



Appeal Decision

Site visit made on 13 November 2019

by Roy Curnow MA BSC(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24th March 2020

Appeal Ref: APP/M5450/C/19/3228225

93A High Street, Wealdstone, Harrow HA3 5DL

- 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 Tarun Agrawal (Oxhey Property Management Limited) against an enforcement notice issued by the Council of the London Borough of Harrow ('the notice').
- The enforcement notice, numbered ENF/0354/18/P/5612, was issued on 29 March 2019.
- The breach of planning control as alleged in the notice is without planning permission: the change of use of the ground floor commercial unit situated on the land from (A1) shop to a mixed use comprising Shop (A1) and Flat (C3) ("unauthorised use").
- The requirements of the notice are to:
 - (1) Cease the unauthorised use and ensure compliance with the approved layout plan of P/3709/14 (attached as 'Proposed Ground Floor Plan');
 - (2) Remove the bathroom, kitchen unit, internal partitions and all paraphernalia which is associated with the unauthorised use; and
 - (3) Remove all materials associated with the above steps 1 and 2 from the Land.
- The period for compliance with the requirements is six (6) calendar months after the notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Decision

1. It is directed that the enforcement notice is corrected by substituting the site plan attached to the issued enforcement notice with the one attached to this decision. Subject to this correction, 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.

Procedural Matter

2. It appears to me that the plan attached to the enforcement notice is incorrect. It does not accurately identify the land to which the notice relates as it includes the adjacent property, 93 High Street. I asked the parties for their views on a revised plan, and comments were invited by 12 December 2019. The Council confirmed that the plan attached to the issued notice was incorrect. The appellant did not respond.
3. It is clear to all parties involved as to which part of the land the notice relates to. I am satisfied that the notice can be corrected by substituting the site plan with the one attached to this decision. I shall correct the notice.

Ground (a) the deemed application for planning permission

Main Issues

4. The main issues in the appeal are:

- The effect of the development on existing and future occupants' living conditions having regard to the size of the flat; and
- The effect of the development on the viability of the retail unit.

Reasons

Living conditions

5. Planning permission¹ was granted for a small flat-roofed extension to the rear of a shop in High Street, for storage ancillary to the retail use. This has been built, but varies from the approved scheme in the following manner. There is no internal link between the extension and the retail element, which has been sub-divided into two small units, and the extension is now used as a studio flat.
6. The Government has set out minimum size standards for residential units in its Technical Housing Standards – Nationally Described Space Standard, March 2015 (the Standards). For a one person flat of the type that has been formed, the minimum is 37 square metres (sqm), with at least 1sqm of storage space. These standards are mirrored in Table 3.3 of The London Plan, 2016, (LP) and a Supplementary Planning Document produced by the Council, the Residential Design Guide, December 2010, (RDG). Adherence with this minimum figure is required by London Plan Policy 3.5C and Policy DM26 of the of the Harrow Development Management Policies Local Plan, 2013 (DMP).
7. The Council suggests that the studio flat has a floor area of 21sqm, a figure that has not been challenged by the appellant. This is significantly below the required figure. Even for a single person, the flat is extremely cramped. At my visit, save for that under a small sink unit, I saw no storage space in the flat. As a result, its occupant's belongings, including food, were stored in bags and in the open across the floor and on a small settee in the living area and clothes were hung on the shower door in the bathroom. This left very little floor space uncovered, seriously limiting circulation space, requiring the bed to double up as the flat's only available seat. To my mind, this situation arose as a result of the fundamental lack of space rather than from a lack of tidiness on behalf of the flat's occupant.
8. The flat's principal window is fairly large and faces south-west. This, together with a smaller side window and partly glazed door, provides adequate light and ventilation to the flat. However, its outlook onto a parking and delivery area is very poor. Flats in developments nearby have similar outlooks, although some are at least set-back from the parking area by a small area of grass. The outlook from windows in those other flats cannot be used to justify the poor outlook from the proposed flat.
9. In addition to the very close relationship with the parking and delivery area, the flat is flanked on one side by an alley running from this area to the High Street and, on the other, by the access to flats above number 93. As a result, occupants of the flat are also adversely affected by noise and disturbance.

¹ Council reference – P/3709/14

Furthermore, this relationship resulted in very little privacy to the flat's occupant unless the blind is down on the main window, as was the case when I visited the site. Lowering the blind has a significant adverse effect on natural light entering the flat and the outlook from it.

