



Appeal Decisions

Site visit made on 29 July 2021

by Jean Russell MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 July 2022

Appeal A: APP/U5360/C/19/3240385

Appeal B: APP/U5360/C/19/3240386

Land at 4 Forburg Road, Hackney, London N16 6HS

- Appeals A and B are made by Mrs Sarah Neuschloss and Mr Shalom Neuschloss under section 174 of the Town and Country Planning Act 1990 (TCPA90) against an enforcement notice (ref: 2018/0127/ENF) issued by the Council of the London Borough of Hackney on 23 September 2019.
- The breach of planning control as alleged in the notice is: without planning permission the material change of use of the property to use as two self-contained flats (C3) and a hair salon (A1 use).
- The requirements of the notice are to:
 1. Cease the use of the property as more than two self-contained flats
 2. Cease the use of the basement unit as a hair salon (A1) use
 3. Remove all the shop fixtures, fittings including the counter and any internal partitions from the basement area of the property
 4. Make good any damage resulting from compliance with the requirements of the notice.
 5. Remove all materials, debris, waste and equipment resulting from compliance with the other requirements of the notice from the property and premises.
- The period for compliance with the requirements of the notice is three (3) months.
- Appeal A is proceeding on the grounds set out under section 174(2)(a), (b) and (c) of the TCPA90. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under s177(5) of the Act.
- Appeal B is proceeding on the grounds set out under s174(2)(b) and (c) of the TCPA90.

Summary of Decisions: Appeal A is allowed, the enforcement notice is corrected and quashed, and planning permission is granted in the terms set out below in the Formal Decision.

Appeal C: APP/U5360/X/19/3236584

4 Forburg Road, Hackney, London N16 6HS

- Appeal C is made by Mr and Mrs Shalom Neuschloss under section 195 of TCPA90 against the decision of the Council of the London Borough of Hackney to refuse an application to grant a certificate of lawful use or development (LDC).
- The application (ref: 2019/2039) was made under section 191(1)(a) of the TCPA90, dated 3 June 2019 and refused by notice dated 12 August 2019.
- The existing use for which an LDC is sought is described on the LDC application form as: 'the property comprises two flats and a basement. One of the flats and the basement is our sole residence. The basement is ancillary to the residential use of the property'.

Summary of Decision: Appeal C is dismissed.

PRELIMINARY MATTERS

1. The appeals site includes a two storey mid-terraced building with a basement and loft accommodation, plus a front yard and back garden. The property was used as a single dwelling until at least April 2016, when it was sold to the appellants.

2. Planning permission (ref: 2018/2601) was granted on 4 December 2018 for the conversion [or change of use] of the property into two self-contained dwellings. The '2018 permission' was granted on a retrospective basis, and I shall therefore take the 'existing' elevations (268-E02) and floor plans (268-E05A) cited on the decision notice as showing what was approved.
3. According to the plans, Flat 1 should occupy the basement and ground floor of the building, and Flat 2 should encompass the first floor plus loft space. Both flats should include two bedrooms. The plans also show four external doors in the building, one at the front and one at the back at ground floor and basement levels.
4. The Council served a planning contravention notice (PCN) to gain information from the appellants about the use(s) of the building. Both parties refer to the evidence that the appellants gave. As an aside, I find it incredible that the PCN did not include fields for or show the dates of service or response¹ but, fortunately, no determination is required as to when the alleged change of use took place.
5. The Council's report on the lawful development certificate (LDC) application subject to Appeal C refers to information given verbally by the appellants in July 2019 to the effect that both flats were rented out. However, it now seems to be common ground that the appellants live in Flat 2 and only let out Flat 1.
6. The LDC application form does not clearly describe the use that is claimed to be lawful. Had I decided to allow Appeal C, I would have exercised the powers set out under s191(4) of the Town and Country Planning Act 1990 (TCPA90) to modify the description of development. However, it is clear that Appeal C is concerned with the same use of the basement as the notice and Appeals A and B.
7. Enforcement appeals on grounds (b) and (c), and LDC appeals relate only to matters of lawfulness. The onus is on the appellants to make their case on the balance of probabilities. I must accept their evidence if it is sufficiently precise and unambiguous, and there is nothing to contradict their version of events or make it less than probable.

