



Appeal Decision

Site visit made on 22 August 2017

by Tim Belcher FCII, LLB (Hons), Solicitor (Non-Practising)

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

Decision date: 07 September 2017

Appeal Ref: APP/E5900/C/16/3164162

Nagpal House, Unit 2, 1 Gunthorpe Street, London, E1 7RG

- 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 1990 Act").
 - The appeal is made by Mr Wai Ming Yau against an Enforcement Notice issued by the Council of the London Borough of Tower Hamlets ("the Council").
 - The Enforcement Notice, numbered ENF/16/00081, was issued on 21 October 2016.
 - The breach of planning control as alleged in the Enforcement Notice is a change in use of the property to a massage parlour (Sui Generis) without planning permission.
 - The requirements of the Enforcement Notice are: 1. Cease the use of the premises as a massage parlour. 2. Remove all materials and equipment from the property associated with the unauthorised use including the massage tables.
 - The period for compliance with the requirements is one month.
 - The appeal is proceeding on the ground set out in Section 174(2)(a) of the 1990 Act.
- Summary of Decision:** The appeal is allowed subject to the Enforcement Notice being corrected in the terms set out below in the Formal Decision below.
-

Procedural Matters

1. The correct postal address for the premises where the change of use has occurred is that stated in the Heading above.
2. The plan attached to the Enforcement Notice identifies the whole of the premises at Nagpal House whereas the breach of planning control is restricted to the area shown edged red on the plan attached to this Appeal Decision. I will substitute this plan for the plan attached to the Enforcement Notice. The Appellant has confirmed that no injustice would arise from this. The Planning Inspectorate asked for the Council's comments on the substitution of the plan. The Council did not reply within the timescale stipulated.
3. Nagpal House falls within the Whitechapel High Street Conservation Area (the Conservation Area). There is a statutory duty when dealing with appeals in a Conservation Area that special attention should be paid to the desirability of preserving or enhancing the character or appearance of the area (the Conservation Area Test). The Council have not raised any specific reference to harm to the Conservation Area. Notwithstanding that I have adopted the Conservation Area Test in dealing with this appeal.
4. Plans were submitted with the Appellant's Appeal Statement. Drawing No. NGPLH-P001 entitled "Existing Ground Floor" shows three 'massage rooms'. At the site visit I was informed and noted that one of the three massage rooms was, in fact, a rest room used by staff working at the massage parlour.

Relevant Background Matters

5. The premises where the change of use has occurred comprises part of the ground floor of Nagpal House. The other unit on the ground floor is occupied by a firm of Solicitors. There are three further levels of accommodation above the ground floor at Nagpal House which are used as flatted residential accommodation.
6. Planning permission for the construction and use of Nagpal House was granted in April 2003. The permission specified that the ground floor of Nagpal House was to be used for A1 (Retail) or A2 (Financial/Professional Services). The permission was conditioned so that the ground floor use would only be carried on between 08:00 and 20:00 on any day.
7. The building works at Nagpal House were completed in about 2007.
8. I understand that two separate commercial uses of the ground floor of Nagpal House have been carried on from when it was first used.
9. I am advised that in April 2016 the Council received complaints relating noise and disturbance due to the operation of the massage parlour late in the evening.
10. In April/May 2016 the Council became aware that there were two commercial uses within the ground floor of Nagpal House.
11. In August 2016 Officers inspected Unit 2 and concluded that three of the rooms were being used for massaging purposes. The Council were informed by local residents that the use was being carried on after 22:00 hours.

Policy

12. The Development Plan for the area includes:
 - a) Policy DM25 of the Managing Development Document adopted in April 2013.
 - b) Policies SP06 and SP10 of the Core Strategy Development Plan Document to 2025 which was adopted in September 2010.
 - c) Policy 7.15 of the London Plan 2016.

Main Issue

13. I consider the main issue in this case is whether the use of Unit 2 as a massage parlour causes harm to living conditions of nearby residential occupiers by reason of noise or disturbance.

Reasons

Noise or disturbance

14. The Development Plan explains that:
 - a) The Council will ensure that development protects amenity and promotes well-being.
 - b) Development should seek to protect the amenity of surrounding existing residents and building occupants by not creating unacceptable levels of noise.

