
Appeal Decision

Hearing and site visit held on 5 March 2014

by A U Ghafoor BSc (Hons) MA MRTPI

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

Decision date: 16 April 2014

**Appeal Ref: APP/Y5420/C/13/2201618
60-68 Markfield Road London N15 4RD**

- 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 The Directors Perch Creative Studios Limited against an enforcement notice issued by the Council of the London Borough of Haringey.
- The Council's reference is FCV/2012/00647.
- The notice was issued on 28 May 2013.
- The breach of planning control as alleged in the notice is the unauthorised change of use to live/work units.
- The requirements of the notice are to cease the use of the land as residential and live/work units.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (b), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with corrections and variations.

Preliminary Matters

1. At the Hearing, ground (f) was added. I will deal with the steps required to comply with the issued notice under that context.
2. The appellant is a company the Directors of which submitted the appeal. The planning agent confirmed that he represented the Directors of the company and, for consistency; I will refer to them as '*the appellant company*'.

Grounds (b) and (c)

3. The appeal parties ('the Parties') agree that the land constitutes a single planning unit and I have no reason to disagree, because of the single unit of occupation. The land, which is outlined in red on the plan attached to the notice and includes the whole building, can be used for business purposes or for activities falling within those classified as B1 in the UCO¹. That is broadly consistent with the findings of a previous Inspector in relation to an enforcement appeal on the same land².

¹ Use class B1 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 as amended ('the UCO').

² The alleged breach of planning control related to the change of use of the land from general industrial use to use of the ground floor as a function room and the first floor as a community church. The appeal was dismissed on 30 November 2006.

4. The nub of the appellant company's main argument is that no breach of planning control has occurred because the whole building is used for business purposes. Although there is a vehicle repair business on the site, the businesses are mainly independent and start-up and carry out activities which fall within those classified as Class B1 of the UCO.
5. All of the tenants have signed commercial leases instead of assured shorthold agreements. Indeed, the sample commercial lease, attached to the appellant company's final comments bundle of evidence, is particularly instructive of the commercial nature of the enterprises. The lease specifies the permitted use as offices, artists' studios and craft workshops. The permitted hours are stated as 0700 to 2300 on any working day. There does not appear to be any specific mention of the living arrangements.
6. My attention was drawn to the definition of 'live/work' as stated in Policy EMP7 of the London Borough of Haringey Unitary Development Plan (UDP) 2006. Paragraph 5.39 of the supporting text defines these units as '*a self-contained unit with separate living and working floorspace*³'. The planning agent's argument was that there are no defined areas allocated to work and living; the claim was that all of the floor area is used for business use.
7. The appeal building is a large commercial property spread over two floors. The layout of the floors is virtually identical in that there is a large open-plan central area with rooms around the periphery. There is one main entrance with a staircase linking the floors. The open-plan areas contain sofas and workstations. It appeared that these items are mainly used in connection with the businesses due to their layout and the availability of office equipment and furniture. At the time of my site visit, people were working in these areas.
8. The rooms positioned around the periphery of the building are mainly used for residential purposes. I was told that these spaces are used for both living and working; however, they contained facilities for sleeping. For example beds, mattresses, cupboard, wardrobe and storage spaces. The doors were fitted with locks presumably for privacy and security. I recognise that some of these rooms include office tables and chairs, but, in my view, they are mainly used for residential purposes. In addition to that, the building contains facilities for cooking and washing. The kitchens contain a large dining table with chairs. There are separate toilet and shower facilities on both floors.
9. As a matter of fact and degree, in addition to the business use of the building, I find that a separate residential use has been introduced given the availability of the cooking, sleeping and washing facilities. A large proportion of the building is used for residential purposes due to the size of the kitchens, washrooms and bedrooms.
10. The introduction of a residential use, whether on its own or as part of a mix of uses, represents a material change of use of the building given the amount of floor area used for living purposes and the extent and scale of the residential activities. Additionally, the residential use of the land is likely to have some on and off-site consequences. For example, increased comings and goings at various times of the day and night. Contrary to the appellant company's view, I find that the introduction of the residential element has resulted in a mixed

³ The Council referred to the definition of live/work units in Circular 03/05, but it has been cancelled as a result of the publication of the Planning Practice Guidance (6 March 2014).

use comprising business and residential for which planning permission is necessary.

