
Appeal Decision

Site visit made on 9 March 2021

by D Hartley BA (Hons) MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 March 2021

Appeal Ref: APP/A5270/C/20/3251137

Premises known as 67 Cloister Road, Acton, London, W3 0DF shown edged bold black and the approximate position of the unauthorised development marked with an 'X' on the attached plan.

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the Act) as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr N Kusturovik against an enforcement notice issued by the Council of the London Borough of Ealing.
 - The enforcement notice, numbered EN170734BC, was issued on 11 March 2020.
 - The breach of planning control as alleged in the notice is the material change of use of 4 garages to separate storage use (Sui Generis).
 - The requirements of the notice are (a) cease the use of the 4 garages for storage use that is not ancillary to the flats at 67 Cloister Road; (b) remove any items associated with the unauthorised use, and (c) remove all resultant debris.
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (c), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. 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. Prior to the determination of this appeal, the London Plan 2021 was published. The main parties were afforded an opportunity to comment on the implications of the publication of this development plan in respect of the determination of the ground (a) appeal. Given the publication of this development plan, the policies in the London Plan 2016, as referred to in the reasons for issuing the enforcement notice, are no longer applicable to the determination of the ground (a) appeal and the deemed planning application.

The Notice

3. The appellant contends that the notice is invalid as the accompanying plan does not include named streets or buildings. Section 2 of the Notice refers to the land affected as "*premises known as 67 Cloister Road, Acton, London, W3 0DF shown edged bold black and the approximate position of the unauthorised development marked with an 'X' on the attached plan*". Whilst the plan does not include named streets, it does nevertheless show the precise boundaries of the land to which the Notice relates and the 'X' is clearly shown in respect of the position of all four garages. The notice also includes reference to No "67",

thereby reflecting the more detailed description of affected land in section 2 of the Notice. There is no doubt about where the four garages are located and I therefore find that the notice is not invalid.

Appeal on Ground (c)

4. The appeal made on ground (c) is that the matters alleged do not constitute a breach of planning control. The appellant's case under ground (c) is that use of the garages for commercial storage purposes results in no material change in the character of their use than had they been used by adjoining occupiers. The appellant also says that there can have been no material change from ancillary garages associated with the adjacent flats as they have never been used for such purposes. There is ambiguity in respect of the latter comment which I address later on in the decision in respect of the appeal made on ground (d).
5. Planning permission¹ was approved on 4 October 2007 at No 67 Cloister Road for the redevelopment to provide a two storey attached residential building comprising four self-contained units (following the demolition of the existing end of terrace house); two vehicle accesses to rear and parking; and refuse storage. The appeal garages were approved as part of this planning permission and were the only on-site car parking spaces within the planning application site. Condition No 6 of that planning permission states *"the car parking spaces and associated manoeuvring area shown on the approved plan 1130/LP/01 received 13 August 2007 shall be marked out on the site prior to first occupation of any part of the development, and these spaces shall be kept continuously available for car parking and shall not be used for any other purpose"*.
6. Having regard to the above condition, the use of the whole of the garages for storage purposes precludes their availability for the parking of a car. In this respect, the matters alleged in the notice would constitute a breach of planning condition No 06 of 1130/LP/01 and, in that regard, planning permission is required. As will be discussed in the other grounds of appeal, the appellant does not dispute the use of the garages for commercial storage purposes and in fact an appeal has not been made under ground (b).
7. Even if one were to disagree with my view above, there is no planning permission in place which would permit the use of the garages for commercial storage purposes. The aforementioned planning permission permits use of the garages in connection with the primary use of the land as four flats. The description of development in respect of the planning permission does not refer to a separate commercial storage use and it is of note that each of the four garages on approved plan No 1130/PP/01 are annotated as *"garage to flat 1"* and so on.
8. In addition, and as a matter of fact and degree, the evidence before me is such that use of the garages for commercial storage purposes has resulted in a change to the character of the activities in the area. Indeed, such a use of the garages has the potential to generate more vehicular and pedestrian comings and goings than use for the parking of vehicles in association with occupation of the flats. Whilst not a determinative issue, this is no doubt one of the reasons why the Council has received a number of complaints from members of the public about such a use.