APPEALS A AND B ON GROUND (B)

8. An appeal on ground (b) is that what is alleged by the enforcement notice has not occurred. The appellants' main argument is that the alleged change of use was not 'material' and did not require planning permission. Whether that is correct is a question which falls to be considered through ground (c); the appellants have not shown that the introduction of the salon use did not occur as a matter of fact.
9. The only point raised by the appellants which is relevant to ground (b) is whether the notice describes the alleged use accurately; they say it is a wig more than hairdressing salon. For the purposes of the notice, however, I find that wig and hairdressing salons are highly similar and compatible land uses.
10. Customers attend hairdressing and wig salons alike for personal grooming services in respect of their own hair and/or a head covering which, in the case of a wig, may be made of real or artificial hair. Hairdressing appointments can vary significantly in duration, depending on the nature of the customer's hair and the services they require, but I would expect the length of wig fitting and styling appointments to be within the hairdressing range. From the appellants' evidence, it

¹ The appellants suggest, however, that they completed the PCN on 7 May 2019.

appears that the ratio of staff to customers and the levels of foot and/or vehicular traffic generated by hairdressing and wig salons is comparable.

11. Thus, wig and hairdressing salons both provide services principally to visiting members of the public, which are appropriate to provide in a commercial, business or service locality. They both fall within use class E.(c)(iii), now that the Town and Country Planning (Use Classes) Order 1987 (UCO) has been amended and the former use class A1 (shops), cited in the notice, has been superseded. It is not necessary for the notice to mention use classes, as discussed below, but it is relevant that the UCO would classify wig and hairdressing salons the same.
12. If the notice misdescribes the alleged use, it does not follow that no change of use has occurred at all. I can correct the notice, in accordance with s176(1)(a) of the TCPA90, so that the alleged use is described more fully and accurately as a wig and hairdressing salon. Making that correction would cause no injustice to the Council or appellants because the land use remains the same in substance and, while the requirements of the notice would need to be reworded, they would not be made any more or less onerous to comply with.
13. The appellants have not demonstrated that, on the balance of probabilities, the use of the building as a wig and hairdressing salon has not occurred. Except to the extent that the notice is corrected, Appeals A and B must fail on ground (b).

APPEALS A AND B ON GROUND (C) AND APPEAL C

14. Ground (c) is that the matters alleged by the notice did not constitute a breach of planning control, perhaps because planning permission was not required or was already granted. Under s191(2)(a) of the TCPA90, a use will be lawful – and an LDC may be issued – if no enforcement action may be taken in respect of it, again perhaps because it did not require planning permission.
15. The appellants' case for ground (c) and for an LDC is that the introduction of the wig and hairdressing salon use did not amount to a material change of use which requires planning permission. They claim that the salon use is – and was on the dates of the LDC application and enforcement notice – 'ancillary' to the residential use of Flat 2, which itself is lawful by reason of the 2018 permission.
16. The appellants have referred to advice on the Planning Portal website that householders 'do not necessarily need planning permission to work from home'. The webpage refers to different types of business that may be carried out from home, expressly including hairdressing, and it states that 'the key test is whether the overall character of the dwelling will change as a result of the business...is it still mainly a home or has it become [a] business premises?'²
17. To put that advice another way, planning permission is required where a change of use is 'material', meaning that the character of the activities taking place within the 'planning unit' becomes significantly different as a matter of fact and degree. The planning unit is usually the unit of occupation, unless a physically and/or functionally separate area is identified.
18. An ancillary or, more properly, incidental use is one that is functionally related in some normal way to the primary use of the planning unit As the Planning Portal

² I have not included a link to the Planning Portal webpage because it is not clearly dated and so future readers of this decision letter would not know whether or not the advice has been changed. As quoted, however, the webpage still says exactly what the appellants recorded in their final comments.

suggests, it is not unusual for a householder to carry out a business from home so that it is incidental to the primary residential use of the property³. However, a business or even hobby activity may also be introduced or expanded so that, as a matter of fact and degree, it represents a primary use in itself and a material change of use has taken place.

