
Appeal Decisions

Site visit made on 24 April 2018

by Anthony J Wharton BArch RIBA RIAS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 May 2018

Appeal A - Ref: APP/Z1510/C/17/3180496 4 Maldon Road, Witham, Essex CM8 2AB

- 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 M Wilde against an enforcement notice issued by Braintree District Council.
 - The enforcement notice, numbered ENF 16/00393/COU3, was issued on 23 June 2017.
 - The breach of planning control as alleged in the notice is the unauthorised sub-division of 4b Maldon Road Witham, to create an additional residential unit known as 4c Maldon Road, Witham.
 - The requirements of the notice are to reinstate the opening between units 4b and 4c (indicated within the red circle on Floor Plan 16/00393/COU3) to revert the 2 residential units back to a single residential unit, resulting in the whole of 4 Maldon Road Witham consisting of 3 individual residential units only.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on grounds (a), (f) and (g) as set out in section 174(2) of the Town and Country Planning Act 1990 as amended
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Appeal B - Ref: APP/Z1510/W/17/3180492 4 Maldon Road, Witham, Essex CM8 2AB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr M Wilde against a refusal to grant planning permission by Braintree District Council.
 - The application reference 16/01407/FUL, dated 12 August 2016, was refused by notice dated 11 July 2017.
 - The development for which planning permission was sought is for the part conversion of a double garage to create a new 1 bed flat including a new roof and fenestration, sub-division of existing flat to create a new 1 bed flat.
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Decisions

1. Appeal A succeeds to a limited degree on ground (f). Otherwise it is dismissed.
2. Appeal B is dismissed. See formal decisions below.

Background information

3. The appeals premises (a former shop at ground floor level with accommodation above) are on the west side of Maldon Road and within the development boundary and the Witham Conservation Area (WCA). There is a detailed planning history but the most relevant matters are; firstly a permission granted in 1995 (95/0052/COU) for change of use of the shop to form part of the domestic premises, secondly, a refusal (16/00748/FUL) for the part conversion of a double garage to create a new 1 bed flat and sub-division of an existing flat to create a new 1 bed flat and, thirdly, the revised application that is now the subject of Appeal B.

4. Following the 1995 permission it would appear that the premises were used as three separate flats (as shown on drawing 091-01 – Existing plans). The first was at first floor level (Flat 1 - I will refer to it as 4d for the purposes of these appeals); the second at ground floor level fronting Maldon Road (Flat 2, known as 4a and the third, also at ground floor level, to the rear (Flat 3, known as 4b). There is no planning permission in place for the three flats but the LPA has not taken enforcement action and, from the requirements set out in the enforcement notice, as well as the representations in these two appeals, the LPA appears to accept that the three flats are lawful for planning purposes.

5. Following the refusal referred to above, the rear ground floor flat (Flat 3, or 4b) was split into two separate units by the sealing of a doorway between the lounge and what used to be the kitchen. This provided a fourth small Flat (with bathroom, lounge/kitchenette and bedroom) now known as 4c. The splitting of Flat 3 into two units is now the subject of the enforcement notice and Appeal A. The four units (4a, 4b, 4c and 4d) currently in use have all been registered for Council Tax purposes; the first of which was registered in November 2014.

6. The application (16/01407/FUL) was made for the part conversion of the double garage (to the rear) to create a new 1 bed flat including a new roof and fenestration, sub-division of existing flat (4b) to create a new 1 bed flat (4c). This was refused permission and is now the subject of Appeal B. Works have commenced on the double garage unit to create a fifth unit but, at the time of my visit it had not been altered in accordance with the submitted drawings and was also being used for storage of building materials.

7. The LPA has queried the adequacy and accuracy of the submitted plans which would result in 5 separate flats. I also find the submitted information relating to this application to be somewhat confusing, having regard to what I was able to inspect during my site visit. Be that as it may I have dealt with the Appeal B on the basis of the submitted plans and documents.

8. A Block Plan (091-06) was submitted with the application which showed amenity space and parking between the property and the shared access from Maldon Road. However, during the site visit it was stated by the appellant that this land was 'separate' from the proposal. The Council has referred to this land being advertised for sale in November 2017 and that queries had been made by prospective purchasers to the planning department.

9. However, I must consider the appeal on the basis of what was applied for and in accordance with the proposed plans. I was also shown an area behind the property that was stated to provide a parking space for each of the proposed five residential units and this is also indicated on one of the block plans submitted. In my view, this has complicated the overall situation and makes the appellant's overall intention regarding the final layout for the 5 units somewhat ambiguous.

