
Appeal Decision

Site visit made on 22 January 2020

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

an Inspector appointed by the Secretary of State

Decision date: 12th February 2020

Appeal Ref : APP/G5750/C/19/3226342

Land at (and between) 2C Gower Road and 1A Chaucer Road, Forest Gate, London, E7 9LZ

- 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 Mustak Patel against an enforcement notice issued by the Council of the London Borough of Newham.
- The notice was issued on 20 March 2019.
- The breach of planning control as alleged in the notice is without planning permission the erection of two dwellinghouses, and without planning permission the partial demolition and alteration of a building (comprising internal and external alterations including the alteration and extension of the roof) and a material change of use of said building to an office.
- The requirements of the notice are i. demolish the dwellinghouses known as 1A Chaucer Road and 2C Gower Road (as shown in the approximate locations edged in blue on the plan attached to the notice); ii. demolish the alteration to the roof of the building (as shown in the approximate location edged in green on the plan attached to the notice) and return the roof of the building to its form prior to the unauthorised works; iii. cease the use of the building (shown in the approximate location edged in green on the plan attached to the notice) as an office; iv. remove from the building (as shown in the approximate location edged in green on the plan attached to the notice) all fixtures and fittings that solely facilitate the use as an office; v. on completion of the steps above, remove all materials and debris from the site.
- The period for compliance with the requirements is six months.
- 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.

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

Ground (c) appeal

1. This ground of appeal is that the matters alleged do not constitute a breach of planning control. A breach of planning control comprises the carrying out of development without the required planning permission.
2. The appeal site formerly hosted a warehouse building with garages at either end. The development carried out comprises the erection of 2 dwellinghouses (known as 1A Chaucer Road and 2C Gower Road), the partial demolition and alteration of the building that sits between these houses and its use as an office. An alleyway is located to the east of the site which provides access to the commercial building inbetween the houses. The frontages of Chaucer Road

- and Gower Road generally comprise terraced housing and the site lies to the rear of commercial properties in Upton Lane.
3. The Appellant argues that there is no breach of planning control because planning permission has been granted for the two dwellinghouses and there is no requirement to remove the commercial building.
 4. Planning permission reference 11/1158/FUL (the 2011 permission) has been granted for the demolition of existing buildings and creation of 1 three bedroom and 1 two bedroom end of terrace dwellinghouses including the demolition of storage building. The approved plans show the site of the central commercial building being used as garden for the two new houses. Approval of details pursuant to four of the conditions attached to the 2011 permission was granted in 2014. There is no condition requiring the removal of the commercial building.
 5. There are significant differences between the development carried out and plans approved under the 2011 permission. The 2014 approval of details does not alter this position. The differences include the numbers of bedrooms and external design (such as the balcony on the front of no.1A and the size of garden areas). The commercial building has been retained contrary to the approved plans. The absence of a condition requiring removal of the commercial building does not alter the description of development. As a matter of fact and degree I conclude that there are material differences between the development carried out and the 2011 permission such that the development carried out comprises development without planning permission.
 6. The notice alleges an unauthorised change of use of the commercial building to an office use. The Appellant argues that a change of use from light industrial to office B1 is permitted development and therefore not a breach of planning control. But I agree with the Council that the site is one planning unit and should be considered accordingly and there are no arguments to the contrary before me. Considering the site as a whole there has been a material change of use.
 7. I conclude that the development the subject of the notice does not have planning permission and comprises a breach of planning control.
 8. For the reasons given above this ground of appeal does not succeed.

Ground (a) appeal and deemed application

Main Issues

9. The main issues in the determination of this appeal are the effect of the development on (i) the character and appearance of the surrounding area and (ii) the living conditions of occupiers of 2C Gower Road with particular regard to the adequacy of the accommodation.

Character and appearance

10. The development plan (including the London Plan and the Newham Local Plan) mirrors the National Planning Policy Framework (the Framework) in emphasising the importance of development that respects its setting. I have also taken into account as a material planning consideration the emerging draft

London Plan but as this is not yet adopted this limits the weight I have attached to its policies.

