
Appeal Decision

Site visit made on 3 September 2019

by Sandra Prail MBA, LLB (Hons), Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: 25 September 2019

Appeal Ref : APP/G5180/C/18/3213655

Land at 20 Southey Street, London, SE20 7JD

- 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 Novus Property Development against an enforcement notice issued by the Council of the London Borough of Bromley.
- The notice was issued on 13 August 2018.
- The breach of planning control as alleged in the notice is without planning permission the material change of use of a storage building to a three bedroom residential dwelling.
- The requirements of the notice are 1. Cease the unauthorised change of use to a 3 bedroom residential dwelling and remove the associated internal alterations, 2. Reinstate the storage building.
- The period for compliance with the requirements is three 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.

Summary of Decision: the appeal succeeds in part and the enforcement notice is upheld as varied in the terms set out in the Formal Decision.

Ground (a) appeal and deemed application

Main Issues

1. The main issues in the determination of this appeal are the effects of the development on the living conditions of (i) current and future occupiers of the appeal site with regard to light, ventilation and adequacy of amenity space and (ii) occupiers of nearby residential properties in Raleigh Road with regard to privacy and overlooking.

Living conditions for occupiers

2. The appeal site is a single storey building which shares a party wall with an adjoining two storey warehouse currently in use as a microbrewery. To the east is a narrow passageway and a fence which form the common boundary with the rear gardens of residential properties. To the south the passageway adjoins the rear garden of a dwelling in Raleigh Road and the rear wall of a store fronting Penge High Street. The front of the site has an outdoor covered lobby area enclosed by a wall and railings and a parking space is located to the side of the lobby area. The site is in an accessible location where the principle of residential development is acceptable.
3. Internally the building is relatively long and narrow and comprises an open plan kitchen/dining/living room with a window that looks onto the enclosed

lobby area. An internal corridor provides access to a bathroom and three bedrooms.

4. The development plan comprises the London Plan and the Bromley Local Plan (adopted since the issue of the notice). The Local Plan mirrors the National Planning Policy Framework (the Framework) in seeking to ensure that development respects the amenities of occupiers and neighbours. Table 3.3 of the London Plan sets out minimum space standards for new development. Policy 10 of the Local Plan provides that the Council will permit the conversion of non-residential buildings to residential use subject to achieving good quality living accommodation. Policy 37 provides that development will be expected to be of a high standard of design and layout and meet specific criteria. These criteria include respecting the amenity of occupiers of neighbouring buildings and those of future occupants providing healthy environments ensuring they are not harmed by inadequate daylight, sunlight, privacy or overshadowing. I have taken into account as a material consideration the Mayor's Housing Supplementary Planning Guidance (the SPG) which sets out guidance in respect of the standards required for all new residential accommodation.
5. The Appellant argues that the Council's concerns have been addressed in planning application 18/02596/FULL1 for a two bedroom unit and that planning permission should be granted for that scheme. But the deemed application in this ground (a) appeal is for the development the subject of the notice – namely, the material change of use of a storage building to a three bedroom residential dwelling. The consideration of an alternative scheme is not within the remit of the deemed application. There is no linked appeal before me concerning a two bedroom unit. I shall therefore consider only the development as described in the notice.
6. The dwelling is principally single aspect and has one single north-west facing window which opens onto the covered lobby area. I saw at my site visit that the absence of natural light creates a gloomy and oppressive atmosphere. Habitable rooms have no external doors and natural ventilation is poor. The amenity space is not of a practical shape and utility being small and enclosed on all sides and does not satisfy the SPG in terms of its size. I agree with the Inspector in a previous appeal that whilst there are public open spaces within walking distance they are no substitute for adequate amenity space at the appeal site.
7. I have taken into account that the site sits within a high density urban area and that the reasonable expectations of people living in this area might be less than in a more open area but the identified harm nevertheless causes undue harm.
8. I conclude that the development causes harm to current and future occupiers by reason of its lack of sufficient natural daylight, poor ventilation and inadequate amenity space contrary to relevant policies in the development plan (including policy 10 and 37 of the Local Plan), the SPG and the Framework.

Living conditions – neighbours

9. The Council's concerns relate primarily to the effect on neighbours of the proposal for a two bedroom unit including the proposed windows and courtyard. But I must consider the development carried out. At my site visit I took the opportunity to view the site from 38 Raleigh Road.
10. I do not find the development carried out to cause undue harm to the living conditions of neighbours. Separation distances and the absence of windows means that there is no adverse overlooking or loss of privacy. As explained it is not within my remit in this appeal to comment on the proposed alternative scheme which introduces windows onto residential facing elevations.

Conclusion

11. Whilst I have found no harm in respect of the living conditions of neighbours by reason of privacy and overlooking I have found harm to the living conditions of current and future occupiers by reason of daylight, ventilation and amenity space and my concerns mean that planning permission should not be granted.
12. The Appellant says that the Council cannot demonstrate a five year housing land supply and refers me to appeal decisions concerning other sites. But even if I were to conclude that there is a shortfall of significant scale the adverse impacts of a grant of planning permission significantly and demonstrably outweigh the benefits of an increase of housing in this case.
13. I have considered whether conditions could overcome the identified harm. I have taken into account the Planning Practice Guidance. I do not consider that conditions, including those suggested by the Council in the event that the appeal is allowed concerning plans and external surfaces, would overcome the identified harm.
14. For the reasons given above, planning permission should not be granted on the deemed application.

Ground (f) appeal

15. This ground of appeal is that the steps required to comply with the notice are excessive.
16. There are two purposes that the steps of an enforcement notice can seek to achieve. The first is to remedy the breach of planning control and the second is to remedy the injury to amenity caused by the breach. In this case the steps require cessation of the use and return of the building to its condition before the breach took place. Its purpose is therefore to remedy the breach and no lesser steps could satisfy that purpose.
17. The Appellant argues that the conversion of the building to a two bedroom dwelling would remedy the injury to amenity. But an alternative scheme is not within the remit of the deemed application before me in this appeal and it would not satisfy the purpose of the notice to remedy the breach of planning control.

18. For the reasons given above, the appeal under ground (f) does not succeed.

Ground (g) appeal

19. This ground of appeal is that the period for compliance is unreasonably short. The notice provides for a three month compliance period.
20. The Appellant argues that substantial building works are required to remove the existing walls and residential fixtures and fittings and that it will take time to find alternative accommodation.
21. Compliance with the notice will mean the loss of a home and interference with individual rights must be proportionate. I have balanced competing public and private interests – the rights of the Appellant and his family and the public interest of bringing to an end the identified harm without unnecessary delay.
22. I consider that six months would strike an appropriate balance so as not to violate individual rights and I shall amend the notice accordingly.
23. For the reasons given above I conclude that a reasonable period for compliance would be six months and I am varying the enforcement notice accordingly prior to upholding it. The appeal under ground (g) succeeds to that extent.

Formal Decision

24. The appeal is allowed on ground (g) and it is directed that the enforcement notice be varied by substitution of 6 months as the period for compliance. Subject to this variation 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.

S. Prail

Inspector