
Appeal Decision

Site visit made on 12 November 2019

by Sarah Dyer BA BTP MRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 21st November 2019

Appeal Ref: APP/G5180/C/19/3220540

Rear of 43 Windsor Drive, Orpington BR6 6EY

- 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 Manik Rahman against an enforcement notice issued by the Council of the London Borough of Bromley.
 - The Council's reference is EN/15/00398/CHANGE.
 - The enforcement notice was issued on 7 December 2018.
 - The breach of planning control alleged in the notice is failure to comply with condition No. 4 of a planning permission Ref DC/07/01571/FULL1 granted on 28 June 2007.
 - The development to which the permission relates is single storey extension to provide office. The condition in question is No. 4 which states that: The single storey rear extension hereby permitted shall be used as ancillary office space only and for no other purpose. The notice alleges that the condition has not been complied with in that the single storey rear extension is being used as a separate residential unit.
 - The requirements of the notice are:
 - a) Cease the unauthorised residential use of the single storey rear extension at the above land.
 - b) Remove from the above land all items associated with the residential use.
 - c) Remove from the above land any resulting debris.
 - The period for compliance with the requirements is 28 days.
- 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. Since an appeal has been brought on ground (a) and the prescribed fees have been paid within the specified period, an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Procedural Matter

1. In his response to the Council's statement, the appellant says that he has made internal changes so that the residential accommodation would be used as a 1 person dwelling. However, the Council's case is based on the premise that there are two studio flats and the potential use of the accommodation as one unit is materially different from that which was considered by the Council. For that reason, injustice would be caused to the Council if I were to consider the appeal on the basis of the accommodation as it is now described by the appellant.

Reasons

Ground (a)/the deemed application for planning permission

2. Under ground (a) an appeal is made on the basis that planning permission ought to be granted or the condition or limitation concerned ought to be discharged. In this case as the allegation is a breach of condition, I have the power to discharge the condition on the original permission and to grant a fresh permission to carry out the original development without complying with the condition. I can also impose new conditions in the event that the appeal succeeds.
3. The main issue in this case is whether Condition 4 is reasonable or necessary in the interest of the amenities of the area including the residential amenity of occupiers of the site.
4. The Council imposed Condition 4 in order to comply with Policy BE1 of the Unitary Development Plan and in the interests of the amenity of the area. Its reason for serving the notice set their concerns in the context of Policies BE1 and H12 of the Unitary Development Plan and Draft Policies 10 and 37 of the emerging Local Plan. The emerging Local Plan has now been adopted as the Bromley Local Plan 2019 and the relevant policies confirmed as Policy 10 Conversion of non-residential buildings to residential and Policy 37 General Design of Development. The appellant has had the opportunity to comment on the relevance of these policies in his response to the Council's case.
5. The appellant does not dispute that the site has been used for residential purposes although he states that the use has now ceased. He considers that the development provides a more than adequate living environment for occupiers and that it constitutes sustainable development, for which there is a presumption in favour.
6. He says that there are two self-contained units and that they each have a floor area of approximately 25 sqm. By contrast the Council state that the Mayors Housing SPG (the SPG) sets out a minimum standard of 50 sqm for a two-person unit and 39 sqm for a one-person unit. The provision on site is well-below the standards, which are a measure of good quality living accommodation. Furthermore, there is limited outlook from the windows serving both units which face the rear of adjacent buildings and the rear service road respectively. This arrangement reduces the amenity of occupiers of the units further.
7. Similarly, the residential units do not perform well against the SPG in terms of the availability of amenity space. The building fills most of the space between the rear of the shop unit facing Windsor Drive and the rear access road, with limited space for car parking. There is no outdoor space and while the appellant refers to local facilities there is limited information regarding the proximity and accessibility of them. Also, the under-provision of amenity space is not compensated for by an increase in internal floorspace over the minimum requirement.
8. In summary the residential use of the extension does not accord with Policies 10 and 37 of the Bromley Local Plan 2019 which amongst other things require that conversions of non-residential buildings to residential achieve good quality

living accommodation and that development respects the amenity of future occupiers.

9. The appellant makes a comparison between the permitted change of use from offices to dwellings. As the Council points out this is not a feasible fallback position given that condition 4 restricts the use of the building.
10. The appellant considers that the small scale of the units results in them being more affordable in comparison with the unit sizes recommended by the SPG. However I have limited evidence before me to demonstrate that this would be the case and, in any event, affordability should not be achieved at the expense of the provision of poor quality accommodation as would be the case here. It follows that I am also not persuaded that benefits of the contribution that the units would make to meeting the need for additional housing, including with reference to the Housing Delivery test, outweighs the harm which would arise in terms of the provision of poor-quality housing.
11. Condition 4 requires the extension to be used as ancillary office accommodation in connection with the use of 43 Windsor Drive. The condition is necessary because were the extension to be used in another way that use may not respect the amenity of future occupants, as has been demonstrated in this case. Policy BE1 of the Unitary Development plan established the expectation that development should respect such amenity considerations, and this is reflected in Policy 37 of the Bromley Local Plan 2019.
12. The condition is precise and enforceable and also passes the other tests set by Planning Practice Guidance in that it serves a planning purpose that is related to the original development and is reasonable.
13. For the reasons given above, I conclude that the appeal on ground (a) should fail, that condition 4 should not be discharged and that deemed planning permission should be refused.

Ground (g)

14. Under ground (g) the appeal is made on the basis that the time for compliance with the requirements of the notice falls short of what should reasonably be allowed.
15. The appellant argues that the period for compliance with the notice is too short because the extension is occupied by two parties who would need to find alternative accommodation. However, he also says that the use of the building for residential purposes has ceased, which is born out by my observations at the site visit. On this basis I do not find the needs of existing occupiers to be a compelling reason to extend the time period for compliance with the notice.
16. The appellant says that he also needs more time to prepare alternative proposals for the use of the building. There is very limited information before me regarding what these alternatives might be or the length of time within which they are likely to come to fruition. Therefore, I am also not persuaded that this argument justifies an extension to the period of compliance.
17. For the reasons given above, I conclude that the appeal on ground (g) should fail.

Conclusion

18. For the reasons given above, I conclude that the appeal should be dismissed, and the enforcement notice upheld.

DECISION

19. The appeal is dismissed, and the enforcement notice is upheld.

Sarah Dyer

Inspector