
Appeal Decision

Site visit made on 14 November 2016

by Daniel Hartley MTP MBA MRTPI

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

Decision date: 17 November 2016

Appeal Ref: APP/N4205/W/16/3157019

Land adjacent to 192 Derby Street, Bolton BL3 6JN

- 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 Mr M Mistry against the decision of Bolton Metropolitan Borough Council.
 - The application Ref 94857/15, dated 23 August 2015, was refused by notice dated 1 August 2016.
 - The development proposed is a new building comprising of a self contained flat to first floor and retail unit on the ground floor.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is the effect of the proposal upon the living conditions of the occupiers of the existing adjacent first floor flat (190a Derby Street) in respect of outlook and light.

Reasons

3. The appeal site includes open and disused land on the corner of Derby Street with Vickers Street. Derby Street is a busy road which leads to the town centre. The site is immediately adjacent to a two storey, double fronted, brick built detached property occupied by "Motor Clinic" on the ground floor and two flats on the first floor. It is proposed to erect an attached two storey brick built building (with a two storey outrigger to part of the rear) with a retail unit on the ground floor and a two bedroom flat on the first floor.
4. I have no reason to disagree with the conclusions reached by the Council in respect of the effect of the proposal upon the character and appearance of the area: in this regard, the proposal would be acceptable and would accord with relevant local and national planning policies.
5. However, and notwithstanding the above, the building would be attached to the Motor Clinic building and hence would block a first floor gable window serving one of the flats. There is no dispute between the parties that this is the only window that serves the lounge/dining area of 190a Derby Street and that it is the main source of natural light into this living area. I was able to see this as part of my site visit.

6. I note that a similar window arrangement exists in respect of the other gable elevation to the Motor Clinic building (serving 190b Derby Street), but the appellant considers that as the Council has confirmed that no planning permission was obtained for either of these first floor gable elevation windows, it should essentially provide evidence that they are lawful due to the passage of time. I have considered the evidence provided by the Council in the form of its appeal statement (this shows the aforementioned windows in situ in 2008) and on the balance of probabilities, I consider that such windows are lawful. Furthermore, and, in any event, the affected window exists and hence it is necessary for me consider what impact the proposal would have on such a window and therefore the living conditions of the occupiers of the flat.
7. The proposed development would have a significantly enclosing impact when viewed from the side window of No 190a Derby Street and would result in a material loss of light penetration into the lounge/dining room area. I therefore conclude that the proposal would cause severe harm to the living conditions of the occupiers of No 190a Derby Street in respect of light and outlook. Therefore, the proposal would not accord with the amenity aims of Policy CG4 of Bolton's Core Strategy Development Plan Document 2011 and the Council's Supplementary Planning Document "General Design Principles" 2015.

Other Matters

8. As part of my site visit, I was able to see that the ground floor gable window of the Motor Clinic served part of the sales area of the shop. Whilst there is some light penetration from shop front windows, the building is quite deep and hence the ground floor gable window provides a reasonable level of additional natural light into the rear part of the sales area. The proposal would result in the loss of light penetration from this window and this adds to the harm that I have identified in respect of the main issue.

Conclusion

9. For the reasons outlined above, and taking into account all other matters raised, I conclude that the appeal should be dismissed.

Daniel Hartley

INSPECTOR