



Appeal Decision

Site visit made on 25 June 2024

by D Boffin BSc (Hons) DipTP MRTPI Dip Bldg Cons (RICS) IHBC

an Inspector appointed by the Secretary of State

Decision date: 21st August 2024.

Appeal Ref: APP/J0405/C/23/3334163

**Land to the rear of 106 High Street, Aylesbury, Buckinghamshire
HP20 1RB**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended) (the 1990 Act). The appeal is made by Mrs Safeena Ramzan against an enforcement notice (EN) issued by Buckinghamshire Council.
- The notice was issued on 27 October 2023.
- The breach of planning control as alleged in the EN is the material change of use of the land to residential including the erection of a building.
- The requirements of the EN are:
 1. Permanently cease the use of the Land for residential purposes.
 2. Remove (demolish) the building shown edged by a thick black line on the attached plan, including all fixtures, fittings, footings, from the Land.
 3. Permanently remove all materials and debris arising from compliance with Step 2, from the Land.
 4. Restore the Land to its condition immediately prior to the breach of planning control taking place.
- The period for compliance with the requirements is: 6 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c) and (f) of the 1990 Act. 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 1990 Act.

Summary Decision: The appeal succeeds in part and the enforcement notice is upheld as varied in the terms set out below in the Formal Decision.

Preliminary Matters

1. A revised version of the National Planning Policy Framework (the Framework) has been published since the appeal was lodged. However, the relevant sections to this appeal have not materially altered. As such, in the circumstances of this case I do not consider that it is necessary to seek the further views of the parties. I am required to consider the appeal on the basis of the current Framework.
2. The building is in use as 2 separate residential units. I was only able to view inside one of the units at the site visit. Both parties agreed that as the size and layout of the units was similar that it was not necessary for me to view both units internally.
3. The appellant submitted a plan¹, illustrating an alternative scheme, with his statement of case which indicates the position of rooflights in the building and the existing boundary fence treatment being replaced with 900mm high panels.

¹ Drawing No:23/2327-2B

Reference is made to those alterations within his statement of case. However, the drawing also appears to indicate that the 2 units would be combined into one larger unit as the dividing wall between the kitchen areas is not shown. But this alteration is not cited elsewhere in the appellant's evidence. As such, I have considered the alternative scheme, within my reasoning below, based on the rooflights and the fence treatment only.

4. The appellant has also stated within his statement of case that '*part of the rear building already has planning permission for residential HMO unit*'. However, the planning history provided within the Council's evidence does not indicate that planning permission has been granted on the appeal site or within the adjoining building for a House in Multiple Occupation (HMO). This is because the planning application² for '*Change of use of part of property from Class E (Office) to Residential Class C4 (HMO) (Retrospective)*' was withdrawn. Therefore, there is no evidence to substantiate the appellant's claim in this respect.

The ground (b) appeal

5. To succeed on this ground, the onus is upon the appellant to show on the balance of probabilities that the allegation has not occurred as a matter of fact. The appellant's representations under this ground of appeal include that the building has planning permission and therefore the enforcement notice is excessive by requiring it to be demolished. However, these matters relate to grounds (c) and (f) rather than ground (b). As such, I have considered them under those grounds.
6. The appellant has also stated that the residential units will never be sold off separately and they are HMO units which are auxiliary to the building. Nevertheless, the appellant has not claimed that the land is not in a residential use and that a building has not been erected. As such, the ground (b) appeal fails.

The ground (c) appeal

7. The ground (c) appeal is that those matters (if they occurred) do not constitute a breach of planning control. The appellant's case within this ground of appeal is limited to the erection of the building shown on the plan attached to the EN. Accordingly, there is no basis on which the notice could be quashed under ground (c). The onus is on the appellant under this ground of appeal to show, on the balance of probability, that the erection of the building does not constitute a breach of planning control.
8. In June 2020 planning permission³ was granted for '*proposed ground floor rear extension to create auxiliary office spaces namely an auxiliary staff accommodation, office storage, male and female toilet facility and staff recreation room*' (the 2020 permission). There is no dispute that the footprint and height of the building, as constructed, is similar to that of the extension approved by the 2020 permission. However, the fenestration, internal layout and function of the building are materially different to that approved by the 2020 permission. The appellant has stated that the building was converted to residential use after it was completed. However, the building control notice was submitted in September 2020 for '*ancillary flat accommodation attached to*

