
Appeal Decisions

Site visit made on 25 November 2019

by V Bond LLB (Hons) Solicitor (Non-Practising)

an Inspector appointed by the Secretary of State

Decision date: 6 February 2020

Appeal A: APP/H5960/W/19/3222818

3 Nightingale Lane, Wandsworth, London SW4 9AF (Development site known as 3-5 Nightingale Lane, formerly the old Police Station Building)

- 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 Audley Villages against the decision of the Council of the London Borough of Wandsworth.
- The application Ref 2018/5547, dated 21 November 2018, was refused by notice dated 18 January 2019.
- The development proposed is described as 'change of use of part of the existing employer's site cabins'.

Summary Decision: The appeal is allowed and planning permission is granted subject to conditions.

Appeal B: APP/H5960/C/19/3220460

Land at 3-5 Nightingale Lane, London SW4 9AF

- 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 Audley Nightingale Lane Limited against an enforcement notice issued by the Council of the London Borough of Wandsworth.
- The enforcement notice was issued on 4 December 2018.
- The breach of planning control as alleged in the notice is Without planning permission and within the last four (4) years, the unauthorised erection and use of a temporary marketing suite.
- The requirements of the notice are to cease the use of the marketing suite and remove any building operations or works comprising the marketing suite from the Property.
- The period for compliance with the requirements is one month.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under s177(5) of the Town and Country Planning Act 1990.

Summary Decision: The appeal is allowed following correction of the enforcement notice in the terms set out below in the Formal Decision.

Preliminary Matters

1. Appeal A is proceeding in the name of Audley Villages whereas Appeal B is brought by Audley Nightingale Lane Limited. These are I understand within the same group of companies and in this decision, I use the term 'appellant' to refer to both group companies.
2. Planning permission has been granted under reference 2015/2469 (2015 Permission) for the redevelopment of the site for a 4-7 storey care facility and

associated ancillary retail/café/day centre and swimming pool, along with parking and associated landscaping.

3. Cabins have been erected partly on the site owned by the appellant, and partly within the public highway to facilitate the construction. A total of some 18 cabins are on the site which are stacked three storeys high and six across. Access to the cabins, and for construction traffic for the site, is from Nightingale Lane.
4. The enforcement notice is directed at three of the ground floor site cabins which are being used as a marketing suite. The development which is in place and has been enforced against (Appeal B) differs from the proposed cabin (Appeal A) in that the Appeal A proposal would see: the point of sale area not encroaching upon the public highway in the Council's ownership; and alterations to the entrance to reduce the landscaped area and enclose the entrance with a new hoarding.

Appeal B

The Enforcement Notice

5. The enforcement notice correctly states the address of the site but the plan attached to the notice does not include all of the land that it should. To correct this would entail expanding slightly the area of land which is subject to the enforcement notice.
6. However, it is apparent from plans submitted with the planning application which is the subject of Appeal A that both parties are aware of the correct boundary. No prejudice would therefore result to either party by my correcting the notice by the inclusion of a new plan showing the correct boundary.

The Appeal on Ground (c)

7. The appeal on ground (c) is that the matters alleged do not constitute a breach of planning control. The onus is on the appellant to make their case on the balance of probabilities.
8. Pursuant to Article 3 and Schedule 2, Part 4, Class A of the Town and Country Planning (General Permitted Development) Order 2015 (GDPO), the provision on land of buildings, moveable structures and other items which are required temporarily in connection with, and for the duration of, works being or to be carried out on the land in question, or adjoining that land, is permitted development (PD).
9. The dispute here is whether the marketing suite cabins are PD. However, there is no dispute that all of the cabins are used in association with the construction of the development permitted. Most of the cabins are used for site office or builders' welfare purposes and the Council accepts that they are PD. The marketing suite cabins in dispute are used as a 'show flat' (also apparently used as a 'mock flat' for tradespeople to see the intended finish standard), along with a small office and sales area.
10. Case law indicates that there is no reason to adopt a restrictive interpretation to what is PD under Class A, bearing in mind that the buildings/structures are only permitted temporarily. 'Required' is taken to mean what is reasonably considered essential. It does not therefore mean 'absolutely necessary', and

nor does it mean merely desirable or convenient. It must genuinely be reasonably required – as outlined in the *Wilsdon* judgment¹.

