



Appeal Decisions

Site visit made on 5 December 2023

by Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH JP

an Inspector appointed by the Secretary of State

Decision date: 18th December 2023

Appeal A: Ref APP/K3605/C/22/3300590

Appeal B: Ref APP/K3605/C/22/3300591

16 Monument Green, Weybridge, Surrey KT13 8QT

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - Appeal A is made by Mr Adam Marlow and Appeal B is made by Mrs Polly Marlow against an enforcement notice issued by Elmbridge Borough Council.
 - The enforcement notice, numbered GH.PL.ENF.000748, was issued on 5 May 2022.
 - The breach of planning control as alleged in the notice is within the last four (4) years and without planning permission, material change of use of the first floor flat into two self-contained units, known as Flat 2 and Flat 2B (and is referred to as Flat 2 and Flat 3 on 'Plan B' attached to the notice for illustrative purposes only).
 - The requirements of the notice are to:
 - (a) Cease the use of the first floor flat as 2 self-contained flats, (b) Remove all kitchen fittings, facilities and equipment from the flat which is referred to as "Flat 3" on 'Plan B' attached, and relating drainage connection(s) that enables the kitchen facilities to function (c) Remove all types of locks to the entrance door which leads into the flat referred to as "Flat 3" on Plan B, (d) Remove the doorbell from the front door of the flat referred to as "Flat 3" on Plan B together with any wiring which separately serves that flat, (e) Remove outside waste bin associated with the flat referred to as "Flat 3" on Plan B, and (f) Remove any resultant waste from complying with above Steps.
 - The period for compliance with the requirements is 6 months.
 - Appeal A is proceeding on the grounds set out in section 174(2) (a) (d) (f) of the Town and Country Planning Act 1990 as amended. Since an appeal on ground (a) has been made, the application for planning permission deemed to have been made under section 177(5) of the Act as amended falls to be considered.
 - Appeal B is proceeding on the grounds set out in section 174(2) (d) (f) of the Town and Country Planning Act 1990 as amended (the Act).
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Appeal C: Ref APP/K3605/W/23/3318180

16 Monument Green, Weybridge, Surrey KT13 8QT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Adam Marlow (iMarlow Properties Ltd) against the decision of Elmbridge Borough Council.
 - The application Ref 2022/0202, dated 24 January 2022, was refused by notice dated 9 September 2022.
 - The development is creation of new residential unit by splitting the existing property.
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Decisions

1. It is directed that the enforcement notice be varied by the replacement of "Flat 3" with "Flat 2" in Section 5(b), Section 5(c) and Section 5(d).
2. Subject to these variations, which are due to success on ground (f), Appeals A and B are otherwise dismissed and the enforcement notice is upheld.

3. As regards Appeal A, planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.
4. Appeal C is dismissed.

Procedural Matter

5. The development in Appeal C, already carried out, is the same development as targeted by the notice in Appeals A and B.

Appeals A and B; Ground (d)

6. For success on this ground, the burden of proof is upon the appellants to demonstrate with sufficiently precise and unambiguous evidence that that no enforcement action could be taken at the date when the notice was issued on 5 May 2022. The standard of proof is 'the balance of probability'.
7. Section 171B(2) of the Act provides that, in respect of the change of use of the first floor of the building to 2 dwellinghouses, no enforcement action may be taken after the end of the period of 4 years beginning with the date of the breach. Therefore, it is for the appellants to demonstrate to the required standard of proof that the first floor of the building has been continuously in use as 2 dwellinghouses since at least 5 May 2018.
8. However, while the appellants suggest that such use has occurred for 'many years' they have submitted very limited evidence in support of this ground of appeal. Further, the response to the Planning Contravention Notice (PCN) issued in May 2020 indicates occupation of Flat 2 from 28 July 2018 only. It is also unclear from the PCN response the continuity of occupation of Flat 2B between January 2016 and the beginning of a stated tenancy on 15 July 2019.
9. For these reasons, ground (d) does not succeed.

Appeal C and Appeal A; ground (a) and the deemed planning application

Main Issues

10. The main issues are the effect of the development upon:
 - the living conditions of occupiers of Flats 2 and 2B as regards space; and
 - the provision of affordable housing.

Reasons

Living conditions

11. It is agreed that both flats do not comply with the **minimum** space standards required by Policy DM10 of the Elmbridge Local Plan Development Management Plan (2015) (DMP). The gross internal areas (GIA) of the flats (32m² and 31m²) in fact fall significantly short of the minimum policy requirement of 37m² in respect of 1-person studio flats¹. This in my judgement has created cramped residential units constituting a dense mode of occupation which is not conducive to the health and welfare of current and future occupiers.

¹ A standard consistent with the *Technical housing standards – nationally described space standard* (March 2015)

12. As the appeal development is a conversion of a pre-existing dwelling through splitting it does not meet the possible policy exception relating to the consideration of 'purpose built, innovative and unique accommodation'. The flats are not purpose built and, notwithstanding the appellant's description of the flats as 'Micro-homes' as defined by the British Property Federation, I do not find anything innovative or unique about them or indeed any aspect of their design which overcomes the harm caused by insufficient living space.
13. Much is made by the appellant of minimal corridors and the use of corners for storage – but it seems to me that these are simply the realities of very small units of accommodation. It does not make under-sized accommodation otherwise suitable. Further, despite what has been said by the appellant, I do not regard the ceilings to be so unusually high or the extent of windows so great as to create any enhanced sense of spaciousness which might overcome the significant GIA deficiency. Neither does the stated contentment of the current occupiers.
14. For these reasons, the development causes significant harm to the living conditions of occupiers of Flats 2 and 2B as regards space. As such, it is in conflict with Policy DM10 of the DMP as supported by the Nationally Described Space Standard. For the same reasons, it is in conflict with paragraph 130 of the National Planning Policy Framework (the Framework) which requires that developments create places which promote health and well-being, with a high standard of amenity for existing and future users.

