
Appeal Decisions

Site visit made on 19 November 2019

by Stephen Brown MA(Cantab) DipArch RIBA

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

Decision date: 17th January 2020

Appeal A: ref. APP/X1545/C/18/3212558 **197-199 High Street, Maldon CM9 5BU**

- 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 Banyards Taxis against an enforcement notice issued by Maldon District Council.
 - The enforcement notice, ref. ENF/16/00442/01, was issued on 7 September 2018.
 - The breach of planning control alleged in the notice is:
The unauthorised material change of use of the land to a mixed use comprising a retail unit and a taxi office and depot being a sui generis use under the Town and country Planning (Use Classes) Order 1987.
 - The requirements of the notice are to:
 - a. *Cease the unauthorised use of the land as a taxi office and depot.*
 - b. *Remove from the land any vehicles associated with the unauthorised use of the land as a taxi office and depot.*
 - The period for compliance with the requirements is twenty-eight (28) days.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have 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 fall to be considered.
-

Appeal B: ref. APP/X1545/W/19/3233747 **197-199 High Street, Maldon CM9 5BU**

- 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 M Bannister against the decision of Maldon District Council.
 - The application ref. FUL/MAL/18/01320, dated 23 October 2018, was refused by notice dated 28 January 2019.
 - The development proposed is the demolition of an outbuilding, two-storey rear extension and conversion of the premises into five self-contained flats, and use of the ground floor frontage as A1 retail and an office.
-

Decisions

Appeal A: ref. APP/X1545/C/18/3212558

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.

Appeal B: ref. APP/X1545/W/19/3233747

2. The appeal is dismissed.

Costs

3. In Appeal A an application for an award of costs has been made by the Council against the appellant. This application is the subject of a separate Decision.

Preliminary matters

4. These two appeals relate to quite separate matters concerning the same site. I have treated the cases entirely separately.

Background matters

5. In 2017 planning permission was refused for use of the ground floor appeal property premises as a taxi office with related car-parking; demolition of outbuilding, and conversion of the first floor from offices to two self-contained flats¹. An appeal against this decision was dismissed in June 2018² (the 2018 appeal).

APPEAL A

The appeal on ground (b)

6. This ground is that the matters alleged in the notice have not occurred as a matter of fact. The appellant argues that when the Council issued the enforcement notice on 7 September the use as a taxi depot had already ceased as of 1 September 2018.
7. This may be the case, but it is not uncommon for a significant time to elapse between detection of a contravention and issue of a notice. The last use of the site was the unauthorised use subject of the notice, and that remains the position. The fact that the use had ceased a short time before issue of the notice cannot justify an argument that ground (b) should succeed. On the balance of probabilities the breach has occurred as a matter of fact. The appeal on ground (b) therefore fails.

The appeal on ground (c)

8. This ground is that there has been no breach of planning control. The appellant argues that no. 197 High Street is not part of a mixed use but is a separate self-contained retail unit of long standing, unconnected with the former taxi business other than in terms of ownership.
9. From the Council's site planning history I understand nos.197-199 were extended and altered following grant of planning permission in the late 1980s and used as a showroom, store and workshop on the ground floor, with offices and a storeroom on the first floor for use by Dale Hire, a tool hire company³. Dale Hire also had the use of the yard at the back of the building.
10. The Town and Country Planning (Use Classes) Order 1987 as amended (the UCO) sets out Use Class A1 – Shops, and at A.1(h) makes clear this includes

¹ Decision notice ref. FUL/MAL/17/00789, dated 13 September 2017.

² Appeal decision ref. APP/X1545/W/17/3187971, dated 4 June 2018.

³ Decision notice ref. MAL/434/86, dated 8 September 1987.

the hiring out of domestic or personal goods or articles. While DIY tools might well be seen as domestic goods, I note that the use also included a workshop, and that a delivery service was operated. Furthermore, in stating that the operations of the site were not focussed on professional and trade users, and included a significant proportion of retail sales, the appellant concedes that the service offered was not entirely for the domestic/personal market.

