



Appeal Decision

Site visit made on 5 March 2012

by JP Roberts BSc(Hons), LLB(Hons), MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 21 May 2012

Appeal Ref: APP/X5210/C/11/2164836
16 Fortress Road, London NW5 2EU

- 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 appeal is made by Mr Dipak Patel against an enforcement notice issued by the Council of the London Borough of Camden.
 - The Council's reference is EN11/0182.
 - The notice was issued on 10 October 2011.
 - The breach of planning control as alleged in the notice is "without planning permission: The Unauthorised change of use of the property at rear ground floor level from shop (Class A1) to residential studio flat (Class C3)
 - The requirements of the notice are to cease the use of the rear ground floor part of the property as a studio flat and reinstate the whole of the ground floor back to retail use (Class A1).
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended.
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Decision

1. I direct that the enforcement notice be corrected by deleting the words in paragraph 5 of the notice "and reinstate the whole of the ground floor back to retail use (Class A1)". Subject to this correction the appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Preliminary matters

2. As well as requiring the residential use of the flat to cease, the notice also says "reinstate the whole of the ground floor back to retail use". It requires that some positive use be made of the whole of the ground floor, and this goes beyond remedying the alleged breach. I shall therefore correct the notice.
3. A planning obligation under Section 106 of the Town and Country Planning Act 1990 has been submitted in connection with the appeal, and I shall refer to this in more detail below.

Main Issues

4. The main issues in the Ground (a) appeal are:
 - i) the effect of the development on the living conditions of the occupier of the rear flat;
 - ii) the effect of the development on the character and function of the Kentish Town Centre, and

- iii) the effect of the development on parking.

Reasons

Ground (a) appeal

Living conditions

5. The flat comprises a single room used as a bedroom, living room and kitchen, together with a bathroom and corridor in which some domestic appliances are also kept.
6. Camden Local Development Framework Development Policies Policy DP26 deals with managing the impact of development on occupiers and neighbours, and amongst other things, it seeks acceptable standards of accommodation in terms of internal arrangements, room sizes and amenity space. The explanatory text indicates that the Council's Supplementary Planning Documents (SPD) provide further details. One of these, CPG6 *Amenity*, requires occupiers to have a pleasant outlook.
7. The main room is lit only by skylights; the only view from these windows is of the sky or the walls of neighbouring buildings, and thus there is no outlook to speak of. There is no outdoor amenity space either. This gives the flat a very hemmed-in and claustrophobic feel and it does not provide a good standard of accommodation or provide a high quality dwelling.
8. I have had full regard to the submissions of the occupier of the flat, who clearly likes living there. However, if permission were granted, there would perhaps be a large number of successive occupiers in the future, and it is important to ensure that if changes to residential use are permitted, that future occupiers can be assured of the high standard of living accommodation that both local and national policies aim to achieve.
9. I therefore find on the first main issue that the development harms the living conditions of occupiers of the flat with particular regard to outlook, and is contrary to the aims of Policy DP26.

The effect on the town centre

10. The site lies in a parade of commercial premises in the Kentish Town town centre, not far from the Kentish Town underground station. The remaining retail area of the premises is small, comprising a single room and a toilet, and at the time of my visit was unused. Policy CS7 of the adopted Camden Core Strategy aims to protect and enhance the borough's centres, and one of the policy's criteria aims to protect and promote small and independent shops, and to resist the loss of shops where this would cause harm to the character and function of a centre. The Council's Development Policies DP12 also aims to support the role of town centres.
11. The appeal site forms part of the retail area of the town centre, where ground floor commercial uses predominate, and the loss of retail units would undermine the development plan objective of protecting the function of the town centre. I saw on my visit that there were a number of vacant premises nearby. I also saw a recent retail and residential redevelopment of a former public house on the opposite side of the road where the residential part of the scheme has been completed but the ground floor retail part has some way to go before it will be ready for occupation. I have not been provided with any

precise details on the length of vacancies, or any other information about these other properties which might be relevant to the arguments about whether the proposal would conflict with the aims of the Core Strategy policy. Having regard to the challenging conditions which face the economy at present, the "snapshot" showing a number of vacant premises is an insufficient reason not to determine the deemed application in accordance with the Council's development plan policies.

12. The provision of the flat at the rear enables the retail use at the front to continue. However, the appellant has referred to difficulties he has had in letting the current unit; whilst its small size might be suitable for some retail uses, there is considerable force in the Council's contention that the current small size may make it even less appealing to the market than if the floorspace occupied by the flat were available to it. Thus, the loss of a substantial proportion of the available retail floorspace conflicts with the policy aim of protecting the function and character of the town centre.
13. I therefore conclude that the development has a harmful effect on the vitality and character of the town centre, and conflicts with the development plan policies to which I have referred above.

Car parking

14. The site provides no off-street car parking, and there are parking restrictions on nearby roads. I have no doubt that parking is under considerable stress, and the introduction of an additional flat would add to that stress, and if not mitigated, would be a good reason to refuse planning permission. However, a planning agreement under Section 106 of the Town and Country Planning Act 1990 has been submitted which precludes occupiers of the flat from applying for a resident's parking permit. I consider that the obligation is reasonable, necessary and relevant to the development, and overcomes this reason for issuing the notice.

Other matters

15. The appellant argues that some of the floorspace occupied by the flat was not previously in retail use. This appears to be an argument that either a breach of planning control has not occurred over the whole of the site, which would fall to be considered under section 174(c) of the Act, or that the time period for taking enforcement action has passed, a ground under section 174(d).
16. However, the onus of proof under such grounds lies with the appellant, and no substantive evidence has been submitted to corroborate the claim. Thus, if it is the appellant's intention that the appeal should be considered under either of these grounds, there is insufficient evidence to support them, and thus the appeal fails on these grounds.
17. I note the appellant's concern that he felt that the Council had indicated that the proposal was acceptable by encouraging him to enter into a planning agreement. However, whether or not this is the case, this is not a sufficient reason to alter my conclusions.

Conclusions

18. Even though I find that the reason for issuing the notice regarding car parking has been overcome, the harm that results to the living conditions of occupiers

and the harm to the vitality and character of the town centre are sufficient reasons to refuse planning permission. In coming to this view, I have had regard to the National Planning Policy Framework (NPPF) which was published on 27 March 2012. However, as the NPPF continues to seek high quality dwellings with good standards of accommodation, and to pursue policies to support the vitality and viability of town centres, in the light of the specific facts of this case, it does not alter my conclusion that planning permission should be refused.

19. Accordingly, for the reasons given above, I conclude that, subject to the correction referred to above, the appeal should be dismissed and the notice upheld.

JP Roberts

INSPECTOR