Appeal A on ground (a)

10. The main issues relate to whether or not the standard of accommodation provided within the two units (4b and 4c) is adequate, having regard to their size, layout, aspect, provision of amenity space, provision of car parking and overall design. In considering whether or not planning permission should be granted for the sub-division the relevant development plan policies are the starting point.

11. Planning law requires that applications for planning permission must be determined in accordance with the development plan unless the material considerations indicate otherwise. The National Planning Policy Framework (NPPF)

is a major material consideration and indicates that development which accords with an up-to-date local plan should be approved and development which conflicts should be refused unless other material considerations indicate otherwise.

12. The most relevant development plan policies in this case are set out in the Braintree District Local Plan Review (BDLPR). They are RLP3 (Development within the Town Boundaries and Village Envelopes); RLP24 (Subdivision of Dwellings); RLP56 (Vehicle Parking) and RLP90 (Layout and Design of Development).

13. In reaching my decision I have taken into account the requirements of the NPPF to achieve sustainable development (paras 6 to 10); the presumption in favour of sustainable development (paras 11 to 16); the core planning principles (para 17); the need to build a strong competitive economy (section 1); the requirement to deliver a wide choice of high quality homes (section 6) and the requirement for good design (section 7).

14. Clearly the principle of residential development in this part of Witham is acceptable and I do not consider that any of the works have had a negative impact on the character and appearance of the WCA. It is also clear that matters relating to parking and refuse storage could be acceptably resolved and I have noted that the Highways Authority do not object to the proposed scheme for 5 units, subject to certain conditions being met.

15. There is also no doubt that the tenants of the three ground floor units 4a, 4b and 4c) are satisfied with their accommodation. However, when assessed against the aims and objectives of other development plan policies and those of the NPPF, I share the Council's concerns about the subdivision of the former Flat 4b.

16. Having seen the plans before the doorway was built up (drawing 091-01), it is clear that Flat 4b, as the second flat on the ground floor, provided adequate and reasonable accommodation. It also provided access to the internal amenity space as well as to the external area to the south (assuming that was available). It would still have shared the courtyard amenity space with the first floor flat but I noted that the latter also had its own external balcony area at first floor level. Flat 4a was not as large and there is no direct access to either amenity space but the plan indicates separate rooms for the kitchen, lounge, bedroom and bathroom.

17. Turning to the present situation the subdivision into two units has resulted, in my view, in poorly designed and cramped accommodation. The remaining spaces in 4b include a tight combined kitchen and living area and this is the same for the newly created Flat 4c. Aspects from both are limited and the overall amenity space is, in any case, less than the normal requirements.

18. Although the Council has not referred to any specific space standards, Policies RLP3 and RLP90 of the BDLPR seek the highest possible standards of design and layout in all new developments. In addition Policy RLP24, amongst other things, seeks to ensure the adequacy of the internal accommodation, relative to the intensity of the accommodation envisaged.

19. In paragraph 64 of the NPPF it is stated that permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions. In this case it seems to me that a quality functioning flat (Flat 4b) has been sub-divided to provide two poorly designed units of accommodation. The LPA would clearly not have granted planning permission for the subdivision and for the reasons set out above I do not consider that permission would be justified at this appeal stage.

20. On this ground of appeal I consider that the works as carried out are contrary to the relevant development plan policies as well as to the core principles and section 7 of the NPPF. It follows that the appeal must fail on ground (a).

21. I have noted the argument that, in the planning application now the subject of Appeal B, it is proposed to add more space to Flat c and, therefore that if permission were to be granted under s177 it could require the additional room to be provided. However, I consider that such an action would exceed the powers transferred to me in relation to Appeal A. I am only empowered to deal with the allegation as set out and on the basis of the unauthorised works as carried out. Any permission on ground (a) and the deemed application must relate directly to the allegation. In any case Flat 4b would not be increased in size.

Appeal A on ground (f)

22. The arguments under this ground refer to the planning application which is the subject of Appeal B. I have already referred above to my powers in relation to the enforcement notice. Having considered all of the appellant's submissions on ground (f), I can understand to some extent the contention that it is excessive to require the property to revert to 3 units only (my underlining).

