



Appeal Decision

Site visit made on 14 June 2023

by Andy Harwood CMS MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 July 2023

Appeal A) Ref: APP/H5960/C/22/3297411

Flats 1-9, Creative House, 124 Prince Of Wales Drive, London SW8 4BJ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended (the Act). The appeal is made by Luxap Limited against an enforcement notice issued by London Borough of Wandsworth.
 - The notice was issued on 14 March 2022.
 - The breach of planning control as alleged in the notice is:
 1. Without planning permission and within the past ten years, a material change of use of Flat 7, Flat 8 and Flat 9 from residential use (Use Class C3) to short-term lets (Use Class C1).
 2. Without planning permission and within the past ten years, a material change of use of Flat 1, Flat 2, Flat 3, Flat 4, Flat 5 and Flat 6 from a mixed residential and office / commercial use to short-term lets (Use Class C1).
 3. The Council granted a planning permission for two flats located on the ground floor and mezzanine floor on 12 October 2010 under reference 2010/3569. The location of Flat 1, Flat 2, Flat 5 and Flat 6 on Plan 2 show the location of where the flats permitted under planning permission 2010/3569 should be located. However there are six flats (Flats 1-6) located on the ground floor and mezzanine floor for there is no extant planning permission.
 4. The last lawful use of the ground floor and mezzanine floor is a mixed use for two x two bedroom flats (Use Class C3) and office/commercial.
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Appeal B) Ref: APP/H5960/C/22/3297412

Flats 10-11, 13-18, Creative House, 124 Prince Of Wales Drive, London SW8 4BJ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended (the Act). The appeal is made by Luxap Limited against an enforcement notice issued by London Borough of Wandsworth.
 - The notice was issued on 14 March 2022.
 - The breach of planning control as alleged in the notice is: Without planning permission and within the past ten years, a material change of use of the of Flat 10, Flat 11, Flat 13, Flat 14, Flat 15, Flat 16, Flat 17 and Flat 18 from residential use (Use Class C3) to short-term lets (Use Class C1).
 - The requirements of the notice are to:
 1. Cease the unauthorised use of the Flats as short-term let units and return the Flats to their lawful use as residential flats (Use Class C3);
 2. Remove any dividing walls, fixtures, fittings or equipment associated with the unauthorised use from the Flats; and
 3. Remove from the Flats and the Property all debris arising from compliance with steps 1 to 2 above.
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Appeal C) Ref: APP/H5960/C/22/3297413

Flat 19-22, Creative House, 124 Prince Of Wales Drive, London SW8 4BJ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended (the Act). The appeal is made by Luxap Limited against an enforcement notice issued by London Borough of Wandsworth.
 - The notice was issued on 14 March 2022.
 - The breach of planning control as alleged in the notice is: Without planning permission and within the past ten years, a material change of use of the of Flat 19, Flat 20, Flat 21 and Flat 22 from residential use (Use Class C3) to short-term lets (Use Class C1).
 - The requirements of the notice are to:
 1. Cease the unauthorised use of the Flats as short-term let units and return the Properties to their lawful use as residential flats (Use Class C3);
 2. Remove any dividing walls, fixtures, fittings or equipment associated with the unauthorised use from the Flats; and
 3. Remove from the Flats and the Property all debris arising from compliance with steps 1 to 2 above.
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Appeals A), B) and C)

- The periods for compliance with the requirements in each of the notices is: 6 months.
 - The appeals are proceeding on the grounds set out in section 174(2)(a), of the Town and Country Planning Act 1990 as amended and appeal A) is also proceeding on ground (e). 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 A) Decision

