



Appeal Decisions

Site visit made on 4 February 2025

by **D Hartley BA (Hons) MTP MBA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 5 FEBRUARY 2025

Appeal A Ref: APP/D0650/C/24/3345718

Units 5 and 5a Salisbury Street (Known locally as Flat 2A & 2B), Widnes, WA8 6PJ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr C Doran (Doran Investments Ltd) against an enforcement notice issued by Halton Borough Council.
 - The notice was issued on 9 May 2024.
 - The breach of planning control as alleged in the notice is the material change of use of the ground floor area of Unit 5 for the sub-division of the existing flat into two new residential flats known as Units 5 and 5A.
 - The requirements of the notice are to cease the use of the ground floor unit 5 for the use as two independent residential flats and return the ground floor section of the property to that of one single residential flat in accordance with Existing Ground Floor Plan shown within Plans WA86PJ/01REV * a copy of which is set out below.
 - The period for compliance with the requirements is six months.
 - The appeal is proceeding on the ground set out in section 174(2)(a) 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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Appeal B Ref: APP/D0650/W/24/3345704

Unit 5 Salisbury Street, Widnes, WA8 6PJ

- 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 C Doran against the decision of Halton Borough Council.
 - The application Ref is 21/00711/FUL.
 - The development proposed is proposed division of one flat into two flats on ground floor.
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Decisions

Appeal A Ref: APP/D0650/C/24/3345718

1. The appeal is dismissed, 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 as amended.

Appeal B Ref: APP/D0650/W/24/3345704

2. The appeal is dismissed.

Preliminary Matters

3. The National Planning Policy Framework was revised in December 2024 (the 2024 Framework). This replaces the previous version of the National Planning Policy Framework published in December 2023. The 2024 Framework has not materially

changed in terms of the identified main issues below. It has not therefore been necessary for me to seek comments from the main parties about the implications of the 2024 Framework.

4. The evidence is that planning permission was approved in 2017 to convert the ground floor of the appeal property to one flat¹ (2017 Planning Permission). This is a material planning consideration which I have considered in terms of the consideration of the main issues below.

Main Issues

5. The main issues in respect of both appeals are the effect of the development on (i) the living conditions of existing and future occupiers of the flats in respect of internal and external space, outlook, light and ventilation, and, (ii), whether suitable on-site space would be available for the storage of waste/recycling facilities and bicycles.

Reasons

Living Conditions

6. Each of the two flats has its own private entrance door, kitchen, bedroom(s) and lounge area. The evidence is that one flat has one bedroom (unit 5a) and the other has two bedrooms (unit 5). The undisputed evidence is that unit 5, which has a gross internal area (GIA) of about 45.65 square metres, and unit 5a, which has a GIA of approximately 40.89 square metres, do not meet the minimum GIA space requirements in the Government's Technical Housing Standards – Nationally Described Space Standard 2015 (NDSS). The appellant states that the deficiency is not very significant, but it is important that I emphasise that the GIA space requirements are minimums.
7. In addition to the above, the bedroom windows of the two flats face onto the shared alleyway and its associated boundary treatment at a distance of about two metres. I do not find that this affords users of the bedrooms an acceptable degree of outlook even accounting for the lowering of the windowsill to the bedroom of unit 5a.
8. Moreover, and, because the entrance to unit 5a and the entrance to the upper floor accommodation are from the shared alleyway, and beyond the position of the bedroom windows of unit 5, I find that the occupiers of unit 5 would likely need to keep their curtains or blinds closed for significant periods of time to ensure a suitable degree of privacy. This would likely lead to an even more oppressive bedroom environment with poor levels of outlook and natural light. I find that this arrangement is such that occupants would likely need to rely on artificial sources of light for most of the time in these bedrooms.
9. In addition to the above, the window serving the kitchen of unit 5(a) faces a brick wall boundary at very close distance. I appreciate that this opening has opaque glass, but this also has an enclosing impact and consequently the outlook is poor. I have considered whether clear glass would be acceptable in this opening, but the brick wall is close. Hence, such an arrangement would result in a dominant and enclosing outlook for occupiers of this flat. Overall, I find that the occupiers of unit 5(a) have no windows where levels of outlook are acceptable. In this regard, I find that the internal living environment is oppressive.

