



Appeal Decision

Site visit made on 8 September 2023

by D Moore BSc (HONS), PGDip, MCD, MRTPI, IHBC

an Inspector appointed by the Secretary of State

Decision date: 22nd September 2023

Appeal Ref: APP/N5660/C/22/3307901

1-3 Cooper's Yard, London SE19 1TN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the 1990 Act) as amended.
- The appeal is made by Mr Zac Rodney against an enforcement notice issued by the London Borough of Lambeth.
- The notice was issued on 19 August 2022.
- The breach of planning control as alleged in the notice is without planning permission, the unauthorised material change of use of the premises from offices to 3 self-contained flats ('the unauthorised 3 flats') and the installation of replacement uPVC windows and doors to the north and west facades ('the unauthorised uPVC windows and doors').
- The requirements of the notice are:
 - a) Cease the use of each of the unauthorised 3 flats; and
 - b) Remove all internal partitions and divisions, all kitchen units and all appliances that facilitate the unauthorised use of each of the unauthorised 3 flats; and
 - c) Remove the unauthorised uPVC windows and doors from the premises and reinstate the metal windows and doors as existed prior to the breach of planning control (filling any resultant voids with materials to match the adjacent work), and
 - d) Remove all associated waste and debris resulting from compliance with the above steps, from the premises.
- The period for compliance with the requirements is 9 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (d) and (g) of the 1990 Act 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.

Summary of Decision: The appeal is dismissed, and the enforcement notice is upheld with a correction and a variation in the terms set out below in the Formal Decision.

Preliminary Matters

1. The enforcement notice detailed two allegations, one concerning the use of the appeal premises and the other concerning alterations to the windows and doors to the north and west facades. I saw there were UPVC windows and doors on the elevation facing into Cooper's Yard, and a further window and door to the gable elevation facing towards Westow Hill. In my understanding, this would be the west and south facing facades. The appellant had not queried the matter. However, I consider the reference to the north and west facades should be deleted in the interests of accuracy. I am satisfied I can make this correction without injustice because the parties are clear which elements of the development are targeted by the notice.
2. On 5 September 2023, the Secretary of State for Levelling Up, Housing and Communities made a Written Ministerial Statement outlining amendments to

the National Planning Policy Framework (the Framework). The amendments concern onshore wind energy developments and do not bear directly on this appeal.

3. There is a dispute between the parties about whether or not the Council followed due process before serving the enforcement notice. However, this is not relevant to the matters before me. I note there is no ground (e) appeal, that copies of the notice were not properly served as required by Section 172 of the 1990 Act.

The ground (c) appeal

4. The ground (c) appeal concerns the windows and doors only. In order to succeed on this ground of appeal, the appellant must show, on the balance of probabilities, that the installation of replacement UPVC windows and doors does not constitute a breach of planning control.
5. It is first necessary to consider whether the replacement of the windows and doors constitutes 'development'. Section 55(1) to the 1990 Act says that the word 'development' means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land. Section 55(1A) says that for the purposes of the Act 'building operations' includes (a) demolition of buildings (b) rebuilding (c) structural alterations of or additions to buildings and (d) other operations normally undertaken by a person carrying on business as a builder. Section 57(1) says that, subject to the provisions of the section, planning permission is required for the carrying out of any development of land.
6. The installation of replacement windows and/or doors is not specifically mentioned as being within the term 'building operations' as set out in s55(1A). However, given the manner and nature of the work involved in removing and re-fitting the new windows and doors, this involved a building operation. The work would have required an element of planning and specific skills would be needed. The scale of the operation suggests that the work was undertaken by people who would normally carry on trade as a builder. As such, I find that the replacement of the windows and doors falls within the concluding clause of the definition of 'building operations'.
7. Section 55(2)(a) excludes from the definition of development works for the maintenance, improvement or other alteration of any building which (i) affect only the interior of the building, or (ii) do not materially affect the external appearance of the building. In deciding whether works materially affect the external appearance, a measure of planning judgement is involved.
8. Although the size and position of the openings has not been altered significantly, the modern synthetic window frames have a material affect when compared to the traditional metal windows, which were characterised by thin glazing bars and small panes. The windows are a distinctive feature of the building and are integral to its design and function. Similarly, the installation of domestic 'patio' style doors does not reflect the more traditional, utilitarian doors that previously existed. The windows and door are visible from a number of vantage points and are material to the appearance of the building as a

whole¹, as a matter of fact and degree. I conclude, therefore, that the works to fit replacement windows and doors are not excluded from the definition of development by virtue of s55(2) and express planning permission would be required.

