



Appeal Decision

Inquiry opened on 14 May 2019

Site visit made on 15 May 2019

by Stephen Brown MA(Cantab) DipArch RIBA

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

Decision date: 06 August 2019

Appeal Ref: APP/U5360/C/18/3194222 60 Windus Road, London N16 6UP

- 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 by Jocel Properties Ltd. against an enforcement notice issued by the Council of the London Borough of Hackney.
 - The enforcement notice, ref. 2017/0043/ENF, was issued on 20 December 2017.
 - The breach of planning control alleged in the notice is the material change of use of the property from General Industrial (Use Class B2) to two residential units (Use Class C3).
 - The requirements of the notice are to:
 - (1) Cease the use of the property as self-contained residential units.
 - (2) Remove all partitions, fixtures, and kitchen and bathroom (except for one) fittings facilitating the use as residential units.
 - (3) Make good all damage to the property resulting from the removal of the unauthorised works.
 - (4) Remove all materials, debris, waste and equipment resulting from compliance with the other requirements of the notice from the property and its premises with requirements (1) to (3).
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the Town and Country Planning Act 1990 as amended. The prescribed fees have been paid within the specified period, and the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended fall to be considered.
-

Decision

1. The appeal is allowed on ground (g), and I direct that the enforcement notice be varied by:
 - DELETION of '*3 months*' and
 - SUBSTITUTION of '*9 months*' as the period for compliance.I further direct that the enforcement notice be varied by:
 - OMISSION of the words '*General Industrial (Class B2)*' from paragraph 3 of the notice; and
 - SUBSTITUTION of the words '*Business (Class B1)*'.
2. Subject to these variations 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.

Preliminary matters

3. The reasons for issuing the enforcement notice include reference to the site being within the Belfast Road Primary Employment Area (PEA) designated in the Council's Core Strategy of 2010. However, the parties now agree that this is not the case. I have determined the appeal accordingly.

Background

4. The appeal site lies on the southern side of Windus Road at the corner of Belfast Road – both of which are entered from the A10 Stamford Hill a short distance to the east. The building is at the eastern end of a terrace, brick built, with a slate roof and having a brick gable end facing Windus Road. It is of 2 storeys with a part basement. Historic ground floor alterations to the corner of the building indicate it may at one time have had shop windows, or other large openings at the front and side. These have been infilled with brick on the side elevation, and a domestic type window and entrance door on the front elevation.
5. Windus Road is predominantly residential, but no. 60 appears to have been in another use previously. It may have been a shop at some time, but there is no record of this. I understand that it was used by a company specialising in sports trophies from about 1983 to 1998. From 2000 to 2012 it was let to the trustees of a religious organisation for administrative purposes, prayer meetings, and bible studies. In 2013 it became used as a single dwelling until works were done to convert to two flats in 2017.
6. The main parties agree the property should probably have been regarded as in an office type use – that is Use Class B1, rather than the Class B2 use referred to in the enforcement notice. I consider I can correct the notice in this respect without causing significant prejudice to either party.
7. The building has been altered to create two flats. To the front, the entrance door gives access to a living room/kitchen, with a shower room to the back. There is an open staircase down to a basement bedroom, and also a void at the front with a guard rail, providing some of the natural light to the bedroom below. This room also has windows just above the external ground level providing additional daylight. I refer to this unit as Flat A.
8. Flat B has its entrance door on the long flank elevation. A small hall gives access to a sitting room, beyond which is a kitchen giving on to a small outside yard partly roofed with translucent sheeting. Within the yard is a lean-to outhouse with a washing machine. Upstairs a rather tortuous corridor gives access to a bathroom at the back, two small bedrooms with windows in the flank elevation, and a larger front bedroom facing Windus Road.

The appeal on ground (a) and the deemed planning application

9. This ground is that planning permission should be granted for the matters alleged in the notice.
10. From my inspection of the appeal site and its surroundings, and from all that I have heard and read I consider the main issues to be as follows:
 - The effect of the development on living conditions for occupants of the appeal property in terms of room sizes, layout, natural light and ventilation.