11. On the basis of this evidence it appears to me as a matter of fact and degree that the premises used as a tool hire company formed a single planning unit, including domestic and trade hire and sales, and a workshop. I do not consider this is contained within Use Class A1, and that the use should be classed as *sui generis*.
12. While it is conceivable that the ground floor of no. 197 did form the retail element of the use, it appears to me that the entire operation was within a single planning unit, and it cannot now be reasonably claimed that this was a separate operation.
13. On a site inspection in August 2018 the Council had found the ground floor of no. 197 occupied by a business selling bin bags, and the south-eastern part of the building on the ground floor as well as the yard occupied by the taxi company. The upper floor was unoccupied.
14. On the balance of probabilities it appears likely that there has been a material change of use of the premises from the *sui generis* tool hire use to separate uses by the taxi office and depot and by the bin bag business. No planning permission has been obtained for this change to a mixed use, and it follows that there has been a breach of planning control. The appeal on ground (c) therefore fails.

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

15. This ground is that planning permission should be granted for the matters stated in the notice.
16. I consider the main issue for consideration to be the effect of the retail, taxi office and depot use on living conditions for occupiers of dwellings in the vicinity of the appeal site in terms of noise and general disturbance.
17. The form of taxi operation enforced against includes taxis coming and going and parking, radio operation, customers' waiting room, drivers' facilities, and deposit of takings all based at the appeal site. I concur with the view reached by the Inspector in the 2018 planning appeal, that noise arising from such things as engine noise, slamming doors, customers coming and going, and vehicles manoeuvring particularly during the early hours is likely to cause significant harm to residential amenity for occupants of nearby dwellings, notably those in North Street.
18. I also consider that imposition of planning conditions concerning restriction on the presence of both drivers and customers at the site would be difficult to enforce, particularly given the existence of the parking area in the yard.
19. Although it is unlikely the retail unit would cause any harm to residential amenity, I conclude that use as a taxi office and depot would cause significant harm to living conditions for occupiers of dwellings in the vicinity of the appeal site in terms of noise and general disturbance. The development does not

- accord with the development plan, particularly with respect to Policies D1 and D2 of the Maldon District Local Development Plan of 2017 (the LDP). These include aims to protect amenity in the built environment in terms of such things as noise, and to minimise all forms of pollution – also including noise.
20. The appellant argues that the operation could be cut down so that use of the site would be limited to the reception counter and operation of a radio by one member of staff. It is argued this has no significant impact upon the amenities of dwellings in North Street. No pick-ups will take place after midnight and callers prior to midnight would generally be limited since most customers arrange to be picked-up from their own home, business or place of entertainment. No taxis will be able to park on the premises, so no taxis will enter North Street. All office activities have been moved elsewhere, including drivers' facilities and arrangements for the deposit of takings.
21. Under s.177(1)(a) of the Act it is open for me to grant planning permission for the matters stated in the enforcement notice as constituting the breach, 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.
22. These arguments are based upon a significantly different form of operation from that enforced against, and also that which was subject of the 2018 planning appeal. It is apparent that the aim is to address the concerns raised in the previous appeal – notably comings and goings of taxis in the early hours, with slamming doors, drivers talking and taking refreshments in the office, and eventually depositing takings.
23. It is conceivable that such a radically altered proposal for operating the taxi business would address the harm caused in terms of noise and general disturbance. However, as noted above, this ground of appeal and the deemed planning application relate to the matters stated in the notice – that is, the material change of use from a *sui generis* use as a tool hire operation to use for retail and a taxi office and depot. Given the considerable degree of difference between that and what is now suggested – including apparently omission of the retail element – I do not consider it would be practical for me to consider granting permission for a part of the matters enforced against when it is by no means clear what areas of the building would be given over to the new operation. Furthermore, I do not consider it would be possible to ensure that no taxis entered North Street, that there could be control over idling engines late at night, or control over customers arriving at the reception desk, all of which have the potential to cause nuisance.
24. As the Inspector in the 2018 appeal observed the operation of the radio control room without adequate sound insulation could be disturbing to occupants of residential accommodation above. In this enforcement case there is no proposal before me for that accommodation, and no reasonable judgement can be made on this issue. Although it is claimed the upper floor is in storage use, there is no evidence of this. Nor do I consider it would be reasonable to impose planning conditions that could have the effect of changing the former taxi operation to the extent necessary, of ensuring that other future uses within the building would be compatible with that use, or that such conditions would be enforceable.
25. The appeal site lies within the Maldon Conservation Area, and I consider that the use for retail, taxi office and depot has a neutral effect upon the mixed use

