



Appeal Decision

Site visit made on 13 February 2020

by Mrs H M Higenbottam BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 June 2020

Appeal A: APP/A2280/C/18/3208574

Appeal B: APP/A2280/C/18/3208576

20-22 Hillside Avenue, Strood, Rochester ME2 3DP

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - Appeal A is made by Mr Raj Ram and Appeal B is made by Dr R Wickham against an enforcement notice issued by The Medway Council.
 - The enforcement notice was issued on 4 July 2018.
 - The breach of planning control as alleged in the notice is 'Without the benefit of planning permission the conversion of the property into 10 self contained flats.
 - The requirements of the notice are:
 - (i) Return the property to the approved layout as four self contained flats.
 - (ii) Reduce the number of kitchens at the property to four.
 - (iii) Reduce the number of bathrooms at the property to four.
 - (iv) Reduce the number of gas and electric meters at the property to four.
 - (v) Remove all resultant debris and associated materials from the Property.
 - The period for compliance with the requirements is:
 - (i) Requirement 5(i) within 4 calendar months from the date of the Notice.
 - (ii) Requirements 5 (ii) to 5 (iv) inclusive within 5 calendar months from the date of the Notice.
 - (iii) Requirement (5) (v) within 6 calendar months from the date of the Notice.
 - Appeal A is proceeding on the grounds set out in section 174(2) (a) and (g) and Appeal B is proceeding on ground (g) only of the Town and Country Planning Act 1990 as amended.
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Decisions

1. It is directed that the enforcement notice be varied by

- Delete the words 'Return the property to the approved layout as four self contained flats' in paragraph 5 (i) and substitute it with the words 'Cease the use for no more than four self contained flats'.
- Delete, at paragraph 6 the words:
 - '(i) Requirement 5(i) within 4 calendar months from the date of the Notice.
 - (ii) Requirements 5 (ii) to 5 (iv) inclusive within 5 calendar months from the date of the Notice.

- (iii) Requirement (5) within 6 calendar months from the date of the Notice.'

and the substitute with the following periods for compliance:

- i. Requirement (i) within 12 months
- ii. Requirements (ii), (iii), (iv) and (v) within 18 months.

Subject to these variations Appeal A and B are dismissed and the enforcement notice is upheld.

In Appeal A planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Costs

2. An application for costs was made by Medway Council against Mr Ram and Dr Wickham. This application is the subject of a separate Decision.

Preliminary Matters

3. Appeal grounds (d) and (f) were withdrawn on 3 December 2019. Following the withdrawal of these grounds of appeal the procedure for determining the appeals was changed from an Inquiry to Written Representations.
4. More Homes Bromley LLP is a joint venture between the London Borough of Bromley and Mears group as a registered provider of homes for people who find themselves homeless. The company acquired the main part of the building and the front area of land at the appeal site following the service of the Notice. The two single storey projections/extensions and the land to the rear of the building remains in the ownership of the appellants. The appeal site i.e. the land shown edged red on the Notice plan, includes the building and the land around the building to the front and rear.
5. The flats viewed internally at the site visit were Flats 20D; 22A; 22B; 22C (empty at the time of visit) and 22D. Access to the other flats was not possible. I will therefore determine the appeal based on the evidence presented and what I viewed at the site visit.
6. The appellant has submitted a Unilateral Undertaking (UU) which covenants to pay a sum of £2,455.60 towards the Council's Strategic Access Management and Monitoring Strategy; for a period of 40 years from 23 January 2019, not to let any flat other than on an Assured Shorthold Tenancy (AST); and to limit the number of occupiers in any flat in accordance with the table set out in the first schedule of the UU.

