



Appeal Decision

Site visit made on 20 April 2023

by Roy Curnow MA BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28th April 2023

Appeal Ref: APP/Y1110/C/22/3304059

53 Northernhay Street, Exeter EX4 3ER

- 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 Danny Merrick against an enforcement notice issued by Exeter City Council ('the Notice').
 - The enforcement notice, numbered ENF/19/00077, was issued on 15 June 2023.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of a garage/workshop to a studio flat for permanent residential occupation.
 - The requirements of the notice are: 1. Cease use of the ground floor garage building on the Land as self-contained residential accommodation; and 2. Remove from the Land all items, fittings and structures associated with residential accommodation including the kitchen and bathroom facilities.
 - The period for compliance with the requirements is 9 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) (b) and (f) of the Town and Country Planning Act 1990 as amended.
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Decision

1. 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.

Reasons

2. 53 Northernhay Street ('No 53') lies close to the heart of the city. It consists of the ground floor of a two-storey, flat-roofed building that lies at the head of a courtyard accessed from Northernhay Street. A three-storey building lies to one side of the yard; this has been built over part of the courtyard, with accommodation at first and second floor levels forming a partially covered parking area at ground level. Access to the appeal site is via this parking area, which lies at a higher level than the appeal site. There are two-storey buildings on the northeast side of the courtyard, and that adjacent to the appeal site appeared to be in residential use.
3. No 53 is divided horizontally. The first floor of the building, accessed via a short flight of steps, was set out for residential use when I visited. It had a bed that folded back into the wall, a kitchen-living-dining area and a separate wc-shower room. It has the facilities to be a *Gravesham* dwellinghouse¹.

¹ See *Gravesham BC v SSE & O'Brien* [1983] JPL 306

4. The appeal site is on the ground floor, and is accessed via steps from the parking area. A narrow space lies in front of No 53. This provides access to it and is its only outdoor area. Immediately on the other side of this access, and therefore very close to No 53, a shed has been erected.
5. No 53 has been sub-divided to form a studio flat. The main area has a small kitchen at one end with the majority of the space being taken up by a bed. There is also a small wc-shower room and a very small room/large cupboard providing space for a boiler and storage. It, too is a *Gravesham* dwelling.

Ground (b)

6. An appeal under Ground (b) is that the matters alleged in the Notice have not occurred. This is a legal ground of appeal, where the onus lies with the Appellant to make his case on the balance of probabilities.
7. Very limited evidence has been given in support of this ground. The Appellant sets out that he visited No 53 weekly between 5 June 2018 and 16 July 2019 and only in one week, 14 June 2018, was there evidence of its use as a workshop/store.
8. The use of the site alleged in the Notice has clearly occurred. The appeal site is obviously used in the manner that is alleged in the Notice and it has not been shown on the balance of probability that there was not a change from the building's use as a garage/workshop.
9. Thus, it has not been demonstrated that the allegation was incorrect and, given this, the Ground (b) fails.

'Hidden' Ground (d)

10. The evidence put forward might be read as a 'hidden' Ground (d) appeal, that is to say that at the date that the Notice was issued no enforcement action might be taken against the use.
11. It appears that the Appellant's submissions might be claiming that the flat had been formed, and used continuously for residential purposes, for at least four years at the time that the Notice was issued. This is the time limit for enforcement action set out in s171B(2) of the Act. I shall treat this as a 'hidden' appeal under Ground (d).
12. Again, it would be for the Appellant to make his case on the balance of probability. The very limited evidence of the dates that the Appellant visited the site, set out in my Ground (b) findings above, is all that I have in this regard.
13. For its part, the Council has supplied, amongst other things, photographs of the building taken by a Local Taxation Visiting Officer. These were said to be taken on 25 March 2019 and, as the Appellant does not counter this, I take it to be the case. One of these shows that No 53 had a solid garage door in the position where the patio door is now. This suggests that the property was not being used as a dwellinghouse at that time. Another photograph shows what I am told is the interior of the property; again, the Appellant does not dispute this. The image is indistinct, so I cannot conclude that it shows the property is being used for storage, as the Council suggests.

14. The record of the date that the property was rated as a flat for Council Tax purposes, 1 June 2019, cannot be held to be definitive in terms of the use of the building. The use might have commenced before being recorded for Council Tax purposes, for example.
15. Notwithstanding these last points, it is for the Appellant to demonstrate that the property has been used as a dwellinghouse for a period in excess of four years. His evidence is scant and does not make the case on the balance of probability. As such, the 'hidden' Ground (d) appeal fails.

Ground (a)