¹ Planning permission Ref P/2007/3764-LB

9. Furthermore, the evidence before me from both the Council and in respect of representations made by other interested parties as part of this appeal, indicates that such a use is more likely to result in a relative increase in noise and disturbance, including at anti-social times, within what is otherwise a relatively quiet residential area. Indeed, two residents have commented "*there are vans entering the slip road on a daily basis unloading and loading fridges. Several fridges are regularly left on the slip road and can be seen from my bedroom window or whilst I am in the garden*".
10. I find that the matters alleged in the notice do constitute a breach of planning control. Planning permission is required in so far that the matters alleged in the notice relate to both a material change of use of the land/garages and a breach of condition No 06 of planning permission P/2007/3764-LB. Therefore, the ground (c) appeal fails.

Appeal on Ground (d)

11. The appeal on ground (d) is that at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters. In an appeal against an enforcement notice on ground (d), the burden of proving relevant facts is on the appellant, and the relevant test of the evidence is on the balance of probability. The appellant makes the claim that the garages have been used for "*independent storage purposes without significant interruption since September 2008*" and hence that such a use is immune from enforcement action having regard to Section 171B of the Act.
12. In particular, the appellant makes the claim that the garages were completed in "Spring/Summer 2009" and that from that time until August 2014 they were let by him to his letting company (Flatstage Ltd) in respect of the storage of furniture and then from August 2014 until October 2016 they were let to his grandfather's property development company (Gladbrook Developments Ltd). From October 2016 until the time when the notice was issued, the appellant claims that the garages were let to third parties and in this respect copies of rental agreements are submitted as part of the appeal.
13. The appellant states that the garages were completed in Spring/Summer 2009. The appellant has submitted a range of photographs showing many items in order to demonstrate use of the garages. Most of these photographs relate to close up images of the items and so there is no certainty that they are stored in the appeal garages. One shows items in one garage, but like all the photographs they are without an electronic date/time. In addition, the appellant's third party tenant agreements are, apart from a couple, not dated or signed. In this context, the evidence submitted by the appellant does not provide a certain and unambiguous picture in respect of a continuous use of the garages for independent storage for at least ten years.
14. Following on from the above, I would also add that the evidence before me is not persuasive particularly when I take into account the email from the appellant to the Council dated 21 May 2013 which states that "*the garages have always been and are still available to the occupiers/owners of the flats*"; an email from the appellant to the Council dated 12 July 2018 saying that the "*4 garages were rented out from time to time*"; the appellant's planning application form for PP/2013/0646, dated February 2013, which states that the garages were at that time "*vacant*" and with the last use of the site as "*a*

garage for parking a car”, and Google Street-View Imagery from July 2017 which includes a sign on the gates into the site saying “garages” and then a mobile phone number. In addition, the imagery shows that vegetation has been cut back at this time relative to the imagery periods back to 2008.

