



Appeal Decisions

Site visit made on 15 October 2024

by D Fleming BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 November 2024

Appeal A Ref: APP/Y5420/C/23/3318515

1-2 The Broadway, Wood Green, LONDON N22 6DS

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Murat Demir against an enforcement notice issued by the Council of the London Borough of Haringey.
 - The notice was issued on 27 February 2023.
 - The breach of planning control as alleged in the notice is without planning permission, the change of use of the upper floors to a restaurant with associated staff facilities.
 - The requirements of the notice are to cease the use of the upper floors as a restaurant with associated staff facilities.
 - The period for compliance with the requirement is 9 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (d) of the Town and Country Planning Act 1990 (as amended). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Appeal B Ref: APP/Y5420/W/23/3318084

1-2 The Broadway, Wood Green, LONDON N22 6DS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Murat Demir against the decision of the Council of the London Borough of Haringey.
 - The application Ref is HGY/2020/0913.
 - The development proposed is described as retrospective planning application for the change of use of the first and second floors from residential (C3) use to restaurant (A3) use with staff facilities at third floor level.
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Decisions

Appeal A

1. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the Town and Country Planning Act 1990, as amended, for the development already carried out namely the material change of use of the upper floors to a restaurant with associated staff facilities at 1-2 The Broadway, Wood Green, London N22 6DS, as referred to in the notice.

Appeal B

2. The appeal is allowed and planning permission is granted for development described as retrospective planning application for the change of use of the first and second floors from residential (C3) use to restaurant use (E) with staff facilities at third floor level at 1-2 The Broadway, Wood Green, London

N22 6DS in accordance with the terms of the application reference HGY/2020/0913, dated 1 April 2020.

Procedural Matter

3. The appellant's description of the development refers to the restaurant as being within Class A3 of the Town and Country Planning (Use Classes) Order 1987. Class A3 was replaced by Class E in September 2020 and I shall therefore proceed on this basis.

Background

4. The appeal is in relation to the first and second floor above a restaurant, as well as the converted loft area. The building is situated at the end of a purpose built shopping parade and comprises two units at ground floor operating as one restaurant. Evidence from a previous application (ref 2013/1663) shows that access to the upper floors was from the side of the restaurant from external staircases. These led to a 2 bedroom maisonette and a 3 bedroom maisonette.
5. Internally the dividing wall between the maisonettes has now been punched through at first and second floor level and one internal staircase has been re-positioned at first floor level and an additional one has been inserted at second floor level to provide access to the converted loft area. I saw that the first and second floors are laid out with tables and chairs and, in addition, there is a bar at second floor level. The loft area is divided into 4 rooms 2 of which are used as offices with some stock storage. The remaining 2 rooms are used for storage and a staff rest area.

The ground (d) appeal

6. This ground of appeal is that at the date when the notice was issued, no enforcement action could be taken. The burden of proof in an appeal on this ground lies with the appellant. As such, the appellant needs to show, on the balance of probabilities, that the material change of use of the upper floors to a restaurant with associated staff facilities occurred before the relevant date. The relevant date is 27 February 2013, namely more than 10 years before the notice was issued.
7. The appellant states the "restaurant use" and "office use ancillary to the restaurant" began February 2010. He made an application to change the use of the *1st floor* (my emphasis) residential space at No 2a The Broadway into a restaurant sitting area in 2010 (Ref 2010/0366) but this was refused by the Council on 21 April 2010. Notwithstanding the refusal, the appellant states he went ahead with the use anyway. This was because he had tried for several months to find a tenant for the residential unit at No 2a, to no avail.
8. In 2013 the appellant made an application for Nos 1-2 The Broadway to change the use of the first and second floors from residential to B1 (offices). This was granted on 4 October 2013. The approved plans show two separate planning units numbered 1a and 2a The Broadway each with their own access at the rear/side of the restaurant via external stairs.
9. The 2013 application was made because the appellant had been unable to find a tenant for flat No 1a. He submits copies of estate agent letters from January, February and March 2013 in which the estate agent states that No 1a

is in an appropriate condition to let as a flat, that viewings have taken place but potential tenants are put off by the busy restaurant below.

