
Appeal Decision

Site visit made on 5 September 2016

by Gareth Wildgoose BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 22 September 2016

Appeal Ref: APP/P4415/W/16/3152464

Fosters Cycles, Thames Street, Thornhill, Rotherham S60 1LU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Empire Property Concepts against the decision of Rotherham Metropolitan Borough Council.
 - The application Ref RB2015/1320, dated 21 September 2015, was refused by notice dated 15 January 2016.
 - The development proposed is "change of use of first and second floors to form 2 No. houses in multiple occupation".
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of development provided on the application form has been replaced in subsequent documents. I consider the amended description to be more precise and adopt it accordingly.
3. The Rotherham Local Plan Sites and Policies (LP-SP) was published in September 2015 and submitted in March 2016 for examination in public. The document has not been adopted at the present time, but the LP-SP proposes to alter the land allocation which includes the site to Industrial and Business. The Council have confirmed that during the public consultation process for the LP-SP, no objections were raised to the proposed land use allocation change of this site. However, as the LP-SP remains subject to examination, the weight that I can give to the proposed change to the land allocation and associated policies is limited.
4. I have therefore determined this appeal principally on the basis of the policies of the Rotherham Local Plan Core Strategy 2013 - 2028 (CS), adopted September 2014, the saved policies of the Rotherham Unitary Development Plan (UDP), adopted June 1999 and the National Planning Policy Framework (the Framework).

Main Issues

5. The main issues of this appeal are:
 - whether the proposal is consistent with the objectives of local and national planning policies relating to the location and supply of housing, and;
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- whether the development would provide for a satisfactory living environment for its future occupiers with particular regard to noise, disturbance and odours.

Reasons

6. The site comprises part of a predominantly three storey building, which was formerly used for the manufacture, sale and storage of bicycles and is currently vacant. The main elevation of the building faces Thames Street where an independent access to the upper floors is proposed. There is also a right of access from Thames Street through an adjacent service yard to a fire escape staircase, bin storage and proposed cycle store at the rear of the building. The adjoining sections of the building include a vehicle servicing business, a dance studio, a car spares shop and a tool hire shop and to the side of the building is a windows, doors and conservatories retailer. On the opposite side of Thames Street is a place of worship, a hot-food takeaway and a martial arts centre, together with a construction academy further to the east.
7. Immediately to the north of the site is an Industry and Business Policy Area, as designated by the UDP Proposals Map. This includes the service area at the rear of the building which includes a breakers yard and an area of hardstanding and a large industrial building used by Beatson Clark Limited as a recycling centre beyond. Other industrial and commercial uses are also located along Glasshouse Street to this aspect and to the opposite side of Greasbrough Street. There do not appear to be any existing residential uses in the area which has the characteristics of a long established industrial and commercial area.

Local and national policies relating to the location and supply of housing

8. The UDP Proposals Map identifies the site as within a Mixed Use Policy Area, specified as Mixed Use Area 18 (MU18) in Saved Policy EC5. The proposed change of use of the upper floors of the building to 2 houses of multiple occupation (HMO) consisting of 10 bedrooms in each, would be a sui generis use. Policy CS31 of the CS guides development in Mixed Use Areas, but relates to a Policies Map accompanying the LP-SP that has yet to be adopted so can be offered little weight.
9. The Council has confirmed that it does not have a deliverable 5-year supply of housing land as required by paragraph 47 of the Framework. Evidence of the extent of the shortfall of 5-year supply of housing land has not been provided to me, nor is there any indication of whether there is prospect of development coming forward soon to make up any shortfall. Nevertheless, the Framework makes clear that relevant policies for the supply of housing should not be considered up-to-date if local planning authorities cannot demonstrate a 5-year supply of deliverable housing sites. In the absence of a deliverable 5-year supply of housing land having been demonstrated and in accordance with paragraph 49 of the Framework, the housing supply policies of the development plan therefore cannot be regarded as up-to-date. This includes Saved Policy HG4.3 of the UDP relating to windfall housing sites which is therefore accorded only limited weight.
10. With regard to the above, the proposal is considered in context of the presumption in favour of sustainable development in paragraph 14 of the Framework. The issue of whether there are any adverse impacts of granting

planning permission that would significantly and demonstrably outweigh the benefits therefore hinges on the assessment of the site and its circumstances.

