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# Appeal Decision

**by Chris Hoult BA(Hons) BPhil MRTPI**

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

**Decision date: 28 August 2020**

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**Appeal Ref: APP/N5660/C/20/3244339**

**12 Cooper's Yard (r/o 11 Westow Hill), London SE19 1TN**

- 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 1990 Act").
  - The appeal is made by Mr Sebastien Baksh against an enforcement notice issued by the Council of the London Borough of Lambeth.
  - The enforcement notice, numbered 18/00115/3CND, was issued on 28 November 2019.
  - The breach of planning control as alleged in the notice is the intentional unauthorised erection of a 2 storey brick building ("the unauthorised 2 storey building") for use as a work-live unit comprising 1 bed accommodation on the first floor and office use on ground floor ("the unauthorised work-live use").
  - The requirements of the notice are: (a) Cease the unauthorised work-live use and remove the unauthorised 2-storey building from the premises; and (b) Remove all associated waste and debris resulting from compliance with the above steps, from the premises.
  - The period for compliance with the requirements is six months.
  - The appeal is proceeding on the grounds set out in section 174(2)(a) and (f) of the 1990 Act.
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## Decision

1. It is directed that the enforcement notice be corrected by: in Section 3, the deletion of the words "unintentional unauthorised", "(the unauthorised 2-storey building)" and "(the unauthorised work-live use)"; and, in Section 4, first paragraph, by the deletion of the word "breaches" and its substitution with the word "breach" and the deletion of the words "last ten and four years respectively" and their substitution with the words "last four years".
2. It is directed that the enforcement notice be varied by, in Section 5(a), the deletion of the words "Cease the unauthorised work-live use and".
3. Subject to these corrections and variations, and to the submission of a signed Unilateral Undertaking as described in paragraphs 15 and 16 below, the appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under s177(5) of the 1990 Act for the development already carried out, namely, the erection of a 2 storey brick building for use as a work-live unit comprising 1 bed accommodation on the first floor and office use on ground floor on land at 12 Cooper's Yard (r/o 11 Westow Hill), London SE19 1TN, as shown in the plans submitted as Appendices 6(a), 6(b) and 6(c) of the appellant's appeal statement and referred to in the notice, subject to the following condition:

- 1) The recessed area at the front of the building shall be retained for the storage of household refuse and recycling bins for the duration of the development.

### **Preliminary Matters**

4. The appeal is being determined by the written representations procedure. The reasons for issuing the notice concern affordable housing contributions and obligations in relation to car-free housing. In the light of this, and of the evidence, I considered that it was not necessary in order to reach a decision to see the site and its surroundings. A site visit was not therefore carried out.

### **Matters Concerning The Notice**

5. The notice alleges both unauthorised building operations and a material change of use, citing the time limits for enforcement action as 4 years and 10 years respectively. The evidence indicates that the site was formerly occupied by a workshop. The development enforced against consists of the erection of a building which, upon completion, was used from the start as a live-work unit. While its use is different from that of the workshop it replaced, in that the Council describes it is a *sui generis* mixed use building, there has been no separate act of development involving the material change of use of the land, with regard to the former building or the building subject of this notice.
6. In the light of this, I consider that the notice requires correction, even though I quash it. The deemed planning application takes its terms from the allegation and I grant planning permission for the erection of a building comprising a work-live unit. In the wording of the allegation, separate reference is made, in parentheses, to what the Council considers to be separate breaches. However, since I consider that there is no such distinction, it is incumbent on me to delete these words also. In the light of this, it is not necessary to refer, as does the Council, to separate time limits for action of four and ten years. Finally, the Council considers that the appellant has intentionally carried out unauthorised development but, while this might be a material consideration in justifying action, it is not necessary to specify this in the allegation.
7. I shall correct the notice accordingly. No injustice would arise to the parties by my so doing. In the light of these corrections, I consider that one of the notice's requirements, to cease the work-live use of the building, is unnecessary. The removal of the building from the land would cause its use to cease and the notice could not separately require the work-live use of the building to cease if the building were to be retained. I shall vary the requirements of the notice accordingly.

### **Ground (a) appeal**

#### *Background and main issues*

8. The appeal building comprises a two-storey building to the rear of the north side of the Westow Hill shopping parade. Planning permission was granted on appeal on the site in 2014 for a building with a workshop on the ground floor and office/storage accommodation above. Council investigations from 2015 onwards showed that it had, however, been built and used from the start as a live-work unit, from when completed in 2016. There were also departures in matters of detailing from the approved plans and a condition requiring prior approval of materials had not been complied with. Given the building's internal

layout, the Council considered it to have a mixed-use *sui generis* live-work use. Ultimately, a retrospective planning application was submitted for the building as built and used which was refused planning permission and appealed in 2017.

