



Appeal Decisions

Site visit made on 22 September 2020

by M Madge DipTP, MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22nd October 2020

Appeal A: APP/U5930/C/19/3227378

Appeal B: APP/U5930/C/19/3227399

95-97 Hainault Road, London E11 1DX

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeals are made by Mr M Hussain (Appeal A) and Mr Saber Ahmed (Appeal B) against an enforcement notice issued by the Council of the London Borough of Waltham Forest.
 - The enforcement notice, numbered 078274, was issued on 29 March 2019.
 - The breach of planning control as alleged in the notice is without planning permission:
 1. The material change of use of the Land from a single family dwelling (use Class C3) to use as a hotel (Use Class C1); and
 2. The installation of a projecting canopy to the front of the Land at ground floor level.
 - The requirements of the notice are:
 - 1) Cease the use of the Land as a hotel; and
 - 2) Remove all fixtures and fittings that facilitate the use of the Land as a hotel, such as fire escape signs, emergency lighting, locks on internal doors, hotel signage and any other paraphernalia associated with the hotel use; and
 - 3) Remove all additional kitchens, sinks, cookers, washing machines, fridge freezers and other kitchen related accessories, fixtures and fittings from the Land that facilitate the use of the Land as a hotel so that only one remains;
 - 4) Remove all additional showers and toilets, sinks and associated fittings and fixtures from the Land that facilitate the use of the Land as a hotel so that only one remains;
 - 5) Remove the canopy to the front of the Land at ground floor level, as outlined in yellow in Photograph 'A' attached to this Notice, and return the front elevation of the Land at ground floor level back to its former condition (except for the porch outside the external door), as shown in Photograph 'B' attached to this Notice; and
 - 6) Remove all resulting fixtures and fittings, materials, rubble and general detritus from the Land following compliance with steps 1) to 5) above.
 - The period for compliance with the requirements is 4 months.
 - Appeal A is proceeding on the grounds set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended and Appeal B is proceeding on the grounds set out in section 174(2)(e), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice is corrected and varied by:

The deletion of the words "The installation of a projecting canopy to the front of the Land at ground floor level" and the substitution of the words "The erection of 2 porches and a projecting canopy to the front of the Land at ground floor level" in paragraph 3.2.

The deletion of the words “(except for the porch outside the external door)” and the substitution of the words “(except for the porches outside the external doors)” in requirement (5).

2. Appeal A is allowed insofar as it relates to the erection of 2 porches and a projecting canopy to the front of the Land at ground floor level and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for the erection of 2 porches and a projecting canopy to the front of the Land at ground floor level at 95 – 97 Hainault Road, London E11 1DX.

Appeal A is dismissed and the enforcement notice is upheld insofar as it relates to the material change of use of the Land from a single family dwelling (Use Class C3) to use as a hotel (Use Class C1) and planning permission is refused in respect of the material change of use of the Land from a single family dwelling (Use Class C3) to use as a hotel (Use Class C1) at 95 – 97 Hainault Road, London E11 1DX on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

3. Appeal B is dismissed.

Preliminary matter

4. The appellants have provided no statement of case or final comments in support of their appeals. I have therefore taken the Appellants’ cases to be as set out in the Appeal Forms.

The notice

5. S173(1)(a) of the Act¹ requires that the notice shall state “the matters which appear to the local planning authority to constitute the breach of planning control”. In this case, the notice confirms that the breach amounts to a material change in use of the Land and the carrying out of operational development without the required planning permission. The operational development identified in the notice is described as “The installation of a projecting canopy to the front of the Land at ground floor level”.
6. The canopy projects across the width of the building as well as forming the roof for 2 porches that have been erected outside each of the external doors on the front elevation and 2 bay windows. The Council suggest that the porches would represent permitted development if the canopy were removed. However, the appellant claims that the erection of the porches and canopy was completed as one building operation. Photographs ‘A’ and ‘B’ attached to the notice would attest to the appellant’s version of events and I will proceed on that basis.
7. S176(1)(a) provides for any defect, error or misdirection in the notice to be corrected so long as the correction will not cause injustice. The notice is clear in respect of identifying the breach of control as the carrying out of a material change of use and the undertaking of operational development. Ambiguity arises from the Council’s intention to under enforce, by not requiring the removal of the porches. The allegation should however identify the extent of the whole operation that represents the breach of planning control, which includes the erection of the porches. As the requirements seek to under enforce, no injustice would be caused by my correction of the allegation.

¹ Town and Country Planning Act 1990 (as amended)

8. Requirement (5) refers to the front elevation at ground floor level being returned to its former condition "(except for the porch outside the external door)". As already identified, there are in fact porches outside both external doors at the front of the Land. Requirement (5) shall be varied accordingly.

Ground (e) Appeal B

9. The appellant claims that the notice has not been served correctly as it was only sent to the landlord and not the tenants. The appellant does not however claim that the matters alleged in the notice have not occurred as a matter of fact, which would be an appeal under ground (b). I have no evidence before me to suggest that the Land is being used as anything other than a hotel. There would therefore be no tenants for the notice to be served upon. Having regard to s172(2), which sets out who a notice shall be served upon, I concur with the Council that hotel guests would not represent "any other person having an interest in the land, being an interest which, in the opinion of the authority, is materially affected by the notice".
10. Notwithstanding that the notice was not specifically served on any tenants, the Council has provided confirmation of the individuals and organisations that the notice was served on, which includes "The Occupier, 95-97 Hainault Road". I am therefore satisfied that the notice was served correctly, and no injustice has been caused.
11. The appeal on ground (e) therefore fails.