Living environment

11. The Council's reason for refusal relates to this main issue and Policy CS27 of the CS is also relevant. The submitted plans indicate that the individual bedroom and communal areas of the house of multiple occupation on each floor would be single aspect served by windows facing Thames Street. The existing windows facing the service yard and the nearby glass recycling centre to the rear of the site, would serve an access corridor leading to the habitable rooms, stairwells and a fire escape.
12. A noise impact assessment and associated evidence provided by the appellant considered the effect of noise from surrounding industrial uses and the ambient noise environment. This included the recycling centre at the rear of the building, commercial uses on Thames Street and those more distant adjacent to Centenary Way (A630) and Greasbrough Street (A6123), together with other sources of noise such as traffic. The noise assessment included the recording of a baseline sound levels during daytime and night time periods on 21 July 2015 and 22 July 2015 with the monitoring positions located 1m from the second floors of the southern façade overlooking Thames Street and the northern façade overlooking Beatson Clark Limited. Furthermore, additional monitoring from the positions on the northern facade was undertaken on 19 November 2015 to assess increased activity at the recycling yard in comparison to July 2015. Although the Council has reiterated concerns with respect to noise and disturbance, it has not provided any alternative or contrary evidence.
13. The noise evidence identifies that it would be technically feasible with sound insulation measures to meet recommended internal ambient noise levels for dwellings, in accordance with BS 8233:2014¹, during the day and at night. Furthermore, the implementation of sound insulation measures would reduce the maximum indoor sound levels to below 45 dB L_{AFmax} , the level that World Health Organisation Guidelines of Community Noise recommends as not to be exceeded on more occasions than 10-15 times per night to ensure a good sleep and prevent night time disturbance. This accounts for worst case noise levels arising from the recycling centre (currently operating 0500 and 2100) and the potential for increased operations at the works in the absence of restrictions, including an extension of operational hours to a 24 hour facility.
14. Notwithstanding the above, I am not satisfied that the sound insulation measures proposed, given the reliance upon double glazing and trickle vents, would appropriately address noise concerns in periods of hot weather when future occupiers may reasonably wish to have windows open. This is noting that daytime and night time ambient noise levels measured on the southern façade, where bedrooms are located, significantly exceed the recommended internal ambient noise levels for dwellings in BS 8233:2014, including 50 dB L_{Aeq} at night time, with higher worst case maximum noise levels. In such circumstances and on the basis of the evidence before me, I consider that there would be an unacceptable risk of future occupiers experiencing intrusive and disruptive noise and disturbance as described in Planning Practice

¹ BS 8233:2014 Guidance on sound insulation and noise reduction for buildings

Guidance (PPG)² to an extent that significant adverse effects on health and quality of life could occur. The harmful effect could not be mitigated by the use of non-opening windows on the southern façade, as such an approach would have a detrimental impact on the living environment for residents.

15. The sound insulation proposed on the northern façade could appropriately mitigate the worst case scenario of noise generation from the recycling centre. In this respect, non-opening windows would be acceptable for windows serving the corridor. However, given my conclusions with respect to harm relating to bedrooms with windows located on the southern façade, it is likely that there would be complaints from future residents. Should the Council consider a statutory noise nuisance was being caused then Beatson Clark Limited would have to put it right, which could make it difficult if not impossible to operate from the existing site. This would have an unreasonable impact on Beatson Clark Limited, an established business which currently operates in an environment where noise is not a matter of concern given the absence of nearby residential properties.
16. With regard to the above, I note that the noise evidence indicates that road traffic noise is the dominant influence on current noise levels experienced on the southern façade facing Thames Street. Nevertheless, it is reasonable to consider that there would be an inevitable focus upon surrounding noise generating uses and maximum noise levels if future occupiers were to experience harmful noise and disturbance. This matter therefore adds to my concerns in terms of the unsuitability of the location to provide a satisfactory living environment for future residents.
17. Although not referred to specifically in the Council's reason for refusal, the provision of private or communal external amenity space is an important part of an appropriate living environment for residential properties. The absence of private or communal external amenity space to serve future occupiers of the development therefore adds to my concerns. The requirement for bedroom windows to be closed to achieve sound insulation, an absence of private amenity space and the industrial estate surroundings would in combination provide an unsuitable living environment.
18. Turning to other effects on the living environment, an odour report was provided by the appellant. This included monitoring via a sniff test during a 30 minute period in the morning of 22 March 2016 in calm wind conditions and dry weather at four locations on the northern façade facing the recycling centre and a fifth location at ground floor level on the southern façade facing Thames Street. Further monitoring was undertaken during two 20 minute periods on the morning and afternoon of 12 May 2016 in calm wind conditions and dry weather, including an additional location on the northern façade. The evidence indicates that although maximum intensities of odours on both the northern and southern facades were classified as strong, the overall risk of exposure at the proposed development site is classed as 'small'. This equates to a 'slight adverse' odour effect which is considered to be 'not significant'.
19. The Council has not provided any alternative or contrary evidence of its own relating to the impact of odours. Nor do I have any substantive reason to conclude that the appellant's odour assessment is inaccurate or significantly flawed. I therefore consider that there would not be a detrimental impact on