15. In respect of the comments made by the appellant in February 2013 about the garages being “vacant”, he has commented as part of this appeal that *“I recall previously referring to them as vacant at that time, but I meant that they were not let to any unconnected party”*. I consider the word vacant to mean either empty or unoccupied. Without any credible or objective evidence to the contrary, I am not persuaded that in making this statement the appellant meant that the garages were unoccupied, apart from by parties connected with himself.
16. The appellant has indicated that the garages have never been used in connection with the flats as would be permitted by planning permission P/2007/3764-LB. The evidence before me is ambiguous in this regard particularly when Section 14 of the planning application form for PP/2014/3660 is taken into account with the appellant stating, in July 2014, that *“at present the site consists of 4 flats, two at ground floor level and two duplex flats at first floor to second floor. Each of the ground floor flats already own their private garden and all of the flats have access to the garages at the rear of the site. There is also a communal garden for use of all of the dwellings”*. There is a degree of uncertainty about what the appellant meant with reference to there being *“access to the garages”*, but it is possible that this meant that they were in use by occupiers of the flats.
17. In support of the above planning application, the appellant included a statutory declaration, dated 16 July 2014, where he stated *“since the garages were built around September 2008 they have never been let to anyone and have for the most part been vacant. At times they have been used for personal storage by me or by person I have authorised and without monetary or other considerations”*. It is not clear who the other people were in terms of use of the garages, but of course it is possible that it could have been the occupiers of the flats as per comments made in Section 14 of the planning application form for PP/2014/3660.
18. As can be seen from the above, the appellant’s comments do not provide a certain and clear picture of the use of the garages since they were built. However, what is clear is that all of the above evidence casts sufficient doubt about the appellant’s claim that the garages have been used for continuous and independent storage purposes for more than ten years. As a matter of fact and degree, and on the balance of probability, I therefore consider that when the notice was issued enforcement action could be taken in respect of the breach of planning control. At the time that the notice was issued, the development was not immune from enforcement action by virtue of the garages being used as an independent storage use for more than ten years. Therefore, the ground (d) appeal fails.

Appeal on Ground (a) and the deemed planning application

19. The appeal is made on ground (a) of s174 of the Town and Country Planning Act 1990 (as amended) that planning permission ought to be granted in respect of any breach of planning control which may be constituted by the matters stated in the notice. I have considered the reasons for issuing the

notice and the main issues are (i) the effect of the breach of planning control on (i) the living conditions of the occupiers of neighbouring residential properties in respect of noise and disturbance (ii) the character and appearance of the area.

Living conditions

20. The garages are accessed from a narrow and gated access road which leads from Park View which is a residential street of mainly terraced brick built dwellings. The garages are positioned to the rear of these terraced dwellings as well as to the rear of terraced dwellings off Cloister Road. There is no dispute between the parties that the garages have, at least more recently, been used for storage purposes. Indeed, the appellant has confirmed that there are lease agreements with tenants not associated with the four flats at No 67 Cloister Road.
21. I consider that use of the garages for commercial storage purposes has the potential to give rise to significant amounts of vehicular and pedestrian comings and goings, and hence associated noise and disturbance, in a rear residential environment where residents should expect a reasonable degree of peace and quiet. I acknowledge that there would likely be some noise and disturbance associated with use of the garages in association with the flats. However, it is unlikely that there would be the same number of comings and goings and, furthermore, it is unlikely that occupiers of the flats would use the garages during unsociable hours.
22. The appellant has commented that they would accept the imposition of a planning condition which precluded use of the garages between 23:00 and 07:00 hours or preferably between 00:00 and 06:00 hours. However, even with such restrictions in place, there would be the potential for intense and noisy activity during the early morning or the late evening when residents should reasonably expect to enjoy peace and quiet in their gardens or to sleep.
23. It is of note that two residents have commented that "*there are vans entering the slip road on a daily basis unloading and loading fridges*" which has not been disputed by the appellant. This is the sort of activity which could happen numerous times in any given day associated with the commercial storage use of the garages. Indeed, I consider that it has the potential to lead to more prolonged and frequent activity when compared to use of the garages in connection with occupation of the flats.
24. Whilst I do not doubt that the provision of CCTV in the area (indeed the appellant says that this was introduced on 10 July 2019), or measures to ensure that the gate was locked when the garages were not in use, would address actual or perceived crime effects, this would not overcome my overriding concern relating to the adverse noise and disturbance impacts from the breach of planning control.
25. I therefore conclude that the use of the garages for separate storage use causes significant harm to the living conditions of the occupiers of neighbouring residents in respect of noise and disturbance. Therefore, it does not accord with the amenity and noise requirements of policy 7A of Ealing's adopted Development Management Development Plan Document 2013 (Development Management DPD); policies D13 and D14 of the LP or paragraph 127 (f) of the National Planning Policy Framework (the Framework) which states that

decisions should ensure that developments should promote a "*high standard of amenity for existing and future users*".

