



Appeal Decision

Site visit made on 30 July 2020

by L Perkins BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 August 2020

Appeal Ref: APP/D5120/C/19/3242017

68 Palmeira Road, Bexleyheath, Kent DA7 4UX

- 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 Xhevat Lita of Access Building Contractors Ltd against an enforcement notice issued by the Council of the London Borough of Bexley.
 - The enforcement notice was issued on 31 October 2019.
 - The breach of planning control as alleged in the notice is: Without planning permission the material change of use of the property shown in the approximate location outlined in blue on the attached plan, to create 1 x 2 bedroom and 2 x 1 bedroom self-contained flats.
 - The requirements of the notice are:
 1. Cease the use of the building shown in the approximate location outline in blue on the attached plan as three self-contained flats.
 2. Remove all kitchen appliances, cupboards, and sinks from each self-contained flat within the building shown in the approximate location outlined in blue on the attached plan.
 3. Remove all resultant materials from the land.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (f) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice be corrected by the deletion of "three" from requirement 1. Subject to this correction 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.

Preliminary Matter

2. Section H of the appeal form refers to another appeal on the same site (the previous appeal)¹. I sought comments from the main parties on the relevance of this for the appeal which is before me and I have taken into account the comments made in my reasoning.

The Notice

3. The requirement to cease the use of the building as three self-contained flats would not prevent the use of the building as two flats. The notice indicates none of the flats are acceptable to the Council and so it is clear it was not the Council's intention to allow the building to be used as two flats. Therefore, the

¹ APP/D5120/W/19/3242012

appropriate wording for this requirement is to cease the use of the building as self-contained flats, omitting the word "three". I am satisfied no injustice would be caused by the above and so I will correct the notice accordingly, drawing on my powers under section 176(1) of the 1990 Act.

Reasons

The ground (a) appeal

4. The main issues in the ground (a) appeal are:

- the effect of the development on the area's stock of housing, with particular regard to small to medium sized dwellings; and
- whether the development provides an acceptable standard of accommodation for occupants, with particular regard to (i) the internal floor area of the ground floor flat, (ii) external amenity space for the first and second floor flats, and (iii) outlook for the bedroom in the second floor flat.

Housing Stock

5. To protect the stock of small to medium sized dwellings, Policy H11 of the Unitary Development Plan 2004 (the UDP) states that the conversion of an existing dwelling should only take place in a dwelling of at least 110 sqm gross internal floor area as originally built.
6. I am conscious from the evidence provided that the Inspector for the previous appeal on this site found that the conversion of the property to 3 flats complied with Policy H11. But I have reached a different conclusion as, based on the evidence provided, the floor area of the property as originally built was 88.7 sqm and so the development before me does not comply with Policy H11.
7. The appellant considers planning permissions granted in the area in recent years have resulted in the stock of small to medium sized dwellings being raised. However, there is no evidence before me that the planning permissions referred to have been implemented and so I cannot be certain that with the appeal development there is no net loss of a small to medium sized dwelling.
8. I conclude on this main issue that the development has resulted in the loss of a small to medium sized dwelling which has reduced the Council's ability to retain a suitable stock of housing, contrary to Policy H11 of the UDP.

Standard of Accommodation

9. From the evidence provided, the internal floor area of the ground floor flat is 71.08 sqm. The drawings provided indicate this flat is a 2 bedroom, 4 person flat with a study. However, based on its size, the Council consider the study is large enough to be a single bedroom and I agree having seen at my site visit that this room was in use as a bedroom (albeit with 2 beds rather than one).
10. Given the study has a window and is clearly of a size capable of accommodating at least one bed, I have no reason to believe this room would not be used as a bedroom by future occupants. In my judgement it is therefore reasonable to assess the ground floor flat as a 3 bedroom, 5 person dwelling rather than a 2 bedroom, 4 person dwelling.

