

Appeal Decision

Site visit made on 30 January 2017

by Elizabeth C Ord LLB(Hons) LLM MA DipTUS

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

Decision date: 2 February 2017

Appeal Ref: APP/J2373/C/16/3153461

Land and building known as 151 Reads Avenue, Blackpool, FY1 4HZ

- 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 Saghir Khan against an enforcement notice issued by Blackpool Borough Council.
 - The enforcement notice was issued on 19 May 2016.
 - The breach of planning control as alleged in the notice is the sub-division of the former single ground floor flat used for permanent residential use and its amalgamation with the former ground floor storage area at the Land Affected to create 2 no. self-contained flats, one in the front part of the said ground floor (known as Flat 4) and one in the rear part of the said ground floor (known as Flat 5) and the use of Flat 4 and Flat 5 for permanent residential accommodation.
 - The requirements of the notice are i) Cease the use of the front part of the ground floor, known as Flat 4, as a self-contained flat for residential accommodation; ii) Cease the use of the rear part of the ground floor, known as Flat 5, as a self-contained flat for residential accommodation; iii) Remove all kitchen fixtures and fittings from either the ground floor front flat (known as Flat 4), or, the rear flat (known as Flat 5); iv) Remove all shower-room fixtures and fittings from the ground floor rear flat (known as Flat 5); v) Remove the dividing wall between the shower-room in Flat 5 and the lounge/kitchen in Flat 4 to re-instate the former corridor that previously [internally] connected the front and rear halves of the former ground floor flat.
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice be varied by deleting the "3 month" time for compliance at paragraph 6 and substituting therefor a "6 month" time for compliance. Subject to this variation, 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.

Reasons

Ground (a)

Main issues

2. The main issues are 1) whether the development further intensifies the existing over-concentration of small self-contained residential units in the Defined Inner Area of the town, thereby adding to an incremental, detrimental change in
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character of the area and 2) whether it results in unacceptable living conditions.

Context

3. The appeal property is situated in Blackpool's "Defined Inner Area", where the evidence demonstrates a high level of deprivation and an imbalanced housing stock with an abundance of bedsits, flats and Houses in Multiple Occupation. I understand that this imbalance has occurred largely due to former tourist and business premises being converted to what the Council describes as "overcrowded housing". Accordingly, a priority for the Council is to address this imbalance by increasing family housing and restricting new flatted development.
4. Blackpool's development plan, which consists of saved policies from the Blackpool Local Plan 2001-2016 (BLP), adopted in June 2006, and the Blackpool Local Plan Part 1: Core Strategy (CS), adopted in January 2016, seeks, amongst other things, to prevent the further over-concentration of existing flats and improve the mix of house types and sizes within Blackpool.

Intensification

5. The development, which is subject to the enforcement notice, consists of the ground floor of a three storey house that was granted planning permission in 2003 for use as four self-contained, permanent flats. The approved layout was a single unit on the second floor, two units on the first floor and a single unit and storage area on the ground floor. All units contained one bedroom. In breach of this planning permission, the ground floor was sub-divided and used as two one bedroom self-contained residential units.
 6. In August 2015 a retrospective planning application was made in an attempt to regularize the development. This was refused for reasons not dissimilar to those contained in the enforcement notice.
 7. The Appellant states that the development is an efficient use of space, with most of the additional living area being taken from a former storage area, so as not to result in the sub-division or loss of any larger residential units. In support he relies on what he says is an extract of the ground floor plans.
 8. However, these plans are not the approved 2003 plans for which permission was granted. The stamped, approved plans show a significantly different layout for the permitted scheme, reflecting one larger ground floor flat, spanning most of the ground floor, which I understand could accommodate two persons. The development is clearly a sub-division of the larger permitted flat.
 9. Although in isolation the effects of the development might be small, the cumulative impact of granting small changes would result in incremental intensification, which would be detrimental to the area's character and undermine the Council's housing policy. As such, the ground floor development is not in accordance with saved Policies BH1, BH3, HN5 and HN6 of the BLP, or Policies CS12 and CS13 of the CS, which together seek, amongst other things, to promote regeneration, restrict sub-division for residential use in inner areas and re-balance the mix of dwelling types and sizes taking account of the local context.
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10. Furthermore, the development is not compliant with the National Planning Policy Framework (NPPF), which seeks to deliver a wide choice of quality homes.