The Notice

7. Requirement 1 requires that the building be returned to the approved layout as four self-contained flats. The Council confirmed that there was no approved layout for the four self-contained flats. Also, I note that a requirement for any, but a specified purpose is excessive, because this could ostensibly prohibit other lawful uses. In effect the requirement is a positive requirement and, as such, it is excessive.
8. Section 57 (4) of the Act allows reversion to the last lawful use following the issue of a Notice. Although I note this right does not extend to a past lawful

use where there have been one or more intervening unlawful uses between it and the use alleged in the Notice. Where there is a right to revert to a particular use this right should not be restricted by the requirements of a Notice.

9. The appellant and Council accept that the previous lawful use of the building was as four flats, therefore the requirements to remove all but four kitchens and four bathrooms appears the minimum necessary to prevent the unauthorised use. I will therefore vary requirement 1 to cease the use for no more than four self contained flats.
10. This variation to the requirement would not cause prejudice or injustice to either party as both parties accept that the lawful use of the property is as four self contained flats. However, it does not positively require the building to be laid out for this lawful use.

Appeal A ground (a)

Main issues

11. The main issues in the consideration of the appeal on ground (a) are the effect of the development on:
 - the living conditions of existing and future occupiers having regard to the standard of accommodation, including provision of bin and cycle storage facilities;
 - the living conditions of neighbouring and nearby occupiers, having regard to noise and disturbance from on-street parking.

The parties agree that the Council cannot demonstrate a five year supply of deliverable housing sites and, as such, paragraph 11 d) of the National Planning Policy Framework (the Framework) is engaged in this case. The appellant states that the parties have also agreed that the Council can demonstrate a maximum of 3.03 years housing land supply.

Reasons

12. The appeal site comprises what were once a pair of semi-detached dwellings. There are two single storey extensions/projections either end of the building. The parties refer to the pair of semi-detached dwellings being subdivided into four self contained flats which were occupied by members of the clergy including retired members. The building has been converted into ten self contained flats and it is this conversion which is the subject of the Notice and the ground (a) appeal.
13. The appeal site is within a residential area with a church, church hall and primary school located on the east side of Mill Road. Bus stops and a local centre are nearby (Frindsbury Road) where there are convenience stores, a butchers shop, a chemist, takeaway food, restaurants and hairdressers all within 300m of the site. The town centre, medical surgeries, schools and pre-schools, supermarkets and Strood Railway station are within 500m.

Amenity

14. Saved Policy BNE2 of the Medway Local Plan (adopted May 2003) (LP) requires that development should secure the amenities of its future occupants and

protect those amenities enjoyed by nearby and adjacent properties. There is no requirement for a certain level of floorspace for residential development.

15. A national system of housing standards commenced in 2015¹. The system means that additional optional standards including internal space, over and above the mandatory minimum standards contained in the Building Regulations can be required. However, these internal space standards can only be applied if there is a relevant plan policy and then they may only require compliance with the Nationally Described Space Standard (NDSS). Saved LP Policy BEN2 predates these matters and therefore cannot apply the Nationally Described Space Standards.
16. The National Planning Policy Framework (the Framework) states that the creation of high quality buildings is fundamental to what the planning and development process should achieve. Good design is a key aspect of sustainable development and developments should achieve a high standard of amenity for existing and future users. Paragraph 213 provides that existing policies should not be considered out of date simply because they were adopted prior to its publication. Weight should be given to development plan policies depending on their consistency with the Framework. Saved LP Policy BNE2 is consistent with the Framework as it requires the consideration of amenities of future occupiers and therefore it is not out of date.
17. The accommodation comprises six two bedroom and four one bedroom flats. The floor area for each unit is as follows:

Flat	Floor area (GIA)	Flat size by bedspaces	Occupancy set out in the UU
20A	43.5	2 bed 3p	1 adult & 1 child
20B	29.8	1 bed 1p	1 adult
20C	43.5	2 bed 3p	1 adult & 1 child
20D	32	1 bed 1p	1 adult
20E	62.5	2 bed 3p	3 person
22A	43.5	2 bed 3p	1 adult & 1 child
22B	29.8	1 bed 1p	1 adult
22C	43.5	2 bed 3p	1 adult & 1 child
22D	32	1 bed 1p	1 adult
22E	62.5	2 bed 3p	3 person

