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# Appeal Decision

Site visit made on 30 May 2017

**by Susan Wraith Dip URP MRTPI**

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

**Decision date: 05 July 2017**

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**Appeal Ref: APP/M9584/C/16/3161410**

**Part of the land at The Carpenters Arms Public House, 17 Carpenters Road, London, E15 2JH**

- The appeal is made under s174 of the Town and Country Planning Act 1990 [hereafter "the Act"] as amended by the Planning and Compensation Act 1991.
  - The appeal is made by Carpenters Enterprise Limited against an enforcement notice issued by the London Legacy Development Corporation [hereafter "the LLDC"].
  - The notice was issued on 22 September 2016.
  - The breach of planning control as alleged in the notice is: Without planning permission:
    - (a) the change of use of part of the Land (shown pink on the plan attached at Appendix 2) from ancillary car parking associated with the public house to a sui generis use as short term lodgings and overnight accommodation.
    - (b) the erection of a boundary brick wall (approximately 2.5m in height) partially along the boundary with Carpenters Road and Hutchins Close (shown light blue on the plan attached at Appendix 2);
    - (c) the erection of railings and vehicular gates to the existing low brick wall on Hutchins Close and Gibbins Road (shown green on the plan attached at Appendix 2);
    - (d) the erection of a roofed timber structure over part of the car park area (shown in yellow on the plan attached at Appendix 2);
    - (e) the erection of a single storey extension to the public house within the car parking area (shown pink on the plan attached at Appendix 2);
  - The requirements of the notice are:
    1. Cease use of the Land for short term lodging or overnight accommodation purposes;
    2. Demolish the brick wall;
    3. Remove the railings and vehicular gates;
    4. Demolish the roofed timber structure;
    5. Demolish the single storey addition;
    6. Reinststate the low-brick wall to the perimeter of the car parking area as it existed prior to the unauthorised development (as shown in Appendix 3 to this enforcement notice);
    7. On completion of steps 2, 3, 4, 5 and 6 above, remove all materials and debris from the site.
  - The periods for compliance with the requirements are:

A period of one month from the effective of the notice should be allowed for compliance with step 1.

A period of two months from the effective date of the notice should be allowed for compliance with steps 2, 3, 4, 5, 6 and 7.
  - The appeal is proceeding on the ground set out in s174(2)(a) of the Act. Since an appeal has been brought on ground (a) an application for planning permission is deemed to have been made under s177(5) of the Act.
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## **Decision**

1. The enforcement notice is corrected by:

- (i) In paragraph 3(c), deletion of "vehicular gates" and substitution of "a vehicular gate";
- (ii) In paragraph 3(d), insertion of "within most of the land" before "shown in yellow"; and
- (iii) In paragraph 6 deletion of the text in entirety and substitution of "For step 1 one month from the date that the notice takes effect. For steps 2, 3, 4, 5, 6 and 7 two months from the date that the notice takes effect."

Subject to these corrections the appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under s177(5) of the Act.

## **Matters concerning the enforcement notice**

2. Before I proceed to consider the appeal I must ensure the notice is in good order. In paragraph 3(c) the erection of vehicular gates (plural) is alleged whereas, at my site visit, I saw that there was only one vehicular gate. This error can be corrected by deleting "vehicular gates" and substituting "a vehicular gate".
3. Also at my site visit I saw that the roofed timber structure, alleged at paragraph 3(d), does not cover the whole of the area which is intended to depict it shown in yellow on the Appendix 2 plan. This error can be corrected by insertion of the words "within most of the area" before the words "shown in yellow...".
4. In paragraph 6 the use of the words "should be allowed" introduces an element of uncertainty as to the time periods for compliance. As legal culpability arises from any failure to comply a recipient should be left in no doubt about what is required and by when. I shall substitute alternative wording so that the compliance periods are set out in absolute terms.
5. I shall make all the above corrections under the available powers of s176(1)(a) of the Act. I am satisfied that no injustice will arise to either of the main parties in me so doing.

## **Other preliminary matters**

### *Temporary use*

6. The appellant describes the works as "low cost temporary buildings" and is seeking permission for a temporary period of twenty one years. The appellant expects, on expiry of the lease, that the Freeholder will take possession and re-develop the site. Thus the appellant is prepared to remove the buildings towards the end of the lease term.
7. The Act provides for the granting of planning permission for a limited period<sup>1</sup> although, in applying that provision, regard must also be had to The Planning

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<sup>1</sup> S72(1)(b) and s72(2) of the Act provide for the granting of planning permission for a limited period; and for the removal of any buildings or works authorised by the permission, or the discontinuance of any use of land so authorised, at the end of a specified period, and the carrying out of any works required for the reinstatement of land at the end of that period.

