



Appeal Decision

Site visit made on 15 January 2019

by Chris Preston BA(Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 February 2019

Appeal Ref: APP/K5600/C/18/3200615 Flat A, 34 Munro Mews, London W10 5RZ

- 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 Mr Luca Longobardi against an enforcement notice issued by The Council of The Royal Borough of Kensington & Chelsea.
 - The enforcement notice, numbered E/17/01258, was issued on 29 March 2018.
 - The breach of planning control as alleged in the notice is: Without planning permission, the change of use from C3 dwelling house to use of the Land for preparation and storage ancillary to the restaurant located at 108 Golborne Road, London, W10 5PS, (Use Class A3).
 - The requirements of the notice are:
 - i) Cease use of the Land for preparation and storage ancillary to the restaurant located at 108 Golborne Road, London, W10 5PS, (Use Class A3), and return the Land to permanent residential use (Class C3); and
 - ii) Remove the metal shelving units installed at 1st floor level from the Land; and
 - iii) Remove the refrigeration units at 1st floor level from the Land; and
 - iv) Remove all food, drink and equipment stored for use by the restaurant from the Land.
 - The period for compliance with the requirements is two calendar months from the date the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (b) and (c) of the Town and Country Planning Act 1990 as amended. Since an appeal is brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decision

1. 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.

The Appeal on Ground (b)

2. An appeal on ground (b) is made on the basis that the matters alleged in the notice have not occurred. The appellant is the restaurateur of the premises below. He contends that the flat has not been used in connection with the restaurant but suggests that he has sometimes made use of the kitchen area in the flat to practice cooking with new ingredients, hence the presence of a greater amount of culinary equipment than may be found in a normal kitchen. In effect, he contends that this is a hobby use and not an extension of the restaurant below.

3. The evidence presented by the Council and third parties casts substantial doubt on those claims. The officer report refers to a visit by an enforcement officer in November 2017 where a number of people were observed working within the building. Shelves had been erected for the storage of foodstuffs and other items that appear to be related to the restaurant use and there was no evidence of any continuing residential use.
4. Photographs taken on the date of the site visit depict people working on what appears to be food preparation. What would have been the bedroom at first floor level is given over to the storage of food and drink and large quantities of non-perishable food and alcohol can be seen on numerous shelving units. Two large fridges and a chest freezer were present and chefs' aprons can be seen hanging on the doorway.
5. The kitchen at second floor level contained industrial sized food mixers and slicers, large quantities of cooking oil and the number of plates and bowls stored on the shelves was far more than could ever be needed by the occupants of a single bedroom flat.
6. All of above is indicative of a commercial use. The amount of storage and the industrial sized equipment is way beyond what would be necessary for a domestic or hobby use. In addition, no domestic furniture is visible and there was no room for a bed in the first floor bedroom or a table in the dining kitchen on account of the amount of equipment and stored items. At the time of the officer's visit the flat did not seem to be equipped with the facilities to enable residential occupation.
7. A letter from a resident of an adjacent flat verified the Council's conclusion that the premises had been used for commercial purposes in association with the restaurant below. The evidence before me strongly indicates that the matters alleged have occurred and the appeal on ground (b) must fail.

The Appeal on Ground (c)

8. The appellant's case on ground (c) is that there has been no breach of planning control on the basis that the flat was used for the purposes of a hobby by the restaurateur and that planning permission is not required to store items associated with a hobby.
9. For the reasons given above, the evidence strongly indicates that the flat was being used in association with the restaurant at the time the notice was served. It seems likely that the shelving, industrial sized equipment and large fridges/freezers were all moved into the premises to facilitate the use. The presence of those items made the space impractical to live in and there is little doubt that a material change of use had occurred from residential to a use associated with the restaurant at the time the notice was served.
10. No planning permission had been granted for that use and a breach of planning control had therefore occurred. Thus, the appeal on ground (c) must fail.

The Appeal on Ground (a)

11. The scope of an appeal on ground (a) is limited by section 177(1)(a) of the Town and Country Planning Act 1990 (the Act). It is open to me to grant planning permission in respect of the matters stated in the enforcement notice

as constituting a breach of planning control, whether in relation to the whole or any part of those matters or in relation to the whole or any part of the land to which the notice relates.

The grounds of appeal are not entirely clear but, in the event that I am not minded to grant planning permission for the breach in its entirety, an alternative proposal has been put forward that would see part of the flat used in connection with the restaurant below. The plans submitted depict that the bedroom/ living room at first floor level would be sub-divided, with half being used as a dry-store by the restaurant and the other half being retained in residential use. In view of the scope of a ground (a) appeal it would be possible for me to grant planning permission for the use of part of the building and I have considered the proposed alternative. However, in the first instance I have considered whether planning permission should be granted for the breach in its entirety.

12. The main issues in the determination of the appeal on ground (a) are:

- i) The effect of the loss of a residential unit, having regard to the likely demand for residential accommodation in the area and local planning policy aimed at protecting existing housing stock; and
- ii) The effect on neighbouring living conditions on account of noise and disturbance.

