



Appeal Decisions

Site visit made on 1 September 2020

by L Perkins BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13th October 2020

Appeal A Ref: APP/U5360/C/18/3217940

First, Second and Third Floor Levels, Myrdle Mansions, 2 Stamford Hill, London, N16 6XZ

- 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 M Shwartz of Dockthorne Ltd against an enforcement notice issued by the Council of the London Borough of Hackney.
 - The enforcement notice was issued on 2 November 2018.
 - The breach of planning control as alleged in the notice is: Without planning permission the material change of use of the Property from Office (Class B1) to use as nine (9) flats (Class C3), the erection of a mansard roof extension (fronting onto Stamford Hill and Cazenove Road) and the erection of a two storey rear extension at second and third floor levels and infilling of internal voids to the building at first floor level.
 - The requirements of the notice are:
 - (1) Cease the use of the Property as flats.
 - (2) Remove all W/C's, Kitchens, Bathrooms and partitions that facilitate the use of the property as flats.
 - (3) Make good all damage to the Property resulting from the removal of the unauthorised works and restore the relevant parts of the Property to the condition they were before the unauthorised use started.
 - (4) Remove all waste, materials, equipment, and debris from the Property resulting from compliance with the requirements in paragraphs 5(1) to (3) of this notice.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Appeal B Ref: APP/U5360/W/19/3231017

Myrdle Mansions, 2 Stamford Hill, London, N16 6XZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr M Shwartz of Dockthorne Ltd against the decision of the Council of the London Borough of Hackney.
 - The application Ref 2018/4582, dated 13 December 2018, was refused by notice dated 12 March 2019.
 - The development proposed is described as: The change of use of the first and second floor of the building to residential; Infill extensions at first and second floor levels to Stamford Hill elevation and at second floor to Cazenove Road elevation, and rear extensions to second floor level; Third floor extension, to create 9 flats. (2x3b 4p, 4x2b 3p, 1x1b 2p, 2xStudio)
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Appeal C Ref: APP/U5360/W/19/3237275

First, Second and Third Floor, 12 Stamford Hill, London, N16 6XZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr M Shwartz of Eastedge Ltd against the decision of the Council of the London Borough of Hackney.
 - The application Ref 2019/1065, dated 20 March 2019, was refused by notice dated 11 June 2019.
 - The development proposed is: The change of use of the upper floors from 3 x Studio Flats (C3) to 6 Offices (B1).
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Decisions

1. It is directed that the enforcement notice is varied by the deletion of 6 months as the period for compliance and its substitution with 12 months. Subject to this variation, Appeal A is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.
2. Appeal B is dismissed.
3. Appeal C is dismissed.

Preliminary Matters

4. These appeals are referred to by the main parties as Appeal A, Appeal B and Appeal C. In the interests of clarity and consistency, I have adopted the same letters to identify each appeal within my reasoning, where required.
5. I have taken the site address for Appeal C in the heading above from the Council's decision notice which describes the location of the appeal site more clearly than the application form or appeal form.
6. At my site visit access was not provided to all of the rooms in Flat 5 within No 2 or to the second or third floor within No 12. So with the agreement of the main parties I have based my decisions on the evidence provided in this regard.
7. Since final comments were due on these appeals, the Council has adopted a new development plan, 'Hackney A Place for Everyone' (the new Local Plan) and a new supplementary planning document, 'S106 Planning Contributions'. The Council has advised that its Core Strategy and Development Management Local Plan (DMLP) policies have been superseded by the new Local Plan.
8. The Council has provided details of new policies which have replaced policies specified on the enforcement notice and decision notices which are referred to in the headings above. The appellant was invited to comment on the implications of the above new policy documents and I have taken any comments made into account in my reasoning. My decisions must be based on the policies which are in place now rather than those in place at the time of the Council's decisions.
9. For Appeal A the appellant has submitted an alternative scheme. However, in an enforcement appeal, under section 177 of the 1990 Act, planning permission may be granted under ground (a) only in respect of the matters stated in the enforcement notice, ie for the development which has been carried out. So as part of these appeals, I am unable to consider the merits of another scheme for a different development that is not part of the development alleged and any

other scheme must be considered by the Council in the first instance. I have determined Appeal A on this basis, ie on what has been built.