² Noise, Paragraph: 005 Reference ID: 30-005-20140306 (Revision date 06 03 2014)

the living environment for future residents with respect to exposure to odours. However the absence of concern in this respect does not justify the harm otherwise identified.

20. Additional concerns have been raised with respect to the close proximity to Beatson Clark Limited and operations which the Council considers likely to produce dust. However, no evidence has been provided to support this assertion or the magnitude of any effect on the proposed development. In such circumstances, I cannot conclude that the generation of dust from the recycling centre or other surrounding commercial uses would harm the living conditions of future occupiers of the proposal.
21. I conclude that the proposal would not provide for a satisfactory living environment for the future occupiers of the proposed development. The proposal, therefore, conflicts with Saved Policy ENV3.7 of the UDP and Policy CS27 of the CS. These policies are consistent with the Framework which seeks to ensure a good standard of amenity for all existing and future occupants of land and buildings. There is also conflict with Saved Policy HG4.3 of the UDP in so far as it seeks compatibility with adjoining uses.

Planning Balance

22. The provision of residential accommodation in the form of 2 HMOs each comprising 20 bedrooms in total, would deliver modest social and economic benefits in a location that has good access to a range of services and facilities in the surrounding area and sustainable transport options nearby. This would include a modest contribution to meeting housing requirements in the borough, whilst supporting local services and businesses. There would also be some temporary economic benefits arising from the construction activity required to deliver the development. However, those economic benefits would be partially offset by a minor adverse impact arising from the loss of a business premises, albeit currently vacant.
23. I give little weight to the absence of a contribution toward affordability housing as required by Policy CS7 of the CS. Policy CS7 is outweighed by the Government policy as expressed in the Written Ministerial Statement dated 28 November 2014 and the associated guidance in the PPG³.
24. The absence of adverse impacts arising from the development with respect to highway safety, biodiversity, flood risk, cycle provision and bin storage, subject to the imposition of conditions if the appeal were allowed, are neutral factors which do not weigh in favour of the proposal.
25. As the Council cannot demonstrate a deliverable 5-year supply of housing, the policies for the location and supply of housing cannot be considered up-to-date. This limits the weight that can be afforded to the identified conflict with Saved Policy HG4.3 of the UDP. Nevertheless, the Framework does not change the statutory status of the development plan as the starting point for decision making. The proposal would not be in accordance with the development plan. In this regard, the identified conflict with Saved Policy ENV3.7 of the UDP and Policy CS27 of the CS is afforded greater weight as they are not policies for the supply and location of housing. In addition, there is also conflict with the

³ Planning Obligations, Paragraph: 031 Reference ID: 23b-031-20160519 Revision date: 19 05 2016

Framework in so far as it seeks to ensure a good standard of amenity for all existing and future occupants of land and buildings.

26. On a simple balancing exercise, the inability to provide for a satisfactory living environment for future occupiers of the proposed development constitutes an adverse impact that significantly and demonstrably outweighs the modest benefits of the proposal when assessed against the policies in the Framework taken as a whole.

Conclusion

27. For the reasons set out above and having taken all other matters into account, I conclude that the appeal should be dismissed.

Gareth Wildgoose

INSPECTOR