23. In my view this wording is not necessary since, if the subdivision is reversed, the lawful use of the property will revert to being for 3 separate flats. Clearly, through Appeal B, the appellant has sought to provide a total of 5 units and I deal with that below. It could also be the case that 4 units could be provided subject to an acceptable application. Thus it would be excessive to restrict the use to 3 flats only through the upholding of the notice.

24. The notice was issued to remedy a breach of control. If the first part of the requirement is carried out and units 4b and 4c become one unit again then the breach will have been overcome. I intend, therefore to delete the second part of the requirement and the appeal on ground (f) succeeds to this limited degree. I shall vary the notice accordingly.

Appeal A on ground (g)

25. On this ground it is indicated that Flats 4a and 4b are let on 12 month tenancy agreements. However from the information provided it would appear that these tenancies have already expired (February and March 2018). I have not been provided with any new tenancy agreements and I conclude, therefore, that a 6 month compliance period is adequate. This will also give sufficient time for the appellant to liaise with the LPA on any amended layouts of the flats. The appeal also fails, therefore on ground (g).

Conclusion on Appeal A

26. For the above reasons the enforcement notice will be upheld and planning permission will not be granted for the subdivision of Flat 4b. See formal decision below.

Appeal B

27. The main issues relate to whether or not the standard of accommodation and amenity space provided for the 5 units is adequate in each case, and whether or not a development to provide 5 units constitutes an overdevelopment of the property and its site.

28. Clearly the first floor flat at 4d is of an adequate size and layout. It also has its own amenity space at balcony level and access to the lower courtyard amenity area.

Flat 4a at ground floor level is also adequate in terms of layout although access to the amenity spaces on either side is somewhat contorted in that it is via the front door and the need to walk along Maldon Road. It remains a poor design overall and, irrespective of whether or not tenants require amenity space; it is in my view that the provision of amenity space and its access is unacceptable.

29. I have already concluded above that the subdivision of Flat 4b is unacceptable and that the resulting spaces are contrary to both local and national policies relating to the provision of quality homes of good design. Flat 4b would remain as a cramped unit and again there is inadequate amenity space taking into account the overall area on the site need to share space with the 4 other units.

30. I accept that there would be some improvement in the floor area of Flat 4c, with the addition of a small lounge taking up part of the space currently used as the double garage (proposed Flat 5). However, the plan shows the lounge as being not much larger than the bathroom and there is a contorted entrance from the already cramped kitchen/diner area. Again I find the layout to be of very poor design and the necessary facilities are perceived to have been '*shoe-horned*' into place in a most adhoc and random manner, without due consideration being given to the overall quality of the living environment.

31. From the plan I accept that Flat 5 would be of an adequate size although the layout is not exactly convenient in that the Lounge area is separated from the kitchen by a corridor between the bedroom and the bathroom. Again I find this to be a poor layout in design terms.

32. Subject to clarification I acknowledge that matters relating to parking, refuse storage and cycle storage could adequately be provided for 5 units. However, overall I consider that the development would result in a cramped and overcrowd development. I share the Environmental Health Officer's concerns that the proposal for 5 units will create poor quality accommodation in terms of layout, room sizes and access.

33. I conclude that this particular 5 unit scheme (based on the submitted drawings) is contrary to policies RLP24 and RLP90 of the BDLPR as well as to policies within the NPPF which seek to provide quality housing and good design. It follows that planning permission will not be granted for this particular 5 unit scheme and that Appeal B must fail.

Other matters

34. In reaching my conclusions in both appeals I have taken into account all of the matters raised by the Council; by interested persons/parties and those made by and on behalf of the Appellant. These include the full planning history; all references to local and national policy; the initial grounds of appeal and detailed statements for Appeal A; the cases in relation to Appeal B; the various consultation comments; the letters of support from the tenants and the contents of the letter from Kingsley Smith dated 26 January 2018.

35. However, none of these matters carry sufficient weight to alter my conclusions on the grounds of appeal in both cases and nor is any other matter of such significance so as to change my decisions set out below.

Formal Decisions

Appeal A

36. The appeal succeeds to a limited degree on ground (f) only. I direct that the enforcement notice be varied by deleting the words '*resulting in the whole of 4*

Maldon Road Witham consisting of 3 individual residential units only from requirement 5a), in part 5 of the enforcement notice, (WHAT YOU ARE REQUIRED TO DO).

37. Otherwise the appeal is dismissed and the enforcement notice is upheld. Planning permission is refused for the application deemed to have been made under section 177(5) of the Act.

Appeal B

38. The appeal is dismissed.

Anthony J Wharton

Inspector