



Appeal Decision

Site visit made on 16 March 2020 by L Wilson BA (Hons) MA MRTPI

Decision by K Taylor BSc (Hons) PGDip MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27th March 2020

Appeal Ref: APP/L2820/W/19/3242116

3 Meeting Lane, Kettering NN16 0BL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mrs K Lemon against the decision of Kettering Borough Council.
 - The application Ref KET/2019/0527, dated 29 July 2019, was refused by notice dated 25 November 2019.
 - The development proposed was described on the application form as conversion of part of ground and first floor to form 3 flats including replacement roof and installation of rooflights.
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Decision

1. The appeal is dismissed.

Appeal Procedure

2. The site visit was undertaken by an Appeal Planning Officer whose recommendation is set out below and to which the Inspector has had regard before deciding the appeal.

Application for Costs

3. An application for costs was made by the appellant against the Council. This application is attached as a separate Decision.

Preliminary Matters

4. The appeal scheme follows two recent applications. A Certificate of Lawfulness was granted in 2018 for the change of use from a shop to a mixed use, incorporating an A1 shop and up to two flats¹. Subsequently, in 2019, planning permission was granted, to convert part of the ground floor and first floor to create three flats²; the scheme before me seeks to amend this approval. The application was originally referred to planning committee in October 2019 but was then deferred as further information was required to make a decision. The application was then re-presented to Planning Committee in November 2019. On my site visit it was evident that building work had started.
5. I note that the drawings before me appear to show amendments to the Certificate of Lawfulness scheme, including a bedroom within the loft, however these alterations do not form part of the proposal being considered at appeal.

¹ KET/2018/0554

² KET/2018/0669

Main Issues

6. These are:

- i. whether or not the proposal would provide appropriate living conditions for future occupiers, having regard to refuse storage; and
- ii. whether the lack of provision of on-site cycle storage is appropriate.

Reasons for the Recommendation

Living Conditions

7. No. 3 is a three-storey building, fronting directly onto Meeting Lane, located within Kettering town centre. I understand from the evidence submitted that a wedding dress shop formerly occupied the premises. As outlined in the preliminary matters section above, the scheme before me follows two recent approvals. The appellant has drawn my attention to case law and two High Court decisions which highlight the importance of previously approved planning applications³.
8. The revised scheme has resulted in an amended bin store area. The bin store proposed measures 6.9sqm. The approved bin store measured 5.4sqm. There is no outdoor space associated with the building therefore there is no capacity for the bins to be stored externally. I note the bin store area would serve both the flats and retail unit.
9. Although the footprint area has increased, I am not convinced by the evidence submitted that the usable space has also increased. The revised bin store has an awkward layout with two fire safety doors which would result in the amount of useable space being significantly less than 6.9sqm. There is a lack of detailed information to demonstrate that the required bins could be housed in the proposed room with adequate circulation area. Consequently, I cannot be certain that the proposed development would make suitable provision for bin storage facilities. Insufficient refuse storage could result in pressure for the refuse bins to be stored elsewhere within the building which, due to the lack of alternative space, would result in poor levels of amenity for future occupiers.
10. I note that the Council's Environmental Health Officer did not object to the proposal, however I am not convinced that they took into account the configuration of the proposed bin store and location of the fire doors opening into the room.
11. For the reasons given above, having regard to the recent approvals, case law and high court decisions, the scheme would not provide satisfactory living conditions for future occupiers, having regard to refuse storage. The proposal would therefore be contrary to Policy 8 and objective 10 of the North Northamptonshire Joint Core Strategy 2011-2031 (2016) and the National Planning Policy Framework. These policies seek, amongst other matters, to ensure new development provides a high standard of amenity for future occupiers through being well designed.

³ Mann LJ in *North Wiltshire District Council v Secretary of State for the Environment* (1993) 65 P & CR 137, R (Midcounties Co-Operative Limited) v *Forest of Dean District Council* [2017] EWHC 2050 and *Baroness Cumberlege v Secretary of State for Communities & Local Government* [2017] EWHC 2057.

Cycle Storage

12. The Council has raised concern that the scheme does not include cycle storage. Policy 6 of the Kettering Town Centre Area Action Plan requires all residential developments to provide a minimum of 1 secure cycle storage space per unit in order to promote sustainable modes of transport and to support future occupiers' health. The proposed development would clearly conflict with this Policy. Nonetheless, no cycle storage was proposed in the approved scheme. Whilst the proposal would conflict with the development plan, in this regard, I give significant weight to the recently approved planning permission and consider the lack of secure cycle storage to be acceptable as there has been no material change in this respect.