Practice Guidance<sup>2</sup> [hereafter “the PPG”]. The PPG advises that a temporary permission may be appropriate where a trial run is needed in order to assess the effect of the development on the area, where it is expected that the planning circumstances will change in a particular way at the end of that period or to bring into use vacant land and buildings pending longer term regeneration plans coming forward. The circumstances of the appeal, however, do not strictly fall into any of those set out in the PPG. I also have reservations about whether “twenty one years” (which is a prolonged period) could qualify for a “temporary permission” as intended by the PPG in the circumstances of this case.

8. Notwithstanding, I acknowledge that there is a prospect of the site being re-developed at the end of the lease term which, if that was to be the case, would in itself limit the life of the development and its ongoing effects. I shall, therefore, weigh this consideration into the overall balance of considerations in reaching my decision on this appeal.

*Description of the use*

9. The change of use of the land to a use as short term lodgings and overnight accommodation (sui generis) is alleged. The deemed application takes its terms from the allegation.
10. There is no appeal made expressly on ground (b), that being on the ground that the matter alleged has not occurred as a matter of fact. However, the appellant argues that the use is a hotel falling within Use Class C1<sup>3</sup> and not a sui generis use for lodgings as is alleged in the notice.
11. Had an appeal been made on ground (b) on that basis, there would have been a burden of proof upon the appellant to show that the change of use was, in fact, to a hotel and not to lodgings. However, little information has been put forward to support the assertion that the use is a hotel. For example, the appellant has not given information in detail concerning the profile of the residents, typical length(s) of stay and what is provided by way of servicing the rooms and accommodation.
12. Whilst the accommodation is described in the notice as an “extension” it has a separate entrance and only minimal attachment to the public house. If taking meals in the public house residents would have to exit the accommodation through its doorway and traverse the Carpenters Road frontage to reach the public house entrance. The accommodation, on the other hand, appears to provide for a degree of self catering in that there is a kitchenette which provides for the heating of food in a microwave, for example.
13. According to LLDC, when its officers visited the premises in August 2016 it was apparent that the premises were lodgings used predominantly by contractors and trades people. The officers were told that persons residing in the premises were generally long term occupants albeit, on occasions, shorter stays of a couple of days were provided for. LLDC’s assertions of what its officers witnessed at that visit have not been disputed by the appellant.

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<sup>2</sup> The Planning Practice Guidance is a web based resource produced by Government which gives guidance to practitioners on a range of planning topics including on the use of planning conditions.

<sup>3</sup> Class C1 Hotels is defined in the Town and Country Planning Use Classes Order 1987 (as amended) as “Use as a hotel or as a boarding or guest house where, in each case, no significant element of care is provided.”

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14. In all these circumstances, on the evidence, I consider that the use more likely than not is as lodgings as alleged in the notice, and that the change of use was not to a hotel as is claimed by the appellant as a matter of fact and degree. I shall deal with the appeal on ground (a) and the deemed application accordingly.

### **The appeal on ground (a) and the deemed application**

#### *Planning policies*

15. The development plan comprises the London Plan 2016 [hereafter "London Plan"] and the London Legacy Development Corporation Local Plan [hereafter "Local Plan"].
16. The site is within the Greater Carpenters District where policy SA3.4 of the Local Plan encourages mixed use development. Policy 4.5 of the London Plan is supportive of infrastructure which stimulates growth of the visitor economy, including by providing additional hotel bedrooms and extending the range of visitor accommodation by (amongst other things) providing good quality budget category hotels. Policies 4.5, 7.2 and 7.6 of the London Plan and policies BN.1 and BN.5 of the Local Plan, taken together, encourage development which (amongst other things) provides for a good standard of amenity and which responds to the needs of all users. Policies 7.1, 7.4, 7.5 and 7.6 of the London Plan together with policies BN.1 and SP.3 of the Local Plan seek development of high quality design that has regard to local character, makes a positive contribution to streetscape and contributes to a sense of place and a coherent and safe environment. Policy SP.5 of the Local Plan encourages development which contributes towards health and wellbeing including through responding to climate change and providing for (amongst other things) sustainable drainage.
17. Planning law requires that planning decisions are made in accordance with the development plan unless material considerations indicate otherwise.<sup>4</sup>
18. The National Planning Policy Framework [hereafter "the Framework"] sets out the Government's planning policies for England and how it expects these to be applied at local level. The Framework seeks to achieve sustainable development by (amongst other things) requiring good design which contributes positively to making places better for people (Section 7). Paragraph 207 encourages an effective and proportionate approach to enforcement. National policies as expressed in the Framework are material considerations for the appeal.
19. The London Plan and the Local Plan post date publication of the Framework, are up to date and in conformity with the Framework. The cited policies are therefore capable of carrying full weight where directly applicable to the appeal development.