11. At 71.08 sqm and with 3 bedrooms the ground floor flat appears cramped. It is not large enough to comply with the space standards for a 3 bedroom, 5 person dwelling referred to in the London Plan Housing Supplementary Planning Guidance (the SPG) which is cited in this reason for issuing the notice. These standards reflect the Technical housing standards – nationally described space standard, 2015, also referred to by the Council, which require a 3 bedroom, 5 person dwelling to be 86 sqm gross internal area (GIA).
12. I note that in the previous appeal the Council withdrew a reason for refusal in relation to the size of the ground floor flat and the Inspector for that appeal saw no reason to disagree with the Council's position in that regard, taking the view that the flat needed to meet a minimum size of 70 sqm. But the Council have not withdrawn the reason for issuing the enforcement notice relating to the size of the ground floor flat in the appeal before me, and, based on the evidence which is before me, it is a 3 bedroom, 5 person dwelling and so is required to be 86 sqm rather than 70 sqm GIA.
13. Policy H11 of the UDP states that adequate amenity space arrangements should be made for conversions. Policy H6 of the UDP states that residential development should normally provide adequate usable on-site amenity space and refers to Design and Development Control Guidelines. Design and Development Control Guideline 3 states that external amenity space should be provided for all units within a conversion and that where it is not possible for the garden to be sub-divided, a communal amenity area must be provided for all of the units of accommodation. However, only the ground floor flat of the development has access to the garden.
14. I have considered whether the respective size of the first floor flat and second floor flat compensates for their lack of external amenity space, in the spirit of paragraph 2.3.32 of the SPG that my attention has been drawn to. However, as with the ground floor flat, at my site visit I found a study in the first floor flat was used as a bedroom. I have no reason to believe future occupants would not use it as such and so in my judgement this flat should reasonably be assessed as a 2 bedroom, 3 person flat. At 52.98 sqm, the first floor flat does not contain additional internal living space equivalent to the area of the private open space required, according to the SPG².
15. I have reached the same conclusion for the second floor flat which, not taking into account a sloping ceiling, only marginally exceeds the minimum floor space for a 1 bedroom, 2 person flat. The appellant states the development has not resulted in family dwellings having no access to external amenity areas. But this is not relevant for the purposes of the minimum outdoor space requirement for 1-2 person dwellings set out in the SPG. Moreover, flats elsewhere not having their own private amenity space is not a good enough reason for allowing more flats without private amenity space in light of the above policies and guidance.
16. The appellant comments that the outlook to the rear is very open. But in my judgement, this does not compensate for the lack of access to external amenity space for the upper floor flats. The appellant has asked that I give further consideration to the availability of public amenity, commented on by the previous Inspector, in relation to the public space of Danson Park which is within walking distance of the appeal site. But in light of the policies and

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guidance referred to above, I do not accept that a public park within walking distance is an acceptable substitute for on-site external amenity space or that it can fulfil all of the purposes that external amenity space provided on-site would.

17. Outlook from the bedroom in the second floor flat is provided only via a single small rooflight. At my site visit I found the sill of this rooflight is broadly eye-level, meaning outlook from this room is particularly limited. As such, the second floor flat presents itself as a single aspect, north-facing dwelling. Consequently, in my judgement, this is a poor quality dwelling, notwithstanding the lack of specific reference to outlook in the policies referred to by the Council in this reason for issuing the notice.
18. Considering all of the above points, I conclude that the development does not provide an acceptable standard of accommodation for occupants due to the limited floor area of the ground floor flat, the lack of access to amenity space for the first and second floor flats and the lack of outlook from the bedroom in the second floor flat. Consequently, it does not comply with Policy CS01 of the Core Strategy 2012, Policies H6 and H11 of the UDP, Design and Development Guideline 3 or the SPG in these respects.
19. My attention has also been drawn to Policy ENV39 of the UDP. But its supporting text states this policy applies mainly to non-residential development and I have not found it relevant to the main issues referred to above.

Other Matters

20. The appellant considers the appeal development is sustainable development and refers to the availability of services and facilities nearby. But in my judgement, the site's access to services and facilities is not a good enough reason to allow the development in light of the harm identified above.
21. The appellant refers to the site as a windfall site which contributes to the Council's housing targets and that to require the removal of any flats would represent anti-sustainability in light of the current economic situation resulting from the Covid-19 pandemic. However, in my judgement this demonstrates why good quality family housing with access to on-site external amenity space is required rather than the standard of housing which has been provided in the appeal development.

Conclusion on ground (a)

22. Considering my findings on the above main issues the appeal on ground (a) fails.

The ground (f) appeal

23. Under section 173(4) of the 1990 Act, when serving an enforcement notice the Council may seek to (a) remedy the breach of planning control, or (b) remedy any injury to amenity which has been caused by the breach. In this case, based on the requirements of the notice, its purpose is to remedy the breach of planning control.
24. The appellant has proposed to merge the first and second floor flats and therefore considers it reasonable to request only the removal of the kitchen from the second floor flat. But in my view, this would not achieve the purpose

of the notice, and, in any event, under section 177 of the 1990 Act I cannot consider an amended scheme or amended plans to resolve the enforcement issues.

25. It is open to the appellant to apply for planning permission to the Council for an alternative scheme, if appropriate, and in my view the period for compliance provides sufficient time for that. I conclude that the appeal on ground (f) fails.

Conclusion

26. For the reasons given above I conclude that the appeal does not succeed. I shall uphold the enforcement notice as corrected and refuse to grant planning permission on the deemed application.

L Perkins

INSPECTOR