character of this part of the town. Although this slightly favours the development before me it does not overcome the harm in terms of residential amenity.

26. The appeal on ground (a) therefore fails, and planning permission will be refused on the deemed planning application.

The appeal on ground (f)

27. This ground is that the requirements of the notice are excessive, and that lesser steps would overcome the Council's concerns. It is argued that if Appeal B were to be allowed, including the use as a taxi office, then there could be a conflict with the outcome of this appeal if the requirement for cessation of the taxi office use came into play.
28. The appellant does not make at all clear in what way any lesser requirement might be drafted. The specific use as a taxi office does not form part of the proposals in Appeal B. If the situation outlined were to arise, and permission granted for the redevelopment of the site including the taxi office this would be an entirely new planning permission, different from those that might be granted under either the ground (a) appeal or in the planning appeal. As I have noted above, the development enforced against is of a quite different nature from that in Appeal B, and from the proposal that has been suggested under ground (a) in this appeal.
29. If the suggestion is that the requirement should be drafted to say the taxi office element should remain, that would be tantamount to making the same suggestion as under ground (a), which I have dealt with fully above.
30. I do not consider any lesser steps have been put forward that would overcome the Council's objections. The appeal on ground (f) therefore fails.

The appeal on ground (g)

31. This ground is that the compliance period is too short. It is argued that if planning permission is granted for the current scheme then a period of 6 months should be allowed for the provisions of the Appeal B scheme to be implemented.
32. However, I understand that the use as a retail unit, taxi office and depot had already ceased on 1 September 2018. As the Council say, the period of 28 days is in any case sufficient to carry out the relatively minor works necessary. At the time of my visit, the site was deserted and not in any apparent use, and I understand the appellant already has other locations for his entire operation in the District. In the circumstances I consider 28 days to be quite adequate to carry out any further works or arrangements that might be necessary. In any case it appears to me that cessation of the taxi depot use at an early stage would be a benefit in implementation of new proposals. The appeal on ground (g) therefore fails.

Conclusions on Appeal A

33. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

APPEAL B

Background matters

34. The proposal is to convert and extend the building to provide a shop and office on the High Street frontage, and five one-bedroom flats. Much of the rear yard would be taken up with the extension, and an existing outbuilding demolished. The remainder of the yard would provide two parking spaces, areas of garden, a refuse storage area, and cycle parking.

35. I note there is a Tree Preservation Order protecting an ash tree in the yard close to the north-eastern site boundary.⁴

Main Issues

36. From my inspection of the site and all that I have seen and read I consider the main issues to be:

- The effect of the proposals on living conditions for occupants of the proposed flats in terms of provision of internal floorspace, amenity space, and refuse disposal arrangements.
- The effect of the proposals living conditions for occupants nearby dwellings and of the proposed flats in terms of privacy.
- The effect of the proposals on the flow of traffic and highway safety for users of the roads in the vicinity of the appeal site.

