



Appeal Decisions

Site visit made on 12 April 2021

by R Satheesan BSc PGCert MSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 April 2021

Appeal A Ref: APP/H5960/C/20/3252592

1F Freshford Street SW18 3TG

- 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 Edward Church on behalf of London Heritage properties Ltd against an enforcement notice issued by the Council of the London Borough of Wandsworth.
 - The enforcement notice was issued on 06 April 2020.
 - The breach of planning control as alleged in the notice is: Without planning permission and within the last 4 years, the material change of use of part of the basement from office (Class B1) to 1 x 2-bedroom self-contained flat (Class C3) at the Property ("the Unauthorised Works").
 - The requirements of the notice are:
Cease the unauthorised use of part of the basement as 1 x 2 bedroom self-contained flat (Class C3) and return the whole basement to its layout as an office (Class B1).
Steps to be complied with:
 1. Cease the unauthorised use of part of the basement as 1 x 2 bedroom self-contained flat and return the whole basement to its layout as an office (Class B1);
 2. Remove from the Property the kitchen, shower room and toilet associated with the unauthorised use;
 3. Remove from the Property any furniture, fittings and fixtures associated with the unauthorised use; and
 4. Remove from the site all debris arising from compliance with steps 1 to 3.
 - The period for compliance with the requirements is 5 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) and (f) 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/H5960/W/20/3252591

1F Freshford Street, London SW18 3TG

- 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 Edward Church against the decision of the Council of the London Borough of Wandsworth.
 - The application Ref 2019/3993, dated 13 September 2019, was refused by notice dated 27 January 2020.
 - The development proposed is change of use from use class B1 (Office) to use class C3 (Residential) to provide 1 x 2-bedroom flat + formation of front light wells located on Garratt Lane. (Retrospective)
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Decisions

Appeal A

1. It is directed that the enforcement notice be varied by:
 - Deletion of steps 2) under section 5 - What you are required to do, and substituted therefore by the following step:
 - 2) Remove from the property the kitchen and shower associated with the unauthorised use;
2. Subject to this 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

Appeal B

3. The appeal is dismissed.

Appeal A on ground (a), the deemed planning application and Appeal B

Procedural Matters

4. As set out above there are two appeals on this site. I have considered each appeal on its individual merits. Ground (a) is that planning permission should be granted for the matters stated in the notice. Since the planning appeal is against refusal of permission for the identical change of use, and the considerations in that appeal are similar, I have therefore treated both cases together, to avoid duplication, except where otherwise indicated.
5. However, the development described in the enforcement notice does not refer to the creation of two front lightwells and associated railings, plus changes to the front elevation to provide new windows. Therefore, these additional proposed works do not form part of the appeal on ground (a) and the DPA. Thus, the appeals differ in so far as Appeal B also proposes these additional works to the front of the building to create front lightwells, railings and windows.
6. This appeal is supported by amended drawings (F.T.P/101 rev A, F.T.P/102 rev A and F.T.P/103 rev A). The main differences between these plans and those refused as part of the planning application (Appeal B) is the increase in the width of the windows at basement level and the provision of a 0.15m upstand to the door and lightwell for flood mitigation. The topographic survey is also included for clarification purposes (ref: 2052LS). These changes are considered a minor amendment, and the nature of concerns of those who would normally have been consulted are clear from the consultation on the original set of plans. I do not consider that their interests would be prejudiced if I take these amended plans into account. I shall therefore determine the Appeal B based on the above revised drawings.

Main Issues

7. The main issues in both appeals are:

- Living conditions for current/future occupiers of the flat with regards to light and outlook; and
- Flood risk for current/future occupiers of the flat.

8. With regard to Appeal B there is the additional main issue:

- The effect of the proposed lightwells, railings and windows on the character of the building and area.

Appeal A: Living conditions for current/future occupiers of the flat with regards to light and outlook (without the proposed front lightwell)