Appeal A and Appeal B Reasons

Appeal A ground (b)

10. In an appeal on ground (b) the burden of proof falls on the appellant to make out their case. The appellant states that, as a matter of fact, there has not been a change of use from offices to 9 flats as most of the structure did not exist prior to the alleged breach taking place.
11. Whilst I accept some of the residential accommodation which has been provided is contained within extensions to the appeal building, there can be no doubt that the land defined by the notice is in use as 9 flats. In my judgement, the notice is sufficiently clear in this regard and the appellant's position does not merit any correction of the allegation. Accordingly, the appeal on ground (b) fails.

Appeal A ground (c)

12. In an appeal on ground (c) the burden of proof falls on the appellant to make out their case. The planning history of the appeal site includes a planning application submitted in 2010, granted on appeal¹, for extensions to the building to create 4 x 1 bedroom flats, and, a 2014 prior notification² for the change of use of office accommodation at first and second floor level to 5 x 1 bedroom flats. The appellant accepts the development was not carried out in accordance with the plans.
13. On examination of the drawings provided for each of the above schemes, it is apparent that the appeal development does not reflect either scheme, whether considered separately or together. There are significant differences, including the size and layout of the flats and the footprint of the development overall, particularly at second and third floor level. So these schemes do not grant planning permission for the development alleged and so I do not accept that the matters alleged in the enforcement notice do not constitute a breach of planning control. Accordingly, the appeal on ground (c) fails.

Appeal A ground (a) and Appeal B

14. Based on the enforcement notice and decision notice provided, the main issues in Appeal A and Appeal B are:
 - whether the appeal development provides an acceptable quality of residential accommodation;
 - whether the appeal development provides an adequate mix of housing; and
 - the effect of the appeal development on the area's stock of employment floorspace.

Quality of Residential Accommodation

15. Based on the information provided, for Appeal A, the width of the primary bedroom in Flats 3, 4 and 6 is inadequate and Flats 2, 5 and 8 fail to meet the

¹ Council ref 2010/1206, appeal ref APP/U5360/A/10/2138382 dated 3 February 2011

² Council ref 2014/1082 dated 22 May 2014

minimum space standards set out in the London Plan 2016 (as amended) (the London Plan) and the Nationally Described Space Standards (the NDSS). This is consistent with my observations at my site visit where I found the above parts of the appeal development to be cramped.

16. The appellant considers the shortfalls are minimal and acceptable. But this position does not recognise that the standards referred to above are **minimum** standards rather than a target. My attention has been drawn to comments by a Council officer in a previous application, to the effect that a shortfall in floorspace could be argued to represent an improvement in the quality of accommodation. But this is not part of the Council's case in this appeal and the Council is not bound by previous comments of an officer.
17. For Appeal B, the Council states the second bedroom of Flats 1 and 4 are large enough to be double bedrooms and therefore both these flats fall short of the required floor area. But this is not the case given the drawings provided show both these second bedrooms are 11.20 sqm, whereas the NDSS requires a double or twin bedroom to have a floor area of at least 11.5 sqm in order to provide two bed spaces.
18. For Appeal A and Appeal B, the Council identifies that flats in the development are single aspect. From my site inspection and an examination of the drawings provided, this is not true for any of the flats in either appeal: all flats have openable windows on two external walls on opposite or adjacent sides of the building.
19. The kitchens of flats 3 and 6 have an external door onto a balcony. The Council considers this provides poor light and outlook. But poor lighting is not identified as a reason for issuing the enforcement notice in Appeal A or a reason for refusing permission in Appeal B and there is no evidence of any policy or guidance which requires good outlook from a non-habitable room such as a small kitchen.
20. The primary bedroom in flat 1 and 4 is north facing and looks directly on to a blank brick wall within close proximity, providing very limited outlook for these habitable rooms. This is identified as a reason for refusing planning permission in the decision notice for Appeal B and contributes to these flats providing poor quality residential accommodation.
21. Whilst I have not found harm for all of the reasons identified by the Council in respect of this main issue, considering all of the above points, I conclude that neither the development in Appeal A nor that in Appeal B, provides an acceptable quality of residential accommodation. As such, Appeal A is contrary to Policy 3.5 of the London Plan, Policy LP17 of the new Local Plan and the NDSS, and in respect of outlook Appeal B is contrary to Policy LP2 of the new Local Plan.

