
Appeal Decision

Site visit made on 19 December 2016

by Thomas Shields MA DipURP MRTPI

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

Decision date: 30 December 2016

Appeal A: APP/M2372/C/16/3158608

4 Clarence Street, Darwen, BB3 1HQ

- 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 Norton Properties Ltd against an enforcement notice issued by the Blackburn with Darwen Borough Council.
 - The notice was issued on 11 July 2016.
 - The breach of planning control as alleged in the notice is without planning permission, the unauthorised change of use of the property into 2 x one bedroom flats.
 - The requirements of the notice are:
Cease the use of this property as two self-contained one bedroom flats and reinstate the property to a single dwelling house of a C3 use, with the associated provisions and limitations as stated within the Town and Country Planning (Use Classes) Order 1987 (as amended).
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended (the Act). Since the prescribed fee has been paid the application for planning permission deemed to have been made under section 177(5) of the Act also falls to be considered.
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Appeal B: APP/M2372/C/16/3158609

2 Clarence Street, Darwen, BB3 1HQ

- 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 Norton Properties Ltd against an enforcement notice issued by the Blackburn with Darwen Borough Council.
 - The notice was issued on 8 July 2016.
 - The breach of planning control as alleged in the notice is without planning permission, the unauthorised change of use of the property into 2 x one bedroom flats.
 - The requirements of the notice are:
Cease the use of this property as two self-contained one bedroom flats and reinstate the property to a single dwelling house of a C3 use, with the associated provisions and limitations as stated within the Town and Country Planning (Use Classes) Order 1987 (as amended).
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended (the Act). Since the prescribed fee has been paid the application for planning permission deemed to have been made under section 177(5) of the Act also falls to be considered.
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Decision

Appeals A and B

1. It is directed that the enforcement notices be corrected:
 - in Section 4:
 - (i) by deleting at the end of the first sentence the words “ten years” and their substitution instead with the words “four years”;
 - (ii) by deleting the whole of the last sentence; and
 - by deleting all of the words in Section 5 and their substitution instead with the words “Cease the use of the property as two self-contained flats”.
2. Subject to the above corrections the appeals are dismissed and the enforcement notices are upheld. Planning permission is refused on the applications deemed to have been made under section 177(5) of the 1990 Act, as amended.

Preliminary Matters

3. The relevant period for immunity from enforcement action in respect of the continuous use of a building, or part of a building, as a single dwellinghouse is four years prior to the issue date of an enforcement notice. The reasons for issuing the notices refer to ten years. Correcting the notices to state four years would not prejudice either party’s case provided that appeals under ground (d) were not withheld by the appellant due to the error. The appellant has confirmed that no prejudice would arise in this case. I can therefore correct the notices.
4. The last sentence in section 4 of the notices state “The residential units fail It is expedient...” (sic). It does not make sense grammatically. I will therefore correct the notices by deleting the sentence.
5. The purpose of the requirement in section 5 of the notices is clearly to remedy the breach of planning control by requiring the use as two self-contained flats to cease. In doing so the notices would be complied with and the breach fully remedied. It is not therefore necessary to specify a return to a particular use within a use class in the UCO¹ because section 57(4) of the Act provides that where an enforcement notice is issued, planning permission is not required for the use of the land for the purposes for which it could lawfully have been used had the unauthorised development not been carried out. I can therefore correct the notices such that they simply require the use of the properties as two self-contained flats to cease.
6. I am satisfied that correcting the notice in the ways set out above, using the powers available to me under section 176(1) of the Act, will not prejudice either party’s case. I have therefore corrected the notices accordingly.
7. Although not referred to in the reasons for issuing the notices, the Council referred in its statement to concerns that the flats lacked suitable outdoor amenity space and refuse collection facilities in conflict with Policy 18 of the Blackburn with Darwen Local Plan Part 2 (2015) (LP). I consider these matters

¹ Town and Country Planning (Use Classes) Order 1987

are relevant material considerations and sought the views of the parties. I have taken their comments into account in reaching my decision.

Ground (a) appeals/deemed planning applications

8. The ground of appeal is that in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted.

Description of appeal sites

9. Nos. 2 and 4 Clarence Street are two adjoining two storey terraced properties. No. 2 is attached to the rear of 159 Blackburn Road. No. 4 is separated from the rest of the terrace on this side of Clarence Street by the gated driveway between it and No. 6. Both previously single dwellinghouses the appeal properties have each been internally converted to form a self-contained flat on each floor. Each flat has its own kitchen, toilet/washing facilities, and living and sleeping area. In each of the two properties Flat 1 is located on the ground floor, Flat 2 on the first floor. There is an open yard area to the rear.

Main issues

10. The main issue in these appeals is whether the developments provide adequate living conditions for occupiers of the flats with particular regard to the provision of indoor and outdoor space, and refuse collection facilities.

