



Appeal Decisions

Site visit made on 6 August 2019

by Stephen Hawkins MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 August 2019

Appeal A Ref: APP/Y5420/C/18/3209851

157-159 Hornsey Park Road, Wood Green, London N8 0JX

- 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 S.E. Cole against an enforcement notice issued by the Council of the London Borough of Haringey.
- The enforcement notice was issued on 24 July 2018.
- The breach of planning control as alleged in the notice is without planning permission, the erection of an additional floor above ground floor office space to create a self-contained flat.
- The requirements of the notice are 1. Cease the use of the first floor above the office space as a self-contained flat; 2. Remove from the first floor the cooking facilities, bathroom facilities and any partitions facilitating the use of the first floor as a self-contained flat; 3. Remove from the site any debris arising from compliance with the above steps 1 and 2.
- The period for compliance with the requirements is four months.
- The appeal is proceeding on the grounds set out in section 174(2) (c), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, 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 have lapsed.

Summary of Decision: The appeal succeeds in part and the enforcement notice is upheld with variation.

Appeal B Ref: APP/Y5420/W/18/3209855

157-159 Hornsey Park Road, Wood Green, London N8 0JX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr S.E. Cole against the decision of the Council of the London Borough of Haringey.
- The application Ref HGY/2018/1297, dated 26 February 2018, was refused by notice dated 27 June 2018.
- The development proposed is described on the application form as "*retrospective application for live-work unit*".

Summary of Decision: The appeal is dismissed.

Preliminary Matters

1. Regulation 4(c) of the Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002 requires an enforcement notice to specify the precise boundaries of the land to which it relates, by reference to a plan or otherwise. The address of the affected land in the enforcement notice is the same as in the banner heading. The Ordnance Survey base plan attached to the notice shows an area of land edged in black, within which the numbers 157

and 159 appear. The additional first floor alleged in the notice is within the black edged area on the plan. There is no requirement for the notice to identify the location of the flat in greater detail. Omitting the vehicular access from the black edged area does not make the notice plan imprecise. Therefore, the notice complies with the Regulations.

2. The description of development for Appeal B in the banner heading is taken from the application form. However, the submitted plans showed a two-bedroomed residential flat. The appellant confirmed that the flat is wholly residential. The Council determined the application on that basis and I shall deal with the appeal accordingly.

Appeal A

Ground (c) appeal

3. The ground of appeal is that the matter alleged in the notice does not constitute a breach of planning control. The onus of proof in this respect is on the appellant, the relevant test of the evidence being on the balance of probability.
4. A building within the appeal site contains offices on the ground floor. The appellant confirmed that this building has been enlarged at first floor level to create the self-contained flat. Such an enlargement comprises operational development as defined in s55 of the Act, for which s57 states that planning permission is required. Enlarging a commercial building to form a self-contained flat is not a development granted planning permission by any Part of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015.
5. Therefore, on the balance of probability the available evidence shows that there has been a breach of planning control and the ground (c) appeal must fail.

Ground (f) appeal

6. The ground of appeal is that the requirements of the notice exceed what is necessary to remedy the breach of planning control or, as the case may be, to remedy any injury to amenity.
7. At s173, the Act sets out two purposes which the requirements of an enforcement notice can seek to achieve. The first (s173(4)(a)) is to remedy the breach of planning control that has occurred by discontinuing any use of the land or by restoring the land to its condition before the breach took place. The second (s173(4)(b)) is to remedy any injury to amenity caused by the breach. The Council did not specify in the notice whether it was one or both above purposes that it sought to achieve. Whilst the notice requires the use as a self-contained flat to cease, it does not require demolition of the first floor enlargement. Therefore, compliance with the requirements would stop short of remedying the breach, giving rise to under-enforcement. It follows that the purpose of the notice must be to remedy an injury to amenity.
8. The bathroom provides facilities which are integral to the residential use enforced against. Consequently, stopping short of removing those facilities would not remedy the injury to amenity caused by the breach. The Courts have held that an enforcement notice can require removal of internal works

which facilitate the use enforced against¹. The appellant did not explain how the bathroom, which includes a bath, could be put to an alternative use associated with offices. During my site visit, I observed that there were toilet facilities on the ground floor of the building. Therefore, whilst enforcement action is meant to be remedial, it is not clear that the facilities in the bathroom would be re-installed on the first floor later following compliance with the notice. As a result, the variation suggested by the appellant does not represent an obvious alternative to upholding the notice as issued.

9. The notice only requires removal of partitions that facilitate the residential use. It does not require removal of any other partitions. As a result, I cannot see how this requirement is excessive for its purpose.
10. Therefore, I find that the notice requirements are not excessive for the purpose of remedying the injury to amenity and the appeal on ground (f) must also fail.

Ground (g) appeal

11. The ground of appeal is that the time for compliance is unreasonably short.
12. The notice allowed 4 months for ceasing the use as a flat, removing the cooking and bathroom facilities and any partitions facilitating the residential use. In practice this is likely to mean that the occupiers would have to vacate the flat within 2-3 months, to allow time for a builder to undertake the remedial works within the required period. Therefore, the occupiers, who I am given to understand are a family with a young child, would have very little time in which to search for and secure alternative living accommodation. Also, I understand that the flat is occupied by an employee of the appellant's company, who would need to continue to live in the local area to be able to provide overnight security at the site. Furthermore, I am mindful of the pressures on the availability of housing in London more generally.
13. Taking all these factors into account, the six-month period requested by the appellant would in my view strike a more appropriate balance between remedying the planning harm identified in the notice, whilst allowing the occupiers a reasonable amount of time to find suitable alternative accommodation in the local area. It would also give the appellant sufficient time to arrange for a builder to undertake and carry out the remedial works once occupation of the flat had ceased.
14. For the reasons given above I conclude that the period for compliance falls short of what is reasonable. I shall vary the notice prior to upholding it. The appeal on ground (g) succeeds to that extent.