37. Regarding the floor areas of the flats, the smallest – Unit 1 – is about 32 square metres. The government document '*Technical housing standards – nationally described space standard*' sets out a minimum internal floor area of 37 square metres for a one-person single storey dwelling with a shower room rather than a bathroom. I appreciate that compliance with the standards cannot be required where there is no relevant current Local Plan policy. However, these standards have a basis in the practical usage of living accommodation and provide useful guidance.

38. In the case of Unit 1 for example, the space labelled 'living' has dimensions of roughly 2.3 metres by 2.9 metres. This gives barely enough room for a sofa and a chair, and it is doubtful whether there would be adequate space for a dining table and chairs or a desk. The space given over to living room, kitchen and shower is in my opinion cramped and impractical. Unit 4, above Unit 1 is slightly larger, and may meet the space standard. However, the living space is again cramped and, in this case, awkwardly shaped as a result of the contrivance of increasing the available area by inclusion of space within the new extension. I consider both these units would provide a poor standard of living accommodation in terms of floorspace.

39. As regards external amenity space, there would be two areas of garden adjacent to the new extension, both enclosed by 1.8 metre high close boarded fences. That related to Unit 1 would have an area of about 13.2 square metres and that related to Unit 2 an area of about 14.8 square metres. In this instance the orientation of the garden areas in relation to the existing building and extension means that neither would receive any sunlight. The enclosing fences, the proximity to the refuse storage area, and the possibility of being overlooked

⁴ The District Council of Maldon Tree Preservation Order no. 3/82, confirmed on 31 August 1982.

from habitable rooms in no. 195 High Street as well as those in the first floor flats of the appeal scheme would make these unattractive spaces offering little in the way of usable amenity.

40. The area of external amenity space recommended in the SPD is 25 square metres for each flat. The provision in this case is so well below the recommendation, and the character of the spaces so poor, that I consider them quite inadequate for their intended purpose.
41. There would also be a communal garden space in the northern corner of the site, where the protected ash tree stands, and bounded on two sides by a low wall. Although considerably overshadowed by the tree, this may receive some sunlight, but would be immediately adjacent to the parking spaces, quite exposed to the street, as well as windows of first floor rooms, and offer little privacy. Again, this would be an unattractive space, which would not provide a decent standard of amenity for the upper floor flats.
42. With regard to the external spaces, I also note that access to both ground floor units would be via the pedestrian accesses from High Street and North Street. These routes would entail passing by either the refuse storage area for the flats or for that for the shop. I consider this to be a further unattractive feature of these spaces.
43. As for access to the refuse storage area for the flats, this would be reasonably convenient for the ground floor units, where as already noted the access passes the area. However, the access to the first floor units is from North Street, and disposal of refuse would entail going downstairs, out into the street, and around the extension. Although not an excessive distance, it is by no means a convenient route, and in my opinion a factor weighing against the scheme.
44. I conclude on the first main issue that the proposals would cause significant harm to living conditions for occupants of the proposed flats in terms of provision of internal floorspace, amenity space, and refuse disposal arrangements. The proposals would not accord with the development plan, with particular respect to LDP Policies D1 and D2 which include aims to promote design quality in terms of layout, and provision of private amenity spaces, and to ensure that development incorporates recycling facilities.
45. I concur with the Council's view that there would be overlooking between the bedroom of Unit 2 on the first floor and habitable rooms on the first floor of no. 195 High Street at a distance of about 8.5 metres. I consider this would be intrusive for occupants of both properties.
46. I conclude on the second main issue that the proposals would cause significant harm to living conditions for occupants nearby dwellings and of the proposed flats in terms of privacy. The proposals would not accord with the development plan, particularly with respect to LDP Policy D1, which includes aims to protect the amenity of surrounding areas in terms of privacy and overlooking.
47. Turning to the third main issue, the Council's Supplementary Planning Document 'Vehicle Parking Standards' (VPS) of November 2018 sets out residential requirements for a minimum of 1 parking space per one-bedroom dwelling, plus 1 visitor's space per 4 units. There is no requirement for any parking space for a shop of less than 500 square metres within the town and

district centres. Use Class B1 business uses should have 1 space for every 20 square metres of floorspace.

