



Appeal Decision

by **J Moss BSc (Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 11TH AUGUST 2022

Appeal Ref: APP/G5180/X/20/3263009

Land at Flat 2, 80 Belvedere Road, Anerley, London SE19 2HZ

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Dr Y Patel against the decision of the Council of the London Borough of Bromley.
 - The application ref DC/20/02570/ELUD, dated 8 July 2020, was refused by notice dated 30 September 2020.
 - The application was made under section 191(1)(b) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is described in the application form as: Internal alterations (sub-division of kitchen lounge) to create additional bedroom.
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Preliminary Matters

1. The works subject of the LDC application comprise internal alterations to Flat 2. Although the description refers specifically to the sub-division of the kitchen lounge to create an additional bedroom, the plans submitted with the LDC application also show the sub division of the room identified as 'bedroom 1' to create a bathroom. I have considered these alterations in the determination of this appeal, as well as the works to sub divide the kitchen and lounge area to create a third bedroom in the flat.

Main Issue

2. Section 191(4) of The Town and Country Planning Act 1990 as amended (the 1990 Act) indicates that if, on an application under that section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use, operation or other matter described in the application, or that description as modified by the local planning authority or a description substituted by them, they shall issue a certificate to that effect; and in any other case shall refuse the application. My decision is, therefore, based on the facts of the case and judicial authority.
3. It is the appellant's case that the internal alterations to the flat are not defined as development under section 55 of the 1990 Act. Whilst the Council acknowledge that internal alterations to a building are not included in this definition, it suggests that the works constitute a failure to comply with a condition or limitation subject to which planning permission has been granted in this case. The Council say that for this reason the works are not lawful. Whether or not this is correct is the main consideration in this case.

Reasons

4. The Council has referred to the planning history for the site and three planning permissions referenced 15/05581/FULL1, 16/03343/FULL1 and

16/03343/RECON. It suggests that the works subject of the LDC application are a breach of a condition imposed on each of these permissions. I have been provided with the decision notice for each of these planning permissions and layout plans approved by each. These plans show the lower ground and ground floor of 80 Belvedere Road.

5. The plans provided with the 15/05581/FULL1 and the 16/03343/FULL1 decision notices have the same reference number (drawing number 101) and appear to show the same layout. There is, however, a difference between the description of development stated on the respective decision notices, with the description on the 16/03343/FULL1 decision notice including balconies at second floor. The 16/03343/RECON permission approves a variation of condition 3 of the 16/03343/FULL1 permission. The decision notice indicates that this permitted scheme amends both internal and external arrangements that were permitted by 16/03343/FULL1. The 16/03343/RECON plan is revision 'A' of drawing number 101, and on this I note a slight variation to the layout at the rear of flat 2.
6. Whilst I have not been provided with the full details of the above-mentioned applications, on the evidence available to me it is more likely than not that there are material differences between the schemes of development approved by each. As such, it is likely that the comprehensive works carried out to 80 Belvedere Road (i.e. the works carried out prior to those that are the subject of this appeal) would not have the benefit of all three permissions and cannot, therefore, be subject to the conditions of all three permissions.
7. In order to establish which of the three permissions is most relevant in this case, I note that the appellant has provided drawing number 101 revision A with their LDC application to show an existing floor plan. They have also provided an annotated version of this plan (and referenced it as drawing number 101A revision A) to show the works that are the subject of the LDC application. Having regard to this, it is more likely than not that the previous development carried out at 80 Belvedere Road was in compliance with the plans approved by the 16/03343/RECON permission. Accordingly, it is the conditions of the 16/03343/RECON permission that are most relevant in this case.
8. It is also pertinent to note that there is nothing before me to suggest that permission had previously been granted for flat 2 as laid out in the manner shown on drawing number 101A revision A, such that I could conclude that the conditions of some other permission are more relevant to Flat 2 than the conditions of the 16/03343/RECON permission.
9. Having established the above, I can agree with the appellant that the drawings submitted with the 16/03343/RECON application show the detail of what is permitted. However, of note in this case are the requirements of condition 3 of the 16/03343/RECON permission, which states that 'the development shall be retained strictly in accordance with the application plans, drawings and documents hereby approved'. I note that this condition has not been imposed on the permissions granted by reason of 15/05581/FULL1 and 16/03343/FULL1. Indeed, this condition imposes an additional level of control over the development permitted, which has not been imposed on the previous permissions. Rather than insisting that the development shall not be carried out otherwise than in complete accordance with the approved plans, condition

3 of 16/03343/RECON requires the development to be **retained** strictly in accordance with the approved details. Such a requirement remains in place and is not discharged once the development permitted has been completed.

10. The 16/03343/RECON permission has approved drawing number 101 revision A for the purposes of showing the detail of what has been permitted, including the layout of Flat 2. Condition 3 requires the development, including the layout of the development, to be retained in accordance with this plan. For this reason I disagree with the appellant's case; this condition has the effect of prohibiting any changes to the development from that shown on drawing number 101 revision A.
11. The works subject of this appeal, as shown on drawing number 101A revision A, comprise the sub-division of two of the rooms in Flat 2, resulting in the addition of 2 further rooms in the flat. Having regard to the nature of the alterations shown on the submitted plan, I find that as a matter of fact and degree the works are a material alteration to the layout of Flat 2. For this reason the carrying out of these works has resulted in a failure to comply with condition 3 of the 16/03343/RECON permission. Accordingly, and having regard to all matters raised, I find that the works subject of the LDC application are not lawful.

Conclusion

12. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of internal alterations (sub-division of kitchen lounge) to create additional bedroom was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act.

Formal Decision

13. The appeal is dismissed.

J Moss

INSPECTOR