- The effect of the development on employment opportunities with the Borough.
11. The development plan before me comprises the London Plan of 2016, the Hackney Local Development Framework Core Strategy of 2010 (DFCS), and the Hackney Development Management Local Plan of 2015 (DMLP). London Plan Policy 3.5 relates to the quality and design of housing developments. Amongst other things it states that housing developments should be of the highest quality internally and externally, and seeks to ensure that requirements for accessibility and adaptability, and minimum space standards are reflected in Local Development Frameworks. Table 3.3 of the policy sets out minimum space standards for new dwellings, which equate to the government's Technical Housing Standards Nationally Described Space Standard of 2015.
 12. DMLP Policy DM1 requires that all developments including alterations and extensions to be of high quality design, and includes aims to ensure they are well laid out internally, and do not lead to cramped layouts and allow for adequate circulation space, storage and installations such as furniture.
 13. The Council say that Flat A does not meet the minimum space standard for a 1 bedroom flat as set out in Policy 3.5 of the London Plan. This requires a minimum Gross Internal Area (GIA) of 37 square metres for a single person flat of one storey with a shower rather than a bathroom. As measured at the site visit, and agreed between the parties, the GIA of Flat A is 34.51 square metres – approximately 2.5 square metres below the standard. While the GIA is defined to include flights of stairs and voids above stairs, a single storey dwelling would not have a staircase. It follows that the presence of stairs in Flat A reduces the available living space – I estimate conservatively this to be a reduction of about 1.6 square metres. Furthermore, the void over the part basement reduces available space still more – by about 1.25 square metres. As a result, this flat is over 5 square metres below the minimum – to my mind a significant deficit.
 14. Considering the layout of Flat A, the entrance is directly in to the living room, with the kitchen arranged along the right-hand (western) wall, and a washing machine in an alcove. There are a dining table and 2 dining chairs, another chair and a TV attached to the wall. Circulation within the room to access the shower room, staircase, kitchen area and entrance door takes up much of the space. Although the gross area of this room is almost 17 square metres, the staircase and void reduce the available area to such a degree that the space is extremely cramped. In my opinion this room does not readily accommodate commonly required furniture – such as easy chairs, a sofa, or desk – and occupants are not reasonably able to move around and undertake the different activities of everyday life, such as preparing food, eating, relaxing and entertaining.
 15. Considering the bedroom, given the space occupied by the staircase and circulation, that too is cramped. Daylight is from the two high level windows, and such light as is 'borrowed' from the window of the room above. I was struck by the very low level of daylight and consider artificial light would be needed at most times of day. Furthermore, all windows in the flat face northwards, so there is no sunlight. I am also concerned that little thought appears to have been given to means of escape from the bedroom in case of fire, since the windows are not large enough or at a height that they are

adequately accessible for this purpose. This leaves the only escape route through the principal living room – where any fire is likely to occur – with exit through the entrance door.

16. Looking at Flat B, I understand the GIA is 62 square metres on two floors. The minimum GIA set out in Policy 3.5 of the London Plan for a 3-bedroom dwelling on two floors is 84 square metres for occupation by 4 people – a shortfall of 22 square metres. On inspection I saw that the kitchen is remarkably small for a 3-bedroom dwelling, with very little in terms of work surfaces and storage. Although the sitting room is reasonably generous, two of the bedrooms are again remarkably small with little space to circulate, and little in the way of storage. Furthermore, in order to give access to the bathroom without passing through a bedroom it has been necessary to introduce a tortuous corridor, which itself reduces the available space for the bedrooms.
17. Overall, although I consider ventilation of Flat A can be adequately achieved, I find both flats to be of poor design, and conclude that they cause significant harm to living conditions for occupants of the appeal property in terms of room sizes, layout, and natural light. The development does not accord with the development plan, notably in terms of London Plan Policy 3.5 and DMLP Policy DM1.
18. Turning to the second main issue, both parties consider the most likely predominant use before conversion to a dwelling in 2013 was as offices within Use Class B1 – clearly an employment use.
19. The enforcement notice does not prescribe a use to which the property should return. However, without any grant of planning permission, the only available use would be the last lawful use – that is, as agreed, within Use Class B1. As the Council say, change of use to residential use Class C3 inevitably means there has been a loss of potential employment space.
20. DFCS Policy16 predicts that 18,000 new jobs will be created in Hackney between 2006 and 2026, and amongst other things seeks to increase the employment offer in the Borough. Furthermore, DFCS Policy 18 includes aims to protect employment land and floorspace last used for employment purposes anywhere in the Borough. The loss of office floorspace in this instance would clearly fundamentally conflict with this aim and would tend to decrease the employment offer.
21. DMLP Policy DM14 states that in considering redevelopment of a site commercial opportunities should be considered first, and the maximum feasible amount of employment land and floorspace should be examined through submission of marketing evidence. Where that has been demonstrated, loss of employment floorspace should only be permitted where robust marketing evidence has been submitted which demonstrates there has been no demand for the vacant floorspace, and the possibility of retaining, reusing or redeveloping it for employment generating uses has been fully explored.
22. There was much evidence put forward about the likelihood of the building being returned to an employment use. However, I concur with the Council's view that this tended to concentrate on potential users who wanted to occupy what were termed 'Grade A' offices. Many of these were open plan light industrial/office units in substantial new developments or converted industrial buildings. Furthermore, it was argued for the appellant that the lack of available B1

spaces within a 1-mile radius of the appeal indicated this would not be an ideal location, and that a B1 use would be incompatible with the amenity of adjacent residential uses.