#### *Main issues*

20. The encouragement given towards hotel development, as expressed in policy 4.5 of the London Plan, to my mind is not directly applicable to the appeal development. This policy seeks to provide a world class experience for people visiting London's major visitor attractions and business visitors, and is not

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<sup>4</sup> S38(1) and (6) of the Planning and Compulsory Purchase Act 2004 and s70(2) of the Town and Country Planning Act 1990.

directly aimed towards longer stay lodgings for trades people working the area, for example. There is no particular encouragement for the type of accommodation which is the subject of this appeal within policy 4.5. In the appeal circumstances I find this policy to carry little weight.

21. On the other hand, policy SA3.4 of the Local Plan acknowledges that residential uses will be comprised within part of the mix of uses within the Greater Carpenters District. I cannot see that a use for lodgings falls outside of the policy intentions for the area in principle. It is, therefore, the more detailed matters concerning the design of the development on which this decision will turn.
22. Having regard to the planning policies, statutory requirement and submissions made by the parties I consider the main issues in the appeal on ground (a) and the deemed application to be:
  - i. Whether the accommodation provides for satisfactory living conditions for its occupiers with particular regard to outlook and daylight;
  - ii. Whether the design of the development adequately provides for the needs of all users; and
  - iii. Effect of the wall, railings/gate, timber roofed structure and single storey extension upon the character and appearance of the area.

*Living conditions of occupiers*

23. The appellant proposes that the accommodation is configured to provide nine bedrooms (a reduction in number from what I saw at my site visit) and that only those rooms with windows would be used as bedrooms. A number of those windows directly face at close quarters the wall which surrounds this part of the site, or are orientated to look along the length of the narrow lightwells, giving a poor level of natural lighting to these bedrooms. Additionally, these rooms have a restricted and blank outlook onto the wall or along the lightwell, the wall having an oppressive and overbearing effect in views from these windows. Thus the development fails to achieve satisfactory living conditions for its occupiers, in particular those who have a longer duration of stay, and is contrary to Local Plan policy BN.1.

*Needs of all users*

24. The accommodation has quite narrow doorway openings and corridors. It is unclear how a person in a wheelchair, for example, could navigate the corridors and gain access to the rooms. Whilst the appellant says corridor and doorway widths will be made to comply with the Building Regulations there is nothing before me to demonstrate that this could be achieved without radical changes to the design of the accommodation.
25. Other changes are proposed including ramps from the courtyard, the allocation of two bedrooms for wheelchair users and an enlarged kitchen said to be suitable to accommodate a wheelchair user. However, it is unclear whether suitable gradients can be achieved for the ramps and there are no detailed kitchen and bathroom/WC layouts to satisfy me that acceptable layouts for disabled users can be provided. A blue badge parking space is also proposed. However, it has not been explained how a wheelchair user would access the accommodation from the blue badge parking space, there being gates separating the parking area from the courtyard. Neither is it clear how he/she

would gain access to the public house from the accommodation if taking meals there.

26. On what is before me I consider the accommodation, even with the proposed amendments, is unlikely to provide welcoming and convenient access for all users and a standard of accommodation that could be used easily and with dignity by all. Thus, I find the development to be contrary to London Plan policies 7.2 and 7.6 and policy BN.5 of the Local Plan.