18. The appellant has provided floor plans of each of the units with stated room sizes for the bedrooms, kitchen/diner or kitchen/lounge. Some bathrooms have floor areas recorded, but not all. The flats benefit from a dual aspect. In the flats which I was able to view on the site visit I noted that most bedrooms accommodated a bed and some clothes storage (whether a wardrobe, chest of draws or hanging rail). However, storage space in general and space within the bedrooms was limited. Flat 22B had a bed within the kitchen/diner area but none within the designated bedroom shown on the submitted plans. The kitchen/living space in all units was very limited. While there was a hob/oven, microwave, kettle, fridge/fridge freezer and storage cupboards in the units I visited the kitchen area dominated the living space. The bath or shower rooms, while accommodating a toilet, sink and shower or bath were cramped with barely room to open the door into the room. Within each flat I was able to

¹ Written Ministerial Statement Planning Update March 2015.

view; the living space was uncomfortably small resulting in a cramped poor standard of accommodation.

19. Flats 20E and 22E are clearly larger on plan than the flats I visited but are within the roof area of the building. The bathroom layout on the submitted plans in Flat 22E appears to be an error but records a space of 2.4m by 1.8m. However, the layout shown for Flat 20E shows a bath, toilet and sink with adequate circulation space. The roof form of the building results in sloping elements within the second floor of the building. The effect of these sloping roofs within Flats 20E and 22E is not clear from the submitted information and I was not able to view the space at the time of the site visit. No section drawings of the building have been provided by the appellant to demonstrate where the roof slopes within the top floor flats or how much floor space has a headroom of less than 1.5m. It is commonly accepted that a headroom of less than 1.5m is not useable floorspace other than for storage purposes. The second floor flats may well only show floorspace with this headroom but without evidence to demonstrate that, I cannot conclude that it does.
20. The overall impression of the flats on the ground and first floors is that they are cramped due the size of the units, poor layout and design for each of these units. I cannot, on the evidence presented, be satisfied that the head height in the second floor units is adequate for the majority of the floor space or for the stated floorspace.
21. While I note that the UU covenants to limit the occupancy of Flats 20A, 20C, 22A and 22C below that indicated by the bedspaces, for 40 years, this does not in my view, overcome the harm of the poor living conditions resulting from the cramped living/kitchen space of these flats. Although I accept it would reduce the harm because there would be less people living in the unit, that would not be to such an extent as to make the layout of the flats a good design or to provide good living conditions for the occupiers of those flats.
22. In relation to cycle and bin storage I note that the appeal site has been subdivided into two ownerships. The written evidence states that bins and cycle storage could be adequately accommodated in the two single storey projections either side of the flats. This would necessitate alterations to these single storey structures and a scheme to be drawn up. The appellant, who retains ownership of these structures, has not clearly established a willingness to allow these areas to be utilised by/sold to More Homes Bromley LLP ownership to provide these amenities.
23. While in a proposal a Grampian (negatively worded condition) may be imposed even where there are issues of land ownership before an Inspector, in the case of a retrospective application or a ground (a) appeal I need to be satisfied that what is required to be provided can actually be provided. In the circumstances of this case I am not satisfied that there is a suitable scheme before me to provide adequate cycle and bin storage to serve the occupiers of the flats. Moreover, there is no satisfactory mechanism available to secure the provision of the cycle and bin storage due to the known issue of how the appeal site has been subdivided into two titles.
24. I therefore conclude on this issue that the development results in harm to the living conditions of existing and future occupiers having regard to the standard of accommodation. As such it is contrary to Saved LP Policy BNE2. In addition, it does not accord with the Framework.

