



Appeal Decision

Site visit made on 11 March 2020

by Anthony J Wharton BArch RIBA RIAS MRTPI

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

Decision date: 23 March 2020

Appeal Ref: APP/G5750/C/19/3240787

Property Link International, 61-63 St. Georges Road, London E7 8HT

- 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 Sajid Naukhez, Investment Link Limited, against an enforcement notice (EN) issued by the London Borough of Newham (the LPA).
 - The enforcement notice was issued on 11 October 2019.
 - The breach of planning control as alleged in the notice is, without planning permission, the erection of an infill extension.
 - The requirements of the notice are as follows:
 1. Demolish the infill extension (as shown in the approximate position edged in blue on the attached plan, and as shown edged in yellow on the photograph attached at Appendix 1) and return the affected elevations of the property to their form prior to the unauthorised works being undertaken.
 2. On completion of step 1 above, remove all materials and debris from the site.
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on grounds (a) and (f) as set out in section 174(2) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is dismissed. See formal decision below.

Background information

2. The appeal site is located on the north side of St Georges Road, which links Green Street (B167) with Upton Lane (A114). It comprises a five storey, mixed-use building with a commercial unit at ground floor level and residential units above. Planning permission was granted for the building in 2007 (ref 07/00338/FUL) and was for the erection of 9 residential studios and flats with a Class A2 use to the ground floor. The adjacent building, Barclay Hall, although not a formally listed, is on the Council's list of buildings of local interest and in my view is worthy of this local status as a building of architectural and historic interest.

3. In August 2019 an application was submitted for '*Part retention, part single storey rear extension*' at the site (19/02247/FUL). This related to the infilling of an open area used for carparking, situated underneath the first floor and an additional fire exit to the commercial unit. Later that month Council officers noted that much of the extension works shown as being proposed (on the submitted plans) had already been completed. A comparison of historic plans at the site indicated that a rear toilet and fire escape extension had also been added. Details of the application are referred to in the Council's Delegated Report dated 7 October 2019 (CDR).

4. The relevant development plan policies are those set out in the Council's reasons for issuing the enforcement notice (section 4 of the notice). These policies are London Plan (LP) policies: 2.15, 4.7, 4.8, 7.1, 7.4, 7.5, 7.6 and 7.8 and the London

Borough of Newham Local Plan policies: S1, S6, SP6, SP7, J1 and INF5 (LBNLP). The National Planning Policy Framework (NPPF) is a major material consideration and the most relevant part is section 12 (Achieving well-designed places).

The appeal on ground (a)

5. The main issues in this case are as follows:

1. The effect of the development, with regard to the Council's objectives of consolidating commercial uses within local and town centres in order to maintain their vitality and viability, and,
2. The effect of the development on the character and appearance of the host building; on this part of the Borough and on the setting of the adjacent locally listed building, Barclay Hall.

Introduction

6. At the time of my visit the infilled areas were being used in conjunction with the Class A2 (Property Lettings) use at the front of the property, as storage space and a workshop. The works carried out had resulted in three parking spaces under the first floor being lost, as well as blocking the access to one of the three stacking parking structures to the rear. The works left access to the other two stacking units and there was additional space between the front roller shutter entry to the car park and the rear of the property. In the north-eastern corner of the rear of the site, there was a small sitting out/amenity area.

7. The Council indicates that the plans submitted and assessed (for application reference 19/02247/FUL), contained many discrepancies in respect of the whole building and that the information did not outline which works were being proposed. Amongst the many discrepancies the drawings had shown that the proposed finish would be rendered to match the upper parts of the building. From my inspection this is clearly not the case, since the new works are rendered with a dusty-grey coloured material which contrasts with the paler render to the upper floors of the flats.

Effect relating to vitality and viability of local and town centres.

8. Whilst accepting that the current Class A2 commercial use is historically established, the Council is of the view that the intensification of this use outside of a local or town centre is contrary to the objectives of consolidating commercial uses to within such centres. It is considered that the historic use of the site for commercial purposes does not set a precedent for allowing further '*establishment and ingraining of such non-conforming development*' contrary to the strategic visions of the relevant development plan policies.

9. The appellant company contends that the Council's reliance upon the erosion of town centre vitality and viability is unjustified. It is stressed that the CDR relies upon a previous appeal decision which is not comparable to this situation and that the A2 use on the site is lawful. It is also argued that the infill works have made more effective use of the land and that the use to which it being put is ancillary to the lawful use. As such it is stated that this promotes growth and jobs which are factors in its favour, as well as being in a location best reached on foot and which serves local people. It is stressed that the CDR did not contend that the loss of parking was any justification for refusal.