1. It is directed that the enforcement notice is corrected by:
 - From Section 2 "The Land to which the Notice Relates" deleting all references to "Flats 1, 2, 3, 4, 5, 6, 7, 8 and 9" and replacing them with "Flats 11, 12, 13, 71, 72, 73, 74, 75, and 76";
 - Deleting 'Plan 2' and the third paragraph of Section 2 referring to Plan 2;
 - Within Section 3, "The Matters which Appear to Constitute the Breach of Planning Control"
 - Within the first paragraph delete "flat 7, flat 8 and flat 9" and replace with "flat 11, flat 12 and flat 13";
 - Within the second paragraph delete "flat 1, flat 2, flat 3, flat 4, flat 5 and flat 6" and replace with "flat 71, flat 72, flat 75, flat 76, flat 73 and flat 74";
 - The deletion of the final 2 paragraphs of this section which start with "The Council granted planning permission ..." and "The last lawful use", respectively.
 - Within Section 5, "What you are required to do":
 - At paragraph '1' delete "flat 7, flat 8 and flat 9" and replace with "flat 11, flat 12 and flat 13"; and
 - At paragraph '2' delete "flat 1, flat 2, flat 3, flat 4, flat 5 and flat 6" and replace with "flat 71, flat 72, flat 75, flat 76, flat 73 and flat 74";

2. Subject to the corrections, the appeal is dismissed, 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) Decision

3. It is directed that the enforcement notice is corrected by:
 - From Section 2, "The Land to which the Notice Relates' and Section 3 "The matters which Appear to Constitute the Breach of Planning Control", delete all references to "Flats 10, flat 11, flat 13, flat 14, flat 15, flat 16, flat 17 and flat 18" and replace them with "Flats 14, 21, 23, 31, 32, 33, Suite 1 and 12."
4. Subject to the corrections, the appeal is dismissed, 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 C) Decision

5. It is directed that the enforcement notice is corrected by:
 - From Section 2, "The Land to which the Notice Relates' and Section 3 "The matters which Appear to Constitute the Breach of Planning Control", delete all references to "Flats 19, flat 20, flat 21 and flat 22" and replace them with "Suite 2, Suite 3, Penthouse 1 and Penthouse 2";
 - From the second paragraph of Section 2, 'The Land to which the Notice Relates', the deletion of "Flats 19 -22" and replace with "Flats known as Suite 2, Suite 3, Penthouse 1 and Penthouse 2."
6. Subject to the corrections, the appeal is dismissed, 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 Preliminary Matters and Getting the Notices in Order

7. On each of the notices, the Council has referenced the numbers of the flats differently from how the numbers appear on the doors of each of the units when I visited. There are 22 units in total within the building with 1 of the units not subject to any requirements on any of the 3 notices. Following my site visit I therefore wrote to the main parties to invite views on re-describing the addresses used on each of the notices to match the actual addresses that are currently used. I have broad powers under the provisions of s176(1)(a) and (b) to correct any defects, errors or misdescriptions where it would not cause injustice to the Council or the appellants. The Council has responded to say that they agree that this would not cause them injustice. The appellant did not respond. As the changes would only alter the description of each unit for clarification, I do not consider that this could be considered to cause the either main party to the appeal any injustice. A consequence of this is also that other references to the numbering throughout the notice will need changing, to match the corrected addresses. This, again, would not cause injustice as the appellant company has clearly understood the notice in its present form and its effective terms would not be altered.
8. When writing out the parties, I also sought clarification about the grounds of appeal. With respect to Appeal A) the appellant company's statement of case

refers to ground (g) but there is no case put that the 6 months given to comply is insufficient and the relevant box was not ticked on the appeal form.

Notwithstanding the lack of a response to my question, it seems clear given the matters raised, that reference to ground (g) in the statement was an error. I am therefore dealing with that case on grounds (a) and (e).

9. With respect to the matters raised in Appeal A) on ground (e), it relates to the accuracy of the plans that were attached to that notice. When I visited, I did note that 'Plan 2' which is referred to regarding the change of use of units 1 – 6 is not entirely accurate with respect to the layout of the ground floor because 'flat 3' is only on 1 floor. I will delete Plan 2 which will be unnecessary given the re-numbering that I have already explained. In addition, the third and fourth paragraphs of section 3 of the notice in Appeal A) do not describe the alleged breach of planning control which is the purpose of that section but is more of an explanatory note. These are unnecessary given that I have corrected the numbering of the flat and so I will delete those paragraphs.
10. For completeness and openness, I have attached the schedule at the end of this decision, which I canvassed the views of the main parties about with respect to the re-numbering that I have carried out on each of the notices.