11. Technically speaking, the issued notice is incorrect in that it alleges the change of use to live/work units; there is only one building and not physically and functionally separate live-work units. In any event, to reflect the reality of the breach of planning control, and for greater precision, the allegation should state the following:

Without planning permission, the material change of use of the land from its business use to a mixed use comprising business and residential use.

12. From the written and oral evidence, it is apparent that the notice attacks the residential use of the building. Although the requirement states: *cease the use of the land as residential and live/work units*, the Parties confirmed that it was the residential element of the mixed use which required ceasing. I will return to the requirement later. Nonetheless, from the way in which the case has been presented, the appellant company was aware of the intention behind the notice. The Council stated that the reference to UDP Policy UD3 in the reasons is an error, but these are typographical mistakes.
13. The envisaged corrections to the allegation and reasons do not undermine the basis of the notice. The Parties confirmed that no injustice would be caused were I to correct the notice which I shall do.
14. As a matter of fact, the building was in a mixed use during the period leading up to the issuing of the notice and at the time when it was issued. The corrected alleged breach of planning control had occurred as a matter of fact. Planning permission is required for the corrected allegation and it has not been granted.
15. Therefore, I conclude that the appeal lodged under grounds (b) and (c) must fail.

Ground (a)

16. The terms of the deemed planning application are directly derived from the corrected breach of planning control. However, at the Hearing, it was made clear that planning permission is sought for the use of the whole building as a live-work unit. No case was made on the basis that planning permission is sought for a mixed business and residential use of any part of the building as such. For consistency, I will evaluate the planning merits of the development on this basis.
17. The appeal site is located within a mainly commercial and industrial area which is locally designated in the UDP as a defined employment use area (DEA 14). In the more recent Haringey Local Plan (HLP) 2013, it is classified as a Locally Significant Industrial Site (LSIS 14).
18. The **main issue** to consider is the effect of the development upon the supply of employment land within the Borough and, linked to that, the living conditions of the occupiers of the proposed live-work unit having particular regard to living standards.
19. No. 60 – 68 is a large two-storey commercial property. The building is currently occupied by individual start-up enterprises. Occasionally, the building

- is used as studios for joint projects such as photography, set production and costume design and stunts. There is also a vehicle repair enterprise.
20. Policy 4.4 of The London Plan (July 2011 as amended by the REMA⁴), relates to managing industrial land and premises. UDP Policy EMP4 sets out the Council's approach to non-employment generating uses in such locations. The Policy applies to any land or buildings in employment generating use and states that planning permission will be granted to redevelop or change the use to a non-employment generating use provided it is no longer suitable for business or industrial use; and there is well documented evidence of an unsuccessful marketing campaign; or where the redevelopment or re-use would retain or increase the number of jobs permanently provided on the site, and result in wider regeneration benefits.
 21. Policy EMP7 concerns live-work units. These units can reduce the need to travel, assist start up and small businesses and can provide a more flexible and sustainable way of living and working. The Policy states that proposals for live-work units will only be permitted provided that: (a) they are outside the Industrial Location DEAs; (b) the residential element complies with the Council's standards on dwelling and room sizes and other residential amenity standards; (c) at least a minimum of 25% of the floor area is allocated for workspace; and (d) where appropriate, the proposal complies with Policy EMP5. Detailed plans showing the proposed internal layout of individual units must be submitted and, where applicable, the Council will seek an element of affordable housing provision in schemes.
 22. Paragraph 5.40 accepts that the circumstances and characteristics of live-work units will determine the configuration of the internal floorspace. However, the Council will be seeking a definable working area to ensure that developments are genuine live-work units without compromising residential standards. Paragraph 5.41 explains that due to the nature of some of the activities that occur within the Industrial Location DEAs, it is considered that live-work units are not appropriate within such areas.
 23. The objective of HLP Policy SP8 is to safeguard sites located within LSIS 14 for uses falling within activities classified as Classes B1 (b), (c), B2 and B8 where they continue to meet the demand and needs of modern industry and business.
 24. Paragraph 22 of the National Planning Policy Framework states that planning policies should avoid the long term protection of sites allocated for employment use where there is no reasonable prospect of a site being used for that purpose. I find the cited local planning policies broadly consistent with that advice.
 25. I heard first hand evidence from some of the existing tenants. They cannot afford higher residential rents in the Borough or elsewhere and so find that the live-work environment would be of significant benefit to make their small enterprises succeed. I sympathise with these concerns, but there is a planning problem. The site is located within an established industrial area where such developments are restricted and require specific justification. For instance, the developer should show that the building is no longer suitable for its business or industrial use, but no satisfactory evidence has been submitted to show that the age, condition or structure of the building is no longer viable for its