The Lawful Use of and Planning Units at 4 Forburg Road

19. According to the enforcement report, the Council received a complaint in April 2018 that works were taking place to facilitate a change of use of the building to use as flats. A Council officer visited the site and saw the salon being fitted out.
20. A design and access statement submitted with the 2018 application suggested that a wig washing room in the basement⁴ would be 'ancillary to the main use of the house', but that could not have been right because the building was said and proposed to be in use as flats. The plans could neither have been right because they showed the basement as being within Flat 1 although the appellants were to run the salon and live in Flat 2. They admit that, when 'converting' the property into two flats, they occupied the upper floors and retained the basement.
21. Thus, the evidence suggests that the building might never have been laid out or used in accordance with the floor plan 268-E05A. Yet condition 1 imposed on the 2018 permission required that the development be carried out and completed strictly in accordance with the approved drawings. I must query whether the 2018 permission, despite being granted on an retrospective basis, was ever implemented in accordance with its terms and conditions.
22. However, the notice does not require the use of the building as two flats to cease, even though it describes a change of use to two flats and a salon. If I upheld the notice and it was complied with, unconditional planning permission for the use as two flats would be deemed to be granted under s173(11) of the TCPA90⁵. For that reason, and since it is clear from their evidence that the Council do not object to or even question there being two flats, I shall assume that such use of the building is or could become the lawful use.
23. Where (part of) a building is used as a self-contained dwelling, for all of the private day-to-day domestic activities such as cooking, eating, sleeping, relaxing and personal hygiene that are required to sustain the occupiers, it will normally be considered a separate planning unit. There is no evidence that the occupiers of Flat 1 have any relationship with the appellants beyond that of tenants and landlords. Flats 1 and 2 should probably be treated as separate planning units and they should each be in residential use as their sole primary use.

The Salon Use

24. As noted above, in a departure from the 2018 plans, the basement does not form part of Flat 1; it has been retained by the appellants for their own use, although they live in Flat 2 or on the upper floors of the building. However, if the 2018 permission had been implemented, and the appellants had later reallocated the

³ Under s55(2)(d) of the TCPA90, the use of any buildings or other land within the curtilage of a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse as such shall not be taken to involve development [which requires planning permission].

⁴ The approved floor plan before me does not refer to wig washing but it is a revised drawing.

⁵ The notice could not be corrected to require the cessation of the use as two flats without causing injustice to the appellants.

- basement from Flat 1 to Flat 2, but the building remained in use strictly and only as two flats, the Council could have enforced against a breach of condition but not against a material change of use.
25. I accept that appellants took the basement out of Flat 1 in part to enlarge Flat 2 as a dwelling. They have four children and use the basement as their only (possible) means of access to the garden. On the date of my visit, toys were being stored in the garden, a shed and – as shown in the Council’s LDC report photographs – on shelves and the floor in the basement. I am satisfied that the basement facilitates the use of the garden for play and recreation that is incidental to the use of Flat 2.
 26. The WC in the basement would be convenient for the family when they are in the garden. The appellants claim that Mr Neuschloss uses the basement as a computer room when his wife – who runs the salon – is not there. I do not know if he uses the computer for domestic, salon and/or other purposes but, in any event, the family’s use of the basement for access to, if not also storage related to the garden, is enough to show probable residential use as the appellants claim.
 27. The only internal staircase leading to the basement is within Flat 1⁶. The appellants must exit and re-enter the building, via the two front doors, when moving between the upper floors and basement. However, they will remain within the site and use the different floors in effect as different parts of the same dwelling. I find that the basement is probably part of the same planning unit as Flat 2.
 28. However, the alleged salon use is also taking place in the basement and I saw that it physically dominates the space. The front door to the basement has a doorbell and CCTV system. Inside, there are shelving units used for the display of wigs (on mannequin heads) and products such as hairspray, hairdryers and curlers. The wigs are individually labelled with price and product/shade reference details.
 29. I also saw a counter; chairs in what appears to be a small waiting area; other chairs and stools likely to be used by customers and staff sitting for wig fitting and styling; large mirrors, sinks and other storage units; and trolleys of the kind typically used in salons for moving hair tools and products. The WC in the basement will almost certainly be used by salon staff if not customers.
 30. In terms of activity, the salon is open to customers, at most, from 9.30 to 14.00 from Monday to Thursday, and from 9.30 to 12.00 on Fridays, adding up to 20.5 hours per week. In practice, the salon is usually open for four rather than five days per week; daily hours are also shorter in winter. Nonetheless, the salon receives an average of five and maximum of ten customers per day. There are four part-time members of staff, some if not all of whom are likely to live elsewhere. The business seems to be run on a regular and highly professional basis.
 31. The appellants explain that customers mainly arrive by appointment and come and go on foot, so their *outside* movements will be ‘completely masked’ by those of general passers-by. That may be the case, but the appellants have not shown that customer activity *on the premises* could be considered insignificant or functionally related to the residential use of Flat 2.
 32. Mrs Neuschloss runs the salon from home, as well as part-time, so she can also manage childcare duties. Thus, there is a functional as well as physical connection between the use of the basement as a salon and use of Flat 2 for residential

