



Appeal Decisions

Site visit made on 9 May 2017

by Anthony J Wharton BArch RIBA RIAS MRTPI

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

Decision date: 19 May 2017

Appeal A - Ref: APP/N5660/X/16/3161758 28 Deerhurst Road, Streatham, London SW16 2AN

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Richard Milner against the decision of the London Borough of Lambeth (the LPA).
 - The application Ref 16/02296/LDCE/DC dated 13 April 2016 was refused by notice dated 21 June 2016.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use or development is sought is the continued use of the property as a mixed use residential dwellinghouse and photoshoot/film location.
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Appeal B - Ref: APP/N5660/W/16/3170319 28 Deerhurst Road, Streatham, London SW16 2AN

- 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 Mr Richard Milner against the decision of the London Borough of Lambeth (the LPA).
 - The application Ref 16/04838/FUL dated 11 August 2016, was refused by notice dated 30 December 2016
 - The development proposed is the use of the property for mixed use comprising residential use (Use Class C3) and as a photographic shoot location (Use Class B1).
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Decisions

1. Appeal A is dismissed and a LDC is not issued.
2. Appeal B is allowed subject to conditions.
3. See formal decisions below.

Background information

4. The appeals property/site, purchased by the Appellant in February 2005, is a 4 storey building which was originally built as a detached dwelling house in the 1960s. It was subsequently extended and the extension became a separate dwelling now known as at No 28a. Internally the Appellant's family home has been well-preserved as an example of mid C20 modern design. It remains complete with original fixtures, fittings and decoration typical of the 1960s. There is an existing lower ground floor extension (swimming pool) and an upper ground floor extension (conservatory) to the rear of the property. There are garages to the front elevation. The building is not listed and nor is it within a conservation area. The surrounding area is mainly residential in character. I note that 28a is a separate dwelling and the appeals relate only to No 28.

5. Because of its originality and 1960s décor, the Appellant and his family have been able to offer the property for use as a film shoot location in conjunction with its primary use as a family home. Therefore, since February 2005, the house has, at various intervals, been rented out by the Appellant (in whole or in part) for commercial film and TV photoshoots.

6. There is no dispute that this has been the case since that date but it was only in October 2015 that the Council advised that, in their view, a material change of use of the property had occurred. Apparently this was as a result of complaints to the Council by nearby residents. Although there were some bookings in the pipeline, it was then agreed that the Appellant would take no further photoshoot bookings until the planning situation had been agreed/remedied. During December 2015 and January 2016, there was correspondence between the Appellant and the LPA to this effect and the last booking took place in January 2016.

Appeal A

Introduction

7. An appeal relating to a Certificate of Lawful Use or Development (LDC) is confined to the narrow remit of reviewing the Local Planning Authority's (LPA's) reason for refusal and then deciding whether the reason(s) are well-founded. The planning merits of the case do not fall to be considered and the relevant test relating to submitted evidence is *'the balance of probability'*.

8. The question to be asked in this case is whether or not the Appellant has shown that the mixed use of the property for a residential use (Use Class C3) and a photographic shoot location (Use Class B1) has been continuous for a period of 10 years starting from the date of the LDC application, 13 April 2016. The relevant date, therefore, is 13 April 2006. As indicated by the Council any period prior to this latter date is not relevant in the consideration of Appeal A.

9. From the evidence and shoot schedules it is clear that, since 2005, the property has been used without a break until the present date as a dwelling house. Since that time it has also been used at various times for commercial photoshoots and as a film location site. Having seen the submitted documents, there can be no disputing that, between 2005 and early 2016, on the days specified in the various schedules and submissions, the property was used for a mixed use, comprising the residential use (Class A3) and as a photographic shoot location.

10. The Council does not query any of the dates but it was not until the above mentioned complaint (in 2015) that they were prompted to write to the Appellant (on 30 October 2015) advising that a material change of use had occurred without planning permission. The Applicant, in an e-mail to the Council dated 10 June 2016, indicated that the last photo/film shoot was on 14 January 2016. However, there was some confusion regarding an invoice (No 470) which, although initially dated 12.12.16, was for a shoot which occurred on 12.12.15.

