



Appeal Decision

Site visit made on 20 May 2024

by Chris Baxter BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19th July 2024

Appeal Ref: APP/A5840/C/22/3307562

Enclosed land on the south side of Rothsay Street, West of No 3 Rothsay Street, and east of the publically accessible garden used as a refuse storage, Rothsay Street, London SE1 4UH

- 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 Act).
- The appeal is made by Alil Industrial Limited against an enforcement notice issued by London Borough of Southwark Council.
- The enforcement notice was issued on 23 August 2022.
- The breach of planning control as alleged in the notice is failure to comply with condition 3 imposed on a planning permission ref 06/AP/1116 granted on 27 February 2009.
- The development to which the permission relates is:
Retrospective planning application to retain three refurbished and extended buildings (Block A, B & C) and a new 5 storey Block (D) to provide a total of 189 residential units (171 private and 18 shared ownership units) 6681 sqm of live work space, a basement car part for 185 cars and to provide 251 bicycle spaces and a residents garden to the east of the site with public access during daytime hours.
- The condition in question is no 3 which states that:
Detailed drawings of the relocated refuse and recycling storage shall be submitted within 3 months from the date of this permission and shall be relocated within 3 months following the completion of the garden. The space shall not be used for any other purpose without the prior written consent of the Council as local planning authority.
- The requirements of the notice are to:
 - 5.1 *Provide the key/s (or other method of access) to an authorised Waste collector for collection*
 - 5.2 *If in the case that the lock (or other method of access) is damaged or otherwise unusable so that it is replaced, that within 24 hours of these works having taking place, that the key/s (or other method of access) is provided to an authorised Waste collector for collection.*
- The period for compliance with the requirement is one day.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (f), (g) of the Act. 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.

Decision

1. The appeal is allowed and the enforcement notice is quashed.

Applications for costs

2. An application for costs was made by Alil Industrial Limited against London Borough of Southwark Council. This application is the subject of a separate Decision.

Grounds (b) and (c)

3. An appeal on ground (b) is a claim that the matters stated in the notice (which may give rise to the breach of planning control) have not occurred as a matter of fact.
4. An appeal on ground (c) is that the matters alleged at Section 3 of the enforcement notice, if they occurred, do not constitute a breach of planning control. The onus of proof in ground (b) and (c) appeals is on the appellant and the test of evidence is on the balance of probability.
5. Condition 3 of planning permission 06/AP/1116 has two main parts to it. The first is a requirement for detailed drawings of the relocated refuse and recycling storage to be submitted and then to be relocated following the completion of the garden. The second part of the condition states that the space shall not be used for any other purpose without the written consent of the Council.
6. Details of the relocated refuse and recycling storage were submitted and agreed by the Council in application 09/AP/0698 and the Council are satisfied that the relocated refuse and recycling storage was provided in the location as approved. The first part of the condition has therefore been satisfied.
7. The refuse and recycling storage has been in use for over 10 years. The Council state a breach has occurred as a result of the removal of access to the refuse and recycling store, and that this had taken place around August/September 2022. The appellant confirms that the refuse and recycling storage area is not currently being used for its intended purpose although they do state that there has not been a material change of use. The Council claim that there has been a material change of use of this land however, they have not indicated what use the land has changed to. Representations made by local residents' state that the space has not been used for any other purpose.
8. There is no compelling evidence submitted which convinces me that the refuse and recycling storage space has been used for any other purposes. Whilst the space may not be operating as a storage space for refuse and recycling, it nevertheless, is not being used for any other purpose and therefore it does not breach the exact wording of condition 3.
9. The courts take a purposive as well as pragmatic approach to the interpretation of conditions. Various cases have been brought to my attention including *Fawcett*¹, *Trump*², *Lambeth*³ and *Crisp*⁴. These contend that a condition is only void for uncertainty if it can be given no sensible meaning and that the starting-point – and usually the end-point – is to find “the natural and ordinary meaning” of the words there used, viewed in their particular context and in the light of common sense. The natural and ordinary meaning of the words of condition 3 requires details of a refuse and recycling storage space to be submitted and then provided, with the space to not be used for any other purpose. From the evidence before me, the Council agreed details of a refuse and recycling storage space which was subsequently provided and on the balance of probability the space has not been used for any other purpose.

¹ *Fawcett Properties v Buckinghamshire CC* [1961] AC 636

² *Trump International Golf Club Scotland Ltd v the Scottish Ministers* [2015] UKSC 74

³ *Lambeth LBC v SSCLG & Aberdeen Asset Management, Nottinghamshire CC & HHGL Ltd* [2019] UKSC 33

⁴ *Crisp from the Fens Ltd v Rutland County Council* (1950) 1 P & CR 48, 59

10. Consequently, it has not been demonstrated that at the date the notice was issued the matters alleged had occurred or that there has been a breach of planning control.

11. Therefore, the appeal on grounds (b) and (c) succeed.

Other Matters

12. I have had regards to all the correspondence and photographs submitted from local residents and the Jam Factory Residents Association which have expressed their frustration with the refuse and recycling storage space situation. The matters raised by the residents include refuse and recycling requirements, unsanitary/hazardous conditions, health and safety, fire hazard, effect to residents living conditions and wellbeing, unsatisfactory alternative refuse and recycling storage, residents' costs, rights of access/use, property valuations. These matters however do not alter my findings with regards to grounds (b) and (c) and that there has not been a breach of condition 3.

Conclusion

13. From the evidence before me and the reasons given above, I conclude that the appeal should succeed on grounds (b) and (c), and the enforcement notice should be quashed and the appeal on grounds (a), (f) and (g) does not fall to be considered.

Chris Baxter

INSPECTOR