Appeal (A) ground (e)

11. To succeed on this ground, it is necessary for the appellant to demonstrate that copies of the notice were not served as required by s172 of the Act. Section 172(2) in particular requires that a copy of an enforcement notice shall be served: (a) on the owner and on the occupier of the land to which it relates; and (b) on any other person having an interest in the land, being an interest which, in the opinion of the authority, is materially affected by the notice.
12. The appellants have not alleged that there has been a lack of service upon the necessary individuals or that anyone has suffered any prejudice as a result. They have concerns under this ground of appeal, regarding the inaccuracy of 'plan 2' as referred to in the notice. However, even if that could potentially result in occupiers not being served with copies of the notice, given the use as an apart-hotel, the occupiers would be changing regularly rather than being long term residents. The matters set out by the appellant seem to me to relate primarily to the validity of the notice. The corrections that I have made and as explained above, overcome this matter.
13. Separately from the appellant's case, some leaseholders of some of the units have however made representations in support of the Council's case. Whether or not those individuals were served copies of any of the notices, they were aware of the appeals and made their views known. I am considering those views in my reasoning as set out below.
14. If there were people who were not served copies who should have been, they have not been caused substantial prejudice as a result. The appeal on ground (e) therefore fails.

The Appeal on ground (a)

15. I have to consider whether planning permission should be given for what is alleged on the enforcement notices. As corrected.

Main Issues

16. The first main issue is the effect of the development on the availability and choice of housing within Wandsworth. The second main issue is the effect of the development on the local visitor economy and infrastructure.

Reasons - Housing

17. The appeal site is located in a busy urban area which includes a mix of residential and commercial premises. The main building on the site has 6 storeys with the addition of a mezzanine. Each floor is separated into individual residential units and the nature of the residential use, which is not disputed by the appellants, is for short-term lets rather than as dwellings used as sole or main residences. Furthermore, the flats on the ground and mezzanine floor are where there were previously commercial units. The breaches of planning control have therefore resulted in the loss of residential units, and in the case of Appeal A, non-residential commercial floorspace premises as well.
18. The development plan policies that have been drawn to my attention protect against the loss of residential units. London Plan¹ (LP) Policy H8 states that a loss of existing housing should be replaced by new housing at existing or higher densities with at least the equivalent level of overall floorspace. Policy DMH1 of the Wandsworth Development Management Policies Document² (DMP) similarly sets out limited circumstances when the net loss of residential units will be permitted and none of those circumstances apply here or are argued by the appellant. Furthermore, CS Policy IS5 also protects existing small family sized houses and flats from conversion although only if they have gardens which does not apply but the policy does seek to maintain a continued supply of housing. DMP Policy DTMS13 is positive in allowing, amongst other things, apart-hotel development but that is the case only when there would be no potential impact upon housing capacity.
19. I have no evidence about housing supply in the area or any other information to question that these policies are out of date or inconsistent with the advice at paragraph 219 of the National Planning Policy Framework (the Framework). There has been a loss of residential units as a direct result of the unauthorised material change of use which clearly goes against the emphasis that the above policies have on retaining and increasing housing supply. Furthermore, these policies would not be complied with even if the apart-hotel use is continued only for a temporary period.
20. In relation to this main issue, the development results in a harmful impact upon the availability and choice of housing Wandsworth. For the reasons set out above, LP Policy H8, DMP Policies DMH1 and DTMS13 and CS Policy IS5 are not complied with. Furthermore, the development would not comply with the objective set out in the Framework to significantly boost housing supply.

Reasons – visitor economy

21. Council accept that the site is within the Vauxhall Opportunity Area, a Central Activities Zone (CAZ) and has good transport accessibility. I found the site well related to a variety of uses including substantial visitor attractions such as the old power station and transport services. The use of most of the building for as

¹ The London Plan 2021

² Wandsworth Local Plan, Development Management Policies Document, adopted March 2016

apart-hotel accommodation provides benefits to the area in terms of offering more space for tourists and business visitors to this busy part of London.

22. LP Policy E10 aims to strengthen London's visitor economy and associated employment. It also seeks to provide for a sufficient supply and range of serviced accommodation which should be maintained.
23. I have no evidence about the supply of serviced accommodation in the area or how critical the use of the building in this way is. However, in relation to this main issue, the development would provide some beneficial effects on the local visitor economy and infrastructure. For these reasons, LP Policy E10 would be complied with.