9. The ground (c) appeal fails, therefore.

The ground (d) appeal

10. To succeed on the ground (d) appeal the appellant must show, on the balance of probabilities that (i) that the material change of use to three self-contained flats took place four or more years prior to the date of the notice and continued after the date of change without significant interruption, such that it is now too late to take enforcement action, and (ii) that the replacement windows and doors were substantially completed four or more years prior to the date of the notice.
11. The appellant has provided a Statutory Declaration², dated 27 September 2022, from a family member. This states that the appeal premises was inherited sometime after 1997 and, at that time, it was believed to be in use as flats or live/work units, with two of the units occupied by residential tenants. In December 2016, it is stated that the appellant entered into an agreement with a third party who let each unit for residential purposes.
12. A series of emails has been submitted which indicates there were people occupying a property at Cooper's Yard from December 2016, but it is unclear whether this relates to the appeal building or in what capacity the units were occupied and by whom. Copies of Assured Shorthold Tenancy Agreements (AST) dated 19 December 2016, between the third party and a tenant have been provided for No 1 Cooper's Yard for a term of two years. This was renewed on 19 December 2018 for a further two years. No ASTs for Nos 2 and 3 have been provided although it is stated that the premises has always been three separate units. It is further explained that the units were refurbished, and the windows were replaced due to their poor condition but there is no detail of when this took place.
13. The appellant's evidence is very limited. The previous use is unclear, whether the units were in live/work use or solely residential use. There is no evidence relating to Nos 2 and 3, and the AST for No 1 does not show how the premises was used and occupied. For example, there are no utility bills, invoices, rental payments, statements from occupants or Council Tax payments for the three units. Overall, the submissions are imprecise and ambiguous.
14. There is limited detail about when the windows and doors were replaced. The appellant's 'Google' street view image dated 2016/17 shows the previous metal windows. The Council's own evidence from street view images strongly indicates that the new windows and doors were installed sometime in 2020 or 2021.
15. I conclude on this matter that the appellant has not shown, on the balance of probabilities, that the material change of use to three flats took place four or

¹ *Burroughs Day v Bristol CC* [1996] 1PLR 78; EGLR 167. This case established that whether changes materially affect the external appearance should be judged against the external appearance of the building as a whole; the degree of visibility; the nature of the building and the nature of the alteration/works.

² Under the Statutory Declarations Act 1835.

more years prior to the date of the notice and continued after the date of change without significant interruption, such that it is now too late to take enforcement action. Nor has it been shown, on the balance of probabilities, that the replacement windows and doors were substantially completed four or more years prior to the date of the notice.

16. The appeal on ground (d) fails, therefore.

The ground (a) appeal and the deemed planning application

Background and Main Issues

17. The ground (a) appeal is that planning permission should be granted for the matters alleged. The terms of the deemed planning application are derived from the corrected allegation. Hence, planning permission is sought for the material change of use of the premises from offices to three self-contained flats and the installation of replacement UPVC windows and doors.
18. The main issues are (i) whether the development would result in the loss of office floorspace to the detriment of investment and economic growth, (ii) whether the flats would provide adequate living conditions for existing and future occupiers in terms of room sizes, light and ventilation and refuse storage facilities, (iii) whether the development would promote sustainable forms of transport, and (iv) the effect of the replacement windows and doors on the character and appearance of the host building and the wider area.

