



Appeal Decision

Site visit made on 22 June 2021

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 July 2021

Appeal Ref: APP/T5150/C/20/3250278

1-7 Opal Mews, London NW6 7JU

- 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 Opal Mews Residents Limited against an enforcement notice issued by the Council of the London Borough of Brent.
 - The enforcement notice was issued on 28 February 2020.
 - The breach of planning control alleged in the notice is failure to comply with condition No.2 of planning permission Ref 12/2292 granted on 6 November 2012.
 - The development to which the permission relates is *Proposed change of use of upper floors of units 1, 2 & 5 Opal Mews to 5 residential units retaining B1 (office) at ground floors, erection of front dormer windows and replacement windows at ground and first floors, installation of 2 rear rooflights to unit 2, associated landscaping including soft landscaping and parking and subject to a Deed of Agreement dated 6th November 2012 under Section 106 of the Town and Country Planning Act 1990, as amended*. The condition in question is No.2 which states that: *The development hereby permitted shall be carried out in accordance with the following approved drawing(s) and/or document(s): 01, 02 Rev A, 03 RevA, 04 RevA, 05 RevA, 06 RevA, 07 RevB, 08 09 RevA, 09A, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20*. The notice alleges that the condition has not been complied with in that the area for refuse collection and the associated 14 bins have not been provided contrary to that set out on the approved plan.
 - The requirements of the notice are:
 - STEP 1 Alter the layout of the development so that it accords with the approved Plan A attached to this notice, ensuring that the area for refuse collection is provided as set out on the Plan A.
 - STEP 2 Ensure that seven recycling bins and seven general waste bins are permanently provided in the area as shown on the Plan A attached to this notice
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is allowed and the enforcement notice is quashed. In accordance with section 177(1)(b) and section 177(4) of the 1990 Act as amended, the condition no.2 attached to the planning permission dated 6 November 2012, ref 12/2292 is discharged in respect of the refuse collection area only.
2. Planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the refuse collection areas without complying with the said condition but subject to the other conditions attached to that permission and the following new condition:

- 1) The refuse collection areas shall be as detailed on drawing number 01 OMP 001 Revision 01 dated 10 March 2020.

The appeal on ground (a) and the deemed planning application

3. The reason for the condition is for the avoidance of doubt and the interests of proper planning. However, my consideration of the appeal must be based on present circumstances and so is not confined to the original reasons given for imposing the condition. In this case it is evident from the reasons for taking action and the Council's statement that the condition, specifically in relation to the refuse collection area, is considered to be necessary to safeguard the character and appearance of the area and the living conditions of residents.
4. Consequently, the main issues are the effect of the refuse collection areas on the character and appearance of the area and the living conditions of the occupiers of nearby dwellings, with particular regard to odours.
5. As approved the refuse storage area would be within the courtyard and would provide two 240 litre bins for each unit (14 in total) with one each for recycling and general waste.
6. The development was completed in around 2014/15 and the refuse arrangements consist of one 1100 litre recycling bin, located within the courtyard, and two 1100 litre bins for general waste which are located to the side of the entrance to the development, close to Priory Park Road. Based on third party representations it seems that prior to December 2019 there was an additional 1100 litre general waste bin located within the courtyard. I also understand that the bins are used by the residents of five flats at 31-33 Priory Park Road.
7. The general waste bins are collected once a week by the Council, as is the recycling, with a further collection of recycling each week by a private operator.
8. The appellants provided calculations from the Council's adopted Waste Plan which indicate that for developments over eight dwellings with 31 bedrooms, 1860 litres of general waste capacity and 1860 of recycling capacity is required. Despite the loss of a bin, based on these figures, which are not disputed by the Council, the general waste and recycling provision, factoring in the additional weekly private collection, exceeds the required capacity.
9. Indeed, other than generalised comments about disputes and disagreements, there is no substantive evidence that the arrangements have led to visual harm associated with overflowing general waste bins or nuisance as a result of unpleasant odours.
10. Whilst images provided show overflow from the recycling bin, since it appears that there has only been one recycling bin since the development was completed, noting the images provided which show a small number of occasions when capacity was exceeded, there is no substantive evidence that the arrangements are inadequate. Moreover, I note the representations of support from a number of residents of the development, in respect of the current arrangements.
11. I note representations from a third party that the development is not fully occupied however, in the absence of explanation or contrary evidence, I have no reason to consider that the existing provision would be inadequate.

12. At my site visit I observed that wheelie bins tend to be located in the front yards or on the street to the front of the terraces along this part of Priory Park Road. The bins, subject of the appeal, are housed within timber enclosures which are modest in height and screen the bins utilitarian appearance from views. In this context I consider that the bin storage areas have no material effect on the character and appearance of the area.
13. Overall, for the reasons given above I find the breach of condition causes no harm to the character and appearance of the area or the living conditions of residential occupiers as a result of odours. There is therefore no conflict with the overall design and amenity protection aims of Policy DMP1 of the London Borough of Brent Local Plan November 2016 Development Management Policies (DMP) or the National Planning Policy Framework.
14. The Council referred to Policy DMP19 of the DMP which relates to the provision of residential amenity space. However, since removing a bin has increased the size of the previously accepted space, I find there is no conflict with this policy.

Conclusion

15. For the reasons given above, I conclude that the appeal should succeed on ground (a) and the enforcement notice should be quashed. I shall partially discharge the condition which is subject to the notice, and grant planning permission on the application deemed to have been made for the *Proposed change of use of upper floors of units 1, 2 & 5 Opal Mews to 5 residential units retaining B1 (office) at ground floors, erection of front dormer windows and replacement windows at ground and first floors, installation of 2 rear rooflights to unit 2, associated landscaping including soft landscaping and parking and subject to a Deed of Agreement dated 6th November 2012 under Section 106 of the Town and Country Planning Act 1990, as amended*, previously permitted without complying with the condition enforced against in respect of the refuse collection area only but subject to a new condition as described above.

Felicity Thompson

INSPECTOR