



Appeal Decision

Site visit made on 8 August 2023

by R Bartlett PGDip URP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22nd September 2023

Appeal Ref: APP/X3540/W/22/3310853

Sole Bay House, Gun Hill, Southwold, Suffolk IP18 6HF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
- The appeal is made by Mr Adrian Hibbert of MARLLA LTD against the decision of East Suffolk Council.
- The application Ref DC/22/0878/FUL, dated 4 March 2022, was approved on 15 August 2022 and planning permission was granted subject to conditions.
- The development permitted is subdivision of dwelling into two units and refurbishment, alterations and additions.
- The condition in dispute is No.4, which states that: House 2 hereby permitted shall not be occupied otherwise than by a person as his or her only or Principal Home. For the avoidance of doubt the dwelling shall not be occupied as a second home or holiday letting accommodation. The Occupant will supply to the Local Planning Authority (within 14 days of the Local Planning Authority's written request to do so) such information as the Authority may reasonably require in order to determine whether this condition is being complied with.
- The reason given for the condition is: To safeguard the sustainability of the settlements in the Southwold NP area, whose communities are being eroded through the amount of properties which are not occupied on a permanent basis and to ensure that the resulting accommodation is occupied by persons in compliance with policy SWD4 of the Southwold Neighbourhood Plan.

Decision

1. The appeal is dismissed.

Procedural Matters

2. The appeal submission did not include all of the information required, as set out in the appeal forms and procedural guidance. A letter, dated 25 July 2023, provided a further opportunity for the appellant's agent to submit this information. Whilst the missing plans and various supporting documents were provided, the legal advice and email correspondence referred to in the appellant's statement of case, and the utility bills referred to, have not been provided. I have proceeded to determine the appeal based upon the information submitted.
3. The description of development on the application form is "*Proposed Refurbishment, Alterations and Additions*." It is apparent from the Council's statement of case that the appellant agreed to this description being amended to "*Subdivision of dwelling into two units and refurbishment, alterations and additions*". This is the description of development that appears on the decision notice and on the appeal form. As the Council granted planning permission based upon this description, I have determined the appeal on the same basis. The condition in dispute reflects the description of development.

Main Issue

4. The main issue is whether the occupancy restriction imposed by condition 4, in relation to the second dwelling to be created on the appeal site, is necessary to safeguard the sustainability of Southwold.

Reasons

5. The Southwold Neighbourhood Plan 2020-2039 (February 2022) (the NP) advises that currently only about 40% of the town's housing stock is occupied by full time residents, and these residents are, in the main, elderly persons. The remainder of the housing stock is occupied as second homes and/or used for holiday letting. This results in many of the dwellings being empty during the winter months, which in turn affects the viability of local businesses and the vitality of the community at this time of year. The NP seeks to increase and diversify the town's full-time population with more young people, more working people and more families.
6. Policy SWD4 of the NP states that all new housing (excluding replacement dwellings and including those created through change of use) will be subject to occupancy restrictions to ensure that they are occupied only as a principal residence. The crux of the appellant's case is that notwithstanding the agreed description of development for the sub-division of one dwelling into two, at the time of submitting the planning application, the main building on the appeal site comprised two independent dwelling units. Consequently, there would not be an increase in dwelling numbers as a result of the development and policy SWD4 of the NP would not apply.
7. There is no certificate of lawfulness to confirm what the existing lawful planning use of the building was at the point the planning application was made. It is not my role, in dealing with an appeal of this nature, to determine what the lawful use of the building was at that time. Moreover, at the time of my site visit, refurbishment had already commenced, and the main building had been largely stripped out. I saw no obvious signs of the building having ever been used as two separate dwellings. However, in the interests of completeness I have considered the evidence before me on this matter.
8. The Design and Access Statement advises that for a number of years Sole Bay House operated as two horizontally divided units, with separate entrances, in addition to kitchens and bathrooms being evident to both floors. The existing floor plans and photographs submitted with the application show the separate entrances, bathrooms and kitchens as well as an internal timber framed obscure glazed door and glazed panels across the ground floor hall. The appellant states that this was a lockable door that sub-divided the unit into two dwellings.
9. The appellant's grounds of appeal refer to a letter from Ashtons Legal dated 17th May 2022. I have not been provided with a copy of this letter or of the evidence which informed its findings. However, it is quoted as saying *"it is clear that the property was subdivided into two flats and used as such from the death of Mrs Hicklin since the 1990's"*.
10. I am advised that the Council responded to the above mentioned letter on 26th May stating: "The Local Planning Authority does not necessarily disagree with the legal advice you sought, however if the 'use' of a site is in question with no

planning history, then a certificate of lawfulness is the correct procedure in order to ascertain its legal standing."