⁶ This staircase is now, presumably, sealed off at the top so the occupiers of Flat 1 cannot go down to the basement. The appellants seem to use the lower internal steps as extra basement storage space.

purposes. However, the appellants have not shown that the functional relationship is one that is normally found. From the quantum of space given over to the salon use in the basement, the fittings, furnishings and stock, the opening hours and numbers of customers, and the employment of staff, the salon use is likely to exceed what could be described as ordinarily incidental.

Conclusion on Appeals A and B on Ground (c) and Appeal C

33. The appellants have referred to other appeals where a business use was found to be incidental to residential use. In the Sevenoaks case, a relative of the appellant carried out a hairdressing use on their own over fewer hours per week and for fewer customers than the appeal salon⁷. In the Aylesbury Vale case, a joinery business was run by the appellant alone for 'infrequent' visitors⁸. The evidence before me is different.
34. I find that the appellants were correct in their PCN response that the basement is used for 'family use and hairdressing' in connection with their use of Flat 2 as a dwelling. They have not shown, however, that the wig and hairdressing salon is ancillary or ordinarily incidental to the residential use. I would describe Flat 2 as including both a home and business premises. As a matter of fact and degree, the salon use probably amounts to a separate primary use of the planning unit.
35. I conclude that, on the balance of probabilities, there has been a material change of use – for which planning permission is required – so that the building includes a self-contained flat (Flat 1) and a unit that is in mixed use as a dwelling and a wig and hairdressing salon (Flat 2). It follows that the notice does not properly describe the unauthorised use but, as before, it can be corrected without causing injustice.
36. The appellants make no case that planning permission is already granted for the material change of use. It follows that there has been a breach of planning control as alleged by the notice. Appeals A and B fail on ground (c).
37. For the same reasons, and since there is evidence of the salon use beginning in spring 2018, I find that the Council could have taken enforcement action against the use of the basement on 3 June 2019, the date of the LDC application. The Council's decision to refuse to grant an LDC was well-founded and Appeal C fails. I will exercise accordingly the powers transferred to me in s195(3) of the TCPA90.

APPEAL A ON GROUND (A) AND THE DEEMED PLANNING APPLICATION

The Description of Development

38. As set out above, the notice should allege that there has been a material change of use of the property to use as one self-contained flat plus one unit that is in mixed use as a dwelling and as a wig and hairdressing salon. The references to use classes C3 and A1 can be deleted from the allegation, because any planning unit ceases to be in a use class when it is in mixed use, plus it was never necessary to refer to use classes and the UCO has been amended.
39. Again, I am satisfied that the corrections to the allegation can be made without causing injustice, because the notice remains directed at the same salon and the requirements of the notice would not need to be made more or less onerous. The parties' cases for and against ground (a) remain equally relevant.