10. The planning officer who visited the site prior to the determination of the application stated, "The site is currently being used as storage for the restaurant on the ground floor with one room as an office". It is not clear whether the 1st and 2nd floor of both Nos 1a and 2a were being used for storage and where the office was located.
11. The only other evidence from the appellant is a statutory declaration in which he states that "the building" has been used as a restaurant and offices ancillary to the restaurant since 2010. He also submits Council tax and Business rate records. These show that with effect from particular dates no Council tax is being paid for various units, as set out in the table below:

19 Apr 1993	2 The Broadway
2 Jun 2000	1 The Broadway
5 Mar 2012	1 st & 2 nd floors, 2a The Broadway
24 Mar 2013	2 nd floor, 1a The Broadway

12. The Summary Valuation for the shop and premises at Nos 1-2 The Broadway has an effective date of 29 August 2017 and sets out a detailed description of how the property is zoned. In particular, it shows restaurant zones on the 1st and 2nd floor and an office zone on the 3rd floor.
13. The Council submits an extract from Google Street View dated August 2014 which shows the front elevation of the premises. They point out the dilapidated condition of the windows, some of which are open and the To Let boards. They submit that it does not appear that the 1st and 2nd floor are in use as a restaurant. They also point out various contradictions on the completed 2013 application form such as, that the current use of the site is stated as being residential not a restaurant. In addition, the accompanying Design and Access Statement describes the site as "currently vacant residential units".

Assessment

14. The Council tax evidence shows that the residential units were vacant from particular dates but it does not follow that a restaurant use was in operation thereafter. The valuation evidence from 2017 is more useful in that it clearly sets out how all the floor space is used at that point. It therefore appears that the restaurant had expanded into the upper floors and into the roof area by this date.
15. However, events prior to this date are not so clear. I find little support for the appellant's broad statement that the upper floors were used as a restaurant with ancillary office from February 2010. Rather, the evidence appears to show that the change of use and its component parts may have taken place on an incremental basis. For example, the 2010 application was only for the first floor of No 2 The Broadway. It is not clear at this point whether the appellant's business had expanded into the adjoining ground floor unit at No 1

The Broadway. If the change of use to restaurant sitting space took place in 2010 then the appellant would have had to insert a new internal staircase from the ground floor of No 2 to the first floor for diners to use. However, this is not shown on the 2013 application plans.

16. The 2013 application plans continue to show separate planning units on the upper floors from the ground floor restaurant and the estate agent confirms that flat No 1a remains a separate planning unit. However, the planning officer visiting the site observes storage taking place at either or both of the flats and a room used as an office, indicating a functional link with the ground floor restaurant. The appellant may have been doing this on an interim basis without the need for any physical alterations with easy access facilitated by the external stairs.
17. The appellant though provides no explanation or documentation to demonstrate when the physical separation ended between the flats and the restaurant and the new restaurant sitting area use began. At my site visit I saw large openings had been created in the load bearing party walls to facilitate an expanse of open space across the first and second floors of Nos 1-2 The Broadway. The internal staircase at No 1a had also been removed. It is likely these works would have required approval from the Council and been carried out by builders but there are no copies of contracts or dated photographs of works in progress. There is also no evidence to show when the loft area was converted into office/storage space and staff rest area.
18. I give significant weight to the Council's Google Street View image from 2014 as I find it unlikely that the first and second floors would have been converted into restaurant use without replacing the dilapidated wooden windows. I saw at my site visit that all the front elevation windows were now plastic as opposed to wood.
19. The Planning Practice Guidance advises that if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to reject it. This is provided the appellant's evidence alone is sufficiently precise and unambiguous, on the balance of probability.
20. I have found the appellant's evidence to be inconsistent and he has not satisfied the requirement to submit evidence that is sufficiently precise and unambiguous, on the balance of probability. Consequently, he has not discharged the onus of proof that the use of the upper floors began before the relevant date and continued without material interruption for a period of ten years thereafter. The appeal on ground (d) therefore fails.