² Ref: 23/02599/APP

³ Ref No: 20/00307/APP

existing dwelling' and the Council has stated that the residential units were advertised in November 2020. Therefore, the evidence before me indicates that on the balance of probabilities the building was, more likely than not, built, designed and used as 2 residential units from its completion. In my judgement the differences, between the 2020 permission and the building as constructed, are significant enough to constitute a breach of planning control. It is development for which planning permission is required and the appeal under ground (c) fails.

The ground (a) appeal and deemed planning application.

Main issues

9. The main issues are:

- The effect of the development on the living conditions of existing and future occupiers of the residential units having regard to internal size, levels of natural light and outlook;
- Whether the development would be resilient to climate change and flooding and whether it would increase the risk of flooding elsewhere;
- The effect of the development on employment sites.

Reasons

Living conditions

10. As stated above, the two units are of a similar size and layout. Each unit has an 'L' shaped kitchen/lounge and dining area, a shower room as well as a double bedroom. The units have three windows each with one of those being a small window to the shower room. There is also a glazed door to the lounge area. All of the windows and doors are on the elevation, that faces approximately east, adjacent to the boundary with the neighbouring property.
11. Policy BE3 of the Vale of Aylesbury Local Plan (VALP) states, amongst other things, that planning permission will not be granted where the proposed development would unreasonably harm any aspect of the amenity of existing residents and would not achieve a satisfactory level of amenity for future residents. A national system of housing standards commenced in 2015. However, these internal space standards can only be applied if there is a relevant development plan policy and then they may only require compliance with the Nationally Described Space Standard (NDSS). VALP Policy BE3 makes no reference to the NDSS and I have no evidence to indicate that there is a relevant policy within the VALP. Nonetheless, the NDSS provides an established benchmark against which to evaluate developments. I have therefore taken it into account when assessing the internal size of the living space provided within each residential unit with regard to the living conditions of the existing and future occupiers of those units.
12. The minimum gross internal floor areas (GIA) included within the NDSS are 37m² for a 1 bed 1-person single storey dwelling with a shower room and 50m² for a 1 bed 2-person single storey dwelling. The Council's Delegated Report relating to planning application ref no 21/01206/APP, which included the 2 residential units, indicates that each of the units has a GIA of around 25 m² and I have no reason to disagree with that figure. As such, the floor space for each

unit is appreciably below the minimum standard within the NDSS for a 1 bed 1 person dwelling. Moreover, I observed that there appeared to be more than one person living in one of the units, as there was a double bed and bunk beds within it.

13. During my visit, I saw that the bedroom is of a good size, containing a double bed whilst leaving ample space for circulation and the storage of items such as personal effects. Nevertheless, the combined kitchen, dining and lounge area in one room significantly reduces the space available for circulation as well as for the storage of everyday household items. Additionally, access to the bedroom and the shower room is from that combined area. Furthermore, the combined kitchen, dining and lounges are unlikely to be able to comfortably accommodate some occupiers going about day-to-day activities such as washing clothes, preparing food or eating, whilst other occupiers and /or their guests also relax in part of that area. As a result, the occupiers are likely to experience an uncomfortably restrictive and congested feel when using the combined kitchen, dining and lounge areas. The overall impression of these units is that they feel distinctly cramped due to their internal size.
14. From my visit it was also evident that the kitchen part of the combined area had reduced levels of natural light. This is partially due to its location adjoining the shower room and being furthest away from the window and glazed door that light the combined area. This is combined with the close proximity of the brick wall of the extension at the adjoining property and the boundary fence to the fenestration. As such, daylight and sunlight penetration levels to the fenestration are reduced due to that proximity. Moreover, given their eastern orientation the fenestration would only receive direct sunlight during the morning. No technical evidence has been submitted, but my assessment of the appeal site leads me to conclude that the natural light levels to the kitchen areas are highly likely to have made them dark spaces that it is difficult to work in without an electric light on.
15. Given the 'L' shape of the combined kitchen, dining and lounge areas the kitchen parts are furthest from the window and door to this room. As a result, there is a very restricted outlook when working within the kitchen areas that is highly likely to be experienced as oppressive. Moreover, the bedroom and the lounge window within the unit, nearest the main building, look directly onto a brick wall of the neighbouring extension. The second unit's lounge and bedroom windows are close to the boundary fencing. I am in no doubt that these factors result in oppressive living conditions for the occupiers of these respective units with regards to outlook.
16. The appellant has suggested an alternative scheme with roof lights being added to the units and the boundary fence being reduced to 900mm in height. The rooflights would increase the natural light available within each of the units and the reduction in the fence height would increase the outlook through some of the fenestration. However, that scheme would not overcome the harm to the living conditions of the occupiers of the units as the internal size of the units would not be amended and the outlook experienced within both kitchen areas and in the unit adjacent to the neighbouring extension would not be significantly altered.
17. Consequently, in my judgement the development results in unreasonable harm to the living conditions of the existing and future occupiers of the residential

