



Appeal Decision

Site visit made on 11 July 2024

by D M Young JP BSc (Hons) MA MRTPI MIHE

an Inspector appointed by the Secretary of State

Decision date: 6 August 2024

Appeal Ref: APP/L2250/W/24/3341541

The Old Laundry, Bowen Road, Folkestone, Kent, CT19 4PL

- 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 D Clark against the decision of Folkestone and Hythe District Council.
- The application Ref is 21/2389/FH.
- The development proposed is a redevelopment to provide 3 one-bedroom flats.

Decision

1. The appeal is allowed, and planning permission is granted for a redevelopment to provide 3 one-bedroom flats at The Old Laundry, Folkestone, CT19 4PL in accordance with the terms of the application, Ref 21/2389/FH, subject to the conditions in the attached schedule.

Main Issue

2. The main issue is whether the development would result in unacceptable living conditions for future occupiers.

Reasons

3. The appeal site comprises a two-storey building that was last used as a garage/workshop. There can be little doubt that the building has a neglected and forlorn appearance which makes a negative contribution to the street scene.
4. The appeal scheme seeks to redevelop the site by demolishing the existing building and erecting a new building containing 3 one-bed flats. The Council takes no issue with the principle of the proposed development but considers the outlook to the bedrooms of flats 1 and 2 as well as the lack of outdoor amenity space would be unacceptable and thereby contrary to Policies HB1 and HB3 of the Places and Policies Local Plan 2020 (the LP).
5. Dealing with outdoor amenity space first, Policy HB3 states that balconies should be provided for new flats provided they do not reduce the privacy of neighbouring dwellings. Based on my own observations, it is difficult to see how the scheme could incorporate balconies that would not overlook neighbouring properties. Indeed, the Council has not suggested otherwise. Consequently, I find the non-provision of balconies in this instance would be justified and would not conflict with Policy HB3. The Council has referred to the requirement for 10m deep gardens. However, that requirement relates to houses rather than flats.

6. While an area of outdoor amenity space is proposed to the front of the building, this would not provide future residents with a meaningful opportunity for sitting out or other activities one might expect from a garden or shared communal space. Occupiers would however be able to access large areas of open space at the Cheriton and Morehall Recreation Areas both of which are within a short walk of the appeal site. Taking these considerations in the round, I do not consider the lack of balconies would cause unacceptable harm to the living conditions of future occupiers.
7. The Council contends that Flat 3 would be unacceptably small and in breach of the standards in Policy HB3 which are in turn taken from the Nationally Described Space Standard (NDSS). These stipulate a minimum floor area of 58m² for a 1 bed (2 person) unit arranged over two floors. As proposed, Flat 3 would be 44m². The floor plans for Flat 3 show that an area of potential floorspace to the bedroom has been omitted to create a void over the open-plan living area. The void would undoubtedly create a sense of spaciousness within Flat 3.
8. The other matter at play is whether 58m² is the correct standard. The NDSS states that to provide two bedspaces, a double (or twin bedroom) must have a floor area of at least 11.5m². There are no calculations before me in relation to the bedroom to Flat 3. Accordingly, I cannot be sure that the criteria for two bedspaces is met and therefore it maybe that 37m² is the more applicable standard.
9. The matter ultimately turns on whether Flat 3 is more likely to be occupied by a couple or a single person. Although finely balanced, I can see nothing about the location and design of Flat 3 that would preclude occupation by a single person. Even if I were to accept the Council's case, internal space standards should be applied with a degree of flexibility and in a manner that recognises their overall aims and objectives. In this case, Flat 3 would provide a good level of accommodation for future occupiers such that a modest shortfall identified by the Council would not be sufficient in itself to withhold planning permission if the scheme were otherwise acceptable.
10. Notwithstanding my findings above, there is a general point here that prospective purchasers of these flats would be well aware of their dimensions, outlook and level of outdoor amenity space and would be able to exercise consumer choice in these matters. That is very different to a scenario where a development proposal would deprive existing occupiers of amenity they currently enjoy.
11. For the above reasons, I do not consider that the proposed development would unacceptably harm the living conditions of future occupiers. It would not therefore conflict with LP Policies HB1 and HB3 insofar as they seek a good level of internal and external amenity.

Other Matters

12. I have noted comments from the occupier of No. 18 Darlinghurst Road who raised concerns that his living conditions would be adversely affected by noise, overlooking and odours from the development. However, no windows are proposed at first floor level and those to the ground floor would be at a high level and obscure glazed. Accordingly, there would be no loss of privacy.