The ground (a) appeal, the deemed planning application and the section 78 appeal

Main Issue

21. The main issue is the provision of housing within the borough.

Reasons

22. For the purpose of my determination under the planning Acts, I am required to determine the appeal in accordance with the development plan, unless material considerations indicate otherwise. The development plan in this

instance is The London Plan¹ (TLP), Hariney's Local Plan² (HLP) and Haringey London, Development Management DPD (the DPD) adopted 2017.

23. The development has resulted in the loss of a 2 bedroom and a 3 bedroom maisonette. Both Policy H8 of TLP and Policy DM10 of the DPD state that the loss of existing housing should be replaced by new housing at existing or higher densities. Policy SP2 of the HLP sets out the strategic approach to housing in the borough and emphasises, in particular, the requirement for excellence in design quality.
24. I find the loss of 2 residential units has a harmful effect on the provision of housing within the borough especially in the absence of a 5 year housing land supply. As such, there is conflict with the development plan. However, I have had regard to the strategic objective of Policy SP2, where there is an emphasis on design quality for new housing.
25. Wood Green High Road has been a shopping area since Victorian times with residential uses above the shop units. The area has seen significant redevelopment over the years, such as the erection of Wood Green Shopping City in the 1970s, which provides an indoor shopping area as well as a cinema and numerous flats at higher levels. More recently a significant number of new flats have been built above some redeveloped shops near to the Sainsbury Local on the High Road. There are also earlier purpose-built shopping parades along the High Road with flats above, such as the appeal site, erected in the 1930s.
26. It seems to me that the environment around some of the older residential flats has not kept pace with the changes in the area. More recent developments have clearly defined accesses to the flats at street level in the public domain. There is also a distinct separation between the commercial space and the residential space, overall exhibiting good design.
27. The Broadway is a continuous commercial parade with a former cinema, now used as a church, in the middle. Access to the maisonettes is from the rear via a narrow service road, which is largely enclosed by the high walls of the library building. Over the years some of the ground floor commercial units have changed from shops, which would close during the evening, to restaurants. These now operate with ventilation and extraction equipment, often erected on the flat roofs of extensions built in the open areas to the rear of the commercial units.
28. The outlook from the front of the maisonettes is directly on to the High Road, with no set back, where there are numerous bus routes and other traffic as it is the main north-south route in the area. The outlook from the rear is over ventilation and extraction equipment not just at the appeal site but the adjacent units as well, where a KFC fast food restaurant occupies 2 conjoined units. There is an audible background sound of mechanical humming in this area and along the High Road there is the sound of traffic and the hustle and bustle of people. It seems to me that the occupiers of the maisonettes would have no respite from this environment.

¹ The London Plan, The Spatial Development Plan for Greater London March 2021

² Hariney's Local Plan, Strategic Policies 2013-2026 (Formerly the Core Strategy) adopted March 2013, Consolidated with alterations since 2017.

29. Although there are some streetlights in the service road, I find it is an uninviting space and I saw some residents had erected CCTV cameras to monitor their access stairs. This may be because the service road enables pedestrians to take a short cut to a large car park, though it appears this route may be locked at night by a gate. In addition, the maisonette at No 2a The Broadway would have abutted the first floor seating area of the KFC fast food restaurant.
30. The Council tax evidence from the appellant indicates that the maisonettes were vacant for some time and according to the estate agent they were unattractive to the potential tenants who viewed them. Whilst the Council granted planning permission in 2013 to change the use of the upper floors to Class B (offices), partly on the basis that a residential use was unsuitable above a restaurant, this decision was made prior to the adoption of the current development plan.
31. I find, having regard to the location, access and the outlook from the maisonettes, that these amount to other material considerations. They demonstrate that, in the particular circumstances of this finely balanced case, the harm caused by the loss of two residential units, and the conflict with the development plan, is clearly outweighed by other material considerations.
32. The appeal on ground (a) therefore succeeds. The material change of use has occurred; no conditions have been suggested by the parties to regulate the use and I see no reason to do so either.

Conclusion

33. For the reasons given above, I conclude that Appeal A succeeds on ground (a) and I shall grant planning permission for the use as described in the notice. Appeal B also succeeds for the same reasons.

D Fleming

INSPECTOR