Character and appearance

26. The breach of planning control does not in itself cause harm to the layout or form of the area. No external alterations have been carried out to the garages and the storage of items could be confined to inside the buildings only in respect of the imposition of a planning condition. I therefore find that the breach of planning control need not cause harm to the appearance of the area.
27. Notwithstanding the above, I have already found that the breach of planning control causes significant harm to the otherwise relatively peaceful and quiet residential environment from a noise and disturbance point of view and that planning conditions would not suitably mitigate such identified harm. In this regard, I find that material harm has been caused to the character of the area.
28. I therefore conclude that the development does not accord with the character requirements of policy 7B and 7.4 of the Development Management DPD, policies D3 and GG1 of the LP and paragraph 127(f) of the Framework which states that decisions should ensure that developments are "*sympathetic to local character*".

Other Matters

29. I recognise that the continued use of the garages for commercial storage purposes would deliver some economic benefits. To this extent, the proposal would accord with the economic aim of policy GG1 of the LP. However, there are some existing storage facilities within relatively close proximity of the site. I recognise that these facilities may be more costly than provided on the appeal site, but the issue of cost alone does not justify allowing harmful development. In this case, the economic benefits associated with the breach of planning control do not alter or outweigh the identified harm that has been caused in respect of my conclusions on the main issues.

Conclusion – ground (a) appeal

30. I conclude that the proposal would not accord with the development plan for the area when considered as a whole and that there are no material considerations which would outweigh the conflict with that development plan. Therefore, and taking into account all other matters raised, I conclude that the ground (a) appeal should fail.

Appeal on Ground (f)

31. An appeal on ground (f) makes the claim that the steps required by the notice to be taken exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
32. The appellant's ground (f) appeal is that they consider that the steps required in the notice are excessive as he considers that since September 2008 the garages have "*never been ancillary to the flats at 67 Cloisters Road*". This is a matter that I have already considered as part of the ground (d) appeal.
33. The purpose of the notice is to remedy the breach of planning control. The reference to the inclusion of words "*that is not ancillary to the flats at 67*"

Cloister Road” would reflect planning permission P/2007/3764-LB which is for four flats and including car parking, i.e. the four garages. It is of note that planning condition No 06 of the aforementioned planning permission states that *“the car parking spaces and associated manoeuvring area shown on the approved plan 1130/LP/01 received on 13 August 2007 shall be marked out on the site prior to the first occupation of any part of the development, and these spaces shall be kept continuously available for car parking and shall not be used for any other purpose”*. It may be possible to store some minor items in the garages, in conjunction with use of the flats, whilst also ensuring that that such *“car parking spaces”* in the garages are continuously available for car parking and only used for that purpose.

34. Given the above, I am satisfied that the requirements of the notice are not excessive and that they would remedy the breach of planning control. Therefore, the ground (f) appeal fails.

Appeal on ground (g)

35. The appeal made on ground (g) is that the period specified in the notice in accordance with s173(9) falls short of what should reasonably be allowed.
36. The compliance period in the notice is three months. The appellant requests a longer period of six months in order to take into account the period of lease agreements and the need for termination periods. The appellant has not provided me copies of any recent lease agreements, but it is of note that the notice was issued in March 2020. Given the uncertain position relating to the outcome of this appeal, it would be surprising if the appellant had opted to renew or enter into new lease agreements.
37. On the evidence that is before me, I consider that a period of three months is a proportionate response to the need to bring this inappropriate and harmful development to an end. I would, however, add that in the event that the appellant is able to provide evidence of dated/signed lease agreements and associated termination periods, or indeed difficulties securing compliance with the notice due to reasons related to COVID-19, the Council would have the power to extend or vary the compliance period under Section 173(A)(1)(b) of the Act.
38. For the reasons given above, I conclude that the compliance period in the notice is reasonable. The appeal under ground (g) therefore fails.

Conclusion

39. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

D Hartley

INSPECTOR