

1A HIGHGATE ROAD, LONDON NW5 1JY

IDM Land Limited

Grounds of Appeal

Ground (c) Appeal

Summary

1. The breach of planning control alleged in the enforcement notice is “Construction of a residential development providing 13 residential units”.
2. It is the Appellant’s case that:
 - a. It carried out works to a warehouse building at 1A Highgate Road.
 - b. Those works do not constitute a breach of planning control as:
 - i. Insofar as those works constituted operational development they were authorised by express planning permissions granted by the London Borough of Camden (“the Council”).
 - ii. Insofar as a material change of use is alleged, a change of use from a warehouse (Class B8) to a use falling within Class C3 (dwellinghouses) planning permission was granted by Article 3(1) and Class P of Part 3 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015.

The Main Material Facts

The Site

3. The Appeal Site is known as 1A, Highgate Road, London NW5 1JY as shown on the plan attached to the enforcement notice.
4. The Appeal Site is located to the rear of properties on the south side of Highgate Road within the designated Kentish Town Centre. Access to the site is gained via a narrow cobbled alleyway between the Grade II listed 3 storey Bull and Gate public house, and some four and five storey properties at 1-7, Highgate Road. To the south and west of the site is a railway line.

5. Almost the entirety of the Appeal Site is occupied by a brick built single storey building and adjoining garage.
6. In 2014, or before, the building and garage was used as a warehouse was used for the storage of pianos.

The Appellant

7. IDM Land Limited (“the Appellant”) is registered at the Land Registry as the freehold proprietor with title absolute of the Appeal Site under Title Number LN93841 subject to a charge to a mortgagee. The Appellant has an interest in the land to which the enforcement notice relates.

Planning History

The 11 Unit Prior Approval

8. On 19th April 2016 the Appellant applied, pursuant to the condition set out at paragraph P.2(b) of Part 3 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 (“the GPDO”), for a determination as to whether prior approval of the Council was required for change of use of the warehouse on the Appeal Site to 11 residential units.
9. By a decision notice dated 22nd June 2016 the Council granted prior approval for “Change of use from warehouse (Class B8) to 11 self-contained residential units (Class C3)”¹ (“the 11 Unit Prior Approval”).
10. On 5th September 2016, the Appellant applied to the Council for approval of details reserved by conditions 2,3,4,5,6,8 and 9 attached to the 2016 Prior Approval. That application was approved by a decision notice dated 22nd June 2016.

The 13 Unit Prior Approval

11. In an application dated 22nd September 2016 the Appellant applied to the Council for a determination as to whether prior approval was required for change of use of the warehouse to 13 residential units.

¹ LPA Ref: 2016/2279/P

12. By a decision notice dated 17th November 2016 the Council granted prior approval for the change of use of the warehouse to 13 residential units.² (“the 13 Unit Prior Approval”).

The December 2016 Planning Permission

13. By an application dated 22nd August 2016 the Appellant applied to the Council for planning permission to develop the Appeal Site by:

“Alterations to roof of building, new window in rear elevation and new front door”

14. The application was supported by a number of reports, including a Structural Appraisal of Existing Roof Structure at 1A Highgate Road prepared by Barrett Mahony dated 8th August 2016 (“the Barret Mahony Report”). In that report it was stated that the existing roof structure was structurally unsound and had partially collapsed in places.

15. By a decision notice dated 20th December 2016 planning permission was granted for:

“Alterations to roof and elevations of warehouse building (Class B8), including changes to roof profiles, new rooflights, new doors and windows in front and rear elevations, plus new paving and fencing in front entrance courtyard.”³

(“the December 2016 Planning Permission”)

The 2017 Planning Permission

16. By an application dated 14th June 2017, the Appellant applied, pursuant to section 73 of the Town and Country Planning Act 1990 (“TCPA 1990”) for planning permission to develop the Site by:

“Minor amendments to improve the approved scheme to be more in keeping with the existing building. Please see attached document 'Design Statement'”

17. By a decision notice dated 30th November 2017 the Council granted planning permission for:

² LPA Ref: 2016/5336/P

³ LPA Ref: 2016/4663/P

“Proposal: Variation of condition 4 (development in accordance with approved plans) of planning permission ref 2016/4663/P dated 20.12.16 (for Alterations to roof and elevations of warehouse building (Class B8), including changes to roof profiles, new rooflights, new doors and windows in front and rear elevations, plus new paving and fencing in front entrance courtyard), namely to allow further design alterations to roof, facades, fenestration and courtyard.”⁴

(“the November 2017 Planning Permission”)

18. Condition 4 attached to the 2017 Planning Permission provides:

The development hereby permitted shall be carried out in accordance with the following approved plans- 050-P1, 054-P1, 075-P2, 076-P1, 077-P2; Design statement by Avebury (revised version received 7.8.17), Daylight and sunlight report by Point dated October 2016.

19. Drawing 076-P1 shows the proposed roof plans.

20. Drawing 075-P2 shows that the rear elevation of the warehouse is to be re-built in matching brick. That drawing also shows the provision of a replacement roof for the warehouse.

21. The November 2017 Planning Permission authorised operational development including replacement of the rear elevation and replacement of the roof as shown on the approved plans.

The Works

22. The Appellant has carried out works to the warehouse building at the Appeal Site. Those works include the following:

- a. Removal and replacement of the roof
- b. Removal and replacement of the rear (south western) wall including installation of Crittall style windows with larger apertures.
- c. Alterations to the front elevation including installation of a glazed canopy and entrance doors and windows.
- d. Installation of internal dividing walls
- e. Removal of the ground floor slab and replacement with a suspended slab with steel reinforcement.

