



Appeal Decision

Site visit made on 27 September 2023

by David Smith BA(Hons) DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 October 2023

Appeal Ref: APP/L2250/W/23/3316123

Trinity View House, 24 - 26 Earls Avenue, Folkestone, CT20 2UF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr Hekmat Bavary against the decision of Folkestone and Hythe District Council.
- The application Ref 22/1600/FH, dated 16 September 2022, was refused by notice dated 9 December 2022.
- The application sought planning permission for change of use from residential care home (Use Class C2) to 11 self-contained residential flats (Use Class C3) without complying with conditions attached to planning permission Ref Y16/0813/SH, dated 16 January 2017.
- The conditions in dispute are Nos 6 and 7 which state that:
 - 6) *No development shall take place until details of the size, design, siting and materials to be used in the refuse covered bin storage area to be provided have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details and the refuse storage areas shall be made available for use upon first occupation of the flats and thereafter retained. The facilities must be large enough to contain the following;*
 - 1100ltr refuse bin
 - 660ltr plastic/glass bin
 - 360ltr paper/card bin
 - 140ltr food bin*Reason: To ensure satisfactory facilities for the storage of refuse and recyclables in the interests of the amenities of the area and residents in accordance with saved Local Plan Review policies SD1, BE1, BE4 and BE8.*
 - 7) *Prior to the first occupation of the development hereby approved, details showing adequate secured covered cycle parking facilities in accordance with adopted standards shall have been submitted to and approved in writing by the Local Planning Authority and the approved cycle parking shall be provided in accordance with the approved details and thereafter maintained in a usable condition for occupiers.*
Reason: It is necessary to make provision for adequate off street parking to prevent obstruction of the neighbouring highway and safeguard the amenities of adjoining areas.

Decision

1. The appeal is allowed and planning permission is granted for change of use from residential care home (Use Class C2) to 11 self-contained residential flats (Use Class C3) at Trinity View House, 24 - 26 Earls Avenue, Folkestone, CT20 2UF in accordance with the terms of the application, Ref 22/1600/FH, dated 16 September 2022, without compliance with Conditions 6 and 7 previously imposed on planning permission Ref Y16/0813/SH, dated 16 January 2017, but subject to the conditions in the attached schedule.

Preliminary Matters

2. The permitted change of use to eleven flats has been implemented. The application and subsequent appeal are for non-compliance with Conditions 6 and 7 which require details of bin and cycle storage facilities. However, the appellant has provided details in both respects and the Council has considered whether they are acceptable. In this regard, no objections are raised in respect of the refuse storage arrangements at the front of the building.

Main Issues

3. The main issues are therefore whether the proposed bicycle storage would promote healthy communities and more active and sustainable forms of transport and the implications of that finding for the disputed conditions.

Reasons

4. The plans accompanying the application show six vertical cycle racks on one side of the building. In practise, metal racks have been installed on either side of it for three bikes each.
5. Policy T5 of the Places and Policies Local Plan expects that one cycle space per bedroom should be provided for individual residential developments and that this should be secure and covered. Whilst the proposed unit might be robust and fixed to the ground, bikes would be exposed to the elements. In addition, any that are attached to the racks would be exposed to view from street level and so might be prone to theft or damage. For these reasons it is most unlikely that residents would wish to keep bicycles there in the long-term.
6. Approval has previously been given for two lockable cycle stores in the rear garden. No explanation has been given as to why this would not provide a suitable solution. Furthermore, there is no indication that it would be practical for occupiers to store their bicycles within the flats. Therefore, the proposal would not promote cycling in accordance with the National Planning Policy Framework and would not accord with the relevant development plan policy in terms of the quantum and type of provision.
7. The details proposed are therefore unacceptable. However, dismissing the appeal would leave the original permission intact and Conditions 6 and 7 as worded could not be complied with as the development has taken place and been occupied. Therefore, the best course of action is to allow the appeal and grant a fresh permission adjusting the wording of the conditions. This would enable details of the cycle store to be provided that take account of this decision and also for the bin store arrangements to be regularised. None of the other conditions imposed on the original permission continue to have effect.

Conclusion

8. The proposed cycle storage racks would not promote healthy communities or more active and sustainable forms of transport. However, in order that the outstanding details can be resolved, a new planning permission should be granted without the disputed conditions but substituting others. Therefore, for this reason alone, the appeal should succeed.

David Smith INSPECTOR

SCHEDULE OF CONDITIONS

- 1) Within two months of the date of this decision, details of the size, design, siting and materials of refuse storage areas shall be submitted to the local planning authority for its approval. The approved refuse storage areas shall be provided in accordance with a timetable specified by the local planning authority, made available for occupiers of the flats and thereafter retained.
- 2) Within two months of the date of this decision, details of secure covered cycle parking facilities for eleven bicycles shall be submitted to the local planning authority for its approval. The approved cycle parking facilities shall be provided in accordance with a timetable specified by the local planning authority and thereafter retained for use by occupiers of the flats.