



Appeal Decisions

Site visit made on 29 September 2020

by Stephen Hawkins MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 October 2020

Appeal A Ref: APP/D1780/C/19/3225651

Unit 1, Muira Industrial Estate, William Street, Southampton SO14 5QH

- 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 Richard O'Mahoney of ROM Property Holdings Limited against an enforcement notice issued by Southampton City Council.
- The enforcement notice was issued on 15 March 2019.
- The breach of planning control as alleged in the notice is without planning permission, change of use of the land to residential accommodation C3 Use Class.
- The requirements of the notice are: Cease the use of the first floor as residential accommodation; Remove the kitchen area within the first floor including cooker, cooker extractor, sink unit and drainer, electrical white good appliances and cupboards and worktops.
- The period for compliance with the requirements is two months.
- The appeal is proceeding on the grounds set out in section 174(2) (a) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with correction and variation.

Appeal B Ref: APP/D1780/W/19/3225570

Unit 1, Muira Industrial Estate, William Street, Southampton SO14 5QH

- 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 Richard O'Mahoney of ROM Property Holdings Limited against the decision of Southampton City Council.
- The application Ref 18/02125/FUL, dated 14 November 2018, was refused by notice dated 7 February 2019.
- The development proposed is change of use from office to 1 no. two bed apartment for rent.

Summary of Decision: The appeal is dismissed.

Preliminary Matter

1. The allegation in the enforcement notice concerns a material change in the use of the appeal site to a use for residential purposes. However, the land to which the notice relates, shown on the plan attached thereto, includes land and buildings used in association with a scaffolding business. As the allegation must therefore be in error, I shall use the power in s176(1)(a) of the Act to correct the notice to refer in the allegation to the use of the first floor of the building as a residential flat. It is clear from the requirements that it is the residential use of the first floor that is attacked by the notice. There is no firm evidence to indicate that the use as a residential flat is not in a separate planning unit to the scaffolding business use. Moreover, as the terms of the

deemed planning application arising from the ground (a) appeal are derived from the allegation, accuracy is required in terms of the description of the breach. I have sought the views of both main parties in relation to correcting the notice as set out above. It is not necessary to reduce the area of the land to which the notice relates; the attached plan can be substituted by a corrected plan distinguishing the building from the rest of the affected land. Also, the site area remains the same as that shown on the red line plan which accompanied the application in Appeal B. Therefore, in making the above corrections I am satisfied that there would be no injustice to either the appellant or the Council.

Appeal A, Ground (a) and Appeal B

Main Issues

2. The main issues in these appeals are:

- Whether suitable living conditions are provided for the current and future occupiers of the residential flat, having regard to outlook, noise and disturbance and the provision of external amenity space.
- The effect of the flat on the availability of employment land for industrial and warehouse development in the city.
- Whether satisfactory provision has been made for mitigation against the impact of the use as a flat on protected species.
- Whether suitable provision has been made for vehicle parking.

Reasons

Living conditions

3. The site is located in an area largely consisting of commercial and industrial buildings and uses, forming part of the Millbank Industrial Area (MIA). The flat is on the first floor of a commercial building and consists of an open plan living area and kitchen, with a bathroom and two bedrooms. During my visit I observed that the flat has an internal layout slightly different from that shown on the plan accompanying the application in Appeal B, in terms of the kitchen arrangements. Also, I noted that additional windows have been inserted in the east and south elevations compared to that plan. The ground floor of the building is used as offices associated with the scaffolding business. The rest of the site consists of two other buildings primarily used for the storage of scaffolding components, all three buildings being arranged around an open service yard.
4. First floor windows in the west elevation of the building provide the principal sources of outlook to the living and kitchen areas of the flat. These windows face directly towards a substantial open fronted two storey building containing racks of stored scaffolding components, a relatively short distance away across the service yard. The outlook from the principal windows in the living and kitchen areas is therefore to a considerable extent dominated by the proximity of a large utilitarian structure. This has created a significant and oppressive sense of enclosure within those areas of the flat. The feeling of being 'hemmed in' by utilitarian built form is reinforced by the immediate context of substantial commercial structures, several of which are larger in scale than the building,

when looking out of the windows in question. The principal window in the main bedroom faces directly towards the wall of a much taller and bulkier commercial building, a few metres away. As a result, the outlook from the main bedroom is even more dominated by the proximity of substantial utilitarian built form. The second bedroom has no window. Whilst there is an obscure glazed external door, that offers very little by way of outlook. Consequently, the occupiers are also likely to experience an oppressive sense of enclosure when using both bedrooms. Overall therefore, I find that the outlook available in the living and kitchen areas together with the bedrooms is unduly restrictive and goes well beyond what might reasonably be considered as offering a 'different' outward view, being deleterious to the quality of living environment that the occupiers of the flat might reasonably expect to experience.