units with regards to internal size, natural light and outlook. Moreover, the alternative scheme would unreasonably harm the living conditions of the existing and future occupiers of the residential units with regards to internal size and outlook. It follows that the development conflicts/would conflict with VALP Policy BE3.

Flood risk

18. The appeal site is within Flood Zone 2. A flood risk assessment (FRA) dated June 2023 has been submitted. It concludes that *'based on the likely flooding risk, it is considered that the proposed development can be operated safely in flood risk terms, without increasing flood risk elsewhere and is therefore appropriate development in accordance with the NPPF'*. However, it is not clear whether the FRA has assessed the development as constructed. In section 2 it states that the proposals are for 2 x 1 bedroom flats but the floor plan layouts in section 5 show a proposed ground floor layout for a 3 bedroom unit. Moreover, also in section 5 it states that the development is classed as being Less Vulnerable for the purposes of the Planning Practice Guidance (PPG). Yet, buildings used for dwelling houses are classed as More Vulnerable within the PPG.
19. Furthermore, in section 3 it states what minor development means and then throughout the document the development is cited as being of a minor nature. However, the development before me is not a minor non-residential extension, it is not an alteration and it is not householder development. Whilst the description of the alleged breach cites a material change of use it also includes the erection of a building. As such, in my judgement the development does not fall within the definition of minor development in the context of the PPG.
20. It is also not apparent as to whether the building as constructed incorporates the flood resistance and resilience measures outlined in section 8.3 or whether it would need to be altered to incorporate them.
21. In conclusion, the evidence before me does not offer sufficient clarity and robustness for me to be able to conclude that the development as constructed would not increase flood risk elsewhere; that it is appropriately flood resistant and resilient such that, in the event of a flood, it could be quickly brought back into use without significant refurbishment; that any residual risk can be safely managed. As such, it has not been demonstrated that the development complies with VALP Policy I4 and paragraph 173 of the Framework.

Employment sites

22. VALP Policy E2 states, amongst other things, that outside key employment sites, the redevelopment and/or reuse of employment sites to an alternative non-employment use will normally be permitted provided a number of criteria apply. The ground floor of the main building at 106 High Street had been in use as an office and the 2020 permission was to provide auxiliary space and facilities associated with that office use rather than a separate office use. Currently the ground floor of the main building is in use as a barber's shop. Whilst the appeal building is used separately to that use an employment use still exists at 106 High Street. Therefore, I do not consider that the development has affected an employment site and therefore VALP Policy E2 is not relevant to this case.