11. The Council accepts that the other cabins are PD because of their purpose, together with their proximity to the development site under construction. The appeal cabins are in the same location and their purpose clearly has a connection with the works being carried out pursuant to the 2015 Permission in that the evidence indicates that the marketing suite is used for marketing of the units being constructed.
12. Moreover, the appellant highlights that the development will provide extra care units for people over 55 years of age. Having the show flat and sales area in one location, and located where the homes will be built, enables these people to see the finish of the flat, location of the development and discuss and complete the purchase in one location, avoiding the need for additional travel.
13. The marketing suite is required in this location because it would not be safe to have a show flat on site due to site constraints and resultant safety considerations. It is also suggested that the temporary marketing suite being located adjacent to/on the development site expedites sales as it means that prospective purchasers can see the show flat/location/arrange purchase in one location.
14. The Council contends that if the speed and safety of construction were intended to justify a Class A building, this would be explicitly stated in Class A. However, other than the limitations and conditions set out in paragraphs A.1 and A.2, which are not relevant here, Class A does not prescribe or constrain the reasons why or circumstances in which buildings may be 'required temporarily' in connection with and for the duration of operations. It seems to me that site cabins are typically required to ensure that construction works are completed in a timely and safe manner but, in any event, neither speed, safety nor any needs for marketing the development being constructed are precluded by law from making a building reasonably required and PD under Class A.
15. On the evidence before me and as a matter of fact and degree, I find that the marketing suite is required temporarily in connection with the building operations being carried out. It is PD under Schedule 2, Part 4, Class A and so is granted planning permission by Article 3 of the GDPO, subject to the conditions and limitations set out under paragraphs A.1 and A.2.

Conclusion

16. For the reasons given above I conclude that Appeal B should succeed on ground (c). Accordingly the enforcement notice will be quashed following the correction referred to above. The remaining appeals under grounds (a), (f) and (g) and the deemed planning application for planning permission do not need to be considered.

¹ *R (on the application of Wilsdon) v First Secretary of State* [2006] EWHC 2980 (Admin)

Appeal A

Background and Main Issues

17. My determination of Appeal A is based upon the development proposed rather than the marketing suite as seen at my site visit and bearing in mind that the appellant seeks a temporary permission for the period up to 28 February 2020. My assessment is made in the context of my having found that the existing and very similar marketing suite is PD.
18. The main issues are the effect of the development related to the use of highway land and on the local highway network, and on the character and appearance of the Clapham Common Conservation Area (CA).

Highway land/local highway network

19. The marketing/sales suite as proposed would be located partially within the public highway on a busy stretch of road very close to Clapham South underground station, which sees very high levels of pedestrian footfall.
20. Siting the existing 18 cabins in this location has necessitated the relocation of a bus shelter, with pedestrian access being created on a narrow route within the road. There has been a resultant reduction in width of the vehicular carriageway also. At times of peak pedestrian and traffic flows, the reduced width pedestrian access and vehicular carriageway is very likely to cause significant inconvenience, particularly for wheelchair users and those with pushchairs.
21. However, the other 15 cabins are in place and are accepted as PD by the Council. It follows that construction traffic will be brought to this location irrespective of the outcome of this appeal. The use of the marketing suite cabins will mean that customers are coming to the site – in addition to the builders and other workers who use the other site cabins.
22. There is no detailed evidence though such as to demonstrate why any increase in pedestrian footfall or car parking resulting from prospective purchasers visiting the sales/marketing suite would result in any materially harmful impact. I will also impose a condition (reflecting that imposed under Class A) to require that the site is restored to its previous condition when the cabins are removed, to ensure pedestrian safety thereafter.
23. In addition, I have also found that the cabins presently used as a marketing suite would also be PD. In view of this fallback position, and bearing in mind that the appellant seeks a temporary permission for a relatively short period, the proposed marketing suite would not result in any harm related to the use of highway land or operation of the highway network.
24. I conclude then on the first main issue that the proposed marketing/sales suite would not have a materially harmful effect related to the use of highway land or on the local highway network.
25. It would accord in this way with Policies DMS1 and DMT1 of the Council's Development Management Policies Document (2016) (DMPD) which require new development to avoid harm related to traffic congestion and indicate that development including change of use will not be permitted where it does not achieve safe and suitable access to the site for all people. Although the

development makes use of land having a highway function as referenced in Policy DMT4 of the DMPD, bearing in mind the fallback position, there would be no harmful effects from any in principle conflict with this policy. It would comply also with Policy 6.3 of the London Plan (2016) which seeks to avoid adverse impacts in terms of transport network capacity and safety.

