



Appeal Decision

Site visit made on 28 November 2019

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 13 February 2020

Appeal Ref: APP/G5750/C/19/3226179

229A Green Street, Forest Gate, London E7 8LL

- 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 Kishor Pandya against an enforcement notice issued by the Council of the London Borough of Newham.
 - The enforcement notice was issued on 8 March 2019.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use to a solicitor's office.
 - The requirements of the notice are
 1. Cease use of the property as solicitor's office.
 2. Remove the shopfront (inclusive of the roller shutter) and all signage (as shown edged in yellow on the photograph attached at Appendix 1)
 3. On completion of steps 1 and 2 above, remove all materials and debris from the site.
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the grounds set out in sections 174(2)(a) and (f) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is allowed and the enforcement notice is quashed. Planning permission is granted in the terms set out in the Formal Decision.

Procedural Matters

2. The appellant indicated in the later stages of the appeal process that parts of the requirements of the enforcement notice had been complied with. The use of the appeal property as a solicitor's office had ceased and a shop selling kitchen furniture now operates from the appeal site. I did observe from my site visit that the appeal property is now in use as a shop.
3. The breach of planning control alleged is a material change of use to a solicitor's office. However, as well as ceasing the use, the requirements include removing the shopfront, the signage and the roller shutter.
4. Where physical development has been provided as part of and integral to an unauthorised material change of use of a building and have thereby facilitated that change of use then such development can also properly be required by an enforcement notice to be removed in remedying the breach of planning control.
5. On 20 December 2013, a Lawful Development Certificate (the Certificate) was granted for a change of use from store to small office (Class B1) for a two year period. The drawings submitted with that application show the shop front as

existing with the only change proposed being to remove the steps to the front of the shop. The shop front in place as shown on the photograph attached to the notice still retained the entrance steps and therefore predates the change of use to a solicitor's office that occurred in 2013. The appellant has also provided photographs showing that the shop front existed when the appeal site was being used as the rear exit for an ice cream parlour. I therefore find that the shop front attached in the notice did not facilitate the change of use to a solicitors office. Consequently, if the ground (a) appeal had not succeeded and I had gone on to consider the ground (f) appeal, I would have varied requirement two to allow the shopfront to remain. Against this background, I shall not consider the planning merits of the shopfront under ground (a).

6. The signage relating to the solicitor's office use has been removed and there is now new signage for 'KVD Kitchen and Bedroom Limited'. Given that the sign referred to in the notice has gone and the deemed planning application is only for the change of use, I shall not consider the merits of the former sign. Furthermore, it is likely that any new sign would need consent under different regulations anyway.
7. The roller shutter was shown as proposed on the drawings that accompanied the application for the Certificate in 2013 and was therefore provided as part of the change of use and can, in my view, form part of the requirements of the notice. I will further address the issue of the roller shutter in my decision but I will however firstly address the ground (a) appeal which seeks planning permission for the material change of use to a solicitors office.

The appeal under ground (a) and the deemed application

The main issues are:

8. (i) whether the development would be in a suitable location having regard to local and national policies and (ii) whether the development would harm the living conditions of nearby residents on Marlborough Road.

Location

9. The single storey appeal property is to the rear of 229 Green Street . However, the front of the appeal property is on Marlborough Road with terraced dwellings to the other side of it. Green Street has a mixed residential and commercial character whereas Marlborough Road is largely residential. Historically, the appeal property has been used in connection with 229 Green Street which is a shop at ground floor level. Previous uses of the appeal property include seating for an ice cream parlour and also for ancillary storage.
10. The appellant indicates that the solicitor's office use permitted by the Certificate continued after the expiry of the two year period in 2015 and it is this use that was the subject of the notice although the solicitor's office use has now ceased.
11. The development plan for the appeal site is made up of both the London Plan (including alterations) adopted in March 2015 (the London Plan) and the Newham Local Plan adopted in December 2018 (the Local Plan). There is also an emerging Draft London Plan (2017) (the Draft London Plan) which is referred to by the Council but as it is not yet adopted, it attracts limited weight.

