



Appeal Decision

Site visit made on 11 March 2025

by Thomas Shields DipURP MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 July 2025

Appeal Ref: APP/Z2260/C/23/3324510

27B Ethelbert Square, Westgate on Sea, Kent, CT8 8SR

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Mrs Tracey-Ann Redwood against an enforcement notice issued by Thanet District Council.
 - The notice was issued on 24 May 2023.
 - The breach of planning control as alleged in the notice is the change of use of the building from storage to 1 No. 2-bed dwelling.
 - The requirements of the notice are:
 - a) Cease the unauthorised residential use of the property, including the removal of all white goods from the kitchen area.
 - b) Cease the unauthorised use of the first floor flat roof as a roof terrace and remove all garden furniture from the flat roof.
 - c) Ensure the disposal of all materials under step a) and b) above from the site.
 - d) Return the property back to the previous use as a store/workshop.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (f), and (g) 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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The Enforcement Notice

1. There are a few minor drafting errors in the notice. A change of use by itself is not an act of “development” within s55 of the Act unless it is a “material” one. I can correct the alleged breach of planning control at Section 3 of the notice by adding the word “material”. The appeal property is a two storey dwellinghouse, hence for the sake of clarity I will correct “dwelling” in the alleged breach to “dwellinghouse”.
2. The requirement in Section 5(a) of the notice requires the residential use of the property to cease, and it is clear from the appellant’s submissions that there has been no misunderstanding of that requirement. However, the requirement wording should flow directly from the alleged breach. As such, I will correct it to state “Cease the use of the building as a dwellinghouse”. Also, the requirement to remove “white goods” is not sufficiently precise in order to understand exactly what needs to be removed. I will delete this element from the requirement.
3. Requirement 5(b) to cease the use of the roof terrace is unnecessary as its cessation for such use is included within requirement 5(a). I will correct the requirement so that it refers only to the removal of garden furniture.
4. An enforcement notice can require unauthorised uses to cease but cannot require a previous lawful use to be implemented. Hence, requirement 5(d) goes beyond simply remedying the breach. I will correct the notice by deleting 5(d).

Main Issues

5. Having regard to the Council's reasons for issuing the enforcement notice the main issues in this appeal are:
- the effect on the Thanet Coast and sandwich Bay Special Protection Area (SPA) and Hacklinge Marshes Site of Special Scientific Interest (SSSI).
 - the effect on the living conditions of occupiers and adjoining occupiers with regard to: the provision of external space, privacy, and noise disturbance.

Reasons

Effect on the SPA and SSSI

6. The site lies within the zone of influence of the SPA, a designated European Site, and an area which has been subject to a decline in bird population in recent years resulting from recreational activities associated with increased residents and visitors. I am therefore required to carry out an appropriate assessment under the Habitats Regulations in order to assess whether the development would result in any significant adverse effects on the SPA.
7. The Council's Thanet Coast and Sandwich Bay Strategy (SAMMS) seeks to mitigate impacts on the SPA through contributions towards access and management measures through a tariff based approach for each additional residential unit. The signed and completed Unilateral Undertaking (UU) provided by the appellant provides the required financial contribution towards access and management measures in accordance with the SAMMS.
8. Having regard to the characteristics of the proposed development and the evidence before me, including the advice from Natural England, in making an appropriate assessment I am satisfied the proposed financial contribution provided via the UU towards the strategic mitigation measures identified in the SAMMS is sufficient to ensure the development will have no significant adverse effect on the SPA or the SSSI.
9. I am satisfied the UU contribution is necessary, directly related, and fairly and reasonably related in scale and kind to the proposed development, in accordance with the paragraph 58 of the Framework and Regulation 122 of the Community Infrastructure Levy (CIL) Regulations 2010.
10. Given these circumstances the development would accord with the requirements of Policy SP29 of the Thanet Local Plan (2020) (LP).

Effect on living conditions

Noise and privacy

11. In this regard I note the planning permission for No. 27A (Ref: F/TH/98/0234) is restricted to use only as a carpenter's workshop with planning conditions to restrict noise. These conditions (C) include: (C2) no use of machinery outside of: 8am to 6pm Monday to Friday, 8am to 1pm on Saturdays, and not at any time on Sundays and Bank Holidays; (C3) a sound-proofing scheme to be approved and implemented; (C7) no machinery to be operated at times when external doors and windows are open.