Other Matters

24. The appellant company wish to use the premises for a temporary period. Previously a planning application proposed a period of up to 10 years although that application was withdrawn. Within the appellant's appeal statement they say that the current use could operate for a 6 month period to allow the impacts on housing capacity to be fully examined and considered further in relation to the situation at that time. However, further evidence could have been brought forward on those matters as well as any economic benefits of the current use within the scope of this appeal. The development plan policies demonstrate a clear need for retaining and increasing housing supply. Even though the site may be redeveloped at some point and the Council is involved in those discussions, there may be shorter term housing needs that can be valuably provided for in the meantime time.
25. The appellants intended redevelopment of the site which the Council's Design Review Panel advised on in July 2019, related to a draft proposal for *"Reconfiguration, recladding and erection of 5 additional storeys to Creative House comprising 9no. residential units, in addition to the formation of a commercial unit (Class A1/A2/A3) at ground floor level. Erection of part 12, part 7 storey building (plus basement) comprising 34no. Units for residential use (Class C3), and 2no. commercial units (Class A1/A2/A3) at ground floor. Provision of associated car and cycle parking, plant, refuse and recycling storage, and other associated works"*. This was a service which the appellant paid for. The panel advised that there were fundamental issues with that scheme that needed to be resolved. Their preferred approach would be to see a scheme for the demolition of the building and the sites complete redevelopment. From the information provided, any redevelopment would appear to be a substantial scheme and it is not clear what form it will eventually take, when it would be approved or when it would be completed. From the evidence provided, there is nothing to indicate that allowing the existing use to continue even for a temporary period would increase the chances of an eventual potentially beneficial redevelopment for this site.
26. It is not disputed that this is an accessible urban location which is also close to a range of attractions and services. Although a sustainability assessment has not been submitted, from the information provided it is not clear that the development would rely upon additional on-site vehicle parking spaces. Furthermore, if additional vehicle and cycle parking spaces as well as disabled parking facilities are required, I saw within the site that there could be scope to provide such space as well as waste storage. It would seem feasible that such matters could be dealt with by way of planning conditions requiring the

submission of schemes showing how those facilities could be provided. Similarly, a planning condition relating to the submission of a fire safety report and a scheme for necessary fire safety precautions could also overcome the Council's objections in those respects.

27. I am required, where regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts, to make that determination in accordance with the plan unless material considerations indicate otherwise. There are policies from the plan that pull in different directions. However, the thrust of the plan as a whole is to retain housing and increase housing supply whilst at the same time encouraging economic activity. In this case, the economic benefits explained to me in the representation would be short term and limited. Even a temporary loss of housing provision is harmful to a number of policies within the development plan as well as the Framework. I do not consider therefore that the short term and limited economic benefits outweigh the substantial harm caused due to the loss of residential units.

Conclusion on ground (a)

28. For the reasons set out above, having had regard to the development plan as a whole and all other material considerations, I conclude that the appeal on ground (a) should not succeed and consequently, the deemed planning application shall be refused.

Conclusion

29. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notices 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.

Andy Harwood

INSPECTOR

Schedule of numbering:-

Appeal A Ref: APP/H5960/C/22/3297411	Floor	Original Notice - Council Numbering	Corrected Notice – Actual Numbering
	Ground	1	71
	Ground	2	72
	Ground	3	No flat (laundry)
	Ground	4	76 (maisonette, ground & mezzanine)
	Mezzanine	3	75 (single storey mezzanine only)
	Mezzanine	4	76 (maisonette, ground & mezzanine)
	Mezzanine	5	73
	Mezzanine	6	74
	First	7	11
	First	8	12
	First	9	13

Appeal B Ref:297412	Floor	Original Notice - Council Numbering	Corrected Notice – Actual Numbering
	First	10	14
	Second	11	21
	Second	12	22 (no alleged material change of use)
	Second	13	23
	Third	14	31
	Third	15	32
	Third	16	33
	Fourth	17	Suite 1
	Fourth	18	12

Appeal C Ref: 3297413	Floor	Original Notice - Council Numbering	Corrected Notice – Actual Numbering
	Fifth	19	Suite 2
	Fifth	20	Suite 3
	Sixth	21	Penthouse 1
	Sixth	22	Penthouse 2