5. The flat is in proximity to the scaffolding yard as well as a number of other business uses. The adverse effects of noise and disturbance from such uses on the occupiers' living conditions formed part of the Council's case at appeal and was also a matter raised by an interested party. During the visit, I noted that there was a background of significant noise from nearby premises, including from industrial processes and plant and equipment operating, as well as disturbance from general vehicular and mechanical activity and comings and goings. Moreover, as far as I was made aware, there are no controls over the operating times of business premises in the locality; I understand that at least one business occupying premises nearby operates a 24-hour general industrial use, seven days per week. This means that there are likely to be significant incidences of noise and disturbance in the vicinity of the flat at most times, including in the early mornings as well as in the evenings and at weekends, when it would not be unreasonable for residential occupiers to expect to enjoy a degree of peace and quiet. There was no firm evidence of sound insulation measures being installed which might have assisted in mitigating the effects of noise and disturbance on occupiers of the flat. Therefore, the occupiers are likely to experience significant levels of noise and disturbance within the flat. Such effects are likely to be experienced to an even greater extent during the summer months, when it is probable that windows will be left open more often for ventilation purposes. The likely levels of noise and disturbance that are experienced by occupiers of the flat are consequently incompatible with even an urban residential use, where higher levels of background noise might otherwise be expected compared to, for example, a suburban location.
6. As the flat has two bedrooms it is not unreasonable to expect that it could be occupied by a small family, including one or more young children as well as pets. I am given to understand that this was the situation in at least one of the previous tenancies. Also, as far as I am aware there is no public open space conveniently located in relation to the site. Such factors emphasise the importance of the flat having an external amenity space, yet no such provision has been made. The Council's Residential Design Guide Supplementary Planning Document (Design Guide SPD) requires a minimum of 20m² amenity space to be provided for a flat with communal grounds. Although this largely relates to suburban situations, given the factors identified above it is not unreasonable to apply the minimum standard in this instance. I acknowledge that the internal floor area of the flat considerably exceeds the minimum required by the nationally described space standard¹ and that it is fitted out to

¹ Technical housing standards-nationally described space standard DCLG March 2015.

a high specification. However, these factors do not provide a suitable alternative to an external amenity space, the absence of which reinforces the restrictive living environment experienced by the flat's occupiers.

7. To conclude on this matter, the flat does not provide suitable living conditions for the current and future occupiers on account of its restricted outlook, the significant levels of noise and disturbance likely to be experienced and the absence of external amenity space. It follows that the flat fails to accord with criterion in Policy SDP1 of the City of Southampton Local Plan Review (LP), as the amenity of residents is unacceptably affected. There is also failure to accord with criterion in LP Policy SDP16, as the users are adversely affected by significant noise from existing noise generating uses. Furthermore, there is failure to accord with criterion in LP Policy H2, as the site is located close to nuisance created by nearby industrial activity. Additionally, the flat does not accord with criterion in LP Policy H5, as the standards and principles of LP Policy H7, which requires residential development to apply the highest standards of quality, have not been incorporated. Moreover, the flat is inconsistent with guidance in the Design Guide SPD, as access to outlook for the intended occupants of new habitable rooms and external amenity space has not been provided.

Availability of employment land

8. LP Policy REI10 safeguards the MIA for industrial and storage and distribution uses. The flat occupies floorspace intended for use as offices associated with the scaffolding business, following a first floor extension to the building granted planning permission in 2017². The extension increased the quantum of employment floorspace, even though it might not have been occupied as such to date. Therefore, formation of the flat has involved a real terms reduction in the amount of floorspace that would otherwise have been in employment use. In turn this has harmfully eroded, albeit to a limited degree, the supply of sites and premises which provide a variety of opportunities for industrial and warehouse development and which contribute to retaining a broad employment base in the city.
9. I acknowledge that the Town and Country Planning (General Permitted Development) (England) Order 2015 at Article 3, Schedule 2, Part 3, Classes O and P permit, respectively, the change of use of offices and storage and distribution centres to dwellings, following the receipt of prior approval and subject to certain limitations and conditions. However, there is no firm evidence to suggest that such permitted development rights represent a realistic fallback position if these appeals are dismissed. Moreover, prior approval under Class P requires consideration of, amongst other matters, whether residential use would have an adverse effect on the provision of services in an area important for providing storage or distribution services or industrial purposes. Therefore, whether such permitted development rights exist in respect of other buildings in the MIA, or whether prior approval would be forthcoming for the residential use of such buildings having regard to the matters relevant in such cases, is unclear. No examples of prior approval having been granted for residential uses in the MIA were drawn to my attention. As a result, I give permitted development rights little weight.

² Council Ref: 17/00170/FUL.

10. Accordingly, residential use of the first floor of the building does not safeguard the site for non-residential uses, failing to accord with LP Policy REI10 and criterion in LP Policy H2.

