



Appeal Decisions

Site visit made on 23 August 2021

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 September 2021

Appeal A: APP/Q1445/W/21/3268988

2 Park Crescent, Portslade BN41 1SR

- 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 Mr P Meredith against the decision of Brighton & Hove City Council.
 - The application Ref BH2020/02566, dated 11 September 2020, was refused by notice dated 22 October 2020.
 - The development proposed is conversion of a single dwelling to two flats.
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Appeal B: APP/Q1445/C/21/3270602

The property known as 2 Park Crescent, Portslade BN41 1SR

- 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 P Meredith against an enforcement notice issued by Brighton & Hove City Council.
 - The enforcement notice was issued on 29 January 2021.
 - The breach of planning control as alleged in the notice is: Without planning permission, the change of use of a single dwellinghouse (C3) to use as two dwellinghouses comprising 1no one bedroom flat and 1no two bedroom flat (C3).
 - The requirements of the notice are: 1. Cease the use of the property as two separate dwellinghouses 2. Return the property to a single dwellinghouse (C3) 3. Remove the locks of the internal front doors, ground floor lounge door and door at the top of the stairs on the first floor.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(g) of the Town and Country Planning Act 1990 as amended.
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Summary of Decisions

1. The appeals are dismissed.

Preliminary Matter

2. Despite agreeing in advance to make the flats available for inspection at an allotted time, nobody on behalf of the appellant attended the site visit. In light of this, and that the appellant stated on his appeal forms that he did not consider it essential for me to enter the site to check relevant facts, I do not consider that injustice arises to the parties from determining the appeal solely on the written evidence already before me.

The Enforcement Notice

3. An enforcement notice can only require the cessation of the breach of planning control that has been alleged. It cannot require the return or resumption of a use. The enforcement notice already requires the cessation of the breach of planning control as well as remedial works in the form of the removal of locks. Accordingly, requirement 2 is unnecessary and moreover lacks precision should it have been intended to require further remedial works. Injustice to the parties does not however arise from deleting requirement 2 in its entirety.

Appeal A

Main Issues

4. The main issues are:
 - i. the effect of the development on the supply of small family housing; and,
 - ii. whether the development provides acceptable living conditions for occupants, having particular regard to the provision of internal space.

Reasons

5. The site relates to a two-storey end of terrace property. The development before me concerns its subdivision to a ground-floor one bedroom flat with a two bedroom flat above.

The supply of small family housing

6. Policy HO9 of the adopted Brighton and Hove Local Plan (the LP) seeks to retain residential units suitable for family occupation and sets out various criteria against which the subdivision of residential properties will be assessed.
7. The undisputed evidence before me is that the original¹ property had 2 bedrooms and a floor area of approximately 73 sqm. I accordingly accept that it was suitable for family occupation.
8. As the property had a floor-area of less than 115 sqm, policy HO9 of the LP resists its subdivision, as it is a smaller dwelling. The size and type of housing needs for different groups in the community is therefore reflected in this policy. The evidence before me is that there remains a high level of demand in the City for smaller dwellings suitable for family accommodation and that it will continue to be important to retain the existing stock of these dwellings.
9. The appellant highlights that a nearby property has been subdivided into two self-contained flats. However, this in itself is not evidence that there is not a requirement to retain smaller family homes for the local population or a material consideration that indicates my determination should not be made other than in accordance with the development plan.
10. I conclude the development results in the loss of small family housing and is therefore contrary to Policy HO9 of the LP. This policy, amongst other things, only permits the subdivision of a dwelling where the original floor area was

¹ For the purposes of Policy HO9 of the LP the original floor area excludes later additions such as extensions, garages (including converted garages) and loft conversions.

greater than 115 sqm. or the dwelling had more than 3 bedrooms as originally built. For the same reasons it conflicts with the delivering a sufficient supply of homes objectives of the National Planning Policy Framework (the Framework). This is a matter to which I attach significant weight.

Living conditions

11. The undisputed evidence before me is that the ground-floor flat has a gross internal floor space of approximately 36 sqm and that it is a one bedroom property for two occupants. That being so, the Government's technical housing standards² (the NDSS) requires the flat to have a floor area of 50 sqm. Moreover, the appellant provides no indicative layout plans to address the concerns raised about the cramped layout of the lounge. In my view, a lounge, which also functions as the only circulation area between the rooms, but without any evidence of adequate space for a sofa or other large items of furniture, results in a cramped and poor standard of accommodation.
12. The undisputed evidence before me is that the first-floor flat has a gross internal floor space of approximately 48 sqm. which is significantly less than the 70 sqm. required by the NDSS for a two bedroom property. Moreover, whilst it is not uncommon for such conversions to only be served by rooflights, the usable floor-space of the bedroom provided within the roof space is then restricted by the inevitable sloping ceilings; indeed, there is also only a maximum ceiling height of 2.1m directly under the roof ridge. Based on the evidence before me I consider this results in a cramped and poor standard of accommodation.
13. I conclude the development does not provide acceptable living conditions for occupants having particular regard to the provision of internal space and therefore contravenes the NDSS and Policy QD27 of the LP. This policy, amongst other things, seeks to ensure a high standard of amenity for occupiers. For the same reasons it conflicts with the achieving well-designed places objectives of the Framework. This is a matter to which I attach significant weight.

Other matters

14. I appreciate the flats have been rented to Council tenants since March 2017, but it does not follow that the subdivision is then policy compliant or otherwise acceptable in planning terms.
15. There is also very little evidence before me that either of the two flats are now suitable for family occupation. In particular, the first-floor flat, being the larger of the two, does not have access to any outside private space, which further reduces its propriety as a family dwelling.

Planning balance

16. The Government is seeking to significantly boost the supply of housing. The Council has also acknowledged that it cannot demonstrate a five-year supply of deliverable housing sites which is a matter I attach considerable weight.
17. However, I have found the development is harmful to the supply of small family housing as well as the living conditions of occupiers, which are matters

² Department for Communities and Local Government Technical housing standards – nationally described space standard

that each attract significant weight. Consequently, there are adverse impacts that significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

Conclusion

18. For these reasons and having regard to all other relevant matters raised, I conclude that the appeal should be dismissed.

Appeal B

The ground (g) appeal

19. It would appear the appellants intention of appealing on ground (g) was to ensure the enforcement notice did not take effect until the appeal against the refusal of planning permission (Appeal A) had been determined. No alternative period for compliance has been suggested other than for it to be from the determination date of Appeal A, which has duly been achieved.

20. The appeal on ground (g) therefore fails, however as a result, the enforcement notice takes effect from the date of these decisions.

Overall Conclusion

21. For the reasons given above I conclude that the appeals should not succeed and I shall uphold the enforcement notice with a correction.

Formal Decisions

Appeal A

22. The appeal is dismissed.

Appeal B

23. It is directed that the enforcement notice be corrected by:

- deleting requirement 5. 2. in its entirety and numerating requirement 5. 3. as requirement 5. 2.

24. Subject to this correction the appeal is dismissed and the enforcement notice is upheld.

Paul T Hocking

INSPECTOR