11. Policy SP1 of the Local Plan sets a strategic principle that high quality development is expected. Policy SP3 emphasises the importance of local character and context.
12. The dwelling known as 1A Chaucer Road includes a balcony feature on its front elevation. Whilst I note that there are other balconies in the locality it is not a feature that is characteristic of the immediate streetscene. Its contemporary design is not characteristic of the terrace of which the appeal site forms a part. It creates a discordant and modern visual appearance that is not in keeping with the surrounding area. Its prominent position at the end of the terrace adds to its visual impact. I do not agree with the Appellant that it is a feature of interest quite the opposite I find it to cause harm to the character and appearance of the surrounding area.
13. The roof of the office building is mansard style and covers the whole building. Whilst I recognise that there has been no material increase in the height of the building its design is out of keeping with its surroundings. It is visible from both Chaucer Road and Gower Road and rear gardens of neighbouring properties. It fails to comprise high quality design contrary to the development plan. I find it to cause harm to the character and appearance of the surrounding area. This identified harm is not outweighed by the modest economic impact of the commercial use.
14. I agree with the Council that the gardens are restrictive and feature no discernible landscaping elements to such an extent that they cause harm to the character or appearance of the host dwellings of the surrounding area and fail to enhance the biodiversity value of the site. Their poor quality is exacerbated by the impact of the office building which sits between them.
15. The Appellant suggests that if the appeal is allowed conditions could be attached to the planning permission requiring the removal of the balcony and submission to the Council of plans concerning the roof of the office building and the garden area. He says that he is prepared to make changes to the development to reflect specific drawings, including extending the rear garden of both houses and reducing the footprint of the commercial building and forecourt. I have taken into account the Planning Practice Guidance concerning conditions but the deemed application before me is for the development carried out (in whole or part) and I do not consider it reasonable to require removal of elements of the development or a process for agreement to new plans by condition. The Appellant is effectively proposing an alternative scheme and this is not within my remit in this appeal as there is no s78 appeal before me incorporating the changes being proposed.
16. I have considered the extent to which the development accords with development plan policies concerning housing. Whilst I recognise the positive housing benefits I do not find the development to accord with policy H1 of the Local Plan as it does not provide a high level of design quality for the reasons set out above. The development fails to represent good quality and inclusive design.
17. For the reasons given I conclude that the development carried out causes undue harm to the character and appearance of the area contrary to the

development plan and the Framework. The identified harm is not outweighed by housing or economic benefits.

Living conditions – adequacy of accommodation

18. The Council's concerns relate to 2C Gower Road. I agree that there is no harm to the living conditions of occupiers of 1A Chaucer Road with regard to the adequacy of the accommodation.
19. The parties disagree as to whether one of the bedrooms at 2C Gower Road is capable of being used as a double bedroom and therefore the extent to which the gross internal area fails to meet the London Plan floor space requirements. I consider that the layout and facilities in the room make it unlikely that it could accommodate a double bed and therefore find the shortfall of internal area for 4 person accommodation to be minimal.
20. I found the property to be small but adequate in size for day to day living. I conclude that it does not create undue harm to the living conditions of current and future occupiers of 2C Gower Road by reason of the adequacy of its size. I do not find it to be contrary to the development plan and it positively contributes to the mix and range of housing provision in the Borough.

Conclusions

21. I have concluded that the development causes harm to the character and appearance of the area but does not cause harm to the living conditions of occupiers of 2C Gower Road. The identified harm does not outweigh the absence of harm to living conditions.
22. I have taken into account the potential social, environmental and economic benefits of the development including the provision of housing and the economic impact of providing employment. Whilst the principle of housing and office development is supported by the development plan the development carried out fails to provide high quality provision as set out above such that the benefits are outweighed by the identified harm.
23. I consider that the issues of waste and recycling are not main issues and could be adequately controlled by condition. I also do not consider that the principle of office use or the location of the access to the office building to be a main issue. The access arrangements are not new and cause no undue harm to residential neighbours or staff.
24. For the reasons given above planning permission should not be granted on the deemed application. This ground of appeal does not succeed.

Ground (f) appeal

25. This ground of appeal is that the steps required by the notice are excessive.
26. The purposes that an enforcement notice may seek to achieve are to remedy the breach of planning control or to remedy the injury to amenity which has been caused by the breach. In this case the notice requires the removal of the dwellinghouses, the restoration of the previous roof structure and the cessation of the office use. Its purpose is therefore to remedy the breach of planning control. Any lesser steps would not meet the purpose of the notice. The requirements of the notice are therefore not excessive.

27. I recognise that an enforcement notice should not be punitive and the Council has no objection to the principle of residential development. Discussion between the parties to try and reach an acceptable alternative solution would seem to me to be appropriate. However, these could take place away from this appeal and during the compliance period which I deal with below.

28. For the reasons given above this ground of appeal does not succeed.

Ground (g) appeal

29. This ground of appeal is that the time to comply with the notice is unreasonably short. The notice includes a six month compliance period.

30. The Appellant argues that twelve months would comprise a reasonable period for compliance. I have taken into account that children live in one of the dwellinghouses. I have balanced competing interests – the private interest of the Appellant in developing his land and the rights of the occupiers to a home and the public interest of bringing the identified harm to an end without unnecessary delay. In light of the offers made in the context of this appeal by the Appellant to address issues of concern I have also given consideration to the potential for discussions between the parties to seek to find an appropriate alternative solution. I consider that nine months would strike an appropriate balance so as not to violate individual rights.

31. For the reasons given above I conclude that a reasonable period for compliance would be nine months and I am varying the period for compliance accordingly prior to upholding it. The appeal under ground (g) succeeds to that extent.

Formal Decision

32. It is directed that the enforcement notice is varied by the substitution of 9 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