Mix of Housing

22. Policy DM22, referred to in the evidence has been replaced by Policy LP14 of the new Local Plan. Consistent with Policy DM22, Policy LP14 contains a preferred dwelling mix of 33% 3+ bedroom units for market housing. The Appeal A development does not include any 3+ bedroom units. Appeal B includes 2 x 3 bedroom units ie 22%. So neither appeal complies with the requisite mix of larger units.

23. The appellant states there is a recognised need for 2 bedroom flats in the area and that the Council previously raised no issue with a lack of family units. Be that as it may, 2 bedroom units should not be provided at the expense of the mix required by a very recently adopted development plan.
24. At the time of my site visit, every flat I saw was clearly occupied by a family with children. So I do not accept the location or characteristics of the building mean it is not suitable for family dwellings. The appellant states there is no outdoor amenity space. But this is not what I found at my site visit³ and a lack of outdoor amenity space is not a good enough reason for not making adequate provision for 3+ bedroom units, particularly as outdoor amenity space can be provided for flats in an urban area.
25. The appellant considers the site layout and scheme viability call for variations to the housing mix. But there is no evidence this is the case. The appellant states the provision of family units will cause the remainder of each storey to be used either as two one bedroom flats or as a two bedroom flat with a studio flat. But this assumes that the same number of dwellings is provided on each floor as exists now so I do not accept the provision of 3+ bedroom units will have a detrimental effect on the use of the remainder of the development as is suggested by the appellant.
26. I conclude on this main issue that Appeal A nor Appeal B provides an adequate mix of housing and this does not comply with Policy LP14 of the new Local Plan.

Employment Floorspace

27. Based on information provided by the appellant, the development in Appeal A and Appeal B occupies 287 sqm of floorspace which was previously B1 office accommodation. Policy LP27 I. of the new Local Plan permits development involving the net loss of B1 office floorspace only where all of the following criteria are met:
 - i. Robust marketing evidence is submitted which demonstrates that there has been no demand for the existing or vacant land and floorspace for its current or former use, and the possibility of retaining, reusing or redeveloping it for similar or alternative smaller or more flexible units for employment generating use, or other alternative employment generating use has been fully explored;
 - ii. Any new employment use provides a range of higher quality, more flexible floorspace and preferably a higher density employment than the previous; and
 - iii. It is demonstrated that the new commercial floorspace being provided has a strong likelihood of being occupied through the submission of a detailed marketing strategy.
28. No marketing evidence has been provided to satisfy criterion i. of Policy LP27 I. I appreciate there may be difficulty providing such information given the former office use ceased some time ago. But this is not a good reason to allow a change of use. To do so may have the effect of rewarding those responsible for the loss of a use which is subject to a development plan policy which seeks its retention.

³ Drawings provided show Flats 3, 5 and 9 have balconies, consistent with my observations at my site visit.

