



Appeal Decisions

Site visit made on 13 August 2018

by **K R Seward Solicitor**

an Inspector appointed by the Secretary of State

Decision date: 20 August 2018

25 Brampton Road, Cambridge, Cambridgeshire CB1 3HJ

Appeal A: APP/Q0505/C/17/3191747

Appeal B: APP/Q0505/C/17/3191748

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr David Parkins (Appeal A) and Mrs Tracey Parkins (Appeal B) against an enforcement notice issued by Cambridge City Council.
- The enforcement notice was issued on 1 December 2017.
- The breach of planning control as alleged in the notice is without planning permission, the unauthorised change of use of the premises from a single dwelling house into two separate units of accommodation.
- The requirements of the notice are:-
 - (i) Cease the use of the premises as two separate units of accommodation.
 - (ii) Comply with condition 2 (approved plans) attached to planning permission 15/0445/FUL.
 - (iii) Remove all but one of the kitchens within the dwelling.
 - (iv) Remove all but one of the external doors on the front flank wall.
 - (v) Reinstate a functional internal link between the ground and first floor.
 - (vi) Remove all resulting materials from the Premises.
- The period for compliance with the requirements is 4 months.
- Appeal A is proceeding on the grounds set out in section 174(2)(a),(f)&(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.
- Appeal B is proceeding on the grounds set out in section 174(2)(f)&(g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.

Summary of Decisions: The appeals are dismissed and the enforcement notice upheld as corrected and varied.

Preliminary Matters

1. It is important that the allegation in the enforcement notice is framed correctly as the terms of the deemed planning application arising under the ground (a) appeal in Appeal A is derived from its wording. The allegation refers to a change of use. However, the act of development is a 'material' change of use.
2. The reasons for issuing the notice refer to the subdivision of the premises into two flats. Therefore, the allegation and requirements should refer to separate units of 'residential' accommodation for precision.
3. It was unnecessary for the first requirement to specify the number of units and

- the word 'two' should be deleted. As each flat is a dwelling, it is not strictly accurate for the third requirement to require removal of all but one of the kitchens 'within the dwelling'. The words are superfluous and can be deleted.
4. As minor points of clarification, I am satisfied that all of the above corrections can be made without causing injustice to either party.
 5. Two different plans accompanied the master copy enforcement notice sent to the Planning Inspectorate. Both are titled 'Enforcement Notice Plan ref: EN/0127/17'. The Council has confirmed that the plan served is the one dated 30 November 2017 showing the whole of the triangular shaped plot.
 6. The appellant points out that the enforcement notice specifies that the breach of planning control has occurred within the last 4 years. Under section 171B(2), the time limit is 4 years for the change of use of a building, or part of a building, to use as a single dwellinghouse. Flats are dwellinghouses for the purposes of the 1990 Act and so the correct immunity period is given.
 7. Since the date of issue of the enforcement notice the Government has published the revised National Planning Policy Framework ('the Framework') which replaces the earlier Framework. The revised policy is a material consideration in the ground (a) appeal. The parties were given opportunity to comment on whether revision of the Framework has relevance to their case.
 8. The appellants are aggrieved at the timing of the enforcement notice. It was issued in December 2017 soon after the refusal of express planning permission for the development. In their view, insufficient opportunity was given to establish if the Council's planning objections could be overcome. They also consider that the time frame made it difficult to submit an appeal because the Christmas break limited the time available. Clearly, appeals were submitted within time and during the course of the appeals, the appellants have had opportunity to elaborate upon their case. Dissatisfaction with the Council is a matter for its complaints procedure rather than pertinent to the matters for consideration under the grounds of appeal.

Appeal A only- ground (a) and the deemed planning application

Main Issues

9. The main issues are whether the accommodation provides adequate living conditions for occupiers in terms of outdoor space provision and bin storage arrangements.

Reasons

Background

10. The appeal property is a two storey semi-detached house. Planning permission was granted on 26 August 2015 under planning ref 15/0445/FUL to extend the property. The appellants explain that the extensions were to accommodate their personal family circumstances as things stood at that time and as elaborated upon in their appeal statement. The extensions were built although not entirely in accordance with the approved plans. Notably, there is a separate front door and the internal layout differs with the property laid out as two separate flats and without a second staircase. Personal circumstances changed and the property is not now used as originally intended.