11. In later correspondence, to the Planning Inspectorate Case Officer, the Appellant confirmed that as a result of a diesel spillage in January 2016 the business had had to be shut down. This cessation of shooting also corresponds with the confirmation in the Appellant's submissions that no further bookings would be taken until the planning situation had been resolved. As indicated above the LDC application was submitted on 13 April 2016 (now subject to Appeal A) and the planning application (now subject to Appeal B) was submitted on 1 August 2016. The refusal notice refers to 15 August 2016 which must be the date on which it was validated by the LPA.

Reasons

12. In the case of *Secretary of State for the Environment Transport and the Regions v Thurrock BC*[2002] EWCA 226 (the *Thurrock* case), it was established that for an unlawful use (one without planning permission) to obtain immunity from enforcement action, it has to be exercised continually and without significant interruption for the whole of the relevant time period. Amongst other things the court found that there has to be some 'activity' for a use to exist and that if there were long absences of the 'activity', the use (or mixed use) could not be said to be continuous.

13. In this case, whilst acknowledging that a mixed use (or activity) has occurred since 2005, that mixed use has been intermittent. There have been significant gaps in the use of the property for simultaneous use as a dwelling house and as a photoshoot location. The Council has scheduled these gaps in the usage and refers to the three significant periods between June and September 2006 (4 months); December 2008 and February 2009 (3 months) and August to December 2011 (5 months) when the photoshoot activities did not take place.

14. The property is used for 365 days a year as a dwelling house (except when a few of the shoots have required it to be vacated). On average, since 2005, it has also been used for the mixed use for around 45 days a year. A single residential use will have resulted in a completely different character of usage than the mixed use. The different character of the mixed use or activity cannot, in my view, be said to have been continuous in the terms required by the *Thurrock* case. Most of the time the property would have been perceived as being a straightforward dwelling house, whilst, at the times scheduled, it would have been seen as a mixed use with photo shoots occurring within the family home.

15. As a matter of fact and degree I consider that the mixed use has been intermittent as opposed to continuous. In the *Thurrock* case it was held that whether a building is used for a particular purpose, at a particular time or times, is a matter of fact and degree. The court also held that the legally correct question to ask was whether a building had been used (in that case as a dwelling house) throughout the whole of the relevant period (in that case 4 years) so that, at any time during that period, the LPA could have taken enforcement action.

16. In addition, the court rejected the notion that time (for the purpose of the 4 or 10 year rule) could continue to run where a use (or mixed use as in this case) became 'dormant' for long periods. In this case the mixed use of dwelling and photo shoot location was 'dormant' not just for the significant periods referred to by the Council, but for noticeable periods each month when the property reverted to its residential use only. The court acknowledged that if the time could continue to run in such circumstances, it would place LPAs in a difficult situation of whether or not to take enforcement action or risk a situation whereby an unauthorised use could become immune.

17. On behalf of the Appellant it is stated that the Council could have taken enforcement action at any time during which the mixed use was taking place. I agree that this is the case. The fact that they did not take action does not mean that they were precluded from doing so. In my view they could have taken action the first time that the change of use occurred and any time after that when each photoshoot use was being carried out. The situation, in fact, alternated between a single use and a mixed use and each time a photoshoot took place, in my view, a breach of planning control occurred.

18. I find that the mixed use was intermittent and that, as a matter of fact and degree, it was not a continuous mixed use for the whole of the relevant period.

There were significant gaps (for long and short periods) when the mixed use was not taking place and was, in effect, 'dormant'. I do not consider, therefore that the Appellant has shown, on the balance of probabilities, that the mixed use was continuous for the necessary 10 year period. It follows that I find the Council's decision to be sound and a LDC should not be issued. Appeal A, therefore, fails.