Parking

25. The Council is concerned that on street parking resulting from the development has or would lead to amenity harm to nearby residents. Saved LP Policy T13 requires parking provision in accordance with adopted standards. The Council state a total of 13 parking spaces would be required. Saved LP Policy BNE2 seeks to protect those amenities enjoyed by nearby and adjacent properties.
26. The Framework states that maximum parking standards for residential should only be set where there are clear and compelling justification for managing the local road network or for optimising the density of development in city and town centres and other locations that are well served by public transport. Based on the evidence provided Saved LP Policy T13 does not comply with the Framework and as such is out of date.
27. There is no off-street parking associated with the development and thus any parking generation resulting from the development would result in on-street car parking of vehicles. The Council consider this would harm the amenities of nearby and adjacent occupiers because of increased parking on street close to those properties. There is nothing to suggest the Council consider that a lack of parking on site would result in issues relating to highway safety.
28. Local residents have raised concerns about on street parking in an area where it is considered by those residents to be an issue. The submissions from residents refer to Hillside Avenue having considerable parking pressures. English Martyrs RC School is at the end of the road, close to the appeal site, there is a church with multiple masses throughout the week. Hillside Avenue is stated to be used by commuters using Strood Train Station. There is also reference to a care home which is referred to as being under refurbishment and expected to reopen. The care home is stated to have resulted in impact on parking from staff cars and visitors.
29. Both the Council and the appellant have done some limited assessment of on street parking within the area around the appeal site. This shows while there is some on-street car parking available at some times at others it is more heavily parked. However, neither party has provided a comprehensive survey of parking near to the appeal site. The submitted assessments and the comments from local residents also give a limited indication of parking in the road and the pressures from the church, school, commuter parking and care home which add to general residential parking demand.
30. The requirements as varied of the Notice are to cease the use as no more than four self contained units. It is estimated by the appellant that each unit could accommodate 3 bedrooms. There is no requirement to provide off street parking for four flats.
31. There is no onsite parking provision to serve the flats. There is no approved layout or agreed layout for four flats within the property. However, if I accept that a four flat layout could have three bedrooms in each flat, it is still likely that the parking demand in an unrestricted flat block for ten flats would be greater than for four flats. In mitigation the appellant states that only one of the current tenants owns a car. More Homes Bromley LLP also refers to the ability to utilise the land still within the appellant's ownership to the rear of the building for car parking, albeit it is not its wish to do this. For the reasons referred to for bin and cycle storage I am not satisfied this is achievable due to

the split in land ownership and there being no mechanism to achieve car parking provision on this area of land.

32. In the absence of a mechanism to enforce a car free occupation of the building or limit the number of cars owned or used by occupiers at the appeal site a lack of car ownership currently cannot be relied upon to be maintained. As such, a development of ten flats with no off street parking may well result in increased pressure for on street parking and this would, on the evidence available, be likely to harm the amenities of nearby and adjacent property occupiers due to vehicle manoeuvres while parking or looking for parking near to the site on a road with a number of competing demands for on street parking. This is contrary to Saved LP Policy BNE2.

