
Appeal Decisions

Site visit made on 8 May 2017

by Diane Fleming BA (Hons) MRTPI

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

Decision date: 25 May 2017

Appeal A Ref: APP/N5090/C/16/3166302

Land at Britannia House, 960 High Road, London N12 9RY

- 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 Ms Aga Slecza of Alto Property Investment Ltd against an enforcement notice issued by the Council of the London Borough of Barnet.
 - The enforcement notice was issued on 7 December 2017.
 - The breach of planning control as alleged in the notice is without planning permission, the provision of 29 self-contained flats in the block.
 - The requirements of the notice are: 1. Cease the use as self-contained flats. 2. Permanently remove all kitchen facilities (including units, sinks, cookers and food preparation areas) from the flats. 3. Permanently remove all sets of toilet and washing facilities (including shower, bathtub and sink) from all but one room per floor of the property excluding the ground floor as approved per consent F/03733/11 on 21st October 2011.
 - The period for compliance with the requirements is 4 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(c), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Appeal B Ref: APP/N5090/W/17/3166388

Britannia House, 958 - 964 High Road, Finchley, London N12 9RY

- 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 Ms Aga Slecza of Alto Property Investment Ltd against the decision of the Council of the London Borough of Barnet.
 - The application, Ref 16/2568/FUL, dated 19 April 2016, was refused by notice dated 10 October 2016.
 - The development proposed is described as 'Extend main block of existing building with two additional storeys (seventh and eighth floors) to accommodate a total of four additional residential units with the extended building being under 25 metres tall'.
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Decisions

Appeal A

1. The appeal is dismissed and the enforcement notice is upheld.

Appeal B

2. The appeal is dismissed.
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Procedural Matters

3. The application which is the subject of Appeal B was amended prior to its determination by the Council. The proposed development is now described as 'Creation of additional floor above top floor level (7th floor) of existing building to provide 2 No self-contained flats' in the Council's decision notice but the appellant has relied on the original description when completing the appeal form. As the plans listed on the decision notice show the amended scheme the Council's description is preferred as it more accurately reflects the proposal and I will deal with the appeal based on this description of development.
4. The Council has confirmed that the first reason for refusal, relating to the height of the building, is no longer upheld. This is because they granted planning permission for an amended scheme following the refusal of the application the subject of Appeal B, which showed the same height. They also do not uphold the second reason for refusal provided the appellant submits a unilateral undertaking to restrict new parking permits being obtained by future residents. A draft unilateral undertaking has been submitted with the appeal. I will deal with Appeal B on this basis.

Appeal A

The ground (c) appeal

5. Under a ground (c) appeal the onus of proof is on the appellant to show that there has not been breach of planning control. Britannia House is, in the main, a seven storey building with a three storey section to the side. The ground floor is currently occupied by a clinic and the upper floors have been converted into flats except for part of the second floor which remains in use as an office. Section 55(1) of the 1990 Act defines the making of a material change of use of land as development and s57(1) requires that planning permission is necessary for development, subject to some specific exclusions.
6. The basis of the appellant's case is that the conversion of the building into flats already has planning permission. This was granted in accordance with Class O (previously Class J¹ at the time of the two 'Prior Approval' (PA) applications) of the Town and Country Planning (General Permitted Development)(England) Order 2015 (GPDO). Furthermore, the Council did not specify either the number of units or a particular layout when granting the PA applications. The first application² was made to obtain the PA for the 'Change of use from B1 office' to 'C3 residential'. This was in relation to the first to fourth floors and was granted 9 January 2014. The second application³ was described as 'Change of use (5th and 6th floor) from B1 office to C3 residential (18 units)' and was granted 4 June 2014.
7. The Council submit that the development does not meet the conditions and limitations of the development Order and in particular, a flat has been developed on the ground floor of the building.
8. The allegation in the notice refers to the whole of the building which includes the ground floor. There was a porter's lodge on the ground floor which the

¹ Class J of the Town and Country Planning (General Permitted Development) Order 1995 as amended by the Town and Country Planning (General Permitted Development)(Amendment)(England) Order 2013

² Ref F/05325/13

³ Ref F/01895/14

appellant converted into a self-contained flat. At the site visit I saw that this has been removed and the former entrance from the foyer area has been blocked up. Nevertheless, at the time when the notice was issued this flat was in existence and was not included in either of the PA applications. The appellant accepts that the development of this flat was a breach of planning control which he has now remedied.

9. This ground of appeal falls to be considered against the GPDO as it stood when the development was carried out. Whilst it is usually necessary to know when the development was carried out, to see whether the 1995 GPDO or the 2015 GPDO is applicable, that is not the case in this appeal. This is because building work could have started at any point after the PA applications were granted in 2014 up to 21 November 2016, which was the date of the Building Control completion visit. As such, according to the 1995 GPDO the residential use should have been begun by 30 May 2016 and according to the 2015 GPDO the development should have been completed within three years from the date of the grant of the PA. Neither limitation has been met as part of the second floor of the building is still used for office purposes.
10. The appellant also submits that the PAs granted by the Council were unconditional. There was no limit on the number of units permitted by the first PA application and the drawings were indicative, suggesting a layout of 18 flats. The second PA application was ambiguous as the description of development referred to 18 units but the plans showed a layout of six flats in total (three flats for each floor).
11. However, whether the development is considered against the 1995 GPDO or the 2015 GPDO, both set out in the procedures⁴ accompanying Classes J and O that the development should be carried out in accordance with the details approved by the local planning authority. The details taken into account by the Council in each case were the plans listed on each of the decision notices. Although they do not appear to be numbered, they each show a scale of '1:200 @A4' and the division of each floor into recognisable flats with kitchen/living areas, bedrooms and bathrooms. In the first PA application the plans showed 18 flats and in the second PA application they showed six flats which is four less in total than has been developed on the upper floors of the building.
12. I therefore conclude that the appellant has not shown that the material change of use of the building into 29 flats is permitted development under either Class J or Class O of the GPDO. The matter alleged in the notice constitutes a breach of planning control and the appeal on ground (c) therefore fails.