Appeal B

The main issues

19. The main issues are: firstly whether this 'hybrid' proposal is appropriate in the locality and whether it would result in the unacceptable loss of housing in this part of Lambeth; secondly, the effect of the mixed use with regard to the transport strategy and parking and, thirdly, the effect on the living conditions of residents who live close to the appeals property.

Reasons

20. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires planning decisions to be made in accordance with the development plan unless material considerations indicate otherwise. The development plan comprises the Lambeth Local Plan (LLP) and the London Plan (LP). The most relevant policies include policies 4.1 (Developing London's economy) and 6.3 (Assessing effects of development on transport capacity) of the LP and policies H3 (Safeguarding existing housing); ED2 (Business, industrial and storage uses outside of KIBAs); T6 (Impact on transport capacity and infrastructure; T7 (Parking); T8 (Servicing) and Q2 (Amenity) of the LLP.

21. The National Planning Policy Framework (NPPF) is a major material consideration and sets out a presumption in favour of sustainable development. In reaching my conclusions I have had regard, amongst other things to the core planning principles set out in the NPPF; the need to build a strong competitive economy; the requirement for sustainable transport and the need to secure a good standard of amenity for all existing and future occupants of land and buildings. I have also had regard to relevant sections of Planning Practice Guidance (PPG).

Principle of land use and loss of Housing

22. Policy ED2 of the LLP supports developments for business uses (B1) on all sites, though subject to compliance with other policies. Policy H3 seeks to safeguard existing houses from change of use, including from change of use to non-permanent residential use.

23. Having considered all of the submissions I consider that the principle of a mixed residential (C3) and business (B1) use is acceptable in this location. It is evident that, as a matter of fact and degree, the use of No 28 as a dwelling house has not been lost. Even when photoshoots are being carried out the mixed use is only taking place for short periods and at no time has the residential use of No 28 been harmed or threatened. As indicated in the Officer's Report there have been no changes to the internal layout and the B1 use has operated spasmodically or intermittently alongside the C3 use since 2005.

24. I agree with the Officer's conclusion that the proposed change of use would not result in the loss of a family unit of accommodation and that it is acceptable in principle. It would not, therefore, conflict with policies ED2 and H3 of the LLP.

Effect on transport strategy and parking

25. Policy T6 seeks to ensure that any development will not result in any unacceptable transport impact including any cumulative impact on on-street parking. Policy T7 requires any development-related parking to be in accordance with the LP policies, reflecting the public transport accessibility of the site. The policy also refers to permit-free and permit-capped schemes and the fact that any parking should not discriminate against any occupiers of the development.

26. The appeals property does not lie within a Controlled Parking Zone (CPZ) and parking is not restricted on Deerhurst Road or the adjacent streets. As indicated by the Council's Planning Officer, the Appellant has provided a table showing the predicted maximum number of vehicle movements to and from the site on any photoshoot day. It is also indicated that the majority of visits to the site would be by car or taxi. The information indicates a total of 4 car vehicle movements for each of the C3 and B1 uses respectively and 4 LGV vehicle movements for the B1 use. The figures also indicate 6 taxi journeys to the site but these vehicles would not be parked at the property.

27. With regard to loading and unloading, I noted that vehicles could be driven up to the two garages or even into one of the spaces. On some occasions therefore this could obviate the need for any photoshoot vehicles to park on Deerhurst Road itself. Using this area for unloading would not cause any obstruction to the footpath. The Appellant has also provided the Council with a Delivery and Servicing Plan (DSP) which outlines where vehicles could park and unload. Parking is said to be encouraged on Hill House Road on the section which does not contain any direct housing frontages. The Transport Officer has no objections to this aspect of the proposal and it is noted that historical parking survey information for the road confirms that parking stress is low. I noted that this was the case during my inspection of the site and the surrounding streets.

28. There are concerns by residents about rubbish left at the site following a photoshoot. However, the Appellant has a requirement for all crews to remove their rubbish and the Council Officer was of the view that this aspect of the development could also be controlled through the implementation and monitoring of the DSP.

