The Planning Inspectorate

Appeal Decisions

Site visit made on 24 January 2022

by R Satheesan BSc PGCert MSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 01 April 2022

Appeal A Ref: APP/G5180/C/21/3273587
Land at the rear of 88 High Street, Penge SE20 7HB

- 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 Ms Haley Bellerby against an enforcement notice issued by the Council of the London Borough of Bromley.
- The enforcement notice was issued on 22 March 2021.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of the land from use as a domestic garage to use as a self-contained studio flat.
- The requirements of the notice are:
  Cease the unauthorised use of any part of the Land as a residential self-contained dwellinghouse, and remove all fixtures and fittings associated with the unauthorised use.
- The period for compliance with the requirements is 3 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.

Appeal B Ref: APP/G5180/W/21/3280920
Rear of 88A High Street, Penge SE20 7HB

- 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 Ms Haley Bellerby against the decision of the Council of the London Borough of Bromley.
- The application Ref DC/20/05166/FULL1, dated 18 December 2020, was refused by notice dated 16 July 2021.
- The development proposed is the conversion of a garage/workshop to a single person dwelling.

Decisions

Appeal A

1. It is directed that the enforcement notice be:

- corrected by deleting the words "domestic garage" within section 3 of the enforcement notice (the matters which appear to constitute the breach of planning control) and its replacement with "garage/workshop".

- corrected by deleting the postcode within section 2 of the enforcement notice (the land to which the notice relates) and its replacement with "SE20 7HB".

2. Subject to these corrections, 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.

The Notice (Appeal A)

4. I have a duty to ensure that the notice is in order. The notice alleges "Without planning permission, the material change of use of the land from use as a domestic garage to use as a self-contained studio flat". However, the appellant states that the site was never in use as a 'domestic garage' but was a 'garage/workshop'. The appellant is best placed to know the former use of the appeal site. Therefore, reference to the former garage being in 'domestic' use appears to be imprecise and unnecessary. Nevertheless, the appellant appears to have understood the allegation and, in my opinion, the misdescription does not render the notice unclear. It is necessary however to correct the allegation to remove unnecessary word 'domestic' but retaining the effect of what the Council is trying to achieve. I consider that a minor correction is therefore necessary which can be achieved by using my powers under s176(1)(a) of the Act without causing injustice.

5. Furthermore, the postcode stated on the notice, "SE20 7H9", is incorrect and the appeal form states that it should be "SE20 7HB". However, it is clear from the remainder of the address on the notice and the site plan, what the property is and therefore the notice as a whole identifies the property correctly. It is necessary however to correct the notice by replacing the postcode on the notice. This would not cause injustice and I can therefore use my powers under the provisions of s176(1)(a) to make this correction.

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

Preliminary Matters

6. My attention has been drawn to a previous appeal decision which was dismissed for an alternative scheme at the appeal site for the change of use to a one bedroom flat[1]. I have had regard to this appeal decision in my decision.

7. 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 enforcement notice. Since the planning appeal is against refusal of permission for a material change of use to a residential single person dwelling, and the considerations in that appeal are similar, I have treated both cases together, to avoid duplication, except where otherwise indicated.

8. For Appeal B and the banner heading above, I have taken the address from the appeal form, as the address given on application form is misleading.

9. Under Appeal A and the ground (a) appeal, the appellant proposes an alternative revised scheme[2] which amongst other things includes new windows

[1] Appeal Ref: APP/G5180/W/16/3161591, dismissed on 13 February 2017.
[2] Drawing number: BEL/01/04 Rev. P1

to the front and rear elevation, demolition of part of the existing structure at the rear and the creation of a rear courtyard with new bi-folding doors. However, this revised scheme is a significantly different development, involving substantial new works, which does not form part of the matters alleged in the notice. Therefore, these additional proposed works do not form part of the appeal on ground (a) and the deemed planning application (DPA). However, this revised scheme[2] was submitted under the planning application for Appeal B. Thus, the appeals differ in so far as Appeal B considers this revised design and layout.