9. The appeal relates to an unauthorised self-contained basement flat beneath a three storey building on a busy main road characterised by a mix of commercial and residential uses. The new flat comprises an open plan living/dining kitchen and two bedrooms. Currently only relatively narrow high levels windows facing towards the busy Garratt Lane exist to each of the bedrooms and the living/dining room/kitchen.
10. During my site visit at approximately 12:00 hours I observed that the existing high level, narrow windows resulted in restricted levels of natural light during the day, and as a result, current/future occupiers of the flat would be highly reliant on artificial light. Furthermore, the kitchen area is set towards rear corner of the flat, where natural light is further restricted, as a result of the shower room situated between the kitchen and the windows. In addition, the high levels windows face towards the pavement of the busy Garratt Lane, with high levels of pedestrian and vehicular activity throughout the day, resulting in very poor outlook for occupiers of this flat.
11. I therefore find that that the current unauthorised development results in substandard level of accommodation for current/future occupiers of the new self-contained basement flat, with particular reference to levels of outlook and light.
12. The appellant considers that occupiers of the flat would have the choice as to whether the living environment is acceptable to them prior to purchasing or renting the flat. Notwithstanding this, I have a statutory duty to consider the effect of the change of use on the living conditions for future occupiers of the development, and there may be circumstances where occupiers might choose to live in accommodation despite the negative effects it may have on their living conditions. As such, this argument does not lead me to alter my conclusion on this matter.
13. Consequently, I conclude that the unauthorised development results in a poor living environment to the detriment of the living conditions for current/future occupiers of the flat with regards to poor outlook and natural light. In this respect, the development conflicts with Policies DMS 1 and DMH 4 of the Wandsworth Local Plan Development Management Policies Document, 2016 (Local Plan). Amongst other things, these require that development does not harm the amenity of occupiers/users and nearby properties through unsatisfactory outlook, privacy or sunlight/daylight, and that permission would

be granted where adequate daylight to habitable rooms is achieved, incorporating dual aspect wherever possible.

Appeal B: Living conditions for current/future occupiers of the flat with regards to light and outlook (with the proposed new front lightwells and windows)

14. For Appeal B, the proposal includes the creation of two new lightwells with railings and newly enlarged windows on the Garratt Lane frontage. Further amended plans¹ have been submitted with this appeal which proposes to further increase the width of the proposed basement windows in an attempt to improve light and outlook to the flat. The proposed height of these windows would be the same as those submitted at the planning application stage.
15. The submitted Daylight Assessment² demonstrates that the self-contained basement flat with the proposed lightwell and enlarged proposed windows at basement level, would have acceptable levels of daylight in accordance with the Building Research Establishment (BRE) document "Site Layout Planning for Daylight and Sunlight: A Guide to Good Practice (2011)". Based on this report, I therefore agree with the appellant that, subject to the proposed new lightwells and the enlarged windows, the development would not have a harmful effect to future occupiers of the flat in relation light. Notwithstanding this, the acceptability of the proposed new lightwells, railings and windows in terms of its effect on the character and appearance of the area, would be considered below (for Appeal B only).
16. With regards to outlook for current/future occupiers, the basement flat would have all its new windows in close proximity to the wall of the front lightwell. Although, new enlarged windows are proposed, the majority of these windows would be situated below the adjacent street level, with only glimpsed views of the pavement. In this respect occupiers of this basement flat would have very restricted outlook, which would result in a sense of enclosure that would feel oppressive for future occupants of the flat. This would cause significant and unacceptable harm to their living conditions taking into account that the entire flat with all of its habitable rooms would be at basement level.
17. For Appeal B, I therefore conclude that with the proposed new lightwells and windows, the unauthorised development would result acceptable living conditions for current/future occupiers of the flat with regards to light. Nevertheless, even with the proposed new lightwells and windows, the unauthorised development results in a poor living environment to the detriment of the living conditions for current/future occupiers of the flat with regards to poor outlook. In this respect, the development conflicts with Policies DMS 1 and DMH 4 of the (Local Plan), which seeks the aforementioned aims.

Flood risk for current/future occupiers of the flat

18. The site lies within Flood Zone 2, which is land defined by the planning practice guidance as having a medium probability of flooding. The site is at risk of fluvial flooding from the River Wandle. Policy DMS 5 of the Local Plan states that in Environment Agency's flood zone 2:

¹ Drawings No. F.T.P/101 rev A, F.T.P/102 rev A and F.T.P/103 rev A

² Prepared by SP Planning

"c. All basements, basement extensions and basement conversions must have safe access threshold levels and internal staircases provided to access floors above the 1 in 200 year tidal flood level (including climate change) or appropriate extreme water level as advised by the Environment Agency's Flood Risk Standing Advice.

d. Self-contained residential basements and bedrooms at basement level will not be permitted."