The ground (f) appeal

13. The appeal on ground (f) is that the requirements of the notice exceed what is necessary to achieve the purpose. The purposes of an enforcement notice are set out in section 173 of the 1990 Act and are to remedy the breach of planning control (s173(4)(a)) or to remedy injury to amenity (s173(4)(b)). In this case the Council require that the use of the building as self-contained flats should cease. The purpose of the notice must therefore be to remedy the breach of planning control.

⁴ Class J, Procedure for applications for prior approval under Part 3, paragraph N.(10)(a) and Class O, paragraph W.(12)(a).

14. The appellant submits a lesser step would be to require that the layout of the building is re-configured to accord with the details shown within the PA applications to reduce the number of flats to 24. However, it would appear that these approvals are now time expired as either residential use of the upper floors of the building was not achieved by 30 May 2016 or the development was not completed within a period of three years starting with the PA dates. I therefore consider it would not be appropriate to vary the notice as suggested and the appeal on ground (f) fails.

The ground (g) appeal

15. The ground (g) appeal is that the four month period given to comply with the requirements of the notice is too short. The appellant requests that this be increased to twelve months to avoid occupants being forced out and left homeless. The Council submit that it could exercise discretion in terms of seeking compliance with the notice.
16. The time period given for compliance with the enforcement notice is to allow for the unauthorised use to cease and the physical works associated with the use to be removed. To extend the period of time to a year would be tantamount to the grant of a temporary planning permission which would not be appropriate. I consider that the four month period is sufficient as it allows for notice to be given to the tenants and for the physical works to be carried out once the flats are vacated. The appeal on ground (g) therefore fails.

Appeal B

Main Issue

17. The main issue is the effect of the development on the living conditions of future occupiers, having regard to the provision of private open space.

Reasons

18. The appellant proposes to use the flat roof of the former office building to erect two flats. These would be built around the existing roof top plant equipment. The proposed, two bedroom, flat for the northern section of the roof (labelled Flat 32 on the plans) would have a 22 sq m roof terrace accessed from the kitchen/dining/living room. However, there would be no such provision for the two bedroom flat proposed for the southern section of the roof (labelled Flat 31 on the plans).
19. The appellant's response to the Council's concerns is to point out that none of the flats in the rest of the building, which were permitted through the PA process, have been provided with outdoor private space. Furthermore, Britannia House has good access to nearby open spaces such as Friary Park and Coppetts Wood which are within walking distance of the site.
20. For the purpose of my determination under the planning acts I am required to have regard to the development plan, unless material considerations indicate otherwise. The development plan in this instance is Barnet's Local Plan (LP)⁵. Policy DM02 requires development to demonstrate compliance with a number of documents including the recently adopted Supplementary Planning Document: Sustainable Design and Construction, October 2016 (SPD). This

⁵ Barnet's Local Plan (Development Management Policies) Development Plan Document adopted September 2012

sets out an 'Outdoor amenity space' requirement of 5 sq m of space per habitable room for flats. The development of Flat 31 without any private open space would conflict with the objectives of this requirement which recognises the value of such space to improving the living standards of residents.

21. I turn now to deal with the appellant's other material considerations which he submits indicate that planning permission should be granted for the development. The development of the flats on the lower floors was permitted by a grant of planning permission set out in a development Order. As such, it was not open to the Council to have regard to the development plan when dealing with the PA applications, which they are ordinarily required to do so by the Planning Acts when dealing with planning applications. It is therefore not appropriate to rely on the lack of provision of either communal or private open space for the flats that have already been developed to justify the current proposal.
22. With regard to access to nearby public parks, the Council advise that the site lies within an area that is deficient in public open space⁶ but that occupiers of Britannia Road are fortunate in being near to accessible open spaces. At the site visit I saw that Friary Park is within about a 20 minute walking distance but Coppetts Wood is further afield. However, just to the north of the appeal site, within about 10 minutes walking distance, there is access to Swan Lane Open Space from the High Road. Notwithstanding the proximity of this provision and its usefulness for informal recreation, I consider that it is no substitute for the provision of private open space which serves different needs.
23. Taking these submissions into account I find that there are no material considerations in this case to indicate that the acceptability or otherwise of the development should be determined other than in accordance with Policy DM02 of the LP. The development would result in harm to the living conditions of future occupiers, having regard to the provision of private open space.

Other Matters

24. The development makes no provision for off-street parking and the site lies within the boundary of a town centre and an All Day Controlled Parking Zone. The Council considers that this could be addressed with a financial contribution from the appellant towards amending the Traffic Order to prevent future occupiers from obtaining parking permits. The appellant has not submitted a completed unilateral undertaking though he is willing to do so and the Council have made no comments on the draft undertaking.
25. It has not been shown that a contribution made via a planning obligation is the only realistic way to prevent future occupiers from obtaining parking permits. I have also not been provided with evidence to indicate whether such an obligation is necessary, having regard to the statutory tests⁷. However as I am dismissing the appeal for other reasons, the decision does not turn on the matter.

⁶ Area 2 Open Space Assessment 2009

⁷ Section 122 of the Community Infrastructure Regulations 2010

Conclusions

Appeal A

26. For the reasons given above I consider that the appeal should not succeed.

Appeal B

27. For the reasons given above I conclude that the appeal should be dismissed.

D Fleming

INSPECTOR