Other matters

33. The appeal site is located within 6km of the North Kent Special Protection Areas/Ramsar Sites (SPA). The SPA's are designated to protect the waders and waterfowl and migratory species². New residential development would be likely to place additional pressure from recreational disturbance on the SPA's. The development of ten flats, in combination with other residential schemes in the district would contribute to that pressure. Nevertheless, were I to consider allowing the appeal, I would need to consider whether an appropriate assessment would be required in relation to the effect of the development on the SPAs. As I have concluded the development would conflict with other development plan policies, I have not completed an appropriate assessment.
34. The appellant's evidence states that it is common ground between the parties that if harm arises from the development then a financial contribution in accordance with the tariff set by the Council will overcome any harm arising. However, without an appropriate assessment I cannot conclude this, although it may be the case.
35. The appellant has referred to a number of appeal decisions in relation to size of flats. Appeal reference APP/Z5630/W/17/3171713 was one in which the flat was considered to meet the NDSS for a 1 bed 1 person unit for a flat on one storey. However, the accommodation was arranged over two storeys and thus a higher space standard was stated as the Council considered the flat would be a two storey two person unit. The one person flats within the current appeal scheme are smaller than the one considered by the Inspector in the referenced appeal. I do not consider the conclusions in the referenced appeal are applicable to the current flat scheme.
36. Another appeal decision (reference APP/J2210/W/15/3003134) concerned two studio flats of 24 and 27 sqm being granted permission. The term 'studio' implies there is no separate bedroom in it. The studio flats would share a rear garden and external cycle parking storage. The development also had a planning obligation for the restriction of parking of private vehicles and was considered to discourage private car ownership. The layout, studio form, access to garden and cycle storage were considered, in that case, to be acceptable. In my view, it is a matter of judgement whether a particular layout or combination of factors such as storage and access to a garden would provide adequate living conditions for occupiers of a development. The referenced

² As stated in the Thames, Medway and Swale Estuaries Strategic Access Management and Monitoring Strategy (dated 22 July 2014).

appeal is therefore different on its merits from the current scheme, particularly in relation to the type of unit i.e. studio or with bedrooms, access to garden space and cycle parking.

Planning Balance

37. The ten flats for the reasons set out above offer a poor standard of accommodation for the existing and future occupiers and could result increased pressure for on street car parking harming the living conditions of neighbouring occupiers. As such the development conflicts with Saved LP Policy BNE2 and is contrary to the development plan as a whole.
38. It is common ground that the Council does not have a five year supply of deliverable housing. The Framework is clear that where an application involving the provision of housing where a local planning authority cannot demonstrate a five year supply of deliverable housing sites, that planning permission should be granted unless the application of policies in the Framework for protection of areas or assets of particular importance provides a clear reason for refusing the development proposed (paragraph 11. d) i.) or any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework taken as a whole (paragraph 11. d) ii.)
39. The Framework footnote 6 in relation to habitat sites requires that the provisions of the Framework at paragraph 11 d) ii do not apply to paragraph 11. d) i. It requires that the decision maker applies the Framework policies for habitat sites in their own terms. I have not carried out an appropriate assessment due to my findings on harm to amenity in relation to the main issues. However, as a result, the habitat sites issue does not provide a clear reason for refusing permission of itself. I will therefore go on and apply the Framework paragraph 11 d) ii.
40. The Government seeks to significantly boost the supply of housing. This is a matter both for plan making and decision taking. However, this is not housing at all costs. The development has resulted in six additional dwellings. This merits substantial weight.
41. The ten flats are stated to be currently occupied by persons that were previously homeless. While the UU would maintain the flats for rent for a period of 40 years as AST's and would ensure the occupancy of the flats at the level set out in the UU this would not retain the flats as affordable housing or for housing those who are homeless in the future. I am therefore only able to attach limited weight to these aspects of the UU and the history of occupancy.
42. The appellant has referred to the personal circumstances of the occupiers of the flats. The occupation of the flats took place after the service of the Notice. Article 8 of the European Convention of Human Rights (as incorporated by the Human Rights Act 1998) provides the right to respect for private and family life. It is clear that a refusal of planning permission would interfere with the Article 8 rights of the appellant.
43. Interference with a person's right to respect for private and family life and the home may be justified in the public interest. Such interference would be in accordance with the law if planning policy and other relevant matters are appropriately and lawfully applied. The interference would also be in a pursuit

of a legitimate aim. This is the economic well-being of the country which includes the protection of the environment through the regulation of land use. Therefore, the impairment of individual rights must be no more than is necessary to accomplish that objective. I attach great weight to the protection of the environment in the public interest.