*Effect upon the character and appearance of the area*

27. Carpenters Road is one of the connections to Queen Elizabeth Olympic Park. Significant investment has been made, in recent years, to its public realm including hard and soft landscaping works. The wall (the subject of this notice) is prominently positioned to the back edge of the Carpenters Road footpath wrapping around to Hutchins Close. Its visual impact upon the public realm is substantial.
28. The wall, which is painted in a light colour, is of solid and featureless appearance. Views which previously would have been possible into and across the site are now blocked. The wall gives a stark and hostile impression which detracts from the general vibrancy of Carpenters Road and which is contrary to the interests of providing for active, interesting and safe frontages at street level. Whilst attention has been drawn to another wall in the area I do not consider this should set the benchmark for the design standards for enclosures going forward.
29. The metal railings (positioned upon the original low brick wall) and gate, which run along the remainder of the site boundary to Hutchins Close and return around the frontage to Gibbins Road provide for views, between the palings, into the site. To that extent this structure does not have the same featureless effect as the wall. I acknowledge that, within an area of mixed uses, well designed enclosures in some situations may be needed for security reasons, for example. I saw at my site visit some other occurrences of walls with piers and railings including those surrounding the patio at the appeal site.
30. However, there is no particular justification put forward for the appeal railings and gate which, even though not blocking views entirely, still appear as forming a visual and human barrier of substantial length and height. To my mind the railings detract from the human scale and coherency of the public realm and fail to contribute positively to a sense of place and safety alongside this stretch of footpath which connects the residential area of the Carpenters Estate to the Queen Elizabeth Olympic Park approach.
31. The roofed timber structure, similarly, is prominent in views from Hutchins Close. It is unclear why the structure is needed for, what is said to be, public house car parking although it is of substantial scale. It appears insubordinate to the more domestic scaled proportions of the public house. Being timber framed with a polycarbonate roof, its materials of construction do not accord with the brickwork, solid and more robust materials that generally characterise buildings within the area.
32. With regard to the single storey extension, at present views of it are very limited because it is shrouded by the boundary wall. It is unclear whether the building could stand alone if the boundary wall was to be removed. If so,

without the boundary wall, the building would appear as a very prominent and incongruous addition which would be disproportionate to and disrespectful of the host property. Its flat roofed form and timber framed stud construction would be at odds with the general form and materials of the area and those of the public house. The building overall would detract from the quality of the public realm and would be detrimental to the interests of providing a well integrated and high quality built environment.

33. On this main issue concerning effect upon the character and appearance of the area I find that all of the matters alleged in the notice have an injurious effect and fail to contribute positively to the overall quality of the area. The development, thus, is contrary to policies 7.1, 7.5 and 7.6 of the London Plan and policies BN.1 and SP.3 of the Local Plan.

*Other matters*

34. The matter of flood risk has been raised in the appeal submissions. The site is within an area of high risk. However, I note that the Environment Agency has raised no objection in principle and LLDC does not wish to pursue the matter as a reason for refusal. Had I found the development acceptable in other respects, I am satisfied that flood resilience and resistance measures, evacuation arrangements and sustainable drainage could have been adequately dealt with through the imposition planning conditions and that the development would not, thus, offend Local Plan policy SP.5 insofar as it concerns flood risk and sustainable drainage.
35. I have been referred to the Planning Policy Statement on Green Belt protection and intentional unauthorised development.<sup>5</sup> The statement introduces a national planning policy to make intentional unauthorised development a material consideration to be weighed in the determination of planning applications and appeals. This consideration does, indeed, call into question why permission was not sought prior to the development being carried out when taking into account its scale and type. However, there is no further evidence from either party on the point and, without evidence, I cannot go so far as to conclude that the development was carried out in the knowledge that permission was needed. This is not, therefore, a consideration which adds weight to my conclusion that permission should be refused in the particular circumstances of this case.
36. I have taken into account all other matters raised including the proposed landscaping to Carpenters Road and the proposed covered walkway. However, none of these other matters weigh sufficiently to alter the conclusion I have reached that the appeal should not succeed.

*Conclusions on ground (a) and the deemed application*

37. I find that the development does not provide for satisfactory daylight and outlook for its occupiers, does not adequately meet the needs of all its potential users and has an adverse effect upon the character and appearance of the area. In providing lodging accommodation there is a limited benefit. However, that benefit is significantly outweighed by the harm I have identified in my consideration of the main issues.

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<sup>5</sup> Planning Policy Statement on Green Belt protection and intentional unauthorised development is a policy statement published by Government in 2015 which (amongst other things) makes intentional unauthorised development a material consideration.

38. As the development is not expected to subsist for longer than twenty one years, that ongoing harm is lessened a little. However, the extent to which it outweighs any benefit still remains substantial
39. The development is contrary to cited policies of the development plan and the development plan read as a whole. There are no benefits or material considerations that have been advanced that indicate a decision other than in accordance with the development plan.
40. Therefore, I conclude on ground (a) that the appeal should fail. The deemed application shall be refused.

### **Conclusion**

41. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections and refuse to grant planning permission on the deemed application.

*Susan Wraith*

Inspector