19. The Environment Agency (EA) have been consulted and object in principle to the unauthorised development for the self-contained residential flat, which includes sleeping accommodation in the basement.
20. In response to this the submitted Flood Risk Assessment (FRA)³ proposes a range of flood resilient construction methods, together with the revised drawings. In particular it is stated that the threshold at the entrance door and lightwell lip will be set at 9.85m AOD (representing a 0.15m rise). The appellant states that this is the 1 in 100 year plus 75% 2D level and considers that this ensure that the risks of flooding are appropriately mitigated over the lifetime of the development.
21. Notwithstanding the measures outlined within the FRA to protect against flooding, the EA⁴ states that the proposal provides insufficient flood mitigation measures to keep both the property and the potential future users safe from flood risk. The EA explains that the proposed access threshold into the basement [9.85mAOD] is not set 300mm above the 1 in 100 inclusive of 35% for climate change flood level [9.66mAOD]. There is also no internal staircase provided to access floors above the 1 in 100 year inclusive of 35% for climate change flood level to act as a place of safe refuge during a potential flooding event. This is therefore contrary to Parts c and d of Policy DMS 5 of the Local Plan.
22. The Council's Engineers and Policy team also support EA's objection to the proposal and state that there are no mitigation measures for self-contained basement residential accommodation in flood zone 2 because it can never be 100% safe. They further clarify that the mitigation measures outlined in the policy are for circumstances where basement developments are not self-contained and do not have bedrooms at basement level. As such, the mitigation measures proposed in the FRA do not overcome the policy objection to self-contained basements in EA's flood zone 2 and would not protect the property and future occupiers from flood risk.
23. Furthermore, it is also unclear on the evidence submitted whether the proposed threshold rise at the entrance to the property would achieve building regulations approval, particularly as I noted that the head height at the entrance was already restricted. Raising the entrance threshold by a further 0.15m would further reduce this head height. As such, there is no evidence before me to demonstrate that such measures would even be achievable.
24. I note that an Exception test has been carried out by the appellant within the FRA. However, Policy DMS 5 of the Local Plan states that 'Applications for

³ Prepared by Base Energy.

⁴ Response dated 20 October 2020

minor development and changes of use are not subject to the Sequential or Exception Test.

25. I therefore agree with the EA and Council that the proposed self-contained flat at basement level with no internal access to a floor above poses an unacceptable flood risk for current/future occupiers of the flat, contrary to Policy DMS5 of the Local Plan, which seeks the aforementioned aims.

Appeal B: Character and appearance - proposed new lightwells, railings and windows

26. The appeal site comprises the basement floor within a terrace of three storey red brick properties, with consistent materials and heights. Despite a small number of the properties containing commercial units at ground floor level with shopfronts, there's a high degree of uniformity in the terrace. In particular, the appeal terrace is currently unimpaired by front lightwells on Garratt Lane.
27. For Appeal B only, the proposal includes the creation of two front lightwells and associated railings, together with changes to the front elevation to provide new windows at basement level. Revised drawings have been submitted with the appeal proposing to further increase the width of the proposed basement windows. The proposed height of the windows would be the same as the original drawings submitted at the application stage. The appellant explains that the frame design replicates the openings on the ground floor above, albeit the windows would be wider than those on the floors above.
28. In respect of the provision of lightwells, Paragraph 4.57 of the Wandsworth Housing Supplementary Planning Document, 2016 (Housing SPD) states "In streets where basements and lightwells are not a traditional feature, the excavation of a basement can have a significant impact on the appearance of the house and the street scene, both by enlarging the front elevation of the house itself". Paragraph 4.58 further states that "Where basements are not a characteristic feature, it is particularly important to ensure that any new one is not so prominent as to dominate the front elevation of the house, and that the front garden is not dominated by a lightwell."
29. Despite the use of matching materials and windows, the proposed excavation of the front lightwells together with the installation of railings projecting forward of the established front building line in the terrace results in an incongruous addition, which is at odds with the prevailing character of the appeal terrace and is highly prominent in views along Garratt Lane.
30. In support of their proposal, the appellant states that railings up to 1.0 metre high can be installed under permitted development and can also be constructed under an extant planning consent⁵. However, the current proposal also involves the excavation to front of the property to form two lightwells, which combined with the railings would have a much greater impact on the appearance of the property and streetscene generally, by enlarging the front elevation of the property, and introducing an alien feature to the terrace.
31. The appellant also refers to permission granted for front lightwells and railings at Nos 474, 605 and 615 Garratt Lane. However, these are not within the immediate vicinity of the appeal site and relate to a different terrace.

⁵ Council ref: 2006/1988.

Therefore, the circumstances which lead to those approvals are not the same as the current appeal site. I also note that the lightwells and railings at Nos 605 and 615 did not project further forward than the brick boundary walls of neighbouring properties in that terrace. However, the proposed lightwells and railings at the appeal site would project further forward than any other railings/walls in the appeal terrace. Although front metal railings exist at Nos 651 to 655 Garratt Lane these do not project further forward of the general front building line in the appeal terrace. As such, these do not lend support for the proposed front lightwells and railings.