12. Policies of the Local Plan states that town centre uses will be directed firstly to designated town and local centres so as to not undermine their function. This approach is also supported in the London Plan. The Council is concerned that allowing development outside the defined town centres areas is also likely to undermine the long term viability of the established areas which the development plan seeks to protect.
13. Whilst the appeal site is outside the defined Green Street shopping centre, the appellant indicates that the appeal site is 100 metres from the primary shopping frontage and 50 metres from the defined centre. The appeal site is close to Green Street itself which is largely made up of shops at ground floor level.
14. The solicitor's office use operated from 2013 to December 2015 under the terms of the Certificate. From December 2015, that use continued until the recent change to a kitchen shop. Prior to the Certificate being granted, approximately two months earlier, the Council had refused an application for a change of use from store (Class A1) into small office (Class B1). However, the Council report dealing with the application for the change of use stated that "the existing building has lawful A1 use" and that the proposed B1 use would generate similar effects to an A1 use although the application was refused.
15. Subsequently, in considering the later application for a Certificate in 2013, where the proposed change of use was described as change from store into small office (Class B1) had the Council taken the view that the appeal building no longer had lawful A1 use, then the Certificate could have been refused.
16. Considering the previous history, there appears to be minimal difference between retail and B1 use. The size of the appeal building is likely to restrict the number of employees and at the time of the grant of the Certificate, reference was made to one full time and one part time employee. A solicitor's office is unlikely to generate the same number and frequency of visitors as a retail use.
17. The Council considers that the location conflicts with the Local Plan which directs such uses to identified town centre locations and micro business opportunity areas and undermines the long term vitality of these areas. The Council's notice has referred to a number of policies with regard to location namely Policies J1, J2, S6 and SP6 of the Local Plan, Policies 4.1, 4.2 and 4.7 of the London Plan and Policies E1, E2, E3, E9, SD6, SD7, and SD8 of the Draft Local Plan and the National Planning Policy Framework (NPPF).
18. In essence, these policies support the town centre first approach and to prevent harm to the vitality of such centres. The policies of the Draft Local Plan appear to support the existing policies, for example Policies E1, E2 and E3 being aligned to Policies 4.1 and 4.2 of the Local Plan. A number of the policies including J1, S6, SP6 of the Local Plan and Policy 4.7 of the London Plan identify that town centre uses will be directed to town and local centres first so as not to undermine their function. Policies SD6, SD7, SD8 and E9 of the Draft Local Plan also collectively seek to promote the vitality of town centres by adopting a town centre first approach which is contained in current policy. However, such policies have to be considered in the context of the history of the appeal site and the previous uses. There is no evidence before me to indicate that the operation of a solicitor's office has or is likely to undermine the long term viability of Green Street shopping centre. Policy 4.7 of the London Plan states

that town centre uses should be focused within town centre uses or sites that can be well integrated with the existing centres and public transport. The appeal site is located within close proximity of the Green Street centre and public transport links.

19. Policy J2 of the Local Plan appears to be less relevant in relating to employment land uses as is Policy 4.2 of the London Plan which refers to supporting mixed use development of office provision. Although the Council has referred to the NPPF in the context of maintaining the character of an area, the NPPF also promotes the effective use of land and although the Council has described the appeal building as representing a visual break between commercial and residential use the building has been in use in the past including for a period of two years when the Certificate was granted.
20. On balance and having regard to the development plan policies as referred to above, I do consider that the use of the development as a solicitor's office in this particular location would be acceptable and would not impact upon the long term viability of the identified town centre location.

Living conditions

21. The Council has referred to additional noise and disturbance for occupiers of Marlborough Road as a result of increased pedestrian and vehicular movements by employees and clients visiting the solicitors office throughout the day.
22. Although no details of number of employees have been provided when the solicitors office was in operation, the appeal property is not particularly large. At the time of my morning site visit, there were parking spaces on Marlborough Road. The appeal property is also in an area with nearby access to public transport as buses run frequently along Green Street with bus stops close to the appeal property. There is no evidence of any complaints or issues with parking when the solicitor's office was in use. The appellant has also referred to potential use of a nearby pay and display car park and that not all clients would need to visit the office.
23. On the limited information provided, I do not consider that the development would harm the living conditions of occupiers of Marlborough Road due to noise and disturbance from increased pedestrian and vehicular movements.
24. It would therefore not be in breach of Policy SP8 of the Local Plan which, amongst other things, refers to new development not resulting in unacceptable levels of noise or Policy SP2 of the Local Plan which refers to healthy neighbourhoods and improving air quality. I find the other policies referred to by the Council to be less relevant. Policy SP3 of the Local Plan relates to design. Policy 7.6 of the London Plan relates to architecture and Policy 7.1 is a more general policy which refers to good quality environment. Policy D7 of the Draft Local Plan refers to public realm.

Conditions

25. The use of the solicitor's office has ceased and I therefore consider that a standard commencement condition is required in the interests of certainty. The appellant originally considered that the roller shutter was needed for security reasons and is consistent with the nature of this part of Green Street and Marlborough Road. However, whilst there are roller shutters on premises on Green Street, Marlborough Road is predominantly residential and the

commercial appearance of the roller shutter looks out of place. The appellant has, in any event, indicated in later comments that he would not object to the removal of the roller shutter and I agree that the removal of the roller shutter can be dealt with by way of a suitable condition.

Conclusion

26. For the reasons given, I conclude that the appeal should succeed on ground (a). I shall grant planning permission for the material change of use to a solicitors office as described in the notice. The appeal on ground (f) does not therefore fall to be considered.

Formal Decision

27. The appeal is allowed and the enforcement notice is quashed. Planning permission is granted on the application deemed to have been made under Section 177(5) of the 1990 Act as amended for the change of use to a solicitor's office at 229A Green Street, Forest Gate, London E7 8LL as shown on the plan attached to the notice subject to the following conditions:

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The roller shutter to the front of 229A Green Street is to be removed within 3 months of the date of this decision.

E. Griffin

INSPECTOR