⁷ Appeal ref: APP/G2245/C/18/3215848

⁸ Appeal ref: APP/J0405/X/15/3139392

Planning Policy

40. The development plan includes the Hackney Local Plan 2033 (HLP) and London Plan 2021 (the London Plan), which were both adopted after the notice was issued. The appellant had opportunity to comment through the usual course of the appeal on the HLP, and at a later stage on the new London Plan.
41. The parties were also given an opportunity to comment on revisions to the National Planning Policy Framework (the Framework) that were made in July 2021. I am satisfied that deciding this appeal on the basis of current local and national planning policy does not prejudice the interests of either party.
42. The Council has referred to emerging planning policy set out in the consultation draft Area Action Plan 'Towards a Stamford Hill Plan'. I do not know when 'the draft AAP' will be adopted, or whether it will remain in anything like its draft form, but I attach significant weight to it as a useful source of local information.

Main Issues

43. I consider that the main planning issues in this case are:
- Whether the appeal change of use has resulted in an unacceptable loss of residential floorspace in housing land supply and planning policy terms,
 - The effect of the change of use on the living conditions of the occupiers of Flat 1 and other nearby dwellings,
 - The effect of the change of use on the character and appearance of the surrounding area, including the Northwold and Cazenove Conservation Area (the CA), and
 - Whether any harm identified in respect of the above issues is outweighed by considerations in favour of the appeal.

Reasons

Residential Floorspace

44. HLP Policy LP24 provides that the change of use of land or buildings involving loss of residential floorspace will be resisted and only permitted where at least one specified condition is met⁹. The appeal change of use has clearly caused a loss of residential floorspace as discussed further below.
45. Only one condition set out in the policy is relevant: a change of use involving loss of residential floorspace may be permitted where the proposal is for an essential community use which can only be provided on that basis and for which there is demonstrable need. The salon serves Haredi Jewish women¹⁰, but is still a commercial rather than community use. The appellant has not shown that the salon could only be located in the basement or is needed in policy terms.
46. Thus, the change of use conflicts with HLP Policy LP24 and that could be sufficient reason on its own for me to dismiss this appeal. I must stress that the policy sets out no minimal threshold but, in order to ascribe proper weight to my conclusion on this issue, I shall consider the extent and effects of the loss.

⁹ This was Policy DM20 in the Submission Draft HLP.

¹⁰ The word 'Haredi' is spelt 'Charedi' by the Council and 'Hareidi' by the appellants.

47. The 2018 permission was granted on the basis that Flat 1 would include the basement and be capable of housing four people. Flat 1 is now confined to the ground floor alone, some 47 square metres (sqm) smaller than it should be and, as found below, only fit for occupation by three people. However, it cannot be said that the basement has completely ceased to be 'residential floorspace'. It is incorporated into Flat 2 and used not only as a salon but also as a route to the family garden, for domestic storage and perhaps as a part-time home office.
48. I also note that the 2018 plans showed Flat 1 as having a kitchen/dining room, bathroom and two bedrooms on the ground floor, and two playrooms in the basement. There would have been nothing to prevent the occupiers from using the basement for other residential purposes, but play was the approved activity. Flat 1 remains a two bedroom flat and the basement still facilitates play, albeit in the garden and for the occupiers of Flat 2 on a limited basis.
49. I am not brushing aside the fact that, because of the salon use, the basement is unsuitable and often unavailable for many domestic activities. Compared to the 2018 plans, Flat 2 is not enlarged *as a dwelling* to the extent that Flat 1 is reduced. However, I also find that the loss of residential floorspace does not strictly amount to 47sqm and has not changed the number of bedrooms in Flat 1.
50. The draft AAP states that there is a severe shortage of housing of all types, sizes and tenures in the area. I understand why the Council seeks to protect every inch of existing residential floorspace. However, the draft AAP also notes that the 'predominant' housing issues in Stamford Hill are affordability (which is not relevant here) and overcrowding. It states that initiatives to increase the number of four bedroom family homes could include the provision of 'smaller units', specifically studio and one bedroom flats, for older residents to downsize into.
51. I conclude that change of use conflicts with HLP Policy LP24, but it has not been shown that the loss of residential floorspace, which has caused Flat 1 to become a 'two bedroom, three person' rather than 'two bedroom, four person' dwelling, unacceptably exacerbates the local shortage of housing on the ground. I attach moderate weight to the conflict with HLP Policy LP24.