11. Without seeing a full copy of the letter in question or a full copy of the Council's response to it, I do not have the full context. However, I do not accept that the Council stating that it does not necessarily disagree with a piece of advice sought by the appellant, is the same as them agreeing that the advice provided contained sufficiently precise and unambiguous evidence to ascertain the lawful use of the building. Although the absence of a certificate of lawfulness is not determinative and this should not be required where there is no dispute regarding the lawful use, that is clearly not the case here and the Council were correct in advising that obtaining a certificate of lawfulness would have been highly beneficial to the appellant.

12. My attention is drawn to an extract from an email to the Council dated 18 May 2022. I have not been provided with a copy of this email, which is quoted as saying:

"Both floors have their own separate kitchen, bathroom, living accommodation and bedrooms. The ground floor flat is accessed via a porch entrance to the south west, and the upper flat is accessed by an entrance to the north west. Separating the ground floor flat from the staircase to the first floor flat is a lockable screen door with obscured glass, ensuring the movement within either flat does not impact the other.

Each flat has its own heating system, electric to the ground floor and gas to the first floor. There are utility bills which refer to "Top Flat", Upstairs Sole Bay House" and "Downstairs Sole Bay House ". This shows that the accommodation was metered and charged in a split manner prior to our client's purchase in 2020".

Copies of the utility bills referred to above have not been submitted with the appeal. The physical description of the building and its facilities is not evidence of its continuous use as two separate dwellings over the relevant period of time to make that use lawful in planning terms.

13. I have also been provided with copies of two letters from British Gas, both addressed to the appellant at "Downstairs Sole Bay House" and "Flat Sole Bay House". Both are dated December 2022. These letters, which post date the grant of planning permission, do not provide precise and unambiguous evidence of the property being in use as two separate dwellings, for a continuous period of four years or more, at the time the application was submitted.
14. Correspondence submitted by friends, relatives and neighbours of the previous owner of the appeal site, who have first-hand knowledge of the site, contradicts the assertions made by the appellant. Whilst this correspondence confirms that the family primarily occupied the first floor accommodation, and that the downstairs, referred to as "the flat" was used by visiting family members and friends, it also states that "the flat" was never rented commercially or occupied full time. It advises that the glazed door and panels across the ground floor hall, were installed to assist with heating and the door was not locked. The correspondence confirms separate boilers and meters were installed to monitor use and costs on each floor. However, it also clarifies that both floors were used by the family, that the post came through one front door

and no part of the property was rated as a separate dwelling for council tax purposes.

15. Whilst it is clear from the evidence before me that there were multiple entrance doors, kitchens, bathrooms, meters and heating systems within the building and that family members and family friends have at times previously occupied separate floors with a degree of independence, such arrangements do not automatically mean that the planning unit has been sub-divided into two separate dwellings.
16. The evidence before me does not sufficiently demonstrate that the property comprised two independent primary dwelling units at the time the application was submitted.
17. I note the condition in dispute relates only to house 2, on the basis that the occupancy of the existing dwelling to be sub-divided is unrestricted. I consider that this is a fair and reasonable approach, consistent with Policy SWD4 of the NP, which only applies to new dwellings.
18. I therefore conclude that the restricted occupancy condition applied to the additional dwelling to be created on the site is necessary to accord with Policy SWD4 of the NP, which seeks to ensure new dwellings are occupied only as a principal residence, in order to safeguard the sustainability of Southwold and contribute towards ensuring its vitality and viability throughout the year.

Conclusion

19. For the reasons given above I conclude that the appeal should be dismissed.

R Bartlett

INSPECTOR