11. A retrospective application for the change of use of the property to two flats¹ was refused planning permission on 24 October 2017. No appeal was made against that decision and the enforcement notice followed.

Alternative drawings

12. The appellant has invited me to consider alternative drawings identifying where external areas could be used to provide outdoor space for both units along with bin storage. The Council objects to my consideration of these drawings as being outside the parameters of a ground (a) appeal. It asserts that an application for express planning permission would be required.
13. It is correct that the deemed planning application is for the matters stated in the enforcement notice as constituting a breach of planning control. In other words, the development as it existed at the time of issue of the notice. The limit on the development which can be granted permission is governed by the wording of section 177(1)(a). Planning permission may only be granted for those matters as alleged (and corrected) whether in whole or part.
14. In this case, the application is for the material change of use of the premises from a single dwelling house into two separate units of accommodation. The plans show development within the scope of the matters set out within the enforcement notice. They would not alter what any planning permission would be granted for. A revised scheme cannot be incorporated within the deemed planning application or subject to a condition specifying the plans. However, it is possible that a condition could require a scheme of works for matters of bin storage and external layout. The plans fall within my consideration in terms of establishing whether such a condition should be imposed in this case.

Living conditions

15. Whilst the retrospective planning application described the first floor as a 1 bedroom flat it has two rooms capable of being utilised as bedrooms. Indeed, the flat is currently occupied by tenants as a 2 bedroom flat.
16. The ground floor flat has use of the garden. There is no external space available to occupiers of the first floor flat. In consequence, they have taken to using the unenclosed flat roof of the extension as outdoor space. To illustrate the point, the Council has produced copy photographs showing a paddling pool on the flat roof. The paddling pool was still in situ at the time of my visit and is clearly visible from the street. To reach the flat roof involves climbing out of a first floor window. Clearly, this is not only unsafe, but unacceptable in terms of living conditions. It also impacts negatively upon the street scene.
17. The property occupies a triangular shaped plot with most of the garden at the front and side. The amount of available garden space has been reduced by the sizeable extensions leaving a somewhat awkward garden configuration. If the garden was to become a communal area for both flats then this would have privacy implications for the ground floor occupants with close range views from the garden into their large windows.
18. To overcome this issue, the appellant suggests separating the garden as illustrated in the plan referenced 'Option A'. However, this entails the first floor flat being designated garden at the front of the property adjacent to the

¹ Made under planning ref: 17/1562/FUL

highway. Whilst there would be space for occupants to sit out, there would be little privacy from being overheard even if the boundary hedge grows to a height to prevent overlooking. It would also not be particularly conducive for everyday uses such as hanging out washing or as a play area if a child is in occupation.

19. During my visit I was able to see that Coldhams Common is nearby. It offers outdoor space for exercise and suchlike, but this is no substitute for private space nor is the close proximity to the city centre. Similarly, prospective occupiers being aware there is no outdoor space does not mean the lack of suitable garden makes for satisfactory living conditions.
20. I do not discount the possibility altogether that there may be other layouts that could provide adequate outdoor space for both flats, but none is before me and a condition cannot be imposed where a solution is so uncertain.
21. As things stand, there is a significant adverse effect on the living conditions of occupiers of the first floor flat in terms of outdoor space provision contrary to Policy 3/7 of the Cambridge City Local Plan 2006 ('LP'). Amongst other things, this policy seeks development designed to provide a high quality and safe living environment.

Bin storage

22. There was no requirement within the 2015 planning permission for bin storage, because that permission was for operational development in the form of extensions to the existing single dwellinghouse. It did not involve the creation of a separate unit of residential accommodation to trigger any such need.
23. When the notice was issued, there was no provision for bin storage within the appeal site itself. Instead, bins were kept along the track behind the appeal site. The track provides access to rear gardens/garages in Coldhams Lane and Brampton Road. There is an opening in the rear boundary fence onto the track towards the top corner of the plot which was identified as the area in which the bins were located.
24. Where the bins were stored involved wheeling them over the rough and uneven track. The parties disagree over the precise distance, but I was able to see the distance involved to gauge its impact. It is a long way to wheel a heavy bin particularly over such a rough surface which is likely to be more difficult still in poor weather conditions.
25. Even if the bin store was not quite as far away from the highway as shown on the plan identified as 'Option A', it would not be an appreciable improvement.
26. The plan referred to as 'Option B' shows a bin store in the front corner of the garden where there is a pedestrian gate onto the track. In this position, the bins would need only be wheeled a short way along the track to get to the highway on bin collection day. They would also be tucked away out of sight. The downside is that the layout would necessitate the occupiers of the upstairs flat exiting the property through the front door and walking along the public footway and around the corner of the plot to reach the bin store. This would be a most inconvenient and unsatisfactory arrangement for that reason.
27. By the time of my visit, there were four bins, including one for garden waste, positioned behind the front garden hedge not far from the front door. They