13. With regards to noise and odours, there is no evidence before me which would give me reason to doubt the Council's conclusions in this regard. It is pertinent that any noise and odours generated by the development is likely to be significantly less than that which could arise if the historical use of the building were to be reinstated. The other matters raised in relation to scaffolding and health and safety are not material planning considerations to which I can ascribe any degree of weight.
14. Although there has been no formal costs application, the Appellant has asked me to consider whether a costs application should be made due to the Council's reason for refusal being unsupported by their own development plan policies. The Appellant has also questioned why an emergence report for bats was deemed necessary given the findings of the Preliminary Ecological Appraisal (PEA)
15. The "*Planning Practice Guidance*" (PPG) states that Inspectors may use their powers to make an award of costs where they have found unreasonable behaviour, including in cases where no formal application has been made by another party. Although I have reached a different view to the Council in relation to the size of Flat 3 and outdoor amenity space, I do not consider these concerns were unreasonable or unsupported by local plan policy. The concerns raised in relation to the balconies were not however supported by the wording of Policy HB3 and could be seen as amounting to unreasonable behaviour.
16. Although not raised directly by the Appellant, I consider the complete absence of any kind of balancing exercise within the Council's officer report to be concerning. There was simply no acknowledgement of the benefits of the scheme which included 1) the redevelopment of a sustainable, brownfield site, 2) a significant enhancement to the Bowen Road street scene through the removal of an unsightly and dilapidated building, and 3) the provision of three new homes against the backdrop of a national housing crisis. On any fair-minded analysis, these benefits clearly outweigh the harms identified by the Council and should have led to the approval of the scheme.
17. In terms of the emergence report, the PEA was unequivocal that the building contained no evidence of bats. That being the case, and notwithstanding the precautionary principle, the onus shifts to the Council to demonstrate otherwise, if it is to justify the request for further survey work from the Appellant. I am not aware that any such evidence was adduced in this case. The Council's request for an emergence report was therefore manifestly unjust.
18. While the Council's handling of the application has raised concerns, I have nevertheless, exercised my discretion not to initiate an application for costs on this particular occasion. The Council should however take note of these comments to avoid any prospect of such an award being made in the future.

Conditions

19. The Council has suggested a number of planning conditions which I have considered against advice in the PPG. In some instances, I have amended or amalgamated the suggested conditions in the interests of brevity, to avoid repetition and to ensure compliance with the PPG.
20. Those conditions suggested by the Council covering time limits and the approved plans are necessary to provide certainty. A materials conditions is

necessary to ensure the development does not harm the character and appearance of the area. Given the current building's architectural and historic interest, I have imposed a condition to ensure a scheme of historic building recording is secured. A land contamination condition is necessary to ensure the land is suitable for a residential use. A condition relating to cycle parking is necessary to encourage sustainable forms of transport. A condition relating to the bin storage area is necessary to ensure bins are not stored on the public highway. To protect the privacy of neighbouring occupiers I have imposed a condition relating to the obscure glazing.

21. I have omitted the suggested condition regarding sustainable construction techniques and water efficiency as these are matters that are covered by separate legislation i.e. the Building Regulations. Given the conclusions of the ecological reports and the fact that the appeal site is within an established residential area, I am not persuaded there is any justification for a lighting design plan. The PEA, which is already captured by Condition 2, contains various ecological recommendation and enhancements. I do not therefore consider a separate condition is necessary to secure a net-gain for biodiversity. The landscaping proposals are clearly shown on the approved plan and there is no suggestion from the Council that these are unacceptable. I do not therefore consider the landscaping conditions to be necessary in this instance.

Conclusion

22. For the reasons given above the appeal should be allowed.

D M Young

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall not be carried out except in complete accordance with the following approved drawings and documents: DR/2193/PA/04, DR/2193/PA/02B, DR/2193/PA/05B, DR/2193/PA/06B, Preliminary Ecological Appraisal Potential Roost Assessment V1 and Bat Emergence Survey Report V1.
- 3) No development beyond the construction of foundations shall take place until details of the external finishing materials to be used on the development hereby permitted have been submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance with the approved details.
- 4) No development shall take place until the applicant, or their agents or successors in title, has secured the implementation of a programme of building recording in accordance with a written specification and timetable which has been submitted to and approved in writing by the Local Planning Authority.
- 5) If during development, contamination not previously identified is found to be present at the site, then no further development (unless otherwise agreed in writing with the Local Planning Authority) shall be carried out until the developer has submitted and obtained written approval from the Local Planning Authority, details of how this unsuspected contamination shall be dealt with. Following completion of measures identified in the approved remediation scheme a verification report shall be prepared and submitted to the Local Planning Authority.
- 6) Three secure cycle lockers shall be provided prior to first occupation of the flats hereby approved and shall be retained thereafter.
- 7) The bin storage area as shown on the approved plans shall be fully implemented prior to the first occupation of the flats hereby permitted and shall thereafter be retained and maintained.
- 8) The windows to be obscure glazed, as identified on the drawing number DR/2193/PA/06B shall be to not less than the equivalent of Pilkington Glass Privacy Level 3, and these windows shall be incapable of being opened except for a high-level fanlight opening of at least 1.7m above inside floor level and shall subsequently be maintained as such.