Ground (a) Appeal A

12. The appellant is seeking planning permission for the material change of use from a single family dwelling (Use Class C3) to use as a hotel (Use Class C1) and for the erection of 2 porches and a projecting canopy, as set out in the amended allegation. The **main issues** are the effect of the development on:
- The provision of family sized housing stock;
 - The living conditions of neighbouring occupiers; and
 - Character and appearance.

Housing stock

13. Both strategic and development management policies seek to provide for a continuous supply of homes to meet a range of needs, including family housing. Furthermore, the loss of housing will be resisted unless it is replaced or there is an overriding need for the alternative use.
14. The development represents the loss of a large family dwelling in an area where demand for such property is high. The dwelling is not proposed to be replaced elsewhere and a needs case for the hotel has not been promoted by the appellant. The development therefore conflicts with policy 3.14 of the London Plan 2016 ("the LP") and policy CS2 of the Waltham Forest Local Plan Core Strategy 2012 ("the CS"), which seek, amongst other things, to maintain and enhance existing housing stock.

Living conditions

15. The amount of accommodation at the property is extensive. Given the scale of the accommodation, the occupation of this property, even as a single dwelling, would have the potential to generate significant comings and goings. Occupation as a hotel would however increase that level of activity even further, through the introduction of staff and commercial deliveries, as well as the number of guests. There is also the potential for increased activities at unsocial times of the day and night.
16. The property is located in a predominantly residential area, where background noise levels would be expected to be low. The two entrance doors to the property are located adjacent to the boundaries with neighbouring properties, close to their habitable room windows. The comings and goings of staff, guests and vehicles associated with the use would therefore cause an unacceptable level of noise nuisance and other disturbance to adjacent residents.
17. For the above reasons the development conflicts with policy CS13 of the CS and policy 3.2 of the LP, which seek, amongst other things, to provide satisfactory levels of amenity for surrounding occupiers.

Character and appearance

18. The site lies in an area characterised by terraced and semi-detached, two-storey dwellings. To outward appearances, properties in the area retain the appearance of being family homes. Hainault Road has a considerable length and there is a plethora of housing designs and fenestration detailing on properties along its length. The appeal property has always had a different appearance to that of its immediate neighbours and others in the surrounding area.
19. The appeal property was erected as a symmetrical pair of semi-detached houses. Prior to the breach occurring, the property had been converted into a single, large family dwelling. The porches and canopy were erected before the change of use occurred. While the Council has no objection to the porches, they consider the projecting canopy to be detrimental to the character and appearance of the Land and the surrounding area.
20. The projecting canopy stretches across the full width of the property, providing a pitched roof over the 2 porches and 2 bay windows. The development incorporates materials that match those of the original building the tiled, pitched roof and timber soffit complement the main roof construction. The symmetrical character of the property is therefore maintained.
21. The projecting canopy to the front of the Land does not detract from the character and appearance of the Land or the surrounding area. For these reasons there is no conflict with policies 7.4 and 7.6 of the LP, policy CS15 of the CS or policies DM4 and DM29 of the Waltham Forest Local Plan Development Management Policies 2013, which seek, amongst other things, to preserve and enhance local character and distinctiveness.

Conclusion on ground (a)

22. For the reasons given above I conclude that Appeal A should succeed in part only, and I will grant planning permission for the erection of 2 porches and a projecting canopy to the front of the Land, but otherwise I shall uphold the

notice and refuse to grant planning permission in respect of the material change of use of the Land from a single family dwelling (Use Class C3) to use as a hotel (Use Class C1). The requirements of the notice will cease to have effect so far as inconsistent with the planning permission which I will grant by virtue of s180 of the Act.

Ground (f) Appeal B

23. Having regard to s180(1)(b), requirement (5) ceases to take effect due to the partial success of the appeal on ground (a). It is clear from the requirements of the notice that its purpose is to remedy the breach of control in so far as it relates to the material change of use. Only the cessation of the use and removal of any facilitating works would remedy the breach of control associated with the material change of use.
24. For an appeal on this ground to succeed, the appellant needs to show that the requirements exceed what is necessary to remedy the injury to amenity. The appellant's case provides no substantive evidence as to what lesser steps could be taken to remedy the breach of control, only suggesting that the Council should have "entered into correspondence prior to the notice being issued".
25. In the absence of any evidence to the contrary, in so far as the material change of use is concerned, the requirements comply with s173(5)(b). The appeal on ground (f) fails.

Ground (g) Appeal B

26. The issue is whether the time for compliance is reasonable. The appellant states that the compliance period of 4 months is "quite short as there are a lot of things which the occupier needs to sort out". However, no specific details are given as to what things need to be sorted out or why a longer period is necessary. Furthermore, an alternative period is not suggested.
27. Given the use as a hotel, there is no obvious reason why the use cannot cease within the period specified. While the amount of work associated with the removal of kitchens and bathrooms may be substantial, I see no compelling reason why 4 months is not sufficient.
28. The appeal on ground (g) fails.

M Madge

INSPECTOR