Conservation Area

26. The significance of the CA is derived from the presence of very imposing architecture and craftsmanship of the historic buildings surrounding the open area of Clapham Common. Nightingale Lane itself contributes to this verdant and open character through soft verges and landscaping alongside its paved walkway. The presence of the existing PD three storey high site cabins are a prominent feature which are not in keeping with the grand historic architecture surrounding.
27. The marketing suite, although modern in appearance, would be similar visually to the other site cabins, save as regards the canopied entrance and glazed frontage. It would also be almost identical to the existing marketing suite except that the entrance doors and staircase/lift access would be enclosed by a new hoarding, which would be visually in keeping with the temporary construction-related appearance of the site as a whole.
28. As such, and bearing in mind also that the proposed marketing suite is requested as a temporary permission, I find that it would preserve the character and appearance of the CA and cause no harm or loss to the significance of this heritage asset.
29. Accordingly, it is not necessary for me to assess any public benefits of the development as required by paragraphs 189-202 of the National Planning Policy Framework (2019). In reaching this conclusion, I have undertaken my statutory duty under Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.
30. The proposed temporary marketing/sales suite would accord with Policy IS3 of the Council's Core Strategy (2016) and Policies DMS1 and DMS2 of the DMPD which seek to protect the existing varied character and heritage of the borough and to ensure that development affecting heritage assets should conserve or enhance the significance of the asset.

Conclusion and Conditions

31. I have had regard to the various other matters raised in objection to the marketing suite but none of these alters my decision.
32. For the above reasons, I conclude that the proposal would comply with the development plan read as a whole, and there are no material considerations of sufficient weight to lead to a decision other than in accordance with the development plan. Appeal A should therefore succeed and planning permission should be granted.
33. I have specified approved plans in the interests of certainty. The proposal was for a temporary permission and a condition is proposed in this respect also. The appellant has indicated that good progress has been made on the construction programme and that they would be happy to accept a temporary permission for a period up to 28 February 2020. I have though factored in a

buffer of just over one month to account for any possible delays resultant from inclement winter weather or otherwise. I have required the land to be restored to its former condition in the interests of preserving the character and appearance of the CA and restoring the pavement for use by pedestrians.

Appeal A Formal Decision

34. The appeal is allowed and planning permission is granted for change of use of part of the existing employer's site cabins at 3 Nightingale Lane, Wandsworth, London SW4 9AF (Development site known as 3-5 Nightingale Lane, formerly the old Police Station Building) in accordance with the terms of the application, Ref 2018/5547, dated 21 November 2018, and the plans submitted with it, subject to the following conditions:
- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: Drawing Nos: 720 C 186A, 720 C 190, 720 C 191, 720 C 192, 720 C 193, 720 C 194, 720 C 195, Design & Access Statement dated 6 November 2018.
 - 2) The use hereby permitted shall be for a limited period and shall be discontinued on or before 31 March 2020. The operational development hereby permitted shall also be removed and the land restored to its former condition on or before 31 March 2020.

Appeal B Formal Decision

35. It is directed that the enforcement notice be corrected: by the deletion of the words "edged in red" and the substitution of the words "edged in blue and red" in paragraph 2 of the enforcement notice; and by the substitution of the plan annexed to this decision for the plan attached to the enforcement notice.
36. Subject to these corrections, Appeal B is allowed and the enforcement notice is quashed.

V Bond
INSPECTOR



Plan

This is the plan referred to in my decision dated: 6 February 2020

by V Bond LLB (Hons) Solicitor (Non-Practising)

Land at: 3-5 Nightingale Lane, Wandsworth, London SW4 9AF

Reference: APP/H5960/C/19/3220460

Scale: NOT TO SCALE

