



Appeal Decision

Site visit made on 22 April 2025

by **T Bennett BA(Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 30th April 2025

Appeal Ref: APP/H1033/W/25/3358881

41 Union Road, New Mills, Derbyshire SK22 3EL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 (as amended) for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr K Ahmed against the decision of High Peak Borough Council.
 - The application Ref is HPK/2024/0369.
 - The application sought planning permission for retention of use of first floor as 1 bedroomed flat without complying with a condition attached to planning permission Ref HPK/2023/0124, dated 16 June 2023.
 - The condition in dispute is No 2 which states that: *"The development hereby permitted shall be occupied solely by one person and shall not be used by any other persons as their sole or main residence."*
 - The reason given for the condition is: *"In the interests of the amenity of occupants on account of the constrained living space in accordance with Policy H3 and the Nationally Described Space Standards."*
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Decision

1. The appeal is allowed and planning permission is granted for retention of use of first floor as 1 bedroomed flat at 41 Union Road, New Mills, Derbyshire SK22 3EL in accordance with the application Ref HPK/2024/0369, without compliance with condition number 2 previously imposed on planning permission Ref HPK/2023/0124 dated 16 June 2023 and subject to the following condition:
 - 1) The development hereby permitted shall be carried out in accordance with the following approved plans: 3186-003, 3186-001A and 3186-002A.

Preliminary Matter

2. The address in the banner heading has been taken from the decision notice and which has also been used on the appeal form as this more accurately describes the address.

Main Issue

3. The main issue is whether the condition is reasonable and necessary to protect the living conditions of future and current occupiers of the property.

Reasons

4. The appeal property relates to a first-floor flat above a commercial premises within a row of terraced properties that are in a mix of commercial and residential use.
5. The appeal property was granted permission in 2023 to change the use of the first floor from an office to a 1 bedroom flat. It was assessed against the Nationally

Described Space Standards which form part of Policy H3 of the High Peak Local Plan (2016) (LP). The wording at part e) of Policy H3 requires new residential development to address the housing needs of local people by seeking to achieve adequate internal space for the intended number of occupants in accordance with the Nationally Described Space Standard (NDSS).

6. Paragraph 57 of the National Planning Policy Framework states that conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. For a condition to be imposed it must meet all six of these tests which are set out in paragraph 003¹ of the Planning Practice Guidance (PPG).
7. I acknowledge that the flat has limited floor space, but nevertheless the Council confirm in the delegated report that it does meet the 39 square metres space standards for a 1 bedroom 1 person flat. There is nothing before me to suggest that, at the time of the original application more than 1 person would be occupying the property. Accordingly, I do not concur with the Council that the disputed condition was necessary to make the development acceptable in planning terms.
8. Notwithstanding the above, I also consider the enforceability of the condition would be problematic due to the difficulty in monitoring it and detecting a breach. The Council asserts that Council Tax and Electoral records could be used to review levels of occupancy. However, Council Tax is not necessarily paid by the occupiers, and the electoral roll would not detect, for example, a parent residing with a child.
9. The appellant also refers to Circular 11/95. This provides examples of unacceptable conditions, one of which is a requirement that flats, for example, should not be occupied by more than a certain number of people, which is what the disputed condition is seeking to do. The circular sets out that this sort of condition would be unsatisfactory in enforcement terms as it would be difficult to monitor, and require an intolerable degree of supervision. Whilst this circular has been cancelled and replaced by the PPG, (except Annexe A), I find that the concerns it raises are still relevant and re-enforces the concerns I have already set out.
10. Additionally, I find the condition is not precise. Whilst the first part of the condition only allows the development to be occupied by one person, the condition then states that the development shall not be used by any other persons as their sole or main residence. Thereby, indicating that it can be occupied by more than one person as long as it is not their main residence. This also adds further complexity in terms of monitoring and enforcing the condition, which adds to my earlier concerns regarding the enforceability.
11. For the above reasons, I find that the condition is not reasonable or necessary to protect the living conditions of future and current occupiers. There is therefore no conflict with Policy H3 of the LP. Furthermore, it does not meet all of the six tests which conditions imposed are required to meet, particularly that of enforceability and preciseness.

Conditions

¹ Reference ID: 21a-003-20190723

12. The PPG makes clear that decision notices for the grant of planning permission under section 73 should also repeat the relevant conditions from the original planning permission, unless they have already been discharged. No conditions appear to have been imposed on the previous permission which required discharging.

13. I have therefore imposed the only remaining condition which specifies the relevant drawings, as this provides certainty.

Conclusion

14. For the reasons given above I conclude that the appeal should be allowed and condition 2 should be deleted

T Bennett

INSPECTOR