Appeal B

Main Issues

15. The main issues in this appeal are:
 - Whether suitable living conditions have been provided for the existing and future occupiers of the flat, having regard to internal floorspace, external amenity space and cycle storage.

¹ *Somak Travel v SSE & Brent LBC* [1987] JPL 630.

- The effect on the ability to deliver comprehensive redevelopment of the Clarendon Square Gateway development site allocation.

Reasons

Living conditions

16. During my site visit, I observed that the flat was of modest size. There was limited space left for circulation in the lounge/diner/kitchen area after basic items of furniture including a sofa and a table, together with everyday domestic appliances had been accommodated. There was also limited circulation space left in the bedrooms after beds had been provided. Therefore, to my mind the living and sleeping areas in the flat had an uncomfortably cramped and restrictive feel.
17. The Council assessed the flat as having a gross internal area (GIA) of around 53m² and the second bedroom a floor area of around 7.3m². The appellant did not dispute these figures and there is no reason to suggest that they are inaccurate. Table 3.3 of the London Plan (LP) incorporates the Nationally Described Space Standard² for a new two bedroom dwelling with three bed spaces of 61m² GIA. Additionally, in order to meet the minimum standard a single bedroom providing one bed space should have a floor area of 7.5m². Applying the minimum standard is also a requirement of the Mayor of London's Housing Supplementary Planning Guidance (SPG). The second bedroom is only marginally smaller than the minimum standard. However, overall the flat is in the region of 10% smaller in terms of its GIA than the size required by the minimum standard. In my view, the deficiency in size compared with the minimum standard is substantial and adds further weight to my above findings regarding the restrictive size of the flat.
18. The SPG requires a minimum of 6m² private outdoor space to be provided for a flat with three bed spaces. As the rest of the site is in the appellant's control, I acknowledge that it would be possible for a space of this size to be provided. However, any amenity space would probably be at ground level within the existing yard. Therefore, such space is likely to have a poor outlook, being adjacent to large commercial buildings and land in active commercial uses. Also, a ground level amenity space would be relatively inconvenient to access by occupiers of the flat. Consequently, it is unlikely that an attractive and usable external amenity space could be provided in practice. The absence of such a space reinforces the restrictive living environment experienced by occupiers of the flat.
19. For the reasons set out above I find that unsuitable living conditions for the existing and future occupiers have been provided, having regard to the cramped and restrictive size of the flat and the absence of external amenity space. These objections could not be overcome simply by removing the second bedroom. In any event, based on the information before me I am not convinced that the number of bed spaces in the flat would also be reduced. Furthermore, imposing a condition restricting occupation of the flat to a site employee would not overcome the planning harm identified.
20. Therefore, the flat does not accord with LP Policy 3.5 paragraph C, as it does not reflect the minimum space standards for a three bed new dwelling and it

² Technical housing standards-nationally described space standard DCLG March 2015.

does not have adequately sized rooms. The failure of the flat to meet LP and SPG space standards does not accord with criterion in Policy SP2 of the Haringey Local Plan Strategic Policies. The flat also does not accord with criterion in Policy DM12 of the Haringey Development Management DPD as it is not of a high quality which meets the LP and SPG minimum internal and external space standards. However, as a suitable condition could be imposed to provide secure cycle storage to the required standard, there is no failure to accord with LP Policy 6.9.

Effect on site allocation

21. The site together with an adjoining supermarket and other commercial uses comprise the Clarendon Square Gateway allocation in Policy SA21 of the Haringey Site Allocations DPD. The allocation has an indicative development capacity of 195 residential units and 6,734m² of employment floor space.
22. The Council did not explain how the flat had prejudiced delivery of a comprehensive redevelopment of the site allocation. The flat is a small-scale development above an established commercial building. It is likely that this building would be demolished in conjunction with any comprehensive redevelopment. The flat is unlikely to be on the alignment of the east-west pedestrian/cycle route required between Wood Green and Clarendon Square by Policy SA21. As I understand it, no masterplan currently exists for the allocation. Therefore, there is no firm evidence available which would enable me to conclude that a co-ordinated development of the site allocation has been compromised by the presence of the flat. Moreover, the flat has not resulted in a loss of employment land.
23. Consequently, although there is a conflict with criterion in Haringey Development Management DPD Policy DM55, as it has not been demonstrated that the flat has not compromised delivery of the outcomes sought by the site allocation, in the absence of demonstrable planning harm I afford this policy conflict reduced weight.

Other Matters

24. The Council accepted that the flat has not caused unacceptable harm to the living conditions of occupiers of adjoining residential properties. I found no reason to suggest otherwise. However, I afford this matter limited weight.

Conclusion

25. For the reasons given above, I conclude that the appeal should be dismissed.

Formal Decisions

26. Appeal A-it is directed that the enforcement notice is varied by extending the period for compliance with the requirements at paragraph 5 to six months from the date the notice takes effect. Subject to this variation the appeal is dismissed and the enforcement notice is upheld.
27. Appeal B-the appeal is dismissed.

Stephen Hawkins

INSPECTOR