



Appeal Decision

Site visit made on 23 August 2023

by Martin Allen BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 September 2023

Appeal Ref: APP/Q3115/C/22/3307785

Land at No. 1 Enigma Estate, Cold Harbour, Goring Heath, RG8 7SZ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Ms Kianga Kaute against an enforcement notice issued by South Oxfordshire District Council.
 - The notice was issued on 24 August 2022.
 - The breach of planning control as alleged in the notice is Without planning permission the subdivision of the property known as No. 1 Enigma Estate from a mixed use comprising 1) a single residential dwelling with ancillary accommodation; and 2) a workshop/office, to a new mixed use comprising 1) two separate self-contained dwellings and ancillary accommodation; and 2) a workshop/office.
 - The requirements of the notice are to:
 - i) Cease the use of the Land and buildings for any residential use exceeding one self-contained dwelling only;
 - ii) Remove from the Land and buildings all but one kitchen, including any related kitchen units, sinks and cooking appliances.
 - The period for compliance with the requirements is: 9 months after the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (f) 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, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the subdivision of the property known as No. 1 Enigma Estate from a mixed use comprising 1) a single residential dwelling with ancillary accommodation; and 2) a workshop/office, to a new mixed use comprising 1) two separate self-contained dwellings and ancillary accommodation; and 2) a workshop/office at Land at No. 1 Enigma Estate, Cold Harbour, Goring Heath, RG8 7SZ as shown on the plan attached to the notice and subject to the following condition:
 - 1) The development hereby permitted shall be carried out in accordance with the following approved plans:
 - 1:100 scale plan titled Enigma Estate, Downstairs
 - 1:100 scale plan titled Enigma Estate, Upstairs

Ground (a) – the deemed planning application

Main Issues

2. The main issues raised are:

- The acceptability of the creation of an additional residential dwelling at this location, and
- The suitability of the existing access arrangements to accommodate any additional traffic associated with the additional dwelling.

Reasons

Acceptability of location

3. Policy STRAT1 of the South Oxfordshire Local Plan 2011-2035 (adopted December 2020) establishes the overall strategy for delivering development within the district. It sets out that generally development will be directed towards identified settlements, which are locations considered to be more sustainable in terms of access to services, thereby reducing the need to travel. Given the location of the appeal site outside of any defined settlement and in the countryside, there would be some conflict with this policy.
4. However, I am conscious that within the development plan, policy H17 permits the sub-division of an existing dwelling, subject to a number of criteria. There is no locational requirement for proposals for sub-divisions to be located within settlements and thus the principle of the development accords with the general principle of this policy.
5. In terms of the criteria of the policy, the Council raise no objection on the grounds of harm to the amenity of occupants of nearby properties, the size of the two resultant dwellings, the internal layout, provision of amenity space or car parking provision. There is concern raised however in terms of the access arrangements, which I consider below.
6. Accordingly, the creation of an additional residential dwelling at this location is acceptable in principle and accords with policy H17. Given the specific focus of this policy, I accord greater weight to the schemes compliance with it, than I do to any conflict with policy STRAT1.

Suitability of access

7. The appeal site is accessed via a private lane, known as Cold Harbour, which runs for approximately 260 metres from adopted highway. The lane is a single width along its length, with the presence of informal passing places. Within the vicinity of the appeal site the appellant states that there are four existing properties, with Cold Harbour serving thirteen properties in total. Whilst I am mindful that the surface of the lane was not perfect in some locations, from driving along it myself I was conscious that speeds were generally low and that for the most part there was good visibility of oncoming vehicles. There is likely to be instances where vehicles will meet, requiring them to at times reverse to one of the informal passing spaces to allow the other to pass, however there is nothing that convinces me that this would be unacceptable, and is not a situation that already currently occurs along the lane.
8. In my view, the addition of one more separate dwelling being served by the lane would not result in an increase in traffic that would be harmful to highway safety or result in any significant inconvenience for existing users. My view is reinforced by the fact that the existing dwelling currently has six bedrooms (as shown on the submitted plans, I observed eight at the time of my visit) and as

such the existing vehicle movements associated with the unit could be considerable.

9. The Council refer to an increase in usage by emergency vehicles, deliveries and refuse collection. While there may be an increase in delivery vehicles using the access because of the subdivision, this to my mind would not be to any degree that would be significant. Moreover, I see no reason there would be an increase in the use by emergency vehicles, which would likely be an infrequent and scarce occurrence, or refuse vehicles given the presence of existing dwellings from which refuse is collected.
10. I note that the lane is also a bridleway. However, there is nothing before me to show that the vehicles movements associated with a single additional dwelling would have any harmful effect on the use of the lane by users of the bridleway.
11. There is the contention from the Council that the acceptable threshold for use of the access lane has been reached. For the reasons given above, I disagree. There is also question of how many dwellings should be permitted to use the access lane. This is not a matter on which it is for me to reach a conclusion; I have considered the scheme that is before me and find the access arrangements to be acceptable.
12. Therefore, for the reasons given above, I find that the existing access arrangements are suitable to accommodate any additional traffic associated with the additional dwelling. Thus, the scheme accords with policy H17, insofar as it seeks to ensure that proposals for the subdivision of dwellings are appropriate in terms of access.

Other Matters

13. I have been provided with details of the extensive planning history, including previous enforcement investigations, of the site. While this is noted, I have assessed the scheme having regard to the provisions of the development plan and found it to be acceptable. These matters therefore have little bearing on my decision.
14. I am conscious that there has previously been an appeal on the site. This was regarding the unauthorised use of a stable building as a dwelling. This appeal was dismissed. However, that unauthorised development was not the subdivision of a dwelling, and the appeal was determined against the backdrop of a different development plan context and proceeded only on the ground that it was too late to take enforcement action. These matters clearly set that case apart from that which is before me and thus I can draw no useful comparisons between the two.
15. Paragraph 80 of the National Planning Policy Framework advises that isolated homes in the countryside should be avoided unless, amongst other things, the development would involve the subdivision of an existing residential building. Given the presence of nearby dwellings, I do not consider the scheme would result in an isolated dwelling. Moreover, the scheme involves the subdivision of an existing dwelling. There is thus no conflict with paragraph 80.
16. The Council have referred to possible misleading statements having been made during enforcement investigations that have taken place. This is not a matter which assists in my determination of the appeal, which I have assessed against current planning policy and guidance.

Conditions

17. The Council have not provided a list of conditions suggested to be imposed should I be minded to allow the appeal. There is no need to impose the standard condition in respect of the commencement of development. I have however imposed a plans condition in the interest of certainty and to define the scope of the permission.

Conclusion

18. For the reasons given above I conclude that the development accords with the development plan as a whole and that the appeal should succeed in respect of ground (a). I will grant planning permission in accordance with the application deemed to have been made under section 177(5) of the 1990 Act, as amended. The notice shall be quashed.
19. Since I am granting permission on the deemed planning application and the enforcement notice will be quashed, the appeal on ground (f) does not require consideration.

Martin Allen

INSPECTOR