29. My attention has been drawn to a letter dated 14 June 2019 from the appellant company. This refers to the building having been in a derelict condition, cluttered with old paperwork and files and with the shop at ground floor storing second-hand furniture on the pavement outside. But these are management and/or maintenance issues or highway issues. They do not justify the loss of employment floorspace in this case and allowing a change of use due to the poor condition of a building may encourage deliberate neglect.
30. The letter also states the building's rooms were awkwardly shaped, with awkward access and no internal lift or parking facilities. But these factors are not evidence there is no demand for employment generating floorspace, particularly given the site's town centre location.
31. The letter further states the rent paid was approximately half the rateable value. But no evidence has been provided to verify the appellant's claims in this regard. Finally, it is stated in the letter that the layout did not lend itself to individual lettings but rather to singular larger companies or companies with some level of relationship. But it is not explained how this means there is no demand for the employment generating floorspace for the purposes of the above policy.
32. As mitigation for the loss of office floorspace at No 2, the appellant proposes that 3 flats on the upper floors of No 12 are converted to office floorspace, pursuant to Appeal C. Based on information provided by the appellant, this would provide 104.5 sqm of office floorspace. But even taking into account these proposals, the overall net quantitative effect would still be a loss of 182.5 sqm of employment generating floorspace.
33. The appellant considers an identified urgent need for housing within the local community means the loss of offices should be outweighed. But this is an argument I afford only limited weight as it could too easily be repeated contrary to the very recently adopted development plan policy noted above which resists the loss of office accommodation.
34. The appellant states the development included the renovation of the entire ground and basement floors which added 'much employment area on the site'. However, from the information available to me, including my observations at my site visit, the ground floor and basement is a retail unit and so is not employment floorspace for the purposes of the new Local Plan. Moreover, the ground floor and basement are not part of 'the land' for the purposes of the enforcement notice in Appeal A, and, the drawings provided make clear the ground floor and basement are not part of the application in Appeal B either. So considering the above points they do not compensate for the loss of employment generating floorspace in this case as a consequence of Appeal A or Appeal B.
35. I conclude on this main issue that, even if additional employment floorspace at No 12 were secured as part of the appeal development, Appeal A and Appeal B both result in the net loss of employment floorspace. This is contrary to Policy LP27 I of the new Local Plan.
36. I note the enforcement notice also refers to Policy 4.2 of the London Plan. But this is a strategic policy which is not relevant to planning decisions.

Other Matters

37. It is the appellant's view that the aforementioned 2010 planning application was implemented within the statutory time limit and therefore is live. Even if I were to agree this is the case, in my judgement, it does not justify each of the harms identified above in either Appeal A or Appeal B and so it makes no difference to my overall conclusions. This is particularly the case given the appellant states 2 of the one bedroom units in the 2010 scheme only had a floor area of 44 sqm, because the minimum floor area for a one bedroom one person flat set out in the London Plan is 37 sqm.
38. The appellant states that the aforementioned 2014 prior notification scheme is still extant and so is a fall-back position. But I am not satisfied this is the case given that scheme only allowed a change from office to the residential scheme described in the details provided with that application, ie what was shown on its drawings. There is no evidence the lawful use of the first and second floor of the building before it was extended was residential pursuant to the prior notification scheme rather than office. My view in this regard is supported by the fact there is no ground (b) appeal before me which is based on a claim that the material change of use alleged by the notice has not occurred because the former use was not office but residential by reason of the implementation of the prior approval scheme.
39. Even if I am wrong in this regard and the former office use had already been lawfully converted to the residential scheme described in the prior notification, this does not assist the appellant's case with regard to each of the harms identified above in Appeal A or Appeal B.
40. I have taken into account the unilateral undertaking provided by the appellant and the Council's comments in this regard. But given the shortfall in office floorspace proposed at No 12 relative to No 2 and issues with the residential accommodation at No 2 identified above as a result of Appeal A and Appeal B, the unilateral undertaking makes no difference to my overall conclusions.
41. The appellant has stated that the development is intended to provide for the needs of the local Jewish community and it was apparent from my site visit that dwellings at No 2 are occupied by Orthodox Jewish families. So I have had due regard to the Public Sector Equality Duty contained in section 149 of the Equality Act 2010. However, minimum standards are in place to protect all occupiers irrespective of race or religion. The evidence provided in this case does not satisfy me that the needs of this particular group are such that accommodation which provides anything less than minimum expectations, including in respect of outlook or housing mix, should be supported contrary to policy. In any event, no mechanism is in place to ensure future occupation is restricted to this group only.
42. My attention has been drawn to other implications of the new Local Plan, including contributions for affordable housing as a result of Policy LP13, carbon off-setting payments and other climate change matters pursuant to Policies LP54 and LP55. But in this case, given my findings on the main issues above, the other implications of the new Local Plan do not lead me to a different overall conclusion on either Appeal A or Appeal B and so I do not need to consider these matters any further.