¹ Planning permission Ref No. 17/00081/COU

10. I acknowledge that the 2017 Planning Permission includes windows which are also close to the alleyway. However, this planning permission is not directly analogous to the sub-division of the space to create two separate flats. This is because the occupiers of the approved single flat would have been afforded a different internal layout, greater access to a range of windows within one flat (including the front window which has an acceptable level of outlook) and, moreover, would not have had the same number of additional residents passing through the alleyway at close distance. Therefore, the 2017 planning permission does not justify granting planning for the unauthorised development which constitutes a more intensive use of the ground floor of the building in terms of the number of residential units occupying the space.
11. The 2017 Planning Permission does not include any private or essentially useable outside amenity space for occupiers of the one flat. While this is noted, it does not mean that a further flat is acceptable in the absence of private and dedicated outside amenity space. I find that the material change of use is unacceptable in this regard as a significant number of people would be without the use of a reasonable amount of private outside amenity space where they could, for example, relax, dry washing, or store domestic paraphernalia.
12. The Council claims that ventilation would be poor for both flats. Subject to all windows being openable (this could be secured by condition), I do not find that the evidence is that the flats would not have acceptable levels of ventilation.
13. While the flats would be capable of being acceptable in terms of ventilation, for the above reasons I nonetheless conclude that in terms of internal and external space, outlook and light, the development which is the subject of Appeals A and B fails to accord with the amenity and space requirements of policy GR2 of the adopted Halton Delivery and Allocations Local Plan 2022 (LP), paragraph 135(f) of the 2024 Framework, and the NDSS.

Storage of Waste and Recycling Facilities and Bicycles

14. My site visit revealed that bins were being stored within the alleyway. The alleyway does not fall within the red edged planning application site, or within land to which the notice relates. The alleyway appears to also serve two other properties in the area in terms of access to the rear of adjacent dwellinghouses. In this regard, and, on the evidence that is before me, I do not know with certainty if the appellant has the power or control to put in place permanent waste/recycling bin stores within this approximately two-metre-wide alleyway. In this regard, I cannot conclude that this area would be capable of permanently providing suitable and practical arrangements for the storage of waste and recycling bins off the highway for the two flats.
15. Policy C2 of the LP requires residential development to provide secure and convenient bicycle parking. In this case, storage for two bicycles is required. I acknowledge that the 2017 Planning Permission did not require such provision. However, the 2017 Planning Permission pre-dates the adoption of the LP. Moreover, the development which is the subject of the two appeals amounts to a more intensive residential use of the ground floor of the property, i.e., two flats rather than one. Allowing the appeal developments, without the required bicycle storage provision, would result in a more unsustainable form of development in travel terms.

16. I do not know if there is sufficient space within the alleyway to provide a secure bicycle storage facility in conjunction with the storage of bins. Moreover, and, for the same reasons outlined in respect of my consideration of waste/recycling provision, I do not know if the appellant has sufficient control and ownership of the alleyway to ensure that a permanent bicycle storage facility could be provided in association with the two flats while also not impeding access to the rear of the neighbouring dwellinghouses.
17. For the above reasons, I am unable to conclude that the appeal developments accord with the waste requirements of policy GR2 of the LP, or the sustainable transport requirements of policy C1 (and appendix D) of the LP.

Other Considerations

18. The provision of two flats rather than one boosts the supply of homes in the area and, in addition, has some associated economic benefits relating to supporting existing amenities and services in the locality. However, the social and economic benefits arising from an additional one flat is not very significant.
19. I recognise that in refusing planning permission for the development, and upholding the notice, it would have the potential to make some, if not all, the existing residents homeless. In this context, my decisions are likely to lead to a significant interference of rights under Article 8 of the European Convention on Human Rights as incorporated into the Human Rights Act 1998. However, the planning harm that I have identified is of such weight that refusing planning permission, and upholding the notice, is a proportionate legitimate, and necessary response that would not violate those persons rights under Article 8. I find that the protection of the public interest cannot therefore be achieved by means that are less interfering of the rights of occupiers of the two flats.

Planning Balance and Conclusions

20. The development which is the subject of appeal A and B causes material harm to the living conditions of existing and future occupiers of the flats in respect of internal and external space, outlook, and light.
21. I am unable to conclude that the development could be made acceptable in terms of waste/recycling storage and bicycle storage provision given the uncertainty about space requirements, the resultant convenient use of the shared alleyway by all users, and the ownership and control of such land. Even if this was capable of being resolved (and hence a condition imposed), it would not alter or overcome my conclusion in respect of the impact of the development on the living conditions of existing and future occupiers of the two flats. These are matters of overriding concern and are not outweighed by any other material considerations including any associated impact on the Article 8 rights of occupiers of the flats.
22. Therefore, I conclude that the ground (a) appeal fails, and the appeal made under section 78 of the Act should be dismissed.

Overall Conclusions

Appeal A Ref: APP/D0650/C/24/3345718

23. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the

application deemed to have been made under section 177(5) of the 1990 Act (as amended).

Appeal B Ref: APP/D0650/W/24/3345704

24. For the reasons given above, the appeal should be dismissed.

D Hartley

INSPECTOR