Living Conditions

52. As set out in the enforcement notice and their representations, the Council is concerned that the change of use has harmed the living conditions of the occupiers of nearby occupiers firstly through the loss of floorspace in Flat 1 and secondly through noise and disturbance. I will address these matters in turn.

The Size and Layout of Flat 1

53. The Council suggests that, under the 2018 permission, Flat 1 should have had a floor area of 108.93sqm but, since it has been reduced by 'approximately 47sqm', it is 'only around 60sqm'. The appellant has not disputed those figures. Given the word 'approximately', the basement floorspace might slightly exceed 47sqm. But when 47 or even 48 is deducted from 108.93, I calculate that Flat 1 will probably have somewhere between 60.93 and 61.93sqm of floorspace.
54. Precision is desirable here because the nationally described space standard for housing (NDSS) set out in the Government's Planning Practice Guidance (PPG), and London Plan Policy D6 and Table 3.1, require that any dwelling which has two bedrooms, is for three people and is laid out on one floor should have a gross internal floor area of at least 61sqm. In my view, Flat 1 is likely to meet that standard. It is capable of being used as a two bedroom, three person dwelling.

55. Flat 1 has insufficient floorspace, according to the NDSS and London Plan, for the four occupiers which were anticipated by the 2018 permission. However, the question here is whether the living conditions of the occupiers of Flat 1 are unacceptably compromised. The Council does not dispute that Flat 1 is, in fact, only let to a couple. The Council also has not shown that Flat 1 could not be comfortably lived in as a two bedroom, three person flat in posterity.
56. The 2018 plans suggest that the ground floor rooms in Flat 1 are reasonably-sized and have windows or French doors for adequate outlook and light. The appellant states that the occupiers of Flat 1 can no longer use the back garden but the Council has not objected to that. The London Plan requires a minimum of 6sqm of private outdoor space for three person dwellings, but the NDSS does not. If the building was used in accordance with the 2018 permission, the occupiers of Flat 2, another two bedroom dwelling, would be unable to access the garden instead.

Noise and Disturbance

57. The Council is concerned that noise associated with the wig and hairdressing salon will cause unacceptable disturbance within Flat 1 and adjacent dwellings. I agree and indeed found on ground (c) that the salon use must increase the number of people coming and going from the site compared with the lawful use as two flats. However, a change of use can be material without resulting in unacceptable harm.
58. Under the 2018 plans, the basement could and probably would have mainly been accessed via the internal staircase from Flat 1. Nonetheless, the basement would still have had a front door. The virtue of the salon having a separate and low level entrance is that staff and customer activity will not take place immediately outside Flat 1 or houses next door.
59. It is normally reasonable and necessary, where a commercial use is permitted close to residential properties, to impose a condition which restricts the opening hours of the business. The appellant's maximum opening hours are from 9.30-14.00 hours from Monday to Thursday, and 9.30-12.00 on Fridays, meaning that the salon need not be open at any unsociable hour or during the weekend at all.
60. With the proposed opening hours and given the size of the salon, there would rarely be more than ten customers per day. I would expect the staff, customers and couriers to come and go at different times, so there would not be significant footfall, vehicular traffic or groups of people talking outside at any one time. I also consider that internal activities such as the movement of trolleys or conversations would not lead to unacceptable noise beyond the walls and ceiling of the basement.
61. Salons such as this are not generally associated with high levels of internal noise; it is common to see flats above hairdressing shops. The occupiers of Flat 1 and nearby dwellings may hear activity related to the appeal wig and hairdressing salon sometimes, but there is no evidence that they experience unacceptable disturbance. Conditions could ensure none would follow from a grant of permission.

Conclusion on Living Conditions

62. I conclude that, despite being limited to the ground floor, Flat 1 is likely to meet the NDSS and London Plan standards for a two bedroom, three person flat. The change of use conflicts with London Plan Policy D6 in that the occupiers of Flat 1 have no outdoor space, but it was always going to be the case that one flat would lack access to the garden. The layout of the building, which facilitates the mixed use, does not unacceptably harm the living conditions of the existing occupiers of Flat 1, or compromise the living conditions of future occupiers.