Planning balance and conclusion – the ground (a) appeal

23. The development does not affect an employment site. However, I have found that there is/would be harm to the living conditions of existing and future occupants and that the development conflicts/would conflict with VALP Policy BE3. I have also found it has not been demonstrated that the development complies with VALP Policy I4 and paragraph 173 of the Framework. Taking into account paragraph 225 of the Framework these policies are consistent with sections 12 and 14 of the Framework. As such, the conflict with them has full weight and I consider that the development is contrary to the development plan as a whole.
24. The evidence before me is that the Council cannot demonstrate a 5-year housing land supply. Although I have not been provided with any evidence about the extent of the shortfall in supply, the provisions of paragraph 11 (d)(ii) of the Framework are engaged. Planning permission should therefore be granted unless any adverse impacts in doing so would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework as a whole.
25. In term of the benefits of the development, contributions to the local economy in terms of spending by occupants, building works and ongoing management providing employment are likely to be very modest in view of the limited extent of the building works, the size of the appeal building and the number of occupants. Whilst the residential units do add to the housing stock, the contribution that 2 units make to housing numbers is very modest.
26. The residential units cannot be considered to provide a satisfactory living environment for existing and future occupiers. Therefore, the development does not create a place with a high standard of amenity for existing and future users and as such it conflicts with paragraph 135 f) of the Framework. I attach significant weight to the harm that arises in this respect. Moreover, it has not been demonstrated that the development complies with paragraph 173 of the Framework with regard to flood risk.
27. I conclude that the adverse impacts of the development significantly and demonstrably outweigh the benefits of providing 2 residential units when assessed against the policies in the Framework taken as a whole. Subsequently, the presumption in favour of sustainable development contained in the Framework does not weigh in support of this case. I consider that there are no material considerations, including the provisions of the Framework, of such weight to lead me to the conclusion that the proposal should be determined other than in accordance with the development plan.
28. For the reasons given above, and having had regard to all other matters raised, I conclude that the appeal on ground (a) and the application for deemed planning permission should fail.

The ground (f) appeal

29. This ground of appeal 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. The purposes of an enforcement notice are

set out in section 173 of the 1990 Act and are to remedy the breach of planning control (173(4)(a)) or to remedy injury to amenity (173(4)(b)). Since the notice requires the cessation of the residential use and the demolition of the building, the purpose is clearly to remedy the breach.

30. The appellant has suggested an alternative scheme in relation to the insertion of rooflights and the reduction in height of the fence and I have considered this as part of the ground (a) appeal. Nonetheless, the appellant has also stated that demolishing the building would be excessive as it has planning permission. However, I have found that the fenestration, internal layout and function of the building are materially different to that approved by the 2020 permission and that the differences are significant enough to constitute a breach of planning control. Therefore requirements 2, 3 and 4 do not exceed what is necessary to remedy the breach.
31. Yet, I am mindful that enforcement action is intended to be remedial and not punitive. Moreover, if there is an extant planning permission the breach of planning control could also be resolved by the development being altered to comply with the terms and conditions of that planning permission. Both parties were given the chance to comment on whether they considered the 2020 permission was begun and is still extant and whether the requirements of the enforcement notice could be varied to allow modification of the development to comply with that planning permission.
32. The Council maintains that whilst the digging of a trench for the foundations of the development would be a material operation, it believes that the siting of any 'trench' if built, in the same location as the permitted building was coincidental. It goes on to state that it does not believe that the 2020 permission was ever implemented as it believes that the intention was always to build residential accommodation and a reference has been made to *Atwill v New Forest National Park Authority* [2023] EWHC 625 (Admin) (the Atwill judgment).
33. The Atwill judgment relates to a case where a Local Planning Authority had granted planning permission under section 73 of the 1990 Act for the variation of a condition. In that respect the circumstances of the case considered in that judgment are not similar to that before me. However, the principles highlighted in this judgment relating to whether a development had 'begun' and the status of a permission are relevant to that before me. The judgment reviews previous case law including *Commercial Land Ltd v Secretary of State for Transport, Local Government and the Regions* [2002] EWHC 1264 (Admin) (the Commercial Land judgment) and *East Dunbartonshire Council v Secretary of State for Scotland and another* [1998] Scot CS 46 (the East Dunbartonshire judgment).
34. The Commercial Land judgment held that *"It is, in my judgment, necessary for an Inspector dealing with this sort of problem to consider not just the existence of differences between the plans and the operations relied on, but also to consider the significance of those differences. It is insufficient just to mark and measure the existence of differences.....Consideration of the similarities, or degree of compliance of the operations relied upon, with the approved plans is also relevant, together with substantial usability of those works in the permitted development, and the degree of alteration required to them in order for them to be effective to that end."*