Reasons

11. Policy H9(iii) of the Council's SPD² aims to ensure that adequate internal living space is provided in flats by application of its adopted floor space thresholds.
12. However, new national technical standards for internal living space are set out in *Technical Housing Standards – Nationally Described Space Standard* (DCLG 2015). The WMS³ applied these new standards from 1 October 2015, stating that existing Local Plan, neighbourhood plan, and supplementary planning document policies relating to particular matters, including internal space, should be interpreted by reference to the nearest equivalent new national technical standard. The appellant considers, and I agree, that the new technical standards are more appropriate in assessing whether the internal living space provided in the flats provides adequate living conditions.
13. The appellant's undisputed evidence is that the gross internal floor areas (GIA) are 32.5 m² for the ground floor flats, and 33 m² for the first floor flats. These GIAs fall below the 37 m² minimum requirement for a one bedroom/one person unit set out in the new technical standards by 12% and 10.5% respectively.
14. Given that the technical standard sets a *minimum* GIA for the provision of acceptable living conditions, I disagree with the appellant that these shortfalls are slight. During my visit to the appeal site I saw that the occupied flats appeared overly cramped with restricted room available for basic furniture and little space for storage of personal belongings. I consider the GIA shortfalls in this context are substantial and result in significant harm to the living conditions of the occupiers. I accept that the internal fixtures and fittings and refurbishment of the properties is relatively recent and of overall good quality,

² Houses in Multiple Occupation and Residential Conversions and Subdivisions (2012)

³ Written Ministerial Statement, March 2015

but that does not mitigate the harm to living conditions resulting from inadequate internal living space. As such, the development is inappropriate for the characteristics and context of the site in conflict with the aims and objectives of the Council's SPD and LP Policy 18 (and thereby LP Policy 19).

15. The rear yard is an open shared space between the occupiers of the four flats, and I saw other doors to the rear of properties on Blackburn Road that also appear to share the same space.
16. The yard is directly accessible from the rear doors in the two ground floor flats, but access for the first floor flats is via the internal stairs, the public footpath, and along the side access way. I do not agree that the yard is directly or easily accessible for first floor occupiers as the appellant suggests. It provides no private space for individual occupiers.
17. Given the number of users from the four flats, together with poor accessibility for occupiers of the first floor flats, the relatively small size of the shared yard, and lack of privacy, I consider that it fails to provide a reasonable level of useable outdoor amenity space for each of the flats. The combined shared use of the yard erodes the individual amenity of others. It would thus conflict with LP Policy 19 (i) and also with criteria (i) and (iv) of the Council's SPD guidance which seeks the provision of easily accessible garden or outdoor amenity space to serve the needs of residents, and prevent the erosion of amenity of neighbouring properties.
18. I acknowledge that there is public open space within a short walking distance of the flats. However, I consider that does not provide either an equitable alternative to useable private outdoor amenity space, or adequate mitigation of the harm to living conditions resulting from a deficiency of such space.
19. The same accessibility constraint to the shared yard described previously for first floor occupiers equally applies in respect of the use of the yard for refuse storage and collection, and thereby conflicts with LP Policy 19 (iv) and criterion (vi) of the Council's SPD guidance. To my mind that would not by itself justify dismissal of the appeal, but it nonetheless adds a further degree of harm and additional weight to my concerns in respect of poor living conditions for occupiers.
20. I have given consideration as to whether the imposition of planning conditions could adequately mitigate the harm I have identified. However, I find that the nature and space constraints of the development preclude the harm from being mitigated in that way.
21. Having regard to all of the above, I find that the development results in significant harm to the living conditions of the occupiers of the flats.
22. Against all the harm I have previously identified, the development undoubtedly has beneficial considerations to be weighed in the balance. These are set out in detail and with reference to other Council's Policies in the appellant's statement, and to which I attach due weight in reaching my decision. In summary; the development contributes to a wider choice of housing types by providing smaller and less expensive housing for people in need of it within the urban boundary against an undisputed shortage of such accommodation, and in the context of a lack of a five year housing supply generally. It is also

located within an existing residential area and within close walking distance to shops, services, recreation facilities and public transport links.

Conclusion

23. While I acknowledge that these positive benefits of the development weigh in support of the appeal, they are significantly and demonstrably outweighed by the adverse impacts I have previously identified. Consequently, I conclude overall that the flats are an unsustainable form of development in conflict with the Council's Development Plan policies and SPD guidance. As such, it also conflicts with the overarching aims and objectives of the National Planning Policy Framework (2012)⁴ which seeks to ensure that all new housing developments are sustainable.

24. The appeals on ground (a) therefore fail.

The appeals on ground (g)

25. The ground of appeal is that the period of time for compliance with the notice falls short of what should reasonably be allowed. The notices allow six months for compliance.

26. The appellant seeks a period of nine months to give the tenants sufficient time to find alternative accommodation, and to arrange various contractors to carry out and complete works for reversion of the flats to two single dwellinghouses.

27. I have not been provided with copies of tenancy agreements and so cannot be sure what periods of tenancy are still left to run for existing occupiers. In any event I consider that six months is not an unreasonable period of time in order to find and secure alternative accommodation. I have also corrected the notices so that they only require the unauthorised use to cease. As such, the appellant can carry out any other works to the properties without a time restriction.

28. Given these circumstance I consider that six months is an adequate period of time to comply with the corrected notices.

29. The appeals on ground (g) therefore fail.

Thomas Shields

INSPECTOR

⁴ Paragraphs 14, 17, 49, 50