16. An appeal under this ground is made on the basis that planning permission ought to be granted for the use of the property alleged in the Notice.
17. The Main Issue in this appeal is whether the flat provides suitable living conditions to its occupants, with particular regard to internal and external space, and outlook.
18. The Appellant's case is limited to drawing my attention to the number of people sleeping rough on the streets and in doorways. The appeal site provides accommodation at the centre of the city, in a similar manner to the flat above.
19. That there are people sleeping rough in the city centre, and that the flat might provide a home in a highly sustainable location are important considerations.
20. However, both the Government and the Council set out housing policies that any proposed dwelling would normally have to accord with. The Council accepts that, as the flat arises from the conversion of a building in the city centre, the use accords with Policies H1 and H2 of the Exeter Local Plan First Review, dated 31 March 2005, ('LP'). Although this document is fairly old, the thrust of these 'saved' policies to develop land in a hierarchical manner is broadly compliant with the Government's National Planning Policy Framework ('the Framework').
21. I saw that the flat was extremely small. The Council tells me that it has an internal area of around 16.5 square metres (sqm). The Government's 'Technical housing standards – nationally described space standard' ('the Standard') of March 2015 sets out that a one person dwelling on one floor should have a floor area of at least 37 sqm. Therefore, the floor area of the flat is significantly lower than the minimum supported by the Standard. I saw that, despite the cupboard, there was very little storage in the flat and clothes and other items were kept in the open. The flat is very cramped and offers poor quality accommodation.
22. The outlook from the flat is currently very poor. It has a single aspect and looks directly toward the shed that has been erected on land in the courtyard outside the Appellant's control. The Council says that this does not benefit from planning permission. Although I cannot presume that this shed will remain, as the only windows serving the flat lie very close to that boundary, activities such as the parking of a van or the carrying out of development in this area that does not require planning permission would have a similarly harmful effect.
23. Externally, the only space available for the flat is its accessway, which has very restricted depth and is overlooked. The Council's Residential Design Guide Supplementary Planning Document, September 2010 ('the SPD') requires a

minimum amenity area of 45sqm, as set out in its Figure 7.1. There is a lesser requirement for residents of ground floor flats, set out in its paragraph 7.12, of 20sqm outdoor space. However, in this situation, it should have a minimum depth of 3m and have the same width as the property it serves. It should also be supplemented by communal space. The amenity space at the flat does run the width of the building, but is less than 3m deep and there is no communal space. Furthermore, the usability of the space is adversely affected by the shed on neighbouring land; if this were removed it might still suffer were that land to be used or developed in the way that I describe in relation to outlook, above. Therefore, I find that this area is unsuitable to serve as the dwelling's amenity space.

Other Matters

24. In its statement, the Council states that the development would give rise to increased pressure on 'European Sites', under the heading of 'Habitats mitigation'. It refers to the "Exe Estuary SPA/Ramsar or Pebblebed Heaths SPA/SAC" in this respect. In legislative and policy terms, it refers to the Habitats Regulations, South East Devon European Site Mitigation Strategy ('the Strategy'), the Framework and Policy CP16. This is not, however, a matter that was referred to in the Notice.
25. I have been provided with no evidence, such as a map showing the location of these habitats, a copy of the Strategy nor how the development would harm protected habitats, to back up these claims. Protecting such habitats is a statutory duty and I am aware of the terms of The Conservation of Habitats and Species Regulations 2017 and Framework in this regard. Were I to be allowing the appeal, I would firstly need to gain further information from the Council on the matter, give the Appellant the opportunity to comment and liaise with Natural England. However, as I am dismissing the appeal – and the requirements of the Notice would result in the cessation of the use that it is alleged causes harm to the protected habitats – I need not take the matter any further.
26. The site lies within the St David's Conservation Area ('SDCA') and immediately adjacent to the boundary of the Central Conservation Area ('CCA'), lying within the setting of the latter. These are designated heritage assets; development within conservation areas has to be assessed in the light of the statutory tests in s72 of the Planning (Listed Buildings and Conservation Areas) Act 1990. This states that "special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area".
27. Here, as the building is of a relatively modern design, and that there are residential properties close-by, the external appearance of the building and the introduction of the residential use has a neutral effect. Therefore, the development preserves the character and appearance of the SDCA and does not harm the setting of the CCA.
28. The Appellant claims that if the appeal were to be dismissed this would "let the squatters in as an illegal drug den or whatever". Its use for anti-social activities is a material consideration. However, I am of the view that these could be avoided through appropriate security measures.

29. Although there is a flat in the first floor of the building, which is of a similar size, I have not been formally told whether this use benefits from planning permission or is lawful. Even if either were the case, given the shortcomings I have identified in the ground floor unit, this would not alter my findings.

Planning Balance

30. The problems of homelessness, and that the dwelling might provide a home for a person, carry substantial weight in my deliberations. However, neither this nor that the development causes no harm to the SDCA, outweigh the very significant problems that I have identified. The flat offers a very poor standard of accommodation to its occupant. It is cramped, has a poor outlook and, furthermore, lacks suitable outdoor amenity space.
31. As such, for the reasons given above, the development is contrary to the terms of Key Objectives (ii), (iii) and (vii) in the preamble to Policies AP1 and AP2 of the LP, which seek to: provide citizens with a decent home; to avoid town cramming; and provide high quality design, respectively. These policy aims are reflected in Policy CP17 of the Exeter City Council Core Strategy, adopted February 2012, LP Policy DG4 and the SPD, none of which the development accords with. For those same reasons, the development does not result in sustainable development that accords with the Framework.

Ground (f)

32. An appeal under Ground (f) is that that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
33. The Appellant states that there is “no reason why anything should be tore out”. He does not go further, so I take this to refer to the Notice’s second requirement.
34. The purpose of the Notice is to remedy the breach of planning control. The evidence before me suggests that the fittings and structures, including the kitchen and bathroom, were introduced to enable the change of use of the building. The Appellant does not suggest any obvious alternative or lesser step which would achieve the purposes of the Notice with less cost and disruption, and I cannot see any.
35. Therefore, I find that the requirements of the Notice are not excessive, and the Ground (f) appeal fails.

Conclusion

36. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Roy Curnow

Inspector