
Appeal Decision

Site visit made on 6 December 2016

by Grahame Gould BA MPhil MRTPI

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

Decision date: 10th January 2017

Appeal Ref: APP/G2245/W/16/3157564

The Old Chapel, Church Street, Shoreham, Kent TN14 7SE

- 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 Dr Henry Ford against the decision of Sevenoaks District Council.
 - The application Ref SE/15/02074/FUL, dated 30 June 2015, was refused by notice dated 5 February 2016.
 - The development proposed is change of use to separate self-contained dwelling (Class C3).
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The street name given on the Council's decision notice refers to the premises being in Darenth Way, while the application form refers to Church Street and I have used the latter in the banner heading above, given the appellant's comments with respect to this matter.
3. The second reason for refusal raises an objection to the development on the basis of there being no planning obligation under Section 106 of the Act to secure the payment of an affordable housing contribution, with an unexecuted Unilateral Undertaking having been submitted to the Council. However, in the period since the refusal of planning permission the Court of Appeal has found in favour of the Government and allowed the reinstatement of national policy, introduced by a Written Ministerial Statement of 28 November 2014 (the WMS), which advises that affordable housing contributions should not be sought in connection with developments for ten dwellings or less. The section of the Planning Practice Guidance (PPG) relating to planning obligations has been amended to reflect the provision of the reinstated WMS.
4. In the light of the WMS and the provisions of the PPG the Council has advised that an affordable housing contribution should not be sought in connection with this development. The Council has therefore in effect withdrawn its second reason for refusal and the appellant has also submitted that his offer to make an affordable housing contribution should be treated as being withdrawn. I have therefore treated the second reason as having been withdrawn and shall give no further consideration to this matter.

Main Issues

5. The main issues are:
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- the effect of the development on the living conditions of its occupiers, with particular regard to outlook, the availability of outdoor space and noise;
- the effect of the development on the living conditions of the occupiers of neighbouring properties, with particular regard to noise and disturbance;
- whether the occupiers of the development would be at risk of flooding; and
- the effect of the development on on-street parking and highway safety in the area.

Reasons

Background

6. The Old Chapel (the premises) benefits from a planning permission (reference SE/01/01368/FUL [the 2001 permission]) which describes this building's permitted use as 'The use of the Chapel building incidental for the enjoyment of Bridge Cottage' with the address for the permitted use being given as Bridge Cottage and The Chapel, Darenth Way. Condition 2 of the 2001 permission restricts the use of The Chapel to one that is '... incidental to the enjoyment of the dwelling ...', ie Bridge Cottage, with no commercial or other purposes being permitted. The effect of condition 2 is to make the premises an annex of Bridge Cottage.
7. Prior to the 2001 permission being granted the premises had been in use as what was in effect a residential annex to the Old Post Office pursuant to a planning permission (reference SE/85/551) dating from July 1985 (the 1985 permission). In 1994 the Council took enforcement action against the occupation of the premises as a separate dwelling and the subsequent appeal¹ was dismissed and the enforcement notice was upheld on 11 May 1995. The parties have referred to the previous appeal decision and I shall address those references in my reasoning below.

Living conditions for the occupiers of the development

8. The development would involve the premises being occupied as a self-contained dwelling. The premises occupy a position that is behind Bridge Cottage, Rising Sun Cottage and Riverside House and in front of three cottages forming part of an 'L' shaped terrace of five properties at 1 to 5 Chapel Alley Cottages (the Cottages).
9. The premises for the most part are illuminated by comparatively large sash windows and the glazing in those windows has been obscured to preclude mutual unneighbourly overlooking between this property and Rising Sun Cottage, Riverside House and the open plan garden area of the Cottages. Part of the premises' eastern and southern elevations, where windows are present, form the boundaries to part of Riverside House's rear garden.
10. Notwithstanding the appellant's written submissions and the notations on the application drawings it appeared to me that the glazing in the eastern and southern elevations is already largely obscured. The use of the obscure glazing means that no outlook would be possible via the windows serving

¹ APP/C/94/G2245/635929

what would be the dwelling's main living space, ie the lounge/dining area, study and bedroom. Even if only the lower sashes in the eastern and southern elevations were to be obscure glazed, given the references in the appellant's case to the upper sashes being obscured only if this was considered to be necessary, the outlook from the main living space would still be extremely limited given the height of the windows' meeting rails. In the absence of an outlook to the outside world I find that the dwelling would provide an oppressive internal environment for permanent occupiers of this building resulting in harm to their living conditions.