63. I further conclude that, subject to an 'hours' condition, the salon use will cause no unacceptable noise or disturbance to any adjoining residents. The change of use does not conflict with HLP Policy LP2 which expects development to be designed to ensure no significant adverse impacts on the amenity of occupiers and neighbours.
64. The salon use does not conflict with London Plan Policy D3, which expects development to make best use of land while delivering appropriate amenity and helping to mitigate the impacts of noise. It complies with the Framework, which expects development to promote a high standard of amenity, and these findings should in my view prevail over the conflict with London Plan Policy D6.

Character and Appearance

65. The Council suggests that the carrying out of the wig and hairdressing salon use in a former dwellinghouse is 'out of character' with the surrounding area. The draft AAP describes that the site falls within the 'Cazenove Neighbourhood character area' which is the 'largest of Stamford Hill's neighbourhoods...made up of highly consistent Victorian terraces, much...within the Northwold and Cazenove Conservation Area...predominately 2-3 storey'.
66. I saw that Forburg Road and other streets within the CA are dominated by well-preserved and beautifully detailed Victorian terraced houses. It seems clear that the significance of the CA as a heritage asset lies in large part in its distinctive, high quality domestic architecture. However, the Council admits that there have been no physical alterations to the exterior of the building which harm the appearance of this terrace or of the CA.
67. The character of an area is more a function of how it is used, and the draft AAP notes that the Cazenove Neighbourhood is predominantly residential. From my site visit and a location plan submitted by the appellant, it seems that community and business uses are scattered around the area, and may sometimes be based in people's homes, but nonetheless that the majority of buildings on Forburg Road are in use as single dwellings or flats.
68. However, the draft AAP also suggests that the character of the area, if not significance of the CA, is derived in part from the fact that diverse communities have made this area their home over the past two centuries. I note in particular the statement in the AAP that:
- 'Stamford Hill is home to one of the UK's largest...Jewish communities, the Charedi Community...[which] tends to have large families...for religious reasons, members of the community desire to live within walking distance of their place of worship, shops and local services...'
69. This is not a neighbourhood which is dull or silent by day. Forburg Road is long and densely developed, and the site is close to the junction of this street with Filey Avenue. Local residents are likely to walk or drive past the appeal building every day when heading to or from the Jubilee primary school, the Simon Marks Jewish primary school, other local service uses, or the bus stops on Cazenove Road.
70. The wig and hairdressing salon would be described under the UCO as a service which it is appropriate to provide in a commercial, business or service locality. It does not follow that the use must be unacceptably out of character in a residential area. In this neighbourhood, with limited opening hours and given the particular service provided at this salon as discussed below, I find that the use causes no unacceptable harm to the character and appearance of the surrounding area.

71. I conclude that the use preserves the character and appearance of the CA so that the heritage asset loses none of its significance. It does not conflict with HLP Policy LP2, which expects development to be appropriate to its location. The use does not conflict with the Framework, which expects development to be sympathetic to local character and history and maintain a strong sense of place; and decision-makers to give great weight to the conservation of heritage assets.

Other Considerations

72. I have noted that the appellant and her husband retained the basement for their own domestic use because they have four children and need access to the garden. That point is not relevant to the merits of the wig and hairdressing salon element of the mixed use. If I dismissed this appeal and upheld the notice, the appellant might have no choice but to put the building into use as two flats, but s173(11) would not operate to deprive her family of access to the garden.
73. However, the appellant also explained in the Enforcement appeal form that, as a married Haredi Jewish woman, she can only operate her business from home given her childcare responsibilities. Her customers are also married Haredi Jewish women who, by reason of their faith, do not move around without a hair covering or wig. She receives little passing trade; her customers are normally by appointment.
74. The appellant has not elaborated on her personal circumstances or the community need for the wig and hairdressing salon, but that does not mean I can disregard her uncontested evidence. In my view, the salon use is unique to the appellant and designed to meet the needs of married women who belong to, according to the draft AAP, the largest religious group in the area.
75. The appellant's personal circumstances and the nature of her business are bound up with my findings that Flat 2 is in a mixed use and the salon can be operated so as to avoid causing any unacceptable harm. However, it is also necessary to attribute weight to these factors in their own right. I consider that enabling the appellant to work from home, and the locally and culturally-specific service that she provides, are clear benefits of the mixed use. Together, they carry significant weight in favour of a grant of planning permission.
76. Although not raised by either party, my doubt that the 2018 permission was ever implemented also lends a little weight to the appeal. An express planning approval would give the parties certainty as to the lawful use of the site, without relying on a deemed planning permission arising from future compliance with the notice.