29. Overall on this issue I again agree with the Council's Planning Officer that there would not be any significant transport or parking issues for occupants in the vicinity of the site. I consider that the proposed change of use (albeit subject to some necessary conditions – see below) would accord with policies T6 and T7 of the LLP. The appeal also succeeds on this second issue.

Effects on living conditions

30. Policy Q2 of the LLP indicates that development will be supported if it does not unacceptably compromise visual amenity from adjoining sites and the public realm; if it does not unacceptably affect existing levels of privacy and outlook and if there are no unacceptable impacts with regard to noise and disturbance.

31. The proposal is to use the premises for the mixed use no more than 52 times per year; on no more than 8 days per calendar month and on no more than 3 days during the same week. I have noted that some objectors consider that 8 days per month is excessive. However, if this level of mixed use activity took place on the site every month, it would well exceed the annual cap. In any case, having seen the pattern of usage over the years, I consider it unlikely that there would be many occasions when shoots exceeding 3 or 4 days would occur. The 3 day per week cap

is also another factor which would ensure that shoots were not carried out for long continuous periods.

32. Turning to the effect of the proposal in terms of loss of privacy or overlooking, I do not consider that there would be any significant difference between the residential use only and the mixed use. From my site visit I noted that neighbouring properties were well-screened. The lower rear terrace is screened by a 1.8m high fence and the planting reinforces the physical barrier in a manner which limits any overlooking between properties. Overall, therefore, I do not consider that the proposal would impact significantly on neighbouring residents in terms of any loss of privacy or overlooking. In this respect I consider that the change of use would accord with policy Q2 of the LLP.

33. Turning to the timing of events it is clear that the mixed use would only occur on weekdays and there would be no weekend or bank/public holiday mixed use. However, I acknowledge that the comings and goings of film crews could, at times result in some levels disturbance for residents as well as inconvenience regarding access and parking. I have referred above to the different character of usage of a simple residential use as opposed to the mixed use.

34. The existing residents have clearly been affected during the time the photoshoots have taken place. I can envisage that the mixed use activity might well have resulted in some additional noise and disturbance over and above that which might be associated with a normal residential use. Thus, although I have found in the Appellant's favour on the first two issues, I have some concerns about allowing an unrestricted change of use in the absence of any detailed assessment of how the mixed use might operate and impact on the living conditions of nearby residents.

Overall conclusion

35. In the Planning Officer's Report it was suggested that permission should be granted for 1 year in order that the situation could be monitored. On balance I find that the principle of the proposed change of use to be acceptable. But I also agree that a monitoring period is necessary and appropriate in order to adequately assess the overall impact. No assessment has been made in the past and this has been a factor in the different conclusions and planning judgements made by the Planning Officer and the Planning Committee.

36. Clearly it is the latter's prerogative to make a final decision on the planning merits of the case. However, having considered all of the matters relating to this appeal, my own view accords with that of the Planning Officer. I consider that a temporary and conditional approval should be granted. I refer in more detail to the conditions below. Appeal B, therefore, succeeds.

Conditions

37. Having considered the conditions (1 to 11 inclusive) attached to the Delegated Report (16-04838-FUL) I consider that, in principle, all are necessary and appropriate. However, in my view there are some changes or amendments necessary and I set out my reasons on these points below.

38. First of all, in condition 1, it is my view that just a 1 year temporary permission is not a sufficient time to monitor the overall situation. The gaps between photoshoots have fluctuated over the years and considering that the mixed use has ceased (pending this decision) it could well take some time to establish a meaningful pattern of use whereby the effects can be properly assessed. I consider, therefore, that a 2 year period would be more appropriate and shall

amend condition 1 accordingly. I also consider that conditions 2, 3 and 4 are all necessary for the reasons set out in the Delegated Report.

39. With regard to condition 5, I agree that hours of usage and days on which the mixed use is to be allowed need to be specified. However I consider that to allow shoot times to continue until 20:00 hrs could cause disturbances for nearby young families. The finishing of shoots at that time would result in the inevitable loading of equipment and the crew leaving the premises. This could well disturb residents and young children at that time of the night. I consider that the mix use should not operate after 18:00hrs. I will vary the condition accordingly.