Living conditions

11. The resulting ground floor flats, identified as Flat 4 (front) and Flat 5 (back) in the enforcement notice, provide a poor standard of living conditions in that the units are very small and cramped with contrived layouts and limited outlook onto neighbouring walls/gables/fences. Flat 4 receives little natural light due its poor window arrangement, and Flat 5 lacks privacy due its living/bed space and kitchen backing directly onto the communal rear yard. Flat 5's very small size results in there being no separate bedroom. The shower rooms in both units, which are accessed from the living/bed spaces, are very small and narrow.
12. The development does not meet the housing standards contained in its Supplementary Planning Document "*New Homes from Old Places*" (SPD), adopted in March 2011, which addresses the need to improve housing quality in Blackpool. However, in a written ministerial statement of 25 March 2015, the government introduced optional national space standards for new housing¹, which supersede local standards. The Council explicitly refers to these national standards in the BCS, stating that the space standards in the SPD are replaced by the national standards. The development meets the national minimum space standards for one bedroom units for one person².
13. Nonetheless, local planning authorities can set additional technical requirements in their local plans subject to them being justified, having considered the impact on viability, and having demonstrated need. The BCS states that other standards in the SPD, not related to the nationally described standards, will still apply³. As the BCS has gone through public examination and been found sound, these additional SPD standards still apply.
14. The SPD states⁴ that in inner areas the maximum number of one bedroom or studio flats in any development is one in three. Furthermore, it says that no dwelling designed for less than two people⁵ will be acceptable. Therefore, one bedroom units for one person in this location are not in accordance with the SPD.
15. From the size of the two ground floor flats it would appear that they are one person, one bedroom units and, therefore, in breach of the SPD. If they were intended for more than one person, they would breach the national minimum standard of 50m². In any event, two additional one bedroom flats in this five unit converted house would be contrary to the SPD.
16. The development is harmful due to its resultant poor living conditions. Therefore, it is not in accordance with saved Policies BH3 and HN5 of the BLP, or Policies CS7 and CS13 of the CS, which together seek, amongst other

¹Technical housing standards – nationally described space standards, March 2015

² 39m² or 37m² where there is a shower room instead of a bath

³ BCS paragraph 6.25

⁴ SPD requirement 1.4

⁵ SPD requirement 2.2

things, to promote good design, ensure appropriate living conditions and satisfy the relevant standards in place for conversions and new build.

17. Moreover, because it fails to provide acceptable living conditions it is not in compliance with the NPPF, which requires good design.

Other matters

18. The Council has a five year supply of housing land and, therefore, NPPF paragraph 49 is not engaged in the sense that the Council's housing policies should not be treated as out of date.
19. There is no dispute that the site is located in a sustainable location.
20. Whilst the appellant may have invested heavily in the property, this does not justify breaching the planning permission.

Planning balance and conclusion

21. Although the sub-division has the benefit of providing an additional residential unit in a sustainable location, this does not outweigh the harm to the area's character caused by intensification, and the harm to living conditions. Therefore, the appeal on ground (a) is dismissed.

Ground (f)

22. The appellant accepts that, in the event of ground (a) failing, it is appropriate to cease the residential use of Flat 5 (rear). However, he submits that it is unreasonable to cease the residential use of Flat 4 (front). This, he says, is because it has had lawful use as a self-contained unit for a substantial period of time, although he does not say for how long. On my site visit I observed that this unit appeared to have been recently renovated/decorated and was not occupied.
23. If the appellant is indicating a ground (d) appeal and suggesting the Council is out of time for taking enforcement action, he has presented no evidence in support of this. With respect to ground (f) this does not justify lesser steps being taken for the following reasons.
24. The layout and size of Flat 4 is significantly different to what was permitted. Given that the purpose of the notice is to remedy the breach of planning control, this can only be achieved by ceasing the use of both flats, removing the identified dividing wall, and taking out the itemised fixtures and fittings. Therefore, the steps required do not exceed what is necessary and the appeal on ground (f) fails.

Ground (g)

25. The Council has given three months to comply with the notice. Whilst this might be sufficient to carry out the required works, it might not give enough time for tenants to find alternative accommodation. On my visit I noted that Flat 5 (rear) was occupied and, therefore, more time should be given. Six months should be sufficient for tenants to be given notice and to vacate, and then for the required works to be carried out. To this limited extent, the ground (g) appeal succeeds.

Elizabeth C Ord

Inspector