10. Having noted the location of the appeal site, whilst acknowledging that it lies outside of a local or town centre, it is nevertheless just off Green Street which, as well as providing retail uses, also contains various commercial premises along its length. I find that this is a positive material consideration in favour of the appellant's cases.

Clearly, the fact that there is an existing lawful Class A2 use on the ground floor is another positive factor in favour of allowing an additional ground floor area to be used for the same use.

11. In principle, therefore, I find that the extension of the Class A2 use is acceptable. In my view the use of the rear area for the same use will have little, if any, detrimental impact on the Council's objectives of consolidating commercial uses within local and town centres in order to maintain their vitality and viability. I do not accept that such a small extension of the use will compromise the vitality and viability of this part of the Borough, just off the very lively mixed-use Green Street.

12. In conclusion on this first issue therefore I find in the appellant's favour and do not consider that the principle of this extended use, in itself, would set a precedent for similar commercial uses to be applied for outside of local and town centres. This is an established and lawful Class A2 use of the ground floor of the appeal building and the small extension in area is negligible. However, I now turn to the second issue relating to the design of the infill extension.

Effects on character and appearance and on the setting of Barclay Hall

13. As referred to above the application drawings for the retrospectively applied for works, had many discrepancies. Even though the drawings indicated that the render would match that as existing, the actual rendered finish to the infill extension is a completely different colour. In addition the workmanship is very poor with staining and cracking to the render on the north and west elevations.

14. I find the overall design to be very poor and the infill works have been carried out in a most obtrusive and clumsy manner which, in effect, means that the eastern-most of the double stacking parking units cannot be used. I acknowledge that the Council has not objected to the loss of parking spaces, but I see no reason why a more competent design could not have retained this unit, as well as being in character with the rest of the building and perhaps even providing some landscaping as suggested by the Council.

15. I consider that in design terms the infill works, as carried out, have resulted in a most obtrusive and visually harmful addition to the rear of the building. Although the works cannot be seen from the street and, therefore, do not directly affect the appearance of the streetscene or the immediate setting of Barclay Hall, they do not accord with the design principles set out in both local and national policies. I agree with the Council that they have been carried out in a 'piecemeal' fashion and that the infilling of the undercroft area '*fails to successfully integrate with, or appropriately contrast with, the original building on the site*'.

16. The policies of both the LP (7.4 and 7.6) and the NLP (SP1, and SP3) are up to date with section 12 (Achieving good design) of the NPPF. The latter seeks to ensure that the design of developments results in the creation of high quality buildings and places. It also indicates that permission should be refused for development of poor quality that fails to take the opportunities available for improving the character and quality of an area and the way it functions.

17. In this case, therefore, for the reasons set out above I do not consider that planning permission ought to be granted for the unauthorised works as carried out. The works are contrary to the relevant policies and the other material considerations do not indicate that the decision should be made other than in accordance with the development plan. The Council refused permission for the works as carried out and I find that there is no justification in granting approval at this appeal stage. Even though I have found in the appellant's favour with regard to the first issue, these

findings are far outweighed by the harm caused to the character and appearance of this part of the Borough due to the poor quality of the design. The appeal fails on ground (a).

The appeal on ground (f)

18. To be successful on this ground it must be conclusively shown that lesser steps would overcome the objections. The purpose of the notice is to remedy the breach of planning control. In the appellant's grounds of appeal it seems to be argued that references to upgrading or refurbishing of the whole rear yard and parking area could have amounted to justification to grant planning permission, subject to conditions that would require work to other parts of the site other than those enforced against.

19. However, any such additional works should have been the subject of the application to retain the unauthorised infill extension. There are no suggested works put forward as part of this appeal and, therefore, no indication that any lesser or other steps could overcome the objections to the unauthorised works. I agree with the Council, therefore, that in the overall circumstances of this case the steps required are proportionate and are the minimum required to remedy the breach of planning control. The appeal also fails, therefore, on ground (f).

Other matters

20. I have found that the principle of extending the Class A2 use to the rear of the premises would be acceptable and, in my view, a properly considered and well-designed scheme could be acceptable. The present scheme, however, falls well short of being acceptable on design grounds.

21. In reaching my conclusions on the grounds of appeal I have taken into account all of the other matters raised by the Council and the appellant company. These include the full planning history of the site; the initial document submissions; the appellant's grounds of appeal and statement; the CDR; the Council's statements; all of the submitted drawings and the submitted photographic records.

22. However, none of these matters carries sufficient weight to alter my conclusions on the grounds of appeal and nor is any other factor of such significance so as to change my decision that the appeal should be dismissed.

Formal Decision

23. 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 Act.

Anthony J Wharton

Inspector