Main Issues

10. The main issue in both appeals is:

- Whether the proposed change of use would provide satisfactory living conditions for the current and future occupiers of the flat with particular regard to amenity space, outlook, and light.

11. With regard to Appeal A there is the additional main issue:

- Whether the proposed change of use would provide satisfactory living conditions for the current and future occupiers of the flat with particular regard to floorspace and ventilation.

Reasons

Background

12. The appeal building comprises a single storey brick built former garage/workshop located to the rear of 88A High Street. The appellant explains that the appeal building was formerly part of the whole of the site of No 88, which includes a ground floor optician, the residential flat above and the former garage/workshop. However, the former garage/workshop was separated from No 88 when it was sold to the current owner in 2018. Access to the appeal site is via a gated alley between Nos 197 and 199 Maple Road, which also provides access to a number of other commercial units, used for storage or fitness to the rear of properties on the High Street in addition to access to some residential flats on the upper floors of properties on the High Street and Maple Road.

Appeal A: Living conditions for current/future occupiers of the flat with regard to floorspace, amenity space, outlook, light and ventilation

13. The ground (a) appeal (Appeal A) seeks permission for the material change of use of the land from a garage/workshop to a self-contained studio flat. With regard to floorspace, the appellant states that the studio flat is for a single person. Given that it has been laid out as a studio flat with an open plan living area, it is reasonable to consider the appeal on this basis of the unit being a single person flat. The floorspace provided by the development exceeds the 37sq.m required by Policy D6 and Table 3.1 of the London Plan, 2021 (London Plan). I also observed during my site visit that there was sufficient space within the unit for bedroom, living, dining and kitchen furniture, as well as sufficient space for circulation and storage. Furthermore, the existing 6 rooflights installed provided acceptable levels of light and ventilation for current and future occupiers of the site. Therefore, the change of use provides satisfactory

living conditions for current and future occupiers of the flat with regard to floorspace, light and ventilation.

14. However, the existing 'as built' flat provides no external outside amenity space for current and future occupiers of the site, and Policy D6 requires a minimum of 5 sq.m of private outdoor space should be provided for 1-2 person dwellings. As such there is no existing external space or break out space for occupiers to sit outside or relax. Indeed, when combined with the location of the site, accessed via the alleyway, with its poor quality appearance and maintenance, and located close to other commercial uses results in a poor quality living environment and a sense of enclosure, oppressive for current and future occupiers of the flat.

15. Consequently, I conclude that the unauthorised change of use results in a poor living environment to the detriment of the living conditions for current and future occupiers of the flat with regards to extremely poor outlook and no amenity space. In this respect, the development conflicts with Policies 4 and 10 of the London Borough of Bromley Local Plan, 2019 (LP), and Policy D6 of the London Plan. Amongst other things, these require that all new housing developments will need to achieve a high standard of design and layout, good quality living accommodation, and the provision of sufficient external, private amenity space that is accessible and practical.

Appeal B: Living conditions for current/future occupiers of the flat with regard to amenity space, outlook, and light.

16. In an attempt to overcome the previous concerns raised by the Council and the previous appeal decision, Appeal B, proposes a revised design and layout of the unit. In particular, the proposed revised design includes the following:
    - New glazing and windows to the front elevation and door (the lobby is also glazed internally);
    - Relocation of rooflights;
    - A new courtyard is provided to the rear of the site together with new sliding/folding doors to the rear of the site.

17. I appreciate that the changes proposed would improve the levels of daylight and ventilation within the flat and that the amount of outside amenity space would meet the minimum space requirements of policy D6 of the London Plan. Nevertheless, the amenity space would be relatively narrow and surrounded on all sides by high walls. Indeed, any views of the courtyard, from within the residential flat, would also be restricted by these high walls on all sides. Therefore, I am not convinced that the proposed courtyard area would provide any useful or meaningful amenity space, that would significantly improve the living environment for the occupiers of the unit. Furthermore, in combination with the location of the site in an area which is predominantly commercial in character leads me to conclude that current and future occupiers of the flat would experience a constrained and oppressive living environment.