48. The proposal includes 2 parking spaces each measuring 2.4 metres by 4.8 metres – considerably smaller than the bay size of 2.9 metres by 5.5 metres recommended in the VPS. The number is well below the minimum for 5 flats, and no space is included for visitors. Although none need be provided for the shop, I consider at least one further space would be needed for the office.
49. It is quite likely that occupants of the proposed flats will have their own vehicles. Although I recognise that this is a relatively sustainable site in terms of accessibility to services, employment and public transport I understand car ownership in the District is above the average for the County, and this is recognised in the recently adopted VPS in which makes recommendations for minimum parking provisions, rather than the maxima in the previous version.
50. I saw there are parking restrictions on many of the streets in the vicinity of the appeal site, and it is clear from my observations and from third party representations that on-street parking near the town centre is a significant problem. I also understand the residents' parking scheme in North Street is already over-subscribed.
51. In these circumstances I consider it likely that situations would arise where occupants of the new flats, and possibly their visitors would be cruising nearby streets searching for parking spaces. This would contribute to traffic flow and make the likelihood of accidents more probable. Furthermore, the relatively small size of the two bays and the lack of any significant manoeuvring space could well be a hazard for pedestrians and for traffic on North Street.
52. The proposed scheme includes 5 cycle parking spaces. The VPS requires there to be 1 space for each one-bedroom dwelling. None are required for shops. One space per 100 square metres is required for Class B1 uses. In this case the office space proposed is well below 100 square metres, but it could reasonably be expected that one cycle space should be provided. In many circumstances this relatively small shortfall could be accommodated, and the desirable number required by a planning condition. However, in this case the planning of the site is so cramped that I do not consider such a condition would be reasonable.
53. I conclude on the on the third main issue that the proposals would cause significant harm in terms of the flow of traffic and highway safety for users of the roads in the vicinity of the appeal site. The development would not accord with the development plan, particularly in respect of Policies T1 and T2 of the LDP which seek to promote measures giving priority to pedestrians and cyclists and seek to ensure that sufficient parking facilities are provided having regard to adopted parking standards.
54. The appeal site is within the Maldon Conservation Area. In terms of form and materials the proposed extension would have a neutral effect upon the character and appearance of the area. However, the size of the extension and pedestrian circulation areas together with the attempt to include vehicle parking, three amenity areas, refuse storage for both the residential and Use Class A1 elements, and cycle parking would result in a site of extremely cramped appearance and character, that would cause significant harm to the traditional and historic character of the appeal site. I consider the character and

appearance of the Conservation Area would not be preserved, and the proposals would not accord with LDP Policy D3 which seeks to protect heritage assets. This adds weight to my conclusions on the main issues.

55. The harm to Conservation Area interests would be less than substantial, and in accordance with the advice of NPPF paragraph 196 this harm should be weighed against the public benefits of the proposals. I appreciate the scheme would contribute to the provision of small dwellings in the District. However, this is not sufficient to outweigh the harm identified, and this benefit is at the expense of creating a cramped site with poor residential amenity, limited vehicle and cycle parking provision, and detriment to highway safety.

56. It is suggested there would be a fallback position consisting of conversion of the upper floor to two flats under the provisions of The Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO), and that no vehicle or cycle parking would be required. I am not aware under what Class or Part of the GPDO this might be permitted. Furthermore, under Article 3(5)(b) of the Order the permission granted by Schedule 2 does not apply if, in the case of permission granted in connection with an existing use, that use is unlawful. This does not represent any realistic fallback position.

Conclusions on Appeal B

57. For the reasons given above and having regard to all other matters raised, I consider Appeal B should not succeed.

Stephen Brown

INSPECTOR