Protected species

11. The site is located within 5.6 kilometres of the Solent Special Protection Areas (SPAs), where a net increase in housing is likely to result in impacts on the integrity of the SPAs through increases in recreational disturbance. A Unilateral Undertaking under s106 of the Act (UU) accompanied Appeal B, committing the appellant to making a financial contribution towards the provision of access mitigation measures in accordance with the Solent Disturbance Mitigation Project (SDMP), should planning permission be granted for the flat. The contribution reflects the sum required by the SDMP for a net increase of one residential unit near the SPAs. The deed is signed and dated. However, the UU only relates to circumstances where Appeal B is allowed. Therefore, it would not provide sufficient mitigation against such impacts in the event that Appeal A were to be allowed and that planning permission was implemented. As a result, Appeal A fails to accord with CS Policy CS22, as the integrity of international designations is adversely affected and the necessary mitigation measures have not been provided. This also contravenes the Conservation of Habitats and Species Regulations 2017 and is inconsistent with the National Planning Policy Framework.

Highway safety

12. During my visit, I saw that there is limited capacity for further roadside parking in the vicinity of the site. This is due to the presence of large numbers of vehicles parked at the roadside, coupled with parking restrictions. However, a vehicle parking space for occupiers of the flat has been made available in the service yard alongside the building. The quantum of on-site parking provision is therefore consistent with the Council's Parking Standards Supplementary Planning Document for a location which, as in this case, has good access to public transport.
13. The parking space is located reasonably conveniently in relation to the entrance to the flat, being a short walk away. The distance between the flat and the parking space is not untypical of that found in other residential situations with allocated parking. Whilst occupiers of the flat have to walk around the edge of the service yard alongside the building to access the parking space, most likely this usually occurs in the early mornings or evenings and at weekends, i.e. times of day when the yard is in all probability less busy and any HGV movements consequently less frequent. Therefore, the parking space is not unsuitably located for occupiers of the flat. Securing the parking space, together with ensuring it is kept available at all times, could have been the subject of a suitable planning condition had the appeals been allowed and planning permission granted.
14. Provision of an off-street parking space has not increased pressure on roadside parking, it is in accordance with the required parking standards and therefore accords with criterion in LP Policy SDP5. There is also accordance with Policy CS19 of the Council's Core Strategy Development Plan Document (CS), as there has been regard for the Council's car parking standards, considering the scale and travel needs of the development and its accessibility level.

Other matters

15. I acknowledge that the site is at risk of flooding. However, as the appeals will be dismissed for the reasons set out above it is not necessary to consider this matter further. Similarly, other matters raised by the Council and by an interested party, including cycle parking and refuse/recycling storage provision, the effect of the flat on adjacent uses and the lawfulness of some alterations to the building, do not require further consideration.

Conclusion on Appeal A, ground (a) and Appeal B

16. The flat does not provide suitable living accommodation for the current and future occupiers, it has reduced the employment land available for industrial and warehouse development in the city, satisfactory provision has not been made for mitigation against the impact on protected species in respect of Appeal A and there is failure to accord with the Development Plan. Therefore, the appeal on ground (a) in Appeal A together with Appeal B do not succeed.

Appeal A-Ground (g)

17. The ground of appeal is that the time for compliance in the notice is unreasonably short.
18. The time for compliance in the notice as issued is two months. I sought further comments from both main parties on the reasonableness of this timescale, having regard to the restrictions currently in force and continuing uncertainty due to the COVID-19 pandemic. In response, the Council suggested that given the current circumstances, six months would be a reasonable time to allow for compliance; the appellant did not disagree and I have found no reason to conclude otherwise. The longer period would afford occupiers of the flat sufficient time to find alternative accommodation whilst also giving the appellant enough of an opportunity to carry out the small-scale remedial works required.
19. Therefore, I conclude that the period for compliance falls short of what is reasonable. A reasonable period for compliance would be six months and I am varying the enforcement notice accordingly, prior to upholding it. The appeal under ground (g) succeeds to that limited extent.

Conclusion

20. For the reasons given above I shall uphold the enforcement notice with correction and variation and refuse to grant planning permission on the deemed application. For similar reasons I conclude that Appeal B should be dismissed.

Formal Decisions

21. Appeal A-it is directed that the enforcement notice be corrected by:
- Deletion of the words "edged red" and substitution by the words "edged black" in paragraph 2;
 - Deletion of the plan attached to the enforcement notice and its substitution by the plan attached to this decision.

- At paragraph 3, deleting all the words after “permission” and inserting the words “the material change of use of the first floor of the building within the area edged in black and identified with a large black ‘X’ on the attached plan to a residential flat”.

And varied by:

- In paragraph 5 the deletion of “2 months” and the substitution of “6 months” for the period for compliance.

Subject to the above corrections and variation the appeal is dismissed and 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.

22. Appeal B-the appeal is dismissed.

Stephen Hawkins

INSPECTOR



Plan

This is the plan referred to in my decision dated:

by Stephen Hawkins MA MRTPI

Land at: Unit 1, Muira Industrial Estate, William Street, Southampton SO14 5QH

Reference: APP/D1780/C/19/3225651

Scale: Not to scale