⁴ The Revised Early Minor Alterations to The London Plan 2013 (REMA).

- business or industrial use. The information does not show that the building is inflexible and awkward for a business or industrial use.
26. I was informed that the building was previously used as a place of worship and function room and it remained unoccupied for a period of time prior to the appellant company's acquisition. However, there is no information to show how long the building was unoccupied. In addition, there is no evidence of any marketing campaign so it is difficult to draw any conclusions about the attractiveness of the building for business or industrial occupiers.
 27. The evidence does not show that the use of the site as a live-work unit would retain or increase the number of jobs permanently provided on the site or result in wider regeneration benefits. Therefore, the current mixed use of the building, or its proposed use as a live-work unit, fundamentally conflicts with UDP Policy EMP4.
 28. The planning agent asserted that up to 70% of the floorspace would be allocated to employment uses and that the bedrooms are doubled-up as live-work units. However, I have already found that these rooms are mainly used for sleeping in because of their layout, design and the availability of bedroom furniture. Furthermore, no floor plans have been submitted illustrating which parts of the building would be used for living and working. In the absence of detailed floor plans showing the internal configuration and layout of the live-work unit, it is difficult to conclude that about 70% of the floorspace would be allocated to employment use.
 29. Given the location of the site within a locally designated DEA and LSIS 14 area, the building's use as a live-work unit would result in the loss of employment land without sufficient planning justification contrary to the main aims and objectives of UDP Policy EMP7 and HLP Policy SP8, and advice contained within paragraphs 17 and 22 of the Framework.
 30. Criterion (b) of UDP Policy EMP7 states that, for live-work units, the residential element should comply with the Council's standards on dwelling and room sizes and other residential amenity standards. The building includes facilities for cooking, washing and sleeping and there are some communal areas. The argument is that the building is already used for residential purposes in connection with the business use and there have been no complaints about living conditions; it does not necessarily follow that an acceptable living environment can be created given the design and size of the building. The lack of detailed floor plans makes it even more difficult to evaluate the configuration and layout of the residential accommodation and it is unclear as to whether or not the type of live-work unit would be appropriate for this particular building.
 31. I will next review the other material considerations advanced by the appellant company in support of the live-work proposal. In the light of guidance contained within the PPG⁵, the planning agent submitted that conditions can be imposed to require 70% of the floorspace to be allocated to employment uses. Given the nature of the development, I am not so sure because the potential wording would be imprecise. In addition, there are no floor plans to tie down the use of certain areas for employment activities.

⁵ National Planning Practice Guidance, 6 March 2014, which replaced Circular 11/95: *The use of conditions in planning permissions* apart from its model conditions.