9. The Council refused permission on a number of grounds which were considered by the Inspector. No material harm was found in relation to whether the development would provide a satisfactory standard of accommodation for future occupiers, or in respect of provision made for refuse and recycling storage or cycle parking. She nevertheless dismissed the appeal on the ground of a failure to produce a viability assessment to justify an exemption from making an appropriate contribution to affordable housing. The appeal was determined in December 2018.
10. The Council is of the view that the development failed to implement the planning permission granted on appeal in 2014 and that the breach constitutes the erection of an unlawful building. While my views on what constitutes the breach of planning control differs from that of the Council, on that element, I concur with its view. While departures from the detailing of its main elevation from those shown on the approved plans appear to be fairly minor, it has been put to a significantly different use, giving rise to planning considerations which could not have been foreseen by the 2014 appeal Inspector.
11. The Council picks up on the affordable housing contributions issue in issuing the notice. Moreover, in an area with a high PTAL<sup>1</sup> score and given a policy commitment to reduce dependence on the private car, Policy T7 of the Lambeth Local Plan seeks to promote car-free development. These issues form the basis of the reasons for issuing the notice.
12. Accordingly, the main issues for this appeal are: (a) whether the development is justified as exempt from a requirement for a contribution to affordable housing in the Borough; and (b) whether the development should be car-free, having regard to the Council's policies relating to sustainable transport.

### *Reasons*

#### *Affordable housing*

13. The Council has estimated that a small contribution towards affordable housing in the Borough is appropriate. No contribution was offered as part of the retrospective planning application nor was there any form of viability assessment to demonstrate that a contribution was not justified.
14. In response to the notice, the appellant has now produced a viability appraisal. It assesses the capability of the development to fund an affordable housing contribution, taking into account such factors as benchmark value, residual value and developer profit, and reaches the firm conclusion that a contribution could not be justified. The Council has reviewed the assessment and considers that the information and analysis provided is robust and comprehensive. It raises no issue with its conclusions and, having read the appraisal, I have no reason to disagree with that finding. Accordingly, I conclude that the development is justified as being exempt from a requirement to make a contribution. In this respect, it complies with criterion (d) of local plan Policy H2, which requires a financial appraisal where affordable housing provision is less than the specified policy requirement, as it is in this case.

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<sup>1</sup> Public Transport Accessibility Level

### *Car-free development*

15. I acknowledge the appellant's complaint that this was not an issue raised by the Council when it refused retrospective planning permission in 2018. There is no evidence of any form of parking restrictions on the previous workshop use of the site. Nevertheless, the policy context for consideration of this issue is clear in that development should have regard to public transport accessibility in considering parking provision, with minimal provision in areas with good accessibility. The appellant has indicated that he has no intention of applying for a car parking permit in connection with the residential use and has now submitted a draft Unilateral Undertaking under s106 of the 1990 Act to that effect. The Council has reviewed the Undertaking and confirms that its form and content complies with its requirements.
16. I have read the submitted Undertaking and I acknowledge that a commitment to not applying for a car parking permit, binding on the developer/occupier and incorporating a commitment to make successive occupiers aware of this obligation, fulfils a requirement for "car-free" housing. I see no reason to disagree with the Council's view regarding its form and content. Accordingly, I conclude that the Undertaking satisfies a justified requirement for the development to be car-free, having regard to the Council's policies, in particular criteria (a)(i) and (a)(ii) of local plan Policy T7.

### **Conclusion**

17. For the reasons given above I conclude that the appeal should succeed on ground (a) and planning permission will be granted. The appeal on ground (f) does not therefore need to be considered.

### **Conditions/Other Matters**

18. The submitted Unilateral Undertaking is a draft and any grant of planning permission therefore needs to be subject to a prior requirement for submission of a signed Undertaking. I word my decision accordingly. The appellant includes in Appendix 6 of his statement a series of plans which show the development as built and, in the interests of clarity and precision, I refer to these plans in my decision. The Council suggests one condition, on refuse/recycling storage. Presently, a small recessed space at the front of the premises is shown as used for bin storage and the Council requires it to be retained for that purpose. I agree, and consider it necessary and reasonable in the interests of keeping other land at the front of the building safe for vehicle circulation etc. to impose a condition, adopting the Council's wording with minor modification.

*C M Hoult*

INSPECTOR