



Appeal Decision

Site visit made on 18 October 2024

by A M Nilsson BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 DECEMBER 2024

Appeal Ref: APP/H1515/W/24/3336284

111A High Street Brentwood, Essex CM14 4RX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr S Jianoung against the decision of Brentwood Borough Council.
 - The application Ref is 23/01069/FUL.
 - The development proposed is the change of use of first floor from office to residential and extend into loft space all to create 3no. flats and extending existing staircase structure.
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Decision

1. I decline to determine the appeal and propose to take no further action.

Reasons

2. The proposed development includes the change of use of the first floor to residential use. This also includes the installation of a series of balconies to the rear. A sizeable part of the property subject to the appeal, for which the change of use is sought, extends over an area of land to the side. There is also a balcony proposed above this land. The Council's evidence states that this part of the development has not been included within the site location plan 'red-line' boundary. This fact is not disputed by the appellant who has however outlined that an annotation on the plan acknowledges the true extent of the site.
3. Article 7(1) of the Order¹ requires, amongst other things, that an application for planning permission must be accompanied by a plan which identifies the land to which the application relates. Given that Section 55 of the Act² defines 'development' as the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land, the appeal proposal includes development not within the 'red-line' boundary.
4. Section 327A of the Act³ requires the local planning authority not to entertain such an application if it fails to comply with any requirement of the Act, or any provision made under it, as to the form or manner in which the application must be made. This is further reflected in the Guidance⁴ which states that such a plan should ensure that the exact location of the application site is clear, that the application site should be edged clearly with a red line on the location plan

¹ Town and Country Planning (Development Management Procedure) (England) Order 2015

² Town and Country Planning Act 1990

³ Town and Country Planning Act 1990

⁴ Planning Practice Guidance – Making an Application Paragraph: 024 Reference ID: 14-024-20140306

and advises how this area should include all land necessary to carry out the proposed development. In this case, the annotation on the plan is not sufficient to comply with the necessary requirement.

5. In short, to be valid, a materially different application site to that considered by the Council would need to be formulated and then progressed. It may also be necessary to serve notifications of ownership and undertake consultation that were not originally undertaken. To proceed otherwise would be both inappropriate and incur a risk of prejudice to any interested parties, something which the Act, the Order and the Guidance all seek to avoid.
6. The appellant outlines how no such request was made to rectify the situation, however the Council suggest that errors were requested to be addressed at validation stage. I therefore cannot be certain of the events that did, or did not, take place, although as the appellant appears to allude, I find it confusing how having identified such errors, the Council validated the planning application. Either way, the fact remains that based on the details before me, the appeal cannot be determined in its current form, and I am entitled to make a fresh judgement on validity.

Conclusion

7. Section 79(6) of the Act provides that if, before or during the determination of an appeal, the Secretary of State forms the opinion that planning permission for that development could not have been granted by the local planning authority, she may decline to determine the appeal.
8. For the reasons given above, I conclude the appeal to be invalid. I am therefore not in a position to progress matters and so proceed to consider the planning merits of the case. Accordingly, I decline to determine the appeal and propose to take no further action.

A M Nilsson

INSPECTOR