- c) Development proposals should seek to manage noise by mitigating and minimising the potential adverse impacts of noise in the vicinity of new development without placing unreasonable restrictions on development.
15. I am mindful of the lawful use of the ground floor of Nagpal House for A1 or A2 uses and the hours during which those uses can be carried out.
16. It is clear to me that Gunthorpe Street would have a quiet environment especially after 20:00 hours when most workers in the area have left for home. The predominant use in Gunthorpe Street is that of residential accommodation. The occupiers of residential properties near Nagpal House should not be exposed to noise and disturbance at times when they can expect to have a quiet environment to relax and enjoy calm after the hustle and bustle of life in London. This is the reason why the Council originally imposed the time limits on the use of the ground floor at Nagpal House.
17. I am aware of the concerns raised by local residents regarding late night noise and disturbance caused by the comings and goings of clients to Unit 2. However, the Appellant's agent confirmed in the Statement of Case that members of the public would only use the services provided at Unit 2 during the time periods originally approved by the Council when they granted planning permission for A1 or A2 uses at Nagpal House. I consider that if the Appellant operated within the times originally imposed by the Council there would be no material harm caused to the living conditions of nearby occupiers. In those circumstances the massage parlour use of Unit 2 would be in accordance with the relevant policies of the Development Plan.
18. I am aware that the Appellant has previously carried on the massage parlour use during the hours when I consider the business needs to be closed. The massage parlour use during these hours harmed the living conditions of nearby residential occupiers. However, it is clear from the Appellant's representations that they will comply with the hours of use restriction. I am also satisfied that the Council have powers available to deal with any breaches of the hours of use restriction.

Other Matters

19. The Development Plan explains that the Council will:
- a) Protect and enhance Conservation Areas.
 - b) Seek to maximise and deliver job creation in the Borough by promoting the creation of a diversified and balanced economy by ensuring a sufficient range, mix and quality of employment uses with a particular focus on small and medium enterprise sectors.
20. The Council are concerned that advertisements promoting the massage parlour business have been displayed within and near Unit 2 and that these have had a detrimental impact on the Conservation Area. At the time of my site visit there were advertisements in the window of Unit 2 explaining what services were provided there. The internal illuminated advertisement was partly obscured by the window advertisement and I understand that it is no longer used. I am aware of a range of powers available to the Council if advertisements are displayed which are detrimental to amenity or are placed illegally on the highway. I consider these powers are sufficient to ensure that the Council retain control over any inappropriate signage displayed at or near Unit 2.

21. I conclude that the massage parlour use would comply with the Conservation Area Test explained above.

Conditions

22. The Council did not propose any conditions. The Planning Inspectorate therefore asked both the Appellant and the Council for their views on the conditions referred to below. These conditions seek to control the future use, the intensity of that use and the hours when the use can be carried on at Unit 2 with Nagpal House. These conditions will protect residents from unacceptable noise and disturbance arising from the massage parlour use.

23. The Appellant had no objection to the conditions. The Council did not reply within the timescale stipulated.

Overall Conclusion

24. It is clear from the representations, and from my inspection of the site, that the description of the premises as set out in the Enforcement Notice and the plan attached to the Enforcement Notice are incorrect. I am satisfied that no injustice will be caused by correcting the Enforcement Notice in those respects, in order to clarify the terms of the deemed application under Section 177(5) of the 1990 Act. For the reasons given above I conclude that the appeal should succeed on Ground (a) and I will grant planning permission in accordance with the application deemed to have been made under Section 177(5) of the 1990 Act.

Formal Decision

25. It is directed that the Enforcement Notice be corrected by:

- a) the deletion of the words in paragraph 2 and the substitution of the words "Land at Nagpal House, Unit 2, 1 Gunthorpe Street, London, E1 7RG shown edged red on the attached plan".
- b) by the substitution of the plan annexed to this Appeal Decision for the plan attached to the Enforcement Notice;
- c) Subject to these corrections the appeal is allowed, the Enforcement Notice is quashed and planning permission is granted on the application deemed to have been made under Section 177(5) of the 1990 Act for the development already carried out, namely the use of the part of the ground floor at Nagpal House, 1 Gunthorpe Street, London, E1 7RG, as shown edged in red on the plan attached to the Appeal Decision, as a massage parlour subject to the following conditions:
 1. Unit 2 at Nagpal House shall only be used as a massage parlour.
 2. Only two of the rooms within Unit 2 shall be used as massage rooms.
 3. The massage parlour use hereby permitted shall not be open for business between 20:00 hours and 08:00 hours on the following morning.

Tim Belcher

Inspector



Plan

This is the plan referred to in my decision dated 07 September 2017

By Tim Belcher FCII, LLB (Hons), Solicitor (Non-Practising)

Land at Nagpal House, Unit 2, 1 Gunthorpe Street, London, E1 7RG

Reference: APP/E5900/C/16/3164162

Do Not Scale