Conclusion for Appeal A on Ground (a)

77. I have found that the change of use conflicts with HLP Policy LP24 and London Plan Policy D6 but does not cause unacceptable harm in terms of the local housing shortage or living conditions within Flat 1. Subject to an 'hours' condition, the salon causes no unacceptable harm through noise and disturbance or to the character and appearance of the surrounding area or the CA. Absences of harm, however, would not justify a grant of permission contrary to the development plan.
78. I have also found, though, that the appellant's personal circumstances and the service she provides to married Haredi Jewish women weigh in favour of the appeal as does, slightly, the certainty which would be gained from a grant of permission. In my view, the personal and public benefits of the salon use outweigh the conflict with HLP Policy LP24 and London Plan Policy D6 and justify a grant of permission.

79. Since the appellant's personal circumstances are key to that conclusion, permission should be granted subject to a 'personal' condition. The PPG is clear that there may be exceptional occasions where development may be justified on planning grounds because of who would benefit from the permission. If and when the appellant ceases to run the salon or live in the building, the salon element of the mixed use would need to cease so that the lawful use becomes use as two flats with the same overall amount of residential floorspace as envisaged by the 2018 permission.
80. As a Haredi Jewish woman, the appellant has the protected characteristics of sex and religion for the purposes of the Public Sector Equality Duty under s149 of the Equality Act 2010. Granting personal permission will protect residential floorspace in posterity while eliminating discrimination against and advancing equality of opportunity for the appellant, so as to foster good relations between her and the settled community. It is the necessary and proportionate decision.
81. I conclude that Appeal A should be allowed on ground (a) and planning permission should be granted subject to conditions that limit the opening hours and make the permission personal to the appellant. The Council has not suggested and I see no need for any other conditions.

OVERALL CONCLUSION AND CORRECTIONS TO THE NOTICE

82. For the reasons given above, the enforcement notice should be corrected to allege that there has been material change of use of the property to use as one self-contained flat plus one unit that is in mixed use as a dwelling and as a wig and hairdressing salon. I am satisfied that the notice can be so corrected without causing injustice to the appellants or the Council.
83. That change of use has occurred and was in breach of planning control, so Appeals A and B must fail on grounds (b) and (c). Since Appeal C concerns the same use, it should be dismissed. Subject to conditions, however, planning permission should be granted for the use and Appeal A should succeed on ground (a). The notice will be quashed and I need not consider any corrections to its requirements.

FORMAL DECISIONS

Appeals A and B: APP/U5360/C/19/3240385 and 3240386

84. It is directed that the enforcement notice be corrected by deleting the text of paragraph 3 in its entirety and substituting: 'Without planning permission, the material change of use of the property to use as one self-contained flat plus one unit that is in mixed use as a dwelling and a wig and hairdressing salon'.
85. Subject to the correction, Appeal A is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under s177(5) of the Town and Country Planning Act 1990 for the development already carried out: the material change of use of the property to use as one self-contained flat plus one unit that is in mixed use as a dwelling and a wig and hairdressing salon at land at 4 Forburg Road, Hackney, London N16 6HS as shown on the plan attached to the notice and subject to the following conditions:
- (1) The mixed use hereby permitted shall be carried on by Mrs Sarah Neuschloss and her resident dependants only. When Mrs Sarah Neuschloss ceases to live in the building or carry out the wig and hairdressing salon component of the mixed use, the salon use shall cease and all materials and equipment brought on to the premises in connection with the salon use shall be removed.

- (2) The wig and hairdressing salon shall only be open for customers between the following hours: 9.30-14.00 hours from Monday to Thursday, 9.30-12.00 on Fridays and not at all on Saturdays or Sundays.

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86. Appeal C is dismissed.

Jean Russell

INSPECTOR