were obscured from public view by dense hedging planted along the frontage. There is already a shared entrance area leading to the front doors. A bin store off to one side in this vicinity would be convenient for both flats and deliver a satisfactory solution. Indeed, the bins would be less apparent than many in the road which I saw in front gardens in full view.

28. Subject to the imposition of a condition requiring approval of the bin store, I conclude that adequate bin storage is capable of being provided. As such, I find no conflict with LP Policy 5/2 which does not permit the conversion of single residential properties into self-contained dwellings where there is a failure to provide for satisfactory bin storage. Nor do I find conflict with the thrust of LP Policy 4/13 which only permits development which does not lead to significant adverse effects on health, the environment and amenity from pollution. As set out in the supporting text, 'pollution' can include waste storage.

Conclusion on ground (a) and the deemed planning application

29. Although I have found that satisfactory bin storage arrangements are capable of being achieved through the imposition of a planning condition, it does not negate or outweigh the harm caused on the first main issue.
30. 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 not succeed.

Appeals A & B - ground (f)

31. The ground of appeal is that the steps required by the notice to be taken are excessive.
32. Section 173 of the Act indicates that there are two purposes which the requirements of an enforcement notice can seek to achieve. These are either to remedy the breach of planning control which has occurred (section 173(4)(a)), or to remedy any injury to amenity that has been caused by the breach (section 173(4)(b)). The Council has not identified which of these two purposes it seeks to achieve. From the requirement to cease the unauthorised use, it is evident that the purpose is to remedy the breach. The reasons for issuing the notice concern the living conditions of the occupiers indicating that the notice also seeks to address injury to amenity.
33. The appellants contest only the second requirement to comply with condition 2 of the 2015 planning permission for the compliance with the approved plans.
34. This would necessitate alterations to the hall arrangement and the installation of a second staircase. It would also involve installing omitted ground floor windows and sub-dividing the first floor side extension which is built open plan.
35. Pursuant to the other requirements of the notice all but one kitchen must be removed, only one front door must remain and a functional internal link must be reinstated between the ground and first floor. Compliance with those measures would prevent the use of the property as separate units of accommodation. Thus, it is excessive for the notice to additionally require other alterations to comply with the approved plans. The purposes of the notice can still be achieved by deletion of Paragraph 5.(ii).

36. To this extent the appeals on ground (f) succeed.

Appeals A & B - ground (g)

37. The ground of appeal is that the time given to comply with the requirements of the notice falls short of what should reasonably be allowed. The appellants seek 6 months rather than the period of 4 months afforded by the notice.

38. There are tenants in occupation who would need to be given notice to vacate. Time needs to be afforded after their departure to execute and complete the works. In the circumstances, 6 months would be a reasonable period and the ground (g) appeal succeeds.

Formal Decisions

Appeal A

39. It is directed that the enforcement notice be corrected by:-

- (a) inserting the word 'residential' before 'accommodation' in paragraph 3.
- (b) deleting paragraph 5.(i) and replacing it with 'Cease the use of the premises as separate units of residential accommodation'.
- (c) deleting the words 'within the dwelling' from paragraph 5.(iii).

And varied by:

- (d) deleting paragraph 5.(ii) and re-numbering the sub-paragraphs below.
- (e) substituting 6 months as the period of compliance.

40. Subject to these corrections and variations, the appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B

41. It is directed that the enforcement notice be corrected by:-

- (a) inserting the word 'residential' before 'accommodation' in paragraph 3.
- (b) deleting paragraph 5.(i) and replacing it with 'Cease the use of the premises as separate units of residential accommodation'.
- (c) deleting the words 'within the dwelling' from paragraph 5.(iii).

And varied by:

- (d) deleting paragraph 5.(ii) and re-numbering the sub-paragraphs below.
- (e) substituting 6 months as the period of compliance

42. Subject to these corrections and variations, the appeal is dismissed.

KR Seward

INSPECTOR