35. In East Dunbartonshire it was held that *"In our view, as we have indicated, there is no justification in the terms or in the structure of the legislation for the imposition of an ill-defined requirement that the specified operations should be carried out with some particular intention. In our view, the proper test is an objective one.."*
36. There is no dispute in this case that the digging of the trenches for the foundations of the building would have been a 'material operation' for the purposes of section 56 of the 1990 Act. That material operation was undertaken within the relevant time limits. However, the Council disputes whether it was a material operation comprised in the development permitted by the 2020 permission.
37. As stated above I have found that the fenestration, internal layout and function of the building are materially different to that approved by the 2020 permission. The building control notice was submitted for 'ancillary flat accommodation attached to existing dwelling'. However, other than the fenestration the majority of the external operational development comprising the building would be substantially usable in the implementation of the 2020 permission. Furthermore, the existing fenestration would also be substantially usable in the implementation of the 2020 permission with adaptations/alterations to the internal layout of the building. I acknowledge that the ground floor of 106 High Street is not currently in use as an office. Nevertheless, it is in a commercial/employment use. Moreover, the degree of adaptations/alterations required to the internal layout to enable the building to be utilised for the function/s permitted by the 2020 permission would be modest in my judgement.
38. Consequently, taking into account all of the above the digging of the trenches for the foundations of the building can reasonably be construed as being a material operation comprised in the development permitted by the 2020 permission. Therefore, I consider that the 2020 permission is still extant.
39. There would be less cost and disruption than total demolition, as the appellant would be able to modify the development by altering the parts of the development that do not accord with the 2020 permission. In light of the extant planning permission which the Council granted and would have been subject to public consultation, I consider that complete demolition of the building is therefore excessive and unnecessary.
40. Consequently, under section 176(b) of the 1990 Act, I will vary the notice to require the cessation of the residential use and either the complete demolition of the development, or that the development shall be altered to comply with the terms and conditions of the 2020 permission. The appellant therefore has the choice of which course of action to take and I can carry out the variations without injustice to the parties. The appeal on ground (f) therefore succeeds to this extent.
41. Furthermore, given that the time limit for compliance is 6 months the appellant would also have sufficient time to submit a further planning application to the Council to retain the existing fenestration.

Other Matters

42. I have taken into consideration the Human Rights Act, 1998 which enshrines in UK law most of the fundamental rights and freedoms contained in the European Convention on Human Rights. I recognise that dismissal of the appeal would interfere with the appellant's and occupiers' rights under Article 8 and Article 1 of the First Protocol. Article 1 concerns enjoyment of possessions; Article 8 states that everyone has a right to respect for his home and private life, his home and correspondence.
43. However, those rights are qualified and my role in this appeal is to ensure that any interference with those rights is necessary and proportionate when also taking into account the wider public interest of remedying the harm arising from the unauthorised use. There are legitimate planning policy aims to manage residential uses in the interests of the community and protect the living conditions of current and future occupiers of the development. The interference with the rights of individual occupiers and the appellant is necessary and proportionate to achieve the legitimate public end pursued. The protection of the public interest cannot be achieved by means that are less interfering with their rights.

Formal Decision

44. The appeal is allowed in part, on ground (f), and it is directed that the enforcement notice be varied by deleting the wording of requirements 1, 2, 3 and 4 and substituting it with the following wording:

'Either

1. Permanently cease the use of the Land for residential purposes.
2. Remove (demolish) the building shown edged by a thick black line on the attached plan, including all fixtures, fittings, footings, from the Land.
3. Restore the Land to its condition immediately prior to the breach of planning control taking place.

Or

4. Permanently cease the use of the Land for residential purposes.
5. Modify the building shown edged by a thick black line on the attached plan to comply with the terms of the planning permission (ref: 20/00307/APP) dated 16 June 2020, including the conditions subject to which that permission was granted.
6. Make good any damage caused to that building as a result of requirement 5 and ensure that all materials used shall match those used in that existing building.

And

7. Remove from the land all materials and debris arising from compliance with the aforementioned requirements of the notice.'

Subject to this variation 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.

D Boffin

INSPECTOR