11. I am mindful of the previous Inspector's comments about there not being a concern about unneighbourly overlooking arising from the premises towards the neighbouring dwellings. However, because of the premises backland siting and the presence of windows in the eastern and southern elevations there is potential for the occupiers of the dwelling to experience a loss of privacy by being overlooked by the occupiers of the neighbouring properties, most particularly from Riverside House's garden. I therefore consider that at the very least the continued obscuring of the lower sashes would be necessary to safeguard the privacy for the occupiers of the dwelling and this requirement, as I have outlined above, would not be conducive to acceptable levels of outlook.
12. While the Council does not have any adopted external (garden) space standards the dwelling would only have an area of 14 square metres of outdoor space. The limited area of outdoor space would be irregularly shaped and highly enclosed and would lie to the north and west of the dwelling, with the area to the north currently being used for the storage of gas bottles. I consider the available outdoor space would be of limited utility and these arrangements would not be comparable with the prevailing situation, which enable users of the premises to make use of the outdoor area to the rear of Bridge Cottage.
13. The appellant has submitted that it is not uncommon for dwellings to have limited or no areas of outdoor space in towns and villages. While I accept that that is often the case in towns and cities, in my experience this is something that is not so prevalent in villages. I therefore find this aspect of the appellant's case not to be persuasive.
14. I therefore consider that the available outdoor space would be inadequate to meet the needs of the occupiers of an independently occupied dwelling and I recognise my finding in this regard is different to that of the previous Inspector. However, the previous Inspector, in reaching his finding on this matter (paragraph 11 of his decision), did so having regard to the then extant national planning policy relating to housing², however, that national policy has been superseded and the National Planning Policy Framework (the Framework). The Framework, unlike the previous policy, does not refer to decisions about functional elements of new development, such as the amount of garden space to be provided, being left to market judgements. The fourth core planning principle (paragraph 17 of the Framework) refers to the securing of a good standard of amenity (living conditions) for all future occupants of land and buildings. I therefore consider that the change in the

² Planning Policy Guidance 3 - Housing

national policy approach that has arisen is of significance and that my finding with respect to this issue is consistent with that change.

15. The premises are of a very solid construction and this building is located in what is an essentially residential area where the pattern of development is tightly knit. While the dwelling would be in close proximity to others I consider that its occupiers would not experience unacceptable levels of noise and disturbance. The situation would be comparable with that experienced by the occupiers of the Cottages, given that those properties rely for access on a shared alley that passes in front of those properties and thus generates comings and goings at close quarters to those dwellings.
16. I accept that internally the premises are of a size that is capable of providing the space and facilities necessary for a one bedroom dwelling. However, as I have found that the outlook from inside the dwelling and the outdoor space provision would be inadequate, the size of the premises is not decisive.
17. For the reasons given above I conclude that the outlook and the outdoor space provision for the residents of the dwelling would be inadequate and that those deficiencies would give rise to living conditions that would be harmful for the occupiers of the development. There would therefore be conflict with the Framework's fourth core planning principle because the development would fail to secure a good standard of living conditions for its occupiers.
18. The first reason for refusal cites conflict with Policy EN2 of the Council's Allocations and Development Management Plan of 2015 (the DMP), which forms part of the Sevenoaks District Local Plan. While Policy EN2 addresses many aspects of the protection of living conditions for the occupiers of new dwellings its wording does not refer to securing either outlook or the provision of garden/outdoor space. Accordingly, the harm that I have identified would of itself not give rise to conflict with Policy EN2.

Living conditions for the occupiers of neighbouring properties

19. Currently there are potentially three ways that the premises could be accessed, via the rear of Bridge Cottage, along the private right of way leading from Church Street between Rising Sun Cottage and Riverside House (the private way) or Chapel Alley (the alley). There is, however, a disagreement about the lawfulness of using Chapel Alley, with its owner submitting that the appellant does not have rights to use the alley.
20. Under the development the access route via Bridge Cottage would become unavailable, which would leave the private way or the alley as the only means of getting to or from the premises. The private way passes directly by Rising Sun Cottage's side elevation within which there are several windows and a partly glazed door. The use of the private way by occupiers of or visitors to the dwelling has the potential to cause harmful noise or disturbance for the occupiers of Rising Sun Cottage, particularly at times when its windows might be open. The use of the private way would be likely to be at a greater level than the prevailing situation, given that as an independent dwelling the premises' occupation would be more intense than that of the annex.
21. Riverside House stands at some distance from the private way, with its drive occupying the intervening space between the house and the boundary with the private way. While some noise might be heard by the occupiers of

Riverside House, if the premises' eastern or southern windows were open, I consider that this level of noise would be unlikely to be disturbing to the occupiers of this neighbouring property. I therefore consider that the development would not cause harmful noise disturbance for the occupiers of Riverside House.