43. The appellant considers the development is built to the highest quality internally and externally. I have not found this to be the case internally for the reasons set out above. The Council raises no objection to the built form of the development whereas the appellant considers it enhances the local area. I do not consider the latter to be the case, rather I consider it does not cause harm to the character or appearance of the area. A lack of harm in this regard is not a benefit and so this is not a good enough reason to grant planning permission for the development which is the subject of Appeal A or Appeal B in light of the harm identified above.

Conclusion on Appeal A ground (a) and Appeal B

44. Considering all of the above points, I find conflict with the development plan overall and I conclude that the Appeal A ground (a) appeal and Appeal B both fail.

Appeal A ground (f)

45. Under section 173(4) of the above Act, when serving an enforcement notice the Council may seek to (a) remedy the breach of planning control, or (b) remedy any injury to amenity which has been caused by the breach.
46. The notice in this case alleges a material change of use and operational development in the form of various extensions. Whilst the requirements of the notice do not attack the extensions, requirement 1 requires the use of the property as flats to cease. In my judgement therefore, the purpose of the notice insofar as it relates to the material change of use is to remedy the breach of planning control.
47. Under section 173(5) of the 1990 Act, a notice directed at a material change of use may require the removal of works integral to and solely for the purpose of facilitating the unauthorised use, even if such works on their own might not constitute development. This is the situation here, ie requirement 2 relates to items that facilitate the unauthorised use and so the notice may require their removal. It makes no difference that some of the items may be within parts of the operational development which the notice does not require is demolished.
48. I realise requirement 1 of the notice has implications for new parts of the building being left with a nil use. But this lends support to the ground (g) appeal and there being time for the consideration of an alternative scheme. I conclude no lesser steps have been suggested which would achieve the purpose of the notice. As such, the appeal on ground (f) fails.

Appeal A ground (g)

49. Nine families will have to seek alternative accommodation as a result of the enforcement notice. Since the appeals were lodged, a public health emergency relating to COVID-19 has begun. For this reason the Council considers a 6 month extension to the 6 month period for compliance specified in the notice is not unreasonable.
50. I have no reason to disagree with the Council's new position in this regard, albeit 12 months is the maximum period I consider reasonable for the occupants of the development to seek alternative accommodation and for the requirements of the notice to be complied with in the circumstances. This also allows time for the consideration of an alternative scheme, if appropriate.

Should this prove not to be the case, it is entirely a matter within the discretion of the Council to draw on its powers under section 173A(1)(b) of the 1990 Act, without prejudicing its right to take further action. I conclude the appeal on ground (g) succeeds to the above extent.

Appeal A and Appeal B Conclusions

51. For the reasons given above, I conclude that Appeal A does not succeed. I shall uphold the enforcement notice as varied and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

52. For the reasons given above I conclude that Appeal B is dismissed.

Appeal C Reasons

53. The main issues in Appeal C are:

- whether the appeal development would provide an acceptable quality of commercial floorspace; and
- the effect of the appeal development on the area's stock of housing.