⁴ LPA Ref: 2017/3428/P

23. Those works were carried out between 24th March 2017 and 18th April 2018.

Authorisation for the development

Operational Development

24. In all material respects the removal and replacement of the roof was carried out in accordance with drawing 076-P1.
25. In all material respects the removal and replacement of the rear wall (including installation of Crittall style windows with larger apertures) was carried out in accordance with drawing 075-P2.
26. In all material respects the alterations to the front elevation including installation of a glazed canopy and entrance doors and windows were carried out in accordance with drawing 075-P2.
27. The installation of internal dividing walls are operations which affect only the interior of the building. In the alternative the installation of the dividing walls does not materially affect the external appearance of the building. As provided by Section 55(2)(a)(i) TCPA 1990 those works are not to be taken to involve development of the land⁵.
28. The installation of the floor slab is an operation which affects only the interior of the building. In the alternative the installation of the floor slab does not materially affect the external appearance of the building. As provided by Section 55(2)(a)(i) TCPA 1990 those works are not to be taken to involve development of the land.
29. All the operational development was authorised by the planning permission granted by the Council.
30. The November 2017 Planning Permission granted permission for alterations to the roof and elevations of the warehouse building. The word 'alterations' was used by the Council in the decision notice. A planning permission for the alteration of a building is predicated on the basis that there is an existing building which will be altered. A planning permission for alteration to a building envisages alterations (i.e. changes) being made to a building. The building is the same

⁵ Section 55(2)(a) TCPA 1990:

(2) The following operations or uses of land shall not be taken for the purposes of this Act to involve development of the land—

(a) the carrying out for the maintenance, improvement or other alteration of any building of works which—

(i) affect only the interior of the building, or

(ii) do not materially affect the external appearance of the building,

and are not works for making good war damage or works begun after 5th December 1968 for the alteration of a building by providing additional space in it underground;

building both before and after the alterations are carried out, although following alterations its appearance will change.

Material Change of Use

31. To the extent that it is alleged that there has been a material change of use of the land, that change of use is authorised by Article 3(1) and Class P of Part 3 of Schedule 2 to the GPDO. That permitted development right permits development consisting of a change of use of a building.
32. At the time that the works (including removal of the rear wall and roof) were carried out the word 'building' was defined in Article 2(1) of the GPDO as:

“building” —

(a) includes any structure or erection and, except in Class F of Part 2, Class B of Part 11, Classes A to I of Part 14, Classes A, B and C of Part 16 and Class T of Part 19, of Schedule 2, includes any part of a building; and

(b) does not include plant or machinery and, in Schedule 2, except in Class F of Part 2 and Class C of Part 11, does not include any gate, fence, wall or other means of enclosure

33. The definition of building in Article 2(1) of the GPDO was changed by Article 3 of the Town and Country Planning (General Permitted Development) (England) (Amendment) Order 2018. The effect of that change was to exclude Class P of Part 3 of Schedule 2 from the definition of building. That change came into force on 6th April 2018. The works subject to the enforcement notice were carried out before the change came into effect.
34. The warehouse, without the rear wall and roof, remained a structure or erection, and therefore, a building falling within the definition set out in Article 2(1) of the GPDO.
35. Class P of Part 3 of Schedule 2 of the GPDO grants permission for development consisting of change of use of a building from a B8 use to a C3 use. For the reasons given above the warehouse building on the Site fell within the definition (in the GPDO) of 'building' when the rear wall and roof had been removed, and continued to fall within that definition when the rear wall and roof had been re-built.
36. None of the exclusions set out at P.1 apply.

37. At the time that the 13 Unit Prior Approval was granted, the Council were satisfied that the conditions set out at P.2 were satisfied.
38. The procedure for making an application for prior approval is set out at paragraph W of Part 3 of Schedule 2 to the GPDO.
39. The details approved on granting the 13 Unit Prior Approval included drawings 070-P5, 071-P6 and 056-P2. Those drawings include:
 - a. A drawing showing existing and proposed areas (056-P2).
 - b. Ground floor layout- including windows in the rear wall (070-P5)
 - c. First floor layout (071-P6)
40. The ground floor layout is consistent with drawing 070-P5. The first floor layout is consistent with drawing 071-P6. The internal arrangements are consistent with the disposition of uses shown on drawing 056-P2.

Conclusion

41. The process followed by the Appellant was entirely consistent with the advice given in the Planning Practice Guidance (“PPG”) section on ‘What is Development?’, which states:

Do permitted development rights for change of use also allow for physical development?

Where associated physical development is required to implement the change of use, developers should consider whether it constitutes development and should ensure they have planning permission if necessary. Some permitted development rights for change of use allow for limited physical works to carry out the change. Full details can be found in Part 3 of Schedule 2 to the General Permitted Development Order⁶.

42. The allegation in the enforcement notice is, without planning permission: construction of a residential development providing 13 residential units. Insofar as that allegation relates to operational development that has been carried out at the Appeal Site, that operational development was authorised by the planning permission granted by the Council. Insofar as that allegation relates to a material change of use from warehouse (class B8) to residential (class C3) that change of use was authorised by the GPDO.

⁶ Paragraph: 055 Reference ID: 13-055-20140306

43. The matters alleged in the enforcement notice do not constitute a breach of planning control as the development was carried out in accordance with the planning permissions which had been granted.

1A HIGHGATE ROAD, LONDON NW5
1JY

THE APPELLANT Land Limited

Draft Grounds of Appeal – ground (c)

Lara Carneiro ARB OA
IDM Land Limited,
Office B, Gainsborough Studios West,
1, Poole Street,
London N1 5EA