



Appeal Decision

Hearing held and site visit made on 6 August 2019

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

an Inspector appointed by the Secretary of State

Decision date: 19 August 2019

Appeal Ref: APP/H5390/C/18/3206312

Bakery House, 2A Loftus Road, London, W12 7EN

- 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 Bazaar Investments Limited ("the Appellants") against an Enforcement Notice issued by the Council of the London Borough of Hammersmith & Fulham ("the Council").
- The Enforcement Notice was issued on 23 May 2018.
- The breach of planning control as alleged in the Enforcement Notice is without planning permission the change of use of the basement, ground and first floor level from offices (Class B1) into 16 self-contained residential flats (Class C).
- The requirements of the Enforcement Notice are: a) Cease the use of the basement, ground, and first floor units for residential use. b) Carry out the following remedial works to the basement, ground and first floor units: i) Remove all showers from the units; ii) Remove all kitchen facilities from the units; iii) Return its use as office spaces (Use Class B1) iv) Remove all items, materials and debris associated with the remedial works from the land.
- The period for compliance with the requirements is 9-months.
- The appeal is proceeding on the grounds set out in Section 174(2)(b), (c) & (f) of the 1990 Act.

Summary of Decision: The appeal is allowed, and the Enforcement Notice is quashed.

Procedural Matters

1. Two other appeals¹ relating to Bakery House were dealt with at the Hearing and are the subject of separate Appeal Decisions.
2. In this Appeal Decision I will refer to:
 - a) The land and premises to which the appeal relates as "the Appeal Site".
 - b) The building which is on the Appeal Site as "Bakery House".

Reasons - Ground (b) that the breach of control alleged in the Enforcement Notice has not occurred as a matter of fact.

3. The onus of proving that the alleged breach of planning control has not occurred as a matter of fact rests with the Appellants. They have to prove this on the balance of probabilities.
4. The office units within Bakery House have been provided with kitchenettes, bathrooms² and, at certain points in time, beds.
5. The Appellants argue that:

¹ APP/H5390/W/18/3219161 & APP/H5390/W/18/3219134

² Containing a shower, WC & wash hand basin.

- a) Kitchen facilities within the offices which they have been seeking to let are a common feature found in offices. They have been provided so that potential office occupiers could make food and drinks whilst at work.
- b) The bathrooms within the units were shown on the plans for offices approved by the Council in August 2017. The description of the approval referred to alterations to fenestration; the provision of a lightwell at the front of Bakery House; the alteration of rooflights and the reduction in the height of the rear boundary wall.

The Council were aware that the plans showed small offices with en-suite bathrooms. In the Officer's Report on the application it states that the layout of the basement, ground and first floor plans has been changed and now sees a configuration of small offices each of which has an en-suite bathroom. The Council imposed a condition on the planning permission that these offices were not to be used for residential purposes but were to be used for Class B1 office use only.

Relevant Enforcement History

- 6. Officers visited Bakery House in September 2016 following a complaint as to residential use. They found that the proposed open plan office space had been built as small units. The architect for the Bakery House project explained that the smaller units were to be used as offices and there was no residential use taking place at that time.
- 7. The Officer's Enforcement Report stated that in December 2016 the offices were being advertised as "live/work pods". However, I asked at the Hearing for copies of the advertisement – none was available. The Appellants had no recollection of the units being advertised as such.
- 8. In January 2017 a Council Officer inspected Bakery House and found one office unit contained a bed. The bed was described as a "flying bed" and I saw these at my site visit. When the bed is not required it can be raised to just below the ceiling level thus allowing the space occupied by the bed to be used as office space. The Appellants explained that this was installed to show prospective office users that a bed could be provided within the unit so that rest could be taken if the office unit was occupied by a single person. A further inspection in March 2017 confirmed that there was no breach of planning control at Bakery House.
- 9. In November 2017 an application was made to change the use of the basement, ground and first floors of Bakery House from offices to 15 serviced apartments. This application was refused in January 2018.
- 10. In late January 2018:
 - a) Council Officers found that there were 16 units at Bakery House that were fitted out each with a bed, bathroom and kitchenette. The Appellants explained that the units had been fitted out in this way in anticipation of planning permission being granted for the November 2017 application.
 - b) The Appellants confirmed after planning permission for the serviced accommodation had been refused that they would:
 - i) not be advertising the units as serviced accommodation,

- ii) continue to market the units as office accommodation, and
 - iii) Bakery House would not be occupied for any non-office use until planning consent had been granted.
11. In May 2018 the Appellants confirmed that caretaking staff stayed overnight at Bakery House when on caretaking duties. The Appellants have a rota of two caretaking staff for Bakery House and two rooms within the basement appear to have been used by the caretakers. I was informed that the caretaking staff have permanent homes where they live when they are not on caretaking duties.
12. As at the date of my site visit the only units that had beds in were in the basement.
13. I do not agree with the Council's assessment that when the 16 units at Bakery House had all the facilities needed for residential occupation that the use of those units was as self-contained flats. The Appellants confirmed that the units had been laid out as described above in anticipation of planning permission being granted for serviced accommodation. I therefore consider that an assessment has to be made as to why the units had been provided with bathrooms, kitchenettes and beds and I do not consider that this was done with the intention of letting them as self-contained flats. There is no evidence before me that that was the Appellants intention or that any of the units were used as self-contained flats.
14. Further still, I am not convinced that the caretakers use (as explained above) of two basement units for overnight sleeping accommodation whilst working as caretakers at Bakery House amount to the use of those units as self-contained flats.

Overall Conclusions

15. For the reasons given above I conclude that the appeal should succeed on Ground (b). Accordingly, the Enforcement Notice will be quashed. In these circumstances the appeal under Grounds (c) & (f) set out in Section 174(2) of the 1990 Act do not need to be considered.

Formal Decision

16. The appeal is allowed, and the Enforcement Notice is quashed.

Tim Belcher

Inspector

APPEARANCES

FOR THE APPELLANTS

Martin Ledger MRICS

Martin Ledger Associates

Ali Ravenshad

Bazaar Investments Limited

Eva Siskinova DipArch RIBA

Dandi Living Limited

Jonathan Scott

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FOR THE COUNCIL

Grace Harrison BSc(Hons), MSc, MRTPI

Principal Planning Officer

James Carleston BA(Hons) & MSc

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