Quality of Commercial Floorspace

54. Policy LP27 A. of the new Local Plan states that new office B1a floorspace must comprise well designed, high quality buildings and floorspace that is flexible/adaptable to accommodate a range of unit sizes and types with good natural light, suitable for sub-division and configuration for new uses and activities, including for occupation by small or independent commercial enterprises. Policy LP27 B. states that all applications should include a marketing strategy which demonstrates the design and layout of the proposed floorspace is of a high quality, is flexible and meets the needs of likely end users.

55. The Council considers that no marketing strategy has been provided. Nevertheless, the appellant states the rooms will all be renovated to provide modern, high quality office space, with each room served by a large window providing good natural light and there being the possibility of using both rooms on each floor as a larger office or separately to provide flexibility.

56. The appellant also states the existing flats are all not in great condition. There is no evidence this would change as a result of a change of use to offices so I do not consider this is justification for their loss.

57. Moreover, the quantum of floorspace proposed is significantly less than that lost at No 2 and the Council refers to the property as having cramped spaces, with most of the offices having only one window with no scope to subdivide.

58. Access was not provided to all of the accommodation proposed for conversion at No 12 at the time of my site visit. What I could see appeared cramped. From the street I could see the top floor is set within the roof space. Considering the above points I am not satisfied No 12 would provide an acceptable quality of commercial floorspace, despite the site's accessible location within a town centre. Nor am I satisfied it sufficiently mitigates or compensates for the loss of office floorspace at No 2 in quantitative or qualitative terms.

59. I conclude the development in Appeal C would not provide an acceptable quality of commercial floorspace and so does not comply with Policy LP27 noted above.

Stock of Housing

60. As a consequence of Appeal C, 3 dwellings would be lost at No 12. Policy LP24 of the new Local Plan permits the loss of residential floorspace only where at least one of 6 specified conditions are met:

- i. The land or buildings are no longer suitable for residential use and it is considered inappropriate to re-provide residential accommodation; or
- ii. Replacement housing of an appropriate type is being provided at either an equivalent or higher density, or to address a specialist housing need for which there is a particular shortage in the Borough; or
- iii. Redevelopment is necessary to create better quality homes and dwelling mix, and improve the living environment, as part of major regeneration schemes; or
- iv. A proposal seeks to combine small dwellings to create larger dwellings in the Stamford Hill Area Action Plan area; or
- v. The proposal will enable sub-standard units to be enlarged to meet residential space standards; or
- vi. The proposal is for an essential community use or infrastructure for which there is demonstrable need, and it can only be provided by the loss of existing residential floorspace.

61. I appreciate the flats at No 12 may not be in the best condition. But this does not justify a loss of residential floorspace and allowing loss for this reason may encourage deliberate neglect.

62. I have considered the net effect of the development in Appeal C on the area's stock of housing in the context of the 9 dwellings which form part of the appeal development in Appeal A and Appeal B at No 2, referred to above. But as I have refused permission for those developments, the dwellings associated with them do not compensate for the loss of housing as a result of Appeal C.

63. Whilst the existing flats at No 12 may not benefit from private amenity space, the same is true of many older dwellings in urban areas and so in my judgement this is not justification for a loss of housing in light of development plan policies that seek to protect it. I also appreciate the existing dwellings may not comply with space standards. But those standards apply to new dwellings, they do not apply retrospectively.

64. I conclude the development in Appeal C would reduce the area's stock of housing, contrary to Policy 3.14 of the London Plan and Policy LP24 referred to above. The latter substantially reflects the content of the policy it replaces, ie Policy DM20 of the DMLP referred to in the Council's decision notice for Appeal C. Considering my findings above, I am not satisfied any of the 6 conditions of Policy LP24 are met.

65. My attention has also been drawn to Policy 3.8 of the London Plan but this is not directly relevant to this main issue.

Appeal C Conclusion

66. For the reasons given above I conclude that Appeal C is dismissed.

L Perkins

INSPECTOR