mentioned above.

22. As I saw the rear courtyard is set down below the floor level of the new flat and provides outdoor space for the basement flat. It is only a small area, but has been planted out with climbers and has seats and a table set out for relaxing. It is clearly an area that is intended to be used by the occupiers of the basement flat. The windows provide clear views into the courtyard and the windows are right next to the siting area. This would clearly be significantly invasive and harm the amenity of those using the courtyard.
23. The appellant suggests an obscure glazed film over the lower half of the window, and I was able to see one window which had such a film applied. I agree this is surprisingly effective. It is still possible, but only with some degree of effort to look down into the courtyard, but the sense of being overlooked would be considerably lessened. From inside the flat the windows provide a view of the wall of the courtyard with the sky above. The top of the wall and the sky are still visible through the top half of the window, so the loss of view of the nearby wall would not be serious. In my view the overlooking issue could be overcome by the imposition of a suitable condition.
24. I agree with the Council that there would be no natural light or ventilation to the kitchen/diner at the rear of the flat as built and if the siting room is to be used as a bedroom this would be even more important as the only living space would be the kitchen/diner.

Conclusions

25. Taking all this together, I consider the conversion as currently built would not provide a suitable shop unit and the potential loss would harm the vitality and viability of the town centre. The flat would also suffer from a lack of natural light and ventilation which would harm the amenity of the occupiers. The proposed studio flat would provide acceptable living accommodation but the resulting shop unit is still likely to be too small to be viable. I shall therefore dismiss the appeals and uphold the enforcement notice.

Simon Hand

Inspector