40. I find conditions 6, 7, 8, 9, 10 and 11 to be necessary in the interests of the living conditions of nearby residents and to avoid obstructions of the surrounding streets.

Other Matters

41. In reaching my conclusions in both of these appeals I have taken into account all of the submissions made by the Appellant, the Council and by interested persons. These include the planning history of the site; the initial statements; the delegated report and the final submissions. With regard to the third party comments I have particularly noted the fact that the Appellants have not usually been present on site during shoots; that there has been disruption and noise caused by the mixed use; that the parking survey dates back to 2012; the litter problems and the swimming pool activities.

42. I consider that the 3rd party concerns should be adequately covered by the conditions and the DSP. The close monitoring of the situation will effectively allow the Council to further consider those issues which have caused residents' concerns. The question of any possible separate commercial use of the swimming pool is not before me in either appeal and from the submissions it would appear that its use by others has not been carried out on a commercial basis. In any case any other unauthorised use of the property is a matter between the Council and the LPA.

43. None of the above factors or any other matter outweighs my conclusions in these appeals. I have found that a LDC should not be issued; that planning permission is required for the change of use and that a temporary permission, subject to other conditions is appropriate in all of the circumstances.

Formal Decisions

44. Appeal A is dismissed.

45. Appeal B is allowed and planning permission is granted for use of the property for a mixed use comprising residential use (Use Class C3) and as a photographic shoot location (Use Class B1) at 28 Deerhurst Road, Streatham, London SW16 2AN subject to the conditions in the attached Schedule.

Anthony J Wharton

Inspector

SCHEDULE OF CONDITIONS

1. The mixed use hereby permitted shall operate for a temporary period of 2 years from the date of this decision, after which time the part use of the property as a Class B1 photographic shoot location shall cease in its entirety.
2. The development hereby permitted shall be carried out in accordance with the approved plans and documents as follows: Floor Plans PL-01 Rev A; PL-01 Rev B; Application Form and cover letter dated August 2016; Full Planning Application Statement dated August 2016; Applicant's response to Objectors received 22.09.16; E-Mail dated 22.09.2016; E-Mail dated 29.11.2016 and the Delivery and Servicing Plan dated December 2016.
3. Notwithstanding the provisions of the Town and Country Planning (Use Classes) Order 1987 or the Town and Country Planning (General Permitted Development) Order 2015 (or any orders revoking and re-enacting those orders with or without modification) the part B1 use hereby permitted shall only be as a photographic shoot location and for no other use within the B1 Use Class.
4. The use of light cranes or generators associated with the photographic shoot activity is not permitted at any time.
5. The use of the premises as a part B1 photographic shoot location shall not occur at weekends or on public holidays or outside of the following times:
08:00 Hours to 18:00 Hours – Monday to Friday.
6. No more than a total of 15 people are to be on or around the premises at any one time in association with the mixed residential and photographic shoot use hereby permitted.
7. During the use of the property as a photographic shoot location, the pavement areas adjacent to the property are to be kept clear at all times to ensure that pedestrian access is not impeded. None of the surrounding roads or streets shall be obstructed or blocked at any time and unrestricted access for residents and others shall be maintained at all times.
8. The part B1 photographic shoot location use shall occur for no more than a total of 52 calendar days per year. Of these 52 days the use shall occur on no more than 3 calendar days per week and no more than 8 calendar days per month.
9. The mixed use hereby permitted shall be operated fully in accordance with the Delivery and Servicing Plan dated December 2016.
10. The owners of the property or a named representative shall be present at the property at all times whilst the part B1 photographic shoot location use is ongoing to assist in ensuring compliance with the planning permission and the attached conditions and the Delivery and Servicing Plan.
11. No equipment or machinery of any kind associated with the part B1 photographic shoot location use shall be stored on the land other than within the building.

End of Schedule of Conditions