Office Floorspace

19. Policy ED1 of the Lambeth Local Plan (2021) seeks to protect and increase its stock of office floorspace to support investment and economic growth. The policy resists the loss of office floorspace unless several tests are met, which includes robust evidence of a lack of demand and appropriate viability or feasibility studies. In addition, Policy ED2 resists the loss of affordable workspace unless the equivalent would be made available elsewhere. Affordable workspace is that provided at rents below the market rate for a specific social, cultural or economic development purpose. The appellant does not dispute that the development would not accord with Policy ED1 because the required information has not been provided to show the tests have been met. However, it is argued that there is clear evidence of an abundant supply of office floor space locally, which indicates limited demand. It is further maintained that the accommodation provided by the appeal premises would not suit the requirements of future occupiers.
20. The appellant has made valid arguments but the evidence to support the assertions is not robust. The supporting documentation is limited to a simple search on 'Rightmove' for commercial premises that are available within a three mile radius of the site. There is no evidence of the reasons why that space is available, nor how the accommodation compares the appeal premises. Policy ED1 requires at least two years evidence of marketing to show there is no demand, and a report by a suitably qualified person to show it would not be feasible and/or viable to refurbish and modernise the office to meet occupiers' needs. The required information has not been provided and there is a clear conflict with the policy. Similarly, there is no information on the applicability of Policy ED2 or whether the requirements for alternative provision would be necessary.

21. I accept that the Framework seeks to significantly boost the supply of homes, and make effective use of land, but this policy objective must be considered alongside the development plan policies, which enable redevelopment of commercial premises where it has been shown this would not affect the local economy.
22. The appellant raises the 'fallback' position and suggests that the lawful use of the premises as offices would enable it to be used for a wide range of uses, such as a food and drink establishment, pursuant to the provisions within Schedule 2, Part 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015. It may be the case that permitted development rights would apply to the premises. However, there must be a realistic and not a merely theoretical prospect of the fallback position being an alternative. The appellant must show that a different use is likely to be carried out, on the balance of probability, and there are no insuperable practical drawbacks to its implementation. The fallback position should also be identified in sufficient detail so that it can be compared to what is alleged. Given the limited detail on this matter, I am unable to assess whether the fallback that may take place would be less desirable than that for which planning permission is sought. Nor has it been shown that any such fallback would be realistic. Consequently, I give this matter limited weight.
23. I conclude on this matter that the development would result in an unacceptable loss of office floorspace to the detriment of investment and economic growth and would not accord with Policy ED1 of the Local Plan. The other considerations carry limited weight and do not outweigh the conflict with the policy.

Living Conditions

24. The development provides three flats with Gross Internal Floorspace (GIA), according to the appellant, as follows: Flat 1 is a one-bedroom flat with a GIA of 34 square metres (sqm); Flat 2 is a two-bedroom flat with a GIA of 53 sqm; Flat 3 of a one bedroom flat with a GIA of 48 sqm. In addition, the main habitable rooms in Flats 2 and 3 are single aspect.
25. Policies D5, D6 and D7 of the London Plan (2021) and Policies H5 and Q2 of the Local Plan seek to ensure housing development is of a high quality and accessible design with adequately sized rooms in accordance with the minimum internal space standards³ and functional layouts that are fit for purpose. The minimum GIA for a one-bedroom, two person flat is 50 sqm, and for a two bedroom, three person flat the GIA is 61sqm. The accommodation provided by the development falls short of these requirements and, as such, they would not meet the required design criteria. Furthermore, there is no provision for outdoor space, which is also a requirement of the relevant policies.
26. The Council is concerned that the mix of dwelling sizes would not appear to meet the requirements of Policy H10 of the London Plan and Policy H4 of the Local Plan. While there may well be demand for the size and type of housing provided, there is no clear evidence of local need other than the fact that two of the flats are occupied. The flats would not be suitable for people with limited mobility due to the layouts and internal steps.

³ Derived from the MHCLG publication "Technical housing standards – nationally described space standards" 2015.

27. The single aspect nature of the rooms in Flats 2 and 3 is undesirable in terms of ensuring adequate ventilation and light. However, the Council accepts the windows are of a good size, and are west facing, and so the arrangement is considered acceptable in this instance. I saw that there is a space set aside close to the development for refuse and recycling storage. Although this is not for the sole use of the flat occupants, it is screened and conveniently located. I consider it meets the aims of Local Plan policy Q12.
28. I acknowledge that the development would constitute the provision of an additional three units of residential accommodation on a small brownfield site with good accessibility. As such, there would be no conflict with Policies H1 and H2 of the London Plan and H1 of the Local Plan. However, it is important to ensure the quality of the accommodation is suitable for existing and future occupants while meeting the local housing need. The development fails to achieve this aim and the provision of three units of residential accommodation does not outweigh the wider conflict with policy.
29. I conclude on this matter that the development would not provide adequate living conditions for existing and future occupiers in terms of room sizes, accessibility and the mix of dwelling types. It would not, therefore, accord with Policies H10, D5, D6 and D7 of the London Plan and Policies H4, H5 and Q2 of the Local Plan.