12. The Council have not referred to any breach of these conditions or stated that the required sound-proofing scheme was not approved and implemented. While I do not know the historic level of use/activities in the workshop, compliance with the conditions seems to me to be consistent with the appellant's stated experience over the last two or more years of her occupation that there has been no noise disturbance from its use. Given these circumstances, and the continuing restrictive conditions imposed on the use of the workshop, I find on balance that it is unlikely current and future occupiers of the appeal property would be subject to any unacceptable levels of noise disturbance. As such, there would be no conflict with LP Policy QD03 which seeks to ensure that all new development should not lead to "unacceptable living conditions" including by reason of noise disturbance.
13. It is commonplace for terraced or other types of residential properties and their amenity areas to adjoin one another. As such, I see no reason why one residential property in normal domestic use would in principle lead to any significant noise disturbance to another.
14. However, in this case I note the roof of the single storey part of the appeal property is being used as a roof terrace, and directly abuts the main sash window to a habitable first floor room of the adjacent property (No. 29). In this regard there is no dividing boundary or other structure on the flat roof to mitigate noise impacts from domestic use, particularly so if the window were open. Additionally, use of the roof as a terrace results in an unacceptable level of over-looking and loss of privacy to the occupier of No. 29, significantly harmful to their living conditions. Although the window is obscure glazed the perception of overlooking would remain even when the window is closed.
15. While there may be potential for a smaller part of the flat roof to be sectioned off with the use of suitable privacy screening so that that harmful effects I have identified might be adequately mitigated, no such scheme is before me and would need to be subject of a separate planning application to the local planning authority in the first instance. Consequently, I find the use of the rear flat roof as a terrace results in significant harm to the living conditions of occupiers of No. 29 in conflict with the requirements of LP Policy QD03.

Amenity space

16. The appellant states that she has been able to dispose of refuse in a Council provided bin to the rear in St. Mildreds Walk throughout her occupation, and that other occupiers' refuse bins are stored continuously in St. Mildreds Walk. I agree with the Council these are not ideal arrangements. However, should it become necessary I saw that internal storage arrangements were capable of being provided within the property. I also saw there is sufficient space within the property for an internal washer/tumble dryer unit for clothes drying, as commonly found in flats for example.
17. Having regard to the above, LP Policy QD03 requires residential development to include the provision of private or shared external amenity space/play space "where possible". In this case I saw there is no possibility of providing external amenity space (also discounting the use of the flat roof as a terrace). Consequently, while the amenity/play space provisions are not ideal, the provision of such external space is *not possible*, hence there is no material conflict with the wording of the policy requirement.

18. That aside, the lack of external space is mitigated to a degree by the full height opening doors with railings at the first floor front elevation, serving domestically as a Juliet balcony. I also note the provision of public open spaces within close walking distance to the property. Overall, I find the harm resulting from the lack of external space provision to be very limited.

Other Matters

19. The enforcement notice does not allege that any external physical alterations to the appeal property have occurred and I did not observe any during my site visit. However, since the appeal is being allowed, the property would then have the benefit of permitted development rights for “alterations” to a dwellinghouse.¹
20. Following on from the above, since the property is within the Westgate Conservation Area, any future alterations to the front elevation and its windows and doors should be in materials and finishes that preserve or enhance the character and appearance of the CA. Consequently, I will impose a condition to remove such permitted development rights.
21. Any future proposed alterations would need to be subject of an application to the Council in the first instance.

Conditions

22. The previously identified harm and conflict with LP Policy QD03 resulting from use of the rear flat roof can be eliminated through a planning condition restricting its use for emergency escape purposes only. A condition is also necessary to remove permitted development rights to the front elevation as I set out previously.

Conclusion

23. There is no dispute that the Council lacks a 5 year supply of housing to meet its locally set requirements. Accordingly, the 'tilted balance' in paragraph 11d(ii) of the National Planning Policy Framework (2024) applies. As such, planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits of the development when assessed against the policies of the Framework as a whole.
24. Although the development would result in the provision of only one single new dwelling it nonetheless brings with it social and economic benefits, albeit small scale overall, in a highly sustainable location.
25. For the reasons set out above, there would be some limited harm resulting from lack of external amenity space (notwithstanding no conflict with the wording of LP Policy QD03). However, there would be no harm resulting from the other matters raised by the Council in the enforcement notice, subject to the imposition of planning conditions and as mitigated by the UU. Overall, the adverse impacts would not significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. It would also not conflict with the Development Plan as a whole.
26. For these reasons I conclude that the appeal should be allowed. As such, there is no need for me to consider the appeals made on grounds (f) or (g).

¹ Class A, Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015

Formal Decision

27. It is directed that the enforcement notice is corrected by:

- in Section 3 insert the word “material” in front of the word “change”, and substitute “dwellinghouse” for “dwelling”;
- delete all of the words in Section 5(a) and insert “Cease the use of the building as a dwellinghouse”;
- in Section 5(b) delete all of the words before the word “Remove”;
- delete all of Section 5(d).

28. Subject to the above corrections the appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act (as amended) for the development already carried out, namely the material change of use of the building to a 2-bedroom dwelling house at 27B Ethelbert Square, Westgate on Sea, Kent, as shown on the plan attached to the notice and subject to the following conditions:

- 1) Other than as a means of emergency escape the roof of the single storey element of the property shall be kept clear and not used for storage of any domestic or other items, and not used for sitting out, exercise or keeping of pets, clothes drying, or for any other leisure or other domestic purposes.
- 2) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no development permitted by virtue of Article 3 and Class A of Part 1 of Schedule 2 to the Order shall be undertaken to the front elevation of the property facing onto St. Mildreds Walk.

Thomas Shields

INSPECTOR