Affordable housing

15. Notwithstanding the appellant's comments concerning the affordability of the 'Micro-homes', it is uncontroversial that the appeal development does not constitute the provision of affordable accommodation for the purposes of Policy CS21 of the Elmbridge Core Strategy (2011) (CS). It appears to be further common ground, following a consideration of viability, that a financial contribution is necessary under that Policy in order to contribute to off-site affordable housing. Having read all of the appeal submissions, and having considered the current Framework, I have no good reason to find otherwise. The issue of dispute between the parties, rather, seems to be concerning the absence of a completed Planning Obligation (PO) securing the undisputed sum which has been calculated.
16. While the need for a completed PO is not contested, the appellant had not provided one at the time of the decision on the refused planning application (Appeal C) and has not provided one in time for my decisions on the appeals before me².
17. I am satisfied, in apparent agreement with the parties as outlined above and with consideration of the Council's Development Contributions SPD, that a PO securing a financial contribution towards affordable housing is necessary to make the development acceptable in planning terms, is directly related to the development and is fairly and reasonably related in scale and kind to the development.

² Appellant's Final Comments on Appeal C: "*If the appeal is granted, I would be happy to submit a legal agreement for affordable housing.*" However, the Start letters on the appeals were explicit that POs should be submitted in accordance with the stated timetables and before the determination of the appeals.

18. The missing PO at the time of my determination of the appeals means that I can apply no weight in the appellant's favour on this main issue. Therefore, I find that the development causes significant planning harm as regards the lack of a contribution for provision for affordable housing. As such it is in conflict with Policy CS21 of the CS as supported by the Council's Development Contributions SPD.

Other Matters and Planning Balance

19. The appeal site falls within the Weybridge (Monument Green) Conservation Area (CA). Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that special attention be paid in the exercise of planning functions to the desirability of preserving or enhancing the character or appearance of Conservation Areas.
20. I have considered third party concerns relating to the development including stated impacts on the CA as regards an extra household potentially driving over and/or parking on Monument Green. However, I find that the likelihood of those concerns being realised from the occupation of one extra small flat to be *de minimis*. Further, as the development does not involve any material external alterations, there would be no harmful impact upon the character and appearance of the CA.
21. The Council and the appellant agree that the housing supply policies of the development plan are out-of-date with the Framework, since the Council cannot demonstrate a 5-year housing land supply (said by the Council in its statement to be 4.36 years). The appeal scheme does not have an impact on protected areas or assets listed in footnote 7 of the Framework and therefore, the tilted balance in Paragraph 11d) is engaged as an important material consideration. This states that planning permission should be granted unless the adverse impacts of the development would significantly and demonstrably outweigh its benefits when assessed against the policies in the Framework taken as a whole.
22. The delivery of one extra home in an accessible location is a benefit of the appeal scheme given the Framework's aim to make a more efficient use of land and significantly boost the supply of housing, which the Council are currently not doing due to the housing supply deficit. However, the supply of housing under the appeal scheme is very modest and is a benefit of limited weight notwithstanding the extent of the shortfall in the Borough.
23. The appeal scheme would result in significant harm to the living conditions of current and future occupiers, and as regards the provision of affordable housing. Overall, the adverse impacts of the development are of a magnitude which weighs heavily against the grant of planning permission.
24. Consequently, the adverse impacts of the appeal scheme would significantly and demonstrably outweigh its benefits when assessed against the policies in the Framework taken as a whole. This does not indicate that the development should be permitted.
25. Article 8 of the First Protocol to the European Convention on Human Rights, as incorporated into the Human Rights Act 1998, is engaged due to potential loss of a home for the appeal property's occupiers due to conflict with planning policies. Therefore, I have undertaken a proportionality assessment and

considered whether the objectives of the planning policies could be met by a less intrusive action. However, the policies seek to safeguard appropriate living standards and deliver affordable housing - those objectives cannot otherwise be achieved other than ensuring that planning permission is refused in these appeals. Further, there are no conditions that I could impose that could meet those objectives. The implementation of the policies in respect to the appeal site would not be excessive or disproportionate taking all into account.

26. The appeal development does not accord with the development plan as a whole, and there are no other considerations which outweigh this finding. Accordingly, Appeal C does not succeed and ground (a) of Appeal A similarly fails.

Appeals A and B; ground (f)

27. For the appeals to succeed on this ground, I must be satisfied that the notice requirements are excessive in achieving its purpose.
28. From the way the notice is drafted, I consider its purpose is to remedy the breach of planning control. However, while the requirements correctly require the unauthorised use to cease they also require removal of features which are not in fact associated with the breach of planning control – a consideration of the approved plan for permission 2018/0160³ shows that it is the kitchen (fittings, facilities, and equipment), locks and doorbell and wiring associated with Flat 2 which form part and parcel of the subsequent unlawful development and not those relating to Flat 2B (identified as Flat 3 in 'Plan B' attached to the notice and in the notice requirements). The notice therefore is excessive in this respect, and I am using my powers to vary its requirements (without injustice to any party) so that it properly refers to the removal of features associated with the correct flat.
29. Ground (f) therefore succeeds in relation to Appeals A and B.

Conclusions

30. For the reasons given above I conclude that Appeals A and B should not succeed except on ground (f). I shall uphold the enforcement notice with variations and refuse to grant planning permission on the deemed application.
31. For the reasons given above I conclude that Appeal C should be dismissed.

Andrew Walker

INSPECTOR

³ Conversion of existing house into 4 flats, new access and associated hardstanding to provide parking.