18. I therefore conclude that the proposed change of use would result in a poor living environment to the detriment of the living conditions for future occupiers of the flat with regard to extremely poor quality amenity space and outlook. In this respect, the development conflicts with Policies 4 and 10 of the LP, which seeks the aforementioned aims.

Other considerations and planning balance

19. The Council have also referred to Policy D4 of the London Plan. However, this policy refers to delivering good design which does not appear to be directly relevant to the case advanced by the Council. As such, I find no conflict with this policy.

20. The Council have not raised any concerns about the design and appearance of the development and given the location of the site away from any public views from the street, I agree that it would preserve the character and appearance of the Penge High Street Conservation Area.

21. The appellant states that there are existing residential flats in the area and that the appeal site is located in an area which is comparable to a 'Mews'. However, these other residential units are located on the upper floors of properties on the High Street and Maple Road and therefore the habitable accommodation for these units would also be at a higher level with enhanced levels of daylight and outlook. As such, these residential flats are not directly comparable to the appeal site which is entirely at ground floor level.

22. The appellant also refers to a number of other approvals for residential schemes which they consider are similar to the appeal proposal. This includes a new dwelling approved within the London Borough of Kingston[3] and the conversion of a former cold war bunker to residential accommodation in Tendring District Council[4]. However, the residential development in Kingston appears to have its own direct residential access from the street, has a larger internal floor space and contains two separate bedrooms and two private courtyards. In addition, the development in Tendring relates to the conversion of a listed former cold war bunker in an entirely different location and setting in Essex. The internal floorspace for that scheme also appears larger than the current appeal development. It is therefore clear that those schemes are materially different to the appeal scheme in terms of their location, size, and layout. In any event, I have assessed the development on its own merits.

23. The appellant states that the Council cannot currently demonstrate a five year housing land supply, with the latest monitoring report stating that this is 3.31 years. The Council have not disputed these figures. The presumption in favour of sustainable development at Paragraph 11(d) of the National Planning Policy Framework (the Framework) is therefore engaged. The studio flat would make a modest but important contribution towards housing need. The development has also improved the appearance of the building and is located in an urban area with good accessibility. However, I consider that the adverse impacts of the development, in relation to the living conditions for current and future occupiers of the site, would significantly and demonstrably outweigh its benefits when assessed against the policies in the Framework taken as a whole.

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

24. Dismissal of the appeals will involve some interference with the occupiers' rights to respect for private and family life under Article 8 of the European Convention on Human Rights and the right to protection of property, including peaceful enjoyment of possession under Article 1 of the First Protocol.

[3] Council ref: 12/16387/FUL approved in 2012.
[4] Council ref: 12/00110/LBC approved in 2013.

However, these are qualified rights. The interference will be the minimum necessary and a proportionate approach to the legitimate aim of ensuring satisfactory living conditions.

25. 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: The appeal on Ground (f)

26. 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".

27. In this case, the purpose of the enforcement notice is to remedy the breach of planning control. This is clear from the requirement of the notice, which requires the unauthorised as a residential self-contained dwellinghouse to cease and the removal of all fixtures and fittings associated with the unauthorised use.

28. The appellant states that the requirements are excessive since a planning application is under consideration for proposals which address the concerns, and the appellant has been, and remains keen to work with the Council to reach a positive resolution on these proposals. It is also stated that the Council chose to issue an enforcement notice because it was concerned about the need to do so in a timely manner, notwithstanding the ongoing planning application.

29. However, the measures outlined by the appellant would not remedy the breach of planning control, which is the purpose of the notice. There are no lesser steps drawn to my attention or any obvious alternative that would remedy the breach of planning control which is the purpose of the notice.

30. Therefore, the appeal on ground (f) fails.

Conclusions

31. **Appeal A:** For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended

32. **Appeal B:** For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

R Satheesan

INSPECTOR