



Appeal Decision

Site visit made on 21 February 2023

by Ms Watson BA(Hons), MCD, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 March 2023

Appeal Ref: APP/K0235/C/21/3282271

11 Commercial Road, Bedford, MK40 1RB

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
 - The appeal is made by Mr Stephen Singh against an enforcement notice issued by Bedford Borough Council.
 - The enforcement notice, numbered 18/00193/UNDEV, was issued on 4 August 2021.
 - The breach of planning control as alleged in the notice is failure to comply with a condition imposed on a planning permission ref 05/00339/FUL granted on 24 May 2005.
 - The development to which the permission relates is: the subdivision of existing dwelling to form 2 self-contained flats. The condition in question is No 3 which states: *The garages to be used for car parking in connection with the development hereby permitted shall be allocated as detailed on the floor plans received 9 February 2005 and shall not be used for any other purpose.* The notice alleges that *the condition has not been complied with because the former garage doors have been altered such that one has had windows inserted and one has been boarded over. The garages have not therefore been allocated as detailed on the floor plans approved as part of the planning permission 05/00339/FUL and are no longer available for car parking.*
 - The requirements of the notice are: i) remove the windows, panelling and any framing and supporting structures from the garage door openings such that there is clear access for vehicles to enter the buildings; (ii) remove all materials stored and any structures such as staircases and partitioning from within the ground floor garage area; (iii) make the garage available for the parking of two cars.
 - The period for compliance with the requirements is one month.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decision

1. The appeal is allowed and the enforcement notice is quashed. In accordance with section 177(1)(b) and section 177(4) of the 1990 Act as amended, Condition No 3 attached to the planning permission dated 24 May 2005, Ref 05/00339/FUL, granted by Bedford Borough Council is discharged and the condition below is imposed. Planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for "the subdivision of existing dwelling to form 2 self-contained flats" without complying with Condition 3 but subject to the other conditions attached to that permission and the following new condition:
 - *The boarding shall be removed and the opening stopped up before 1 September 2023 in accordance with details which shall have first been submitted to and approved in writing by the LPA.*

Preliminary Matters

2. The enforcement notice gives the address as No 11. The appellant says that the address is 11b. The address of the planning permission for the roof extension is 11b. Even though I have no reason to doubt that the loft belongs to 11b, the plans do not confirm that the whole of the roof extension permission annexes the whole of the garage to 11b. Nevertheless, the site is clearly identified by the plan attached to the notice and it is therefore clear what the alleged breach of planning control relates to, which is the whole of the approved garage.

The appeal on ground (a)

3. The main issue is whether the breach of condition results in unacceptable on-street parking pressure in respect of highway safety.
4. The reason for condition 3 is "To ensure that adequate provision is made for vehicles to park clear of the highway in the interests of highway safety and in accordance with Policy BE30 of the Bedford Borough Local Plan 2002."
5. Policy BE30 of the 2002 plan has been superseded and the Council relies, in its notice, on current policies 29 and 31 of the Bedford Local Plan 2030 (LP) which refer to parking, cycle parking and bin storage.
6. The Council has not made a case in its statement in relation to bin storage or cycle parking. The Council's case is that the failure to allocate the garages for parking harms highway safety. Moreover, the condition pertains to require the garages to be used for car parking and no other purpose. It does not require the storage of bicycles or bins.
7. The Council approved a roof extension in 2014¹ which involved the construction of a staircase within one of the parking spaces, so one of the spaces has already been removed with the consent of the Council. I do not accept the Council's argument that the staircase has not been approved due to it being part of the internal layout of the proposal. The staircase is clearly shown on the approved plans. Whilst internal alterations generally do not constitute development, internal layout is a planning matter in the determination of planning applications. For example, the internal arrangement of dwellings is relevant when determining if a dwelling would provide adequate living conditions. As the Council approved the staircase leading to the roof extension, only one space remains in the garage.
8. The Council's Supplementary Planning Document Parking Standards for Sustainable Communities: Design and Good Practice, (SPD) indicates that a one-bedroom flat should provide 1 parking space. It also says that no newly constructed dwellings or conversions are eligible for residents' permits within the Controlled Parking Zone (CPZ).
9. However, both parties agree that the occupants of the flats are entitled to apply for residents parking permits as the flats were formed before the SPD came into being. They can apply for them regardless of whether the garage exists or not.

¹ Council Ref: 14/00511/FUL

10. As a result of not complying with the condition, if the occupants of the flats were to park on the road as an alternative to using the garage, this would result in additional competition for one additional parking space within the CPZ. However, although the existence of the garage space might make it less likely that the residents would obtain a permit and park on the street, it could not prevent this happening, i.e., the residents could park on the street regardless of the outcome of this appeal. Furthermore, the Council accepts that the remaining space in the garage is about half a metre shorter than the minimum length indicated in the SPD. Therefore, it is substandard and not suitable for large cars.
11. The Council say that there were very few on-street spaces available when officers have visited the site during the day. However, I noted at my visit that there were several free spaces on Commercial Road and on Costin Street. There may be more pressure for car parking in the evening but no substantive evidence has been submitted in respect of evening parking pressure.
12. Moreover, the Council has not explained how the additional parking on the road by the occupants would harm highway safety. There are double yellow lines outside of the property up to the junction of Costin Street and Commercial Road. Hazardous unauthorised parking can therefore be enforced against in the vicinity of the appeal site.
13. I note the Council's concern in relation to a potential unauthorised future use of the building. However, I must determine this appeal on the basis of what has been applied for. If the garage were to be used for purposes which resulted in a material change of use, enforcement action could be taken. Whilst I acknowledge the Council's reference to a breach of condition at 19 Ivy Road, and the dismissed appeal² in relation to the use of the appeal building as ancillary living space, I do not agree that an unauthorised change of use would be difficult to enforce against. It is not uncommon for unauthorised subdivisions of dwellings to be enforced against and no good reason has been put to me why it would be any different in this case if a breach of planning control were to occur. Moreover, the Council did take enforcement action in the case of 19 Ivy Road.
14. For the above reasons I conclude that the breach of condition does not harm highway safety and therefore the condition is not necessary. I find no conflict with the aims and objectives of LP Policy 29 which seeks to ensure good quality design. Whilst criteria viii of this policy indicates that functional needs, such as that car parking should be integrated, it does not specifically require the provision of car parking. Integration of parking within a development in respect of design quality is not the same as requiring off-street car parking spaces. I find no conflict with LP Policy 31 which seeks to ensure that development does not have any significant adverse impact on access to the public highway. Whilst I find some conflict with the SPD, as no parking would be provided, the other material considerations set out above outweigh the conflict.

Conditions

15. As one of the garage openings is currently boarded over, it is necessary to attach a condition to ensure that the opening is closed off in an acceptable way in the interests of the character and appearance of the area.

² APP/K0235/W/21/3272879

Conclusion

16. For the reasons given above, I conclude that the appeal should succeed on ground (a) and the enforcement notice should be quashed.
17. I shall discharge the condition which is subject to the notice, and grant planning permission on the application deemed to have been made for the development previously permitted without complying with the condition enforced against but subject to the new condition described above.
18. The appeal on ground(g) does not fall to be considered.

Ms Watson

INSPECTOR