



Appeal Decision

Site visit made on 11 July 2011

by Phil Grainger BA(Hons) MRTPI

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

Decision date: 15 July 2011

Appeal Ref: APP/T5720/C/11/2150438

land at 336 Western Road, Colliers Wood, London SW19 2QA

- 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 Collierbridge Properties Ltd against an enforcement notice issued by the Council of the London Borough of Merton.
- The Council's reference is 43177.
- The notice was issued on 3 March 2011.
- The breach of planning control as alleged in the notice is: *a material change of use of the first floor and part of the ground floor at the land into four self-contained flats.*
- The requirements of the notice are:
 - (a) *completely and permanently cease the use of the land as self contained flats;*
 - (b) *completely and permanently remove all partitions, doors, means of separation, facilities, fixtures and fittings facilitating the use of the land as self contained flats.*
- The period for compliance with the requirements is six 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.

Summary of Decision: the appeal is dismissed and the enforcement notice upheld.

Main Issue

1. This is the adequacy of the residential environment that can be provided for occupiers of the flats, having particular regard to noise, outlook and amenity space, and taking into account any impact that safeguarding occupiers' living conditions might have on nearby commercial activity.

Inspector's Reasoning

2. The appeal property is a former public house located within but on the edge of a designated industrial area and facing a busy main road. Much of the ground floor is, for the present at least, now used as a bar/restaurant. The remainder of the ground floor (towards the rear of the property) and the first floor currently comprise 4 self-contained flats. During my visit I was able to see inside three of the flats. In respect of the other (flat 1) I have relied on what I could see externally, together with the planning application drawings that I was shown on site and which also appear on the Council's website.
3. Looking first at flat 4, which is on the ground floor, all its windows are small. Moreover, all but one of them face north across a narrow commercial access (serving a car storage area to the rear) towards a blank gable wall of more than normal two storey height. The outlook is exceptionally poor and I found the interior of the flat very gloomy, even on a bright day. Furthermore, using blinds, curtains or opaque glazing to screen the interior of the flat from users of the commercial access would make this worse.
4. Flat 3, which again is mostly on the ground floor, also has a poor outlook with most of its ground floor windows facing at very close range the solid fence,

- over 2m high, that surrounds the public garden area of the bar/restaurant. Moreover, although the fence is solid it is not an acoustic one and is unlikely to provide significant attenuation of noise from customers using the garden. That is especially so in respect of the first floor bedroom window which faces directly over the garden area and obliquely at the rear of the bar/restaurant itself.
5. The other flats are on the first floor and include rooms facing Western Road. They have a better outlook and seem likely, for the most part, to receive adequate natural light. However, both bedrooms in flat 2 and one bedroom and the living room in flat 1 are directly above the public areas of the bar/restaurant. These rooms also face the busy road. Furthermore, the commercial premises to the side and rear, although at present apparently largely unused, have the potential to generate further noise.
 6. Given all this I would expect most if not all of the flats to experience high levels of noise for significant periods of time, especially if occupiers want to have windows open for ventilation. Moreover, that noise could continue until late on some evenings. No actual noise readings have been provided to suggest that this is not the case or that the site is in an area where Planning Policy Guidance Note 24 advises that noise is not likely to be a serious problem. Nor, despite the appellants' claims, have any details of soundproofing, existing or proposed, been supplied to suggest that mitigation is practicable, and it is far from self-evident that this could be achieved in this situation. Both national advice and local policy discourage residential development in noisy areas.
 7. In addition, at least some of the flats include rooms that are smaller than those specified in the Council's floorspace standards, albeit in some cases only marginally, and there is currently no effective outdoor amenity space at all. The appellants suggest that a communal amenity area could be formed, but this would be at the rear of the residual bar/restaurant garden and adjoined by parking areas on two other sides. Even with the suggested planting and fencing it would be a poor quality space. Moreover, from three of the flats access to it would be via the commercial access serving the parking area at the rear. This is an unsatisfactory arrangement, especially as young children are involved.
 8. Taking all this into account I conclude that, whilst the nature of the effects may vary between the flats, the occupiers of all of them would experience a poor residential environment, in some cases extremely poor. Notwithstanding the appellants' claims no contrary view from the tenants themselves has been provided. Moreover, in respect of flat 4 it is difficult to see how any meaningful improvement to its very poor outlook could be achieved. In addition, it appears likely that improving noise conditions for the flats could be achieved only if the activities of adjoining commercial users are restricted. Even if this could be achieved, it seems inappropriate in an area where the aim of development plan policy appears to be to allow firms to operate without conflict with other land uses. I note that an adjoining firm have already raised concerns about their activities being hindered.
 9. All this is very different from the circumstances and conditions of the houses immediately across Western Road. These are long established, pre-dating any planning control. In addition, although they face the road on one side they are not in general closely affected by other non-residential uses to the rear. Nor are they within the same building as a noise-generating use.
 10. In addition, the present use of the appeal premises as independent flats is materially different from any past use as ancillary accommodation connected with the former public house. In particular, it is not normally considered

necessary or appropriate to apply similar levels of protection to ancillary accommodation, as, amongst other things, employees are likely to be working on the premises at noisy times.

11. As for the appellants' suggestion that the accommodation was not ancillary, the evidence seems at best unclear. In my experience public houses normally have ancillary living accommodation associated with them and whilst various witness statements refer to 4 flats that does not necessarily mean that they were independent of the public house. Moreover, even if that was the case there is no evidence as to how long such a situation had existed. In my view this evidence, which is not corroborated by, for example, Council Tax records, falls far short of demonstrating that on the balance of probabilities an independent residential use existed and was lawful. Furthermore, the evidence strongly suggests that whatever the residential use was it had ceased and the accommodation had become uninhabitable before the works that led to the enforcement proceedings were carried out. In any event, no appeal under grounds (b), (c) or (d) has been made.
12. I have taken into account that the flats are currently occupied, in some cases by families with children, and that the tenants seem to be vulnerable people who would otherwise be on the Council's waiting list. This, together with the desirability of making full use of land and buildings in accessible locations and the need for affordable housing in the area, counts significantly in favour of granting planning permission. So too does the fact that this is a previously developed site. However, although the premises remained unused and were the focus of anti-social activities for several years before being refurbished, it is not clear to me that a return to those conditions is inevitable if this appeal is dismissed. (For the avoidance of doubt this is not intended to imply that the premises could or should be returned to use as a public house.)
13. In any event, like the previous Inspector, I consider that these matters are clearly outweighed by the extremely poor residential environment provided. In my view this is not consistent with the aim, identified in Planning Policy Statement 3, of providing high quality homes. It is also contrary to the overall thrust of development plan policy, in particular Policy HS.1 of the Merton Unitary Development Plan, notwithstanding the encouragement that this Plan, and the London Plan, gives to the provision of additional housing. For the reasons set out above, and having taken all other material considerations raised into account, I conclude that the appeal should not succeed.

Decision

14. 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.

P Grainger

INSPECTOR