23. However, looking at users on Belfast Road it was apparent that there are several buildings in use as studio or gallery spaces, small professional offices, a martial arts establishment, and others such as vehicle repair workshops. These are generally not of the type of high-quality modern conversion exemplified in the appellant's evidence. While Belfast Road is within a designated PEA – and Windus Road is not – given the very close proximity of these users to the appeal property it could well be that there would be demand for more such relatively small spaces.
24. The property has not been marketed for commercial use since 1998, when conditions would have been very different from those prevailing to-day, and there was little evidence of the extent or detail of that exercise. In my view it would be necessary to go on to carry out the robust marketing exploration outlined in Policy DM14 before concluding that the appeal property could not be put to a Class B1 use.
25. Furthermore, in this context the lack of available B1 spaces in the area may well indicate a need for more to become available. As for the suggestion that a B1 use would be incompatible with residential amenity, the Use Classes Order includes the definition that B1 is a use which can be carried out in any residential area without detriment to the amenity of that area. Also, there is no evidence that the previous B1 use caused any harm in that respect.
26. Overall, I conclude on the second main issue that the development has resulted in significant harm in terms of employment opportunities with the Borough. The development does not accord with the development plan, in particular with respect to DFSC Policies 16 & 18, and DMP Policy DM14.
27. I appreciate the demand for housing in the Borough and in London generally is extremely high, and that this should be weighed against any harm in terms of loss of employment opportunities. However, the dwellings provided by this development are of low quality in terms of space standards and residential amenity and do not make up for the loss of potential employment space.
28. The appeal on ground (a) therefore fails. I intend to uphold the enforcement notice and to refuse planning permission on the deemed planning application.

The appeal on ground (f)

29. This ground is that the requirements of the notice are excessive and that lesser steps would overcome the Council's objections. The appellant suggests that it is excessive to require cessation of the residential use, and that planning permission might be granted for use of the building as a single dwelling under the provisions of s.177(1)(a) of the Act. This section allows the grant of planning permission in a s.174 appeal for the development to which the enforcement notice relates or for part of that development, or for development of part of the land to which the enforcement notice relates.
30. However, I have already found that planning permission should not be granted for the development to which the enforcement notice relates. Furthermore, grant of planning permission for the premises to become a single dwelling would not be a part of the development to which the notice relates, but a

different development. While I can readily see that the premises could revert to a single dwelling – as I understand it was from 2013 to 2017 - there is nothing before me to show specifically how this would be achieved. Nor would this allow for the marketing exercise for the premises referred to above, and the possible return to B1 use.

31. I therefore conclude that the proposed grant of planning permission would not be a lesser step that would overcome the Council's objections. The appeal on ground (f) therefore fails.

The appeal on ground (g)

32. This ground is that the compliance period of 3 months is too short. The appellant argues this would give inadequate time to give notice to the present tenants and for them to vacate, and that there should be a longer period to allow for negotiations with the Council to explore suitable outcomes for the building – such as conversion to a single dwelling. I understand discussions are in progress in relation to making a planning application for some form of residential development. It is suggested that 12 months should be allowed for an application to be submitted and determined and including a period in case a planning appeal were necessary.
33. I consider a longer period would be appropriate to allow for the marketing exercise already referred to, and for a planning application to be made and determined. A period of 9 months should be adequate for this. Any notice period for tenants could run concurrently. As to a possible planning appeal, the making of the appeal would in itself effectively stop the clock and there would be no need to extend the compliance period further.
34. I therefore conclude that the appeal is allowed on ground (g), and I will vary the enforcement notice accordingly.

Conclusions

35. For the reasons given above and having regard to all other matters raised, I conclude that a reasonable period for compliance would be 9 months, and I am varying the enforcement notice accordingly, in addition to the variation concerning the previous use of the premises. The appeal under ground (g) succeeds to that extent but otherwise I shall uphold the enforcement notice as varied and refuse to grant planning permission on the deemed planning application.

Stephen Brown

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Anjoli Foster	of Counsel, instructed by David Dolties of Romain Coleman, Solicitors
She called:	
John Broomfield	Managing Agent for the appellant.
Aasiah Pathan BSc MSc MRICS	Chartered Surveyor, Strettons Ltd
Nicholas Ward BA(Hons) MSc MRTPI	Chartered Surveyor, Senior Associate JB Planning Associates.

FOR THE LOCAL PLANNING AUTHORITY:

Isabella Crowdy	of Counsel, instructed by The London Borough of Hackney Council Legal Services.
She called:	
Christopher Last BA(Hons)	Planning Enforcement Officer, The London Borough of Hackney Council

INTERESTED PERSONS:

Mark Aarons	Nearby resident.
-------------	------------------

DOCUMENTS

- 1 Attendance lists.
- 2 Letter of notification of the appeal dated 4 October 2018.
- 3 Agreed internal measurements.
- 4 Statement of Common Ground.
- 5 Proposed planning conditions.
- 6 Appendices to Mr Broomfield's proof of evidence.
- 7 Appendices to Ms Pathan's proof of evidence.
- 8 Appendices to Mr Ward's proof of evidence.
- 9 Appendices to Mr Last's proof of evidence.

PLAN

- A Floor plans marked up with dimensions taken at the site visit.