Housing Supply

13. Policy CH3 of the Royal Borough of Kensington and Chelsea Consolidated Local Plan (2015) (the Local Plan) identifies that the Council will seek to protect "market residential use floorspace" with a limited number of exceptions. That policy is set in the context of a need to increase the housing stock in the Borough and the importance of the private rented sector in providing low cost housing¹.
14. In a similar vein, saved policy H17 of the Kensington and Chelsea Unitary Development Plan (2002), notes the importance of the private sector in providing smaller units and states that the Council will resist the loss of existing, small, self-contained flats or one or two habitable rooms. That policy is clearly of some vintage but the more recent analysis that underpins the Local Plan would indicate that small private sector flats continue to play an essential role in maintaining a balanced housing stock to meet the needs of the local population.
15. The above policies are consistent with the National Planning Policy Framework (the Framework) which identifies that the size, type and tenure of housing needed for different groups in the community should be assessed and reflected in planning policies².
16. Thus, in view of the importance of small private rented sector flats in maintaining a balanced supply of housing in the Borough the loss of the flat would clearly be contrary to the established policies of the development plan and the aims of the Framework and would have a material and harmful effect on the ability to provide a balanced housing supply in the area. The

¹ As set out in the preamble to the policy

² Paragraph 61

development may only relate to a single unit but there is nothing to indicate that the policies only apply above a given numerical threshold and their aims would be difficult to achieve unless a consistent approach is taken.

Noise and Disturbance

17. The entrance to the flat is at first floor level and there is no direct access between the restaurant and the unit. In order to gain access staff need to leave the restaurant by the back door and turn up the external staircase before entering the side door of the unit.
18. Whilst no noise monitoring appears to have been undertaken, the nature of the entrance arrangements are such that disturbance for the occupants of neighbouring units is highly likely in my view. The Mews court is a relatively quiet space compared to the busy streets at the front and ambient background levels of noise are likely to be lower such that noise and disturbance will be easier to detect for residents living in the various flats that are in close proximity.
19. The activity from staff coming and going, carrying food and equipment up and downstairs is likely to be greater than would be the case for a small flat. There is a likelihood of disturbance as a result of doors opening and closing, conversations between staff, and a greater likelihood that the rear door of the restaurant will be left open whilst goods are being moved up and down, allowing noise from within to escape. If the flat was not in use, there would be little need to use the rear door of the restaurant frequently.
20. All in all, given the close relationship with neighbouring flats I conclude that the use is likely to have caused disturbance and caused harm to the living conditions of neighbouring occupiers, contrary to the aims of policy CL5 of the Local Plan which states that the Council will require all development to ensure good living conditions for occupants of new and neighbouring buildings.

Other Matters

21. The appellant has not explicitly mentioned the matter but it would appear that the need for additional storage and preparation space has arisen out of the success of the restaurant below and the lack of space at ground floor level. The continued occupation of the restaurant no doubt brings economic benefits in terms of employment of staff and adds to the vibrancy of the high street. I am mindful of that matter and attribute some weight to it in reaching my decision. However, whilst the limited space may hinder the growth of the restaurant, there is no indication that it would close or cease to operate effectively without the use of the accommodation in the flat.

Conclusion

22. Planning decisions should be made in accordance with the policies of the development plan unless material considerations indicate otherwise. The relevant policies of the plan seek to retain small, private sector, rented accommodation in the interests of providing a balanced housing mix. The loss of the unit is contrary to those aims. The likely level of noise and disturbance is also contrary to the aims of policy CL5. Whilst I attach some weight to the likely economic benefit of the continued success of the restaurant that matter is not sufficient to outweigh the clear harm in relation to the two main issues or to override the presumption in favour of the development plan. Accordingly,

the appeal on ground (a) should not succeed and I shall refuse to grant planning permission for the matters stated in the breach.

The Appellant's Alternative Proposal

23. The floorspace within the flat is limited in extent, particularly in respect of the main living and sleeping accommodation. In effect, there is a single living/bedroom at first floor level and a kitchen above which would be large enough to accommodate a dining table. The proposal to sub-divide the bedroom to form a dry-store for the restaurant would reduce the likely level of noise externally because access to the room would be reached from within the restaurant.
24. However, the plan appears to have been put together with little thought for the resultant living conditions in the flat itself. What is already a small bedroom/siting area would become pitifully cramped with insufficient space to accommodate furniture and allow a reasonable degree of circulation space. The sense of enclosure for any residents within what is the main living and sleeping area would be substantial. Put simply, remaining internal space would be inadequate and living conditions would be wholly unsuitable. The proposal would clearly fail to comply with the aims of policy CL5 of the Local Plan in terms of providing good living conditions for any residents and I am firmly of the view that planning permission should not be granted for the use of part of the flat for that reason.

Overall Conclusion

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

Chris Preston

INSPECTOR