10. The flat does not benefit from any external space. Whilst there is no policy requirement for a single person flat to provide amenity space, London Plan Policy 6.9 requires the provision of secure cycle storage and DMP Policy DM45 requires the on-site provision of waste and recycling facilities. These requirements are reflected in DMP Policy DM1 and the RDG. The flat cannot provide these facilities externally and, given its very limited size, there is no scope for either within the flat. Although I saw a large wheeled bin across the parking area from the flat, I have not been given any information to show that this facility is open to use by the flat's occupant. The lack of these facilities further highlights the inherent unsuitability of the flat.
11. Although providing a dwelling on previously developed land in an accessible location, in an area of high housing demand, these cannot justify the very low standard of accommodation it provides for its present and future occupants. Similarly, that the flat would provide safe accommodation in a low crime area does not outweigh the identified harm. It has been suggested that the accommodation is affordable, but I have been given little evidence in this regard and, therefore, give this little weight. Given that the flat falls so far short of the required standard of housing in the Borough, it fails to accord with the social objective of sustainable development in the National Planning Policy Framework (the Framework).
12. My finding on this main issue is that the flat's severely limited size, relationship with the parking and delivery area, and lack of facilities results in a unit of accommodation that does not provide appropriate living conditions for its occupant. For the reasoning set out, above, I find that the creation of the flat would be contrary to the terms of London Plan Policies 3.5C and 6.9, DMP Policies DM26 and DM45, the Standards, RDG and the Framework. It also fails to comply with DMP Policy DM1 that requires residential development to be of a high standard of design and layout.

Retail Floorspace

13. Although the flat has been formed within the ancillary storage space to the rear of the retail use fronting High Street, this forms part of its gross retail floorspace. In this regard, I find that the creation of the flat has led to a loss of retail floorspace.
14. Whilst the store might not be required by the current users of the two retail units that have been formed, I am not persuaded that this would be the case with all future occupants of retail uses fronting High Street. In this regard, I am aware that it is only a short time since the extension was proposed to provide ancillary storage space for retailers in that shop unit.
15. Although not resulting in a loss of that part of the retail use fronting onto High Street, I am not convinced that there would be no effect on the viability of the parade. Future retailers might require the ancillary space that the extension could provide and, in its absence, not choose to locate here. In such a scenario, the use of the store as a dwelling would have an adverse effect on the ground floor of the property as a viable retail unit.

16. Little evidence has been provided to suggest that the store would be underutilised or underused, were the appeal to fail and the enforcement notice upheld. Neither have I been provided with local, regional or national policies relating to this, that might support the contention. Therefore, I give this argument little weight.

Other consideration

17. Within his appeal under Ground (f), the appellant has proposed that the requirements of the notice be varied to allow compliance with the plan set out in Appendix A to his statement ('the plan'). This is a matter to be dealt with within the Ground (a) appeal.
18. The plan includes the sub-division of the shop unit at 93A High Street. Planning law² sets out that planning permission granted in an enforcement notice appeal is restricted to the matters referred to in the alleged breach. The works of sub-division on the plan are not referred to in the alleged breach. Therefore, and notwithstanding the planning merits put forward in this regard, they cannot be approved in an appeal against the notice.

Conclusion on Ground (a)

19. In the light of the above, I find that the proposal would be contrary to the terms of DMP Policy DM38 that, amongst other things, sets out that a residential use at ground floor level is an inappropriate use of a ground floor premises in a neighbourhood parade. The aims of this policy are reflected amongst the terms of CS Policy CS1. However, as the development that has occurred is not a matter covered by Policy 4.9 of the London Plan, I do not find that it is contrary to its terms.

Ground (f)

20. I have addressed the question of the appellant's plan as part of the Ground (a) appeal decision, above. The appellant has not put forward any other argument as to why the steps required by the notice to be taken exceed what is necessary to remedy the breach of planning control. The requirements in the notice are not excessive but are proportionate to remedy the breach alleged in the notice.
21. For the above reasons, my finding on the appeal under Ground (f) is that the steps required by the notice do not exceed what is necessary to remedy the breach of planning control. The appeal is therefore dismissed.

Ground (g)

22. I am mindful of the reasoning provided by the appellant, with regards to the issues relating to the relocation of the businesses and the flat's tenant to find new accommodation. However, I have not been persuaded that 6 months would not be sufficient for these, and the required physical works, to be undertaken. This represents a reasonable timeframe and, therefore, the appellant has not demonstrated the need for the time for compliance to be extended and the appeal fails on ground (g).

² Section 177 of the Town and Country Planning Act 1990 (as amended)

Conclusions

23. I have found it necessary to replace the plan attached to the enforcement notice with one that I have drafted, which accurately defines the land. For the reasons given, above, and having regard to all other matters raised, I conclude that the appeal fails on grounds (a), (f) and (g) and should be dismissed.

Roy Curnow

INSPECTOR



Plan

This is the plan referred to in my decision dated:

By: Roy Curnow MA BSC(Hons) MRTPI

Land at: 93A High Street, Wealdstone, Harrow HA3 5DL

Reference: APP/M5450/C/19/3228225

Scale: 1:1000