32. There are non-employment generating uses within the vicinity including some residential properties on Broad Lane. However, as I have already said elsewhere, the prevailing character of the area is industrial.
33. For consistency's sake I should consider the appeal decision in relation to no. 5 Fountayne Road, which is located within the DEA/LISI 14 employment area. In that case, temporary planning permission was granted for a live-work unit at first floor level even though the Inspector found that the development conflicted with local planning policies. However, significant weight was attached to other material considerations.
34. In this case, the nature and history of the site combined with the outlined employment, economic and social benefits arising from the current use of the building do not substantially outweigh the fact that the proposed live-work use would be contrary to UDP Policies EMP4 and EMP7 and HLP Policy SP8. Therefore, the other considerations individually or collectively do not outweigh my findings.
35. For all of the above reasons, on the basis of the available information, I conclude that the mixed use of the building comprising business and residential, and the proposed live-work use, would have a materially harmful effect upon the supply of employment land within the Borough and, linked to that, harm the living conditions of future occupiers.

Ground (f)

36. It is necessary to consider whether or not the steps required to comply with the notice are excessive. The issued notice required the appellant company to simply cease the use of the land as residential and live/work units. The Council confirmed that it did not require the removal of the kitchens or bathrooms. From the wording of the requirements, it sought to remedy the breach of planning control; squarely derived from Section 173 (4) (a) of the Town and Country Planning Act 1990 as amended.
37. Given my findings in grounds (b) and (c) above, the requirement should flow from the corrected allegation. The requirement should state: *cease the use of the land for residential purposes*. This is how the Parties interpreted the steps required to comply with the notice and my variation would not make the notice any more onerous than first issued. I am content that no injustice would be caused by such a variation.
38. No lesser steps were advanced to remedy the breach of planning control. Therefore, the varied step would not be excessive to remedy the breach of planning control. However, I am varying the steps required to comply with the notice and so ground (f) succeeds to this limited extent only.

Ground (g)

39. The appellant company's argument was that the compliance period is too short. This is because the current occupiers require 12 months to relocate. The submitted tenancy agreement is a commercial lease and does not specifically relate to the residential use of the building. In any event, the term is rolling on a monthly basis following the first month's payment of rent.
40. Given the nature of the work required to cease the residential use of the building, I consider 12 months compliance period would be too excessive.

Nonetheless, the current occupiers would need to find suitable accommodation elsewhere; I am mindful of the potential impact of my decision upon these start-up businesses.

41. On the particular circumstances of this case, I consider that six months period for compliance would be reasonable. The appeal on ground (g) succeeds to this extent only.

Overall conclusions

42. For the reasons given above and having considered all other matters, I conclude that the appeals lodged under grounds (b), (c) and (a) should not succeed. As I am varying the requirements and the compliance period, the ground (f) and (g) appeals succeed to this extent only. I shall uphold the enforcement notice with corrections and variations and refuse to grant planning permission on the deemed application.

Formal Decision - Appeal Ref: APP/Y5420/C/13/2201618

43. The enforcement notice is corrected by the deletion of all of the text in paragraph 3 the breach of planning control alleged and the substitution therefor of the following text: *Without planning permission, the material change of use of the land from its business use to a mixed use comprising the following elements: business and residential uses.*
44. The enforcement notice is corrected by the deletion of the words and numbers '*...and UD3 'General Principle'*'.
45. The enforcement notice is varied by the deletion of all of the text in paragraph 5 (1) what you are required to do and the substitution therefor of the following text: *Cease the use of the land for residential purposes.*
46. The enforcement notice is varied by the deletion of the number '3' and the substitution therefor of the number '6' under the heading: time compliance.
47. Subject to these corrections and variations, the appeal is dismissed and 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.

A U Ghafoor

Inspector

APPEARANCES

FOR THE APPELLANT:

Alvin Ormonde	Wiesenfield Associates on behalf of the appellant company
Rachel Lovelock	}
	}
Mat Nathan	}Tenants

FOR THE LOCAL PLANNING AUTHORITY:

Edward Grant	Barrister, instructed by Legal Services section
Sumaya Nakamya	Enforcement officer

DOCUMENTS

- 1 Hearing notification letter and consultation list
- 2 List of planning history for the site – letter dated 4 February 2014
- 3 Copy of appeal decision APP/Y5420/C/05/2004824
- 4 Copy of TH8: South Tottenham Employment Area