32. I therefore conclude that the proposed development harms the character and appearance of the building and area and conflicts with Policies DMS 1 and DMH 5 of the Local Plan, and the Council's Housing SPD which together seek to ensure that the scale, massing and appearance of the development provides a high quality, sustainable design and layout, that contributes positively to local spatial character; and that and front gardens are not dominated by lightwells.

Other Matters

33. The Council have referred to Policy DMH 2 of the Local Plan. However, this relates specifically to conversions of existing dwellings and not to changes of use of properties. The appellant also states the former use of the site was offices and I note that the description of the development on the application form refers to the change of use from use class B1 (Office) to use class C3 (Residential). Therefore, reference to Policy DMH 2 relating to conversions does not appear to be relevant to this case.
34. The Appellant also highlights that the provision of an additional two-bedroom flat would contribute towards increasing the housing stock, with an identified need for this size property in the Borough. It is also stated that the proposed front lightwells result in no access nor pedestrians being close to the residential units. However, these benefits do not outweigh the harms identified above under the main issues.

Conclusion on Appeal A on ground (a), and the Deemed Planning Application, and Appeal B

35. For the reasons given and with regard to all other matters raised, I conclude that Appeal A on ground (a) should fail and the deemed planning application, and Appeal B, should be dismissed.

Appeal A on ground (f)

36. The appeal on this ground is "that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters (i.e. the matters alleged in the notice) or, as the case may be, to remedy any injury to amenity which has been caused by any such breach".
37. The enforcement notice requires the:
 - 1) unauthorised use of the basement as 1 x 2 bedroom self-contained flat to cease and return the whole basement to its layout as an office (Class B1).
 - 2) Removal of the kitchen, shower room and toilet associated with the unauthorised use; and

- 3) the removal of any furniture, fittings and fixtures associated with the unauthorised use.
38. Therefore, the purpose of the notice is to remedy the breach of planning control rather than only remedy any injury to amenity.
39. The appellant states that step 1, should be amended to include the retention of the existing 1 x 2 bedroom basement flat, subject to the completion of the proposed works shown on the revised drawings submitted for Appeal B. However, I have already found above that the proposals submitted under the revised drawings would not overcome the harms identified with regards to living conditions, flood risk, and to the character and appearance of the area. Therefore, the proposed amendment to step 1 would not remedy the breach of planning control.
40. The appellant also states with regards to step 2 that it is usual and necessary for office units to have toilet and basic kitchen facilities, and that without these, future occupiers could be put off, rendering the office unit unviable. It is further stated that it is not uncommon for offices to have a shower available for use by staff cycling to work, and that the removal of the shower would be contrary to the sustainable transport aims of national and development plan policy. The appellant therefore recommends that step 2 is revised to: *"Rationalise the kitchen facilities so they are appropriate for office use"*.
41. It is clear that the installation of the kitchen and shower have sustained the material change of use to a residential flat and to require their removal is not excessive. These facilities are part and parcel of the unauthorised use and should not be viewed in isolation as has been suggested by the appellant. Furthermore, no substantive evidence has been presented to demonstrate that the kitchen and shower existed before the unauthorised change of use took place. Notwithstanding that these facilities may not require planning permission in their own right, a notice directed at a material change of use, as is the case here, may require their removal. Furthermore, the appellant's suggested wording for step 2, outlined above, is vague and lacks the necessary degree of precision needed for a requirement.
42. However, it seems perfectly reasonable and proportionate that a toilet would have existed within the office prior to the current unauthorised change of use to a flat. As such, requirement 2) on the issued notice requiring the removal of the toilet clearly goes beyond what is necessary to remedy the breach of planning control. I will therefore replace requirement 2), omitting reference to the removal of the toilet. This would remedy the breach of planning control, in line with s173(4)(a) of the Act. Varying the notice on this basis would cause no injustice to either party, as it would not make it more onerous.
43. As such, the appeal on ground (f) succeeds and I will vary the notice to remove the excessive requirement outlined above.

Conclusions

44. **Appeal A** - For the reasons given above, and having regard to all other matters raised, I conclude that the Appeal A fails on ground (a) and I shall refuse planning permission on the deemed application and uphold the notice.

45. I also conclude that the requirements of the notice are excessive to remedy the breach. I shall vary the enforcement notice prior to upholding it. The appeal on ground (f) succeeds to that extent.
46. **Appeal B** - For the reasons given above, and having regard to all other matters raised, I conclude that Appeal B should be dismissed.

R. Satheesan

INSPECTOR