Transport

30. The Council considers the development may result in a detrimental impact on parking stress in the area. It is acknowledged that the premises is within an area well served by public transport, with an excellent Public Transport Accessibility Level (PTAL) rating of 6b. As such, no specific on-site parking would be sought, but the development should be car free, which is where no on-site parking is provided, and residents would be excluded from the Council's residents' parking permit scheme. This would normally be secured through a planning obligation under Section 106 of the 1990 Act, in accordance with Policy T6 of the Local Plan. There is no such agreement in place due to the unauthorised nature of the development.
31. The appellant argues that there is parking space within Cooper's Yard, which is available for use by the appellant, although it is not clear whether this right would extend to the tenants. On the evidence available, I am not able to reach a conclusion that the semi-commercial location, and the traffic restrictions on local roads, would simply obviate the need for a planning obligation. Future occupants of the flats may have cars, and if these cannot be accommodated within Cooper's Yard, there may well be an increase in parking stress in the area. The Council would also be seeking five secure and well-designed cycle parking spaces to meet the requirements of development plan policy. There is no evidence that any dedicated cycle parking space has been provided either internally or external to the flats.
32. Overall, I find that the development fails to promote sustainable modes of transport, including prioritising and promoting walking and cycling, which is contrary to Policies D2, Q13, T1, T3 and T6 of the Local Plan and Policies T5 and T6 of the London Plan.

Character and Appearance

33. The appeal premises is a part single-storey, part two-storey building located within Cooper's Yard, within an area of mixed residential and commercial development. The building is utilitarian in design with the fenestration and doors being the main architectural feature.
34. The windows that previously existed were of a traditional metal design with glazing bars and small lights, which were appropriate to the form of the building, and its location, and made a positive contribution to local distinctiveness. However, the replacement windows and the new patio doors do not complement the building or reflect its simple design. The residential style windows and doors with wide glazing bars, fabricated from white UPVC stand out as an uncharacteristic feature that is detrimental to the host building and the wider area.
35. I appreciate that the doors, in particular, were in a poor state of repair but this does not justify the installation of an inappropriate substitute.
36. I conclude on this matter that the replacement windows and doors have a harmful effect on the character and appearance of the host building and on the local distinctiveness Cooper's Yard, contrary to Policies Q5, Q8 and Q11 of the Local Plan, which seek to secure high quality design while sustaining local distinctiveness. The development would not accord with the guidance of the Council's Supplementary Planning Document: Building Alterations and Extensions (2015) which, among other things, seeks to secure quality architectural detailing.

Conclusion

37. I conclude that the proposal would not accord with the development plan taken as a whole and there are no substantiated considerations that would outweigh the conflict with policy.
38. The appeal on ground (a) fails, therefore.

The ground (g) appeal

39. The ground (g) appeal is that the period for compliance specified in the notice falls short of what should reasonably be allowed. The appellant is seeking 12 months to allow for the expiration of tenancy agreements and/or to agree a compromise solution with the Council.
40. I am mindful that the implication of upholding the notice is that at least two families would be required to find new homes. Consequently, I consider a 12 month compliance period to be reasonable and proportionate in these circumstances. The ground (g) appeal succeeds to this limited extent.

Conclusion

41. For the reasons given above, I conclude that the appeal should succeed on ground (g) only. I shall uphold the enforcement notice with a correction and a variation and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Formal Decision

42. It is directed that the enforcement notice is corrected by the deletion of the words "to the north and west facades" from paragraph 3 and varied by the deletion of 9 months and the substitution of 12 months as the period for compliance.
43. Subject to the correction and variation, 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.

D Moore

Inspector