Other Considerations

13. The appeal site is located within the Kettering Conservation Area (CA). The Council raise no concerns in respect of the effect of the development upon the CA. The external works are extremely limited and would not have a significant impact upon the appearance of the building. The scheme would not unduly interrupt views of the CA, nor would it have any notable impact on how the heritage asset is experienced. The proposal would therefore have a neutral effect on the CA and there would be no harm to the designated heritage asset. Accordingly, the development would preserve the character and appearance of the CA.

Conclusion and Recommendation

14. The lack of harm on the second issue would not mitigate or outweigh the harm I have found on the first issue. Thus, although I have found that the shortfall in cycle storage would be acceptable, the scheme would not provide satisfactory living conditions for future occupiers to which I attach significant weight. I therefore recommend that the appeal should be dismissed.

L M Wilson

APPEALS PLANNING OFFICER

Inspector's Decision

15. I have considered all the submitted evidence and the Appeal Planning Officer's report, and, on that basis, I agree and conclude that the appeal should be dismissed.

K Taylor

INSPECTOR



The Planning Inspectorate

Costs Decision

Site visit made on 16 March 2020 by L Wilson BA (Hons) MA MRTPI

Decision by K Taylor BSc (Hons) PGDip MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27th March 2020

Costs application in relation to Appeal Ref: APP/L2820/W/19/3242116 3 Meeting Lane, Kettering NN16 0BL

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mrs K Lemon for a full award of costs against Kettering Borough Council.
 - The appeal was against the refusal of planning permission for the conversion of part of ground and first floor to form 3 flats including replacement roof and installation of rooflights.
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Decision

1. The application for an award of costs is refused in part and allowed in part in the terms set out below.

Reasons

2. The application for an award of costs, the Council's response and the applicant's further response were submitted in writing and the content will be familiar to both parties. Consequently, I shall not repeat those submissions in full within this decision. Government guidance on the award of costs is set out in the Planning Practice Guidance (PPG). Paragraph 030 of that guidance notes that a party may have costs awarded against them in relation to appeal proceedings if they have behaved unreasonably and that behaviour has led another party to incur unnecessary expense. Those two matters are pre-requisites for an award; if there has been no unreasonable behaviour or no wasted expense an award will not be justified.
3. The applicant seeks a full award of costs on the basis that they have incurred additional costs in having to appeal the decision. The applicant contends that the Council has not taken into consideration the previous decisions, in line with case law and High Court decisions⁴. They assert that the schemes are very similar and therefore they are a material consideration as there has been no material change in circumstances between the approved and refused applications.
4. In terms of the refuse storage, the application required an exercise of planning judgement and the Decision above explains why the Council's case had merit.

⁴ Mann LJ in *North Wiltshire District Council v Secretary of State for the Environment* (1993) 65 P & CR 137 and *R (Midcounties Co-Operative Limited) v Forest of Dean District Council* [2017] EWHC 2050 and *Baroness Cumberlege v Secretary of State for Communities & Local Government* [2017] EWHC 2057.

It is not unreasonable that the Planning Committee departed from the officer's professional advice as they are not bound to accept the recommendation of their officers. The planning application was originally deferred as members required more information to determine the differences between the application and approved schemes, thus it is apparent that they were aware of the previous decisions. Although the schemes are similar there are differences, such as alterations to the configuration of rooms, so it was not unreasonable to refuse the application. I am satisfied that the Council considered all of the pertinent factors and has been able to substantiate the part of the reason for refusal relating to refuse storage.

5. Turning to the second aspect of the applicant's cost claim, in respect of the cycle storage, both the approved and proposed schemes' do not include cycle parking. From the evidence before me, there has been no material change in circumstances between the approved and proposed development in this regard. Thus, the Council has failed to take into account the recent approval. The Council has not provided sound reasons for disregarding and departing from the previous approval, having regard to well-established case law highlighted above.
6. I therefore find that the Council's refusal of planning permission was not unreasonable in terms of the refuse storage. However, unreasonable behaviour, as described in the PPG, resulting in unnecessary or wasted expense has been demonstrated, with regards to the cycle parking, and therefore a partial award of costs is justified.

L M Wilson

APPEALS PLANNING OFFICER

Inspector's Decision

7. I have considered all the submitted evidence and the Appeal Planning Officer's report, for all the above reasons, I concur that this application should be refused in part and allowed in part.

Costs Order

8. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Kettering Borough Council shall pay to Mrs K Lemon, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in dealing with the cycle storage element of the appeal only; such costs to be assessed in the Senior Courts Costs Office if not agreed.
9. The applicant is now invited to submit to Kettering Borough Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

K Taylor

INSPECTOR