44. The ground and first floor flats provide cramped kitchen/living areas and bathrooms. They are not good design and provide a poor standard of accommodation for the occupiers and future occupiers. The second floor flats have, on the evidence available, not been demonstrated to provide headroom throughout the floor area on the submitted plans at a height of not less than 1.5m. The lack of adequate refuse and cycle storage adds to my finding on the standard of accommodation for occupiers and future occupiers. Furthermore, the lack of a mechanism to provide off street parking or to ensure a car free development may result in unacceptable on street parking to the detriment of the adjacent and nearby occupiers. I therefore find that interference with Article 8 rights is therefore necessary and proportionate.

Section 38(6)

45. The starting point in determining this ground (a) appeal is the Development Plan. Section 38(6) of the Planning and Compulsory Purchase Act 2004 makes it clear that if regard is to be had to the development plan for the purpose of any determination to be made under the Planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise.
46. The form of the development, the lack of mechanisms to deliver bin and cycle storage and the lack of a mechanism to provide off street parking provision or a mechanism to ensure the development is car free result in a development that would not accord with the Development Plan taken as a whole. Therefore, it is necessary to consider whether any material considerations indicate that the ground (a) appeal should be allowed. I have set out the benefits of the development and the weight I afford them, namely the provision of six additional dwellings, and retention for forty years of the flats for rent via AST's and a defined occupancy level.
47. I consider that despite these benefits, the harm resulting from the development is such that the appeal should fail.

Conclusion

48. For the reasons set out above the Appeal A on ground (a) should fail.

Appeal A and B ground (g)

49. This ground of appeal is that the time given to comply with the Notice is too short. The Council have given 4 months for compliance with requirement (i); 5 months for compliance with requirement (ii) and (iv); and 6 months for compliance with requirement (iii).
50. The appellant considers that it would be proportionate and reasonable for the compliance periods to be varied to 18 calendar months for compliance with requirement (i); 24 calendar months for compliance with requirement (ii); and 26 months for compliance with requirement (iii). The appellant sets out the personal details of the occupants of each of the flats. I note that there are

children living with a parent/guardian in some of the flats. It is reiterated that Martin Bloor Homes LLP was not aware of the Notice when purchasing the building and moving occupants into many of the flats.

51. The appellant considers that due to the personal details of the occupiers that adequate time would be needed to rehouse the tenants and a period of 18 months is considered necessary for this. In addition, it is stated that it would take 6 months to carry out the physical works to return the layout to four flats.
52. The Council state at the time of serving the Notice none of the ten flats were occupied and at that time four months was considered a reasonable period of time for compliance with the requirements. It is not clear to the Council why Martin Bloor Homes LLP were not aware of the Notice and its requirements when placing the tenants in flats at the appeal site.
53. The Council consider in the light of the occupation of the units that the period for compliance could be varied to 8 months for compliance with requirement (i); 10 months for compliance with requirement (ii); and 11 months for compliance with requirement (iii).
54. While I am mindful of the personal circumstances of the occupiers, I consider that a period of 12 months would allow adequate time for either the occupiers or those responsible for provision of housing to look for alternative accommodation. Although the detail in relation to the 6 month period required for the works to be carried out has not been provided it is considered to be a reasonable period. It is unclear why a period of 26 months overall is sought for compliance with the requirements of the Notice. I therefore consider that an overall compliance period of 18 months in total, with 12 months of that overall period given to cease the use, would be reasonable on the evidence available. The ground (g) appeals succeed to this extent.

Conclusions

55. For the reasons given above I conclude that Appeal A should not succeed, although I consider a reasonable period for compliance would be 18 months and will vary the enforcement notice accordingly prior to upholding it. I shall uphold the enforcement notice with variations and refuse to grant planning permission on the deemed application.
56. For the reasons given above I conclude that in relation to Appeal B a reasonable period for compliance would be 18 months, and I am varying the enforcement notice accordingly, prior to upholding it. The appeal under ground (g) succeeds to that extent.

Hilda Higenbottam

Inspector