22. Assuming that rights do exist to use the alley then I am less concerned by the noise and disturbance associated with the comings and goings that might generated by the use of this route as an access to an independently occupied dwelling compared with the situation relating to the private way. This is because the alley serves five cottages and the activity generated by a further independently occupied dwelling would be unlikely to significantly alter the prevailing use of the alley. I therefore consider that the development would not cause unacceptable harm to the living conditions of the occupiers of the cottages.
23. I recognise that historically the premises were occupied for institutional purposes. However, as highlighted by the previous Inspector, those activities would have resulted in a more sporadic use of the premises when compared to its every day occupation as a dwelling. In any event the institutional occupation of the premises ceased around 30 years ago and I therefore consider that its former use now has very little bearing on the consideration of the development.
24. For the reasons given above I conclude that the development would generate levels of noise and disturbance that would be harmful to the living conditions for the occupiers of Rising Sun Cottage. That harm would give rise to conflict with Policy EN2 of the DMP and the fourth core planning principle referred to in the Framework because the development would result in noise disturbance and would thus fail to secure a good standard of living conditions for all existing and future occupants of a neighbouring building.

Flood Risk

25. As the development would result in the premises being occupied on a more intensive residential basis than is currently the case, I consider that there is a need to consider whether or not the dwelling's occupiers would be at risk of being flooded.
26. The premises straddle the boundary between areas classified as Flood Zone 2 (medium probability of flooding) and Flood Zone 3 (high probability of flooding) by the Environment Agency. The flood risk section of the Planning Practice Guidance (the PPG) indicates that the dwelling would be a form of accommodation classified as being within the 'more vulnerable' category. Paragraph 103 (including footnote 20) of the Framework makes it clear that proposals for all changes of use within Flood Zones 2 and 3 should be accompanied by a flood risk assessment (FRA). FRAs have the purpose of identifying the measures to be incorporated into a scheme's design to manage any flood risk.
27. As the development would involve a change of use there is no need for the appellant to undertake sequential or exception testing (paragraph 104 of the Framework). Undertaking sequential and exception testing is, however, a different exercise to preparing an FRA. Paragraph 104 goes on to state that for a case such as this there is still a requirement to undertake a site specific

FRA and none was submitted with the application. The responsibility to submit an FRA was the appellant's and the fact that sequential and exception testing was unnecessary and the Council registered the application for determination is immaterial in this regard. The absence of an objection from the Environment Agency is also immaterial because the scale of the development is below its consultation threshold and for a case such as this there is an expectation that local planning authorities will have regard to the Environment Agency's flood risk standing advice.

28. I recognise that as the development would involve no new built development it would not increase the risk of flooding in the area. However, in the absence of an FRA there is no demonstration that the development would be appropriately flood resistant and that any safe access and escape routes that might be required would be available or that any residual risks could be safely managed, in line with the matters referred to in the second bullet point in paragraph 103 of the Framework.
29. In the absence of an FRA I conclude that it has not been demonstrated that there would be no unacceptable risk of flooding for the occupiers of the development. There would therefore be conflict with paragraphs 103 and 104 of the Framework.

Parking

30. The premises, like many others in the immediately surrounding area, do not have any off-street parking. While Darenth Way is subject to on-street parking controls, Church Street is not and it is therefore likely that the parking demand generated by the occupiers of the development would have to be met within Church Street. The development's parking requirement has been assessed as one space. However, the premises are already being occupied as a residential annex and may therefore be generating some demand for on-street parking in the area.
31. While the Council is concerned that any additional on-street parking would be harmful to highway safety, it has not produced any evidence demonstrating that there is any particular on-street parking problem that is giving rise to safety problems in Shoreham.
32. Given the above mentioned circumstances I am of the opinion that while the development would generate a small demand for on-street parking in the area, this would not result in congestion or become harmful to highway safety. I recognise that my findings in this respect are different to those of the Inspector who determined the previous appeal. However, in the period since the previous appeal's determination planning policies concerning parking provision have become more flexible, with the promotion of alternative modes of transportation as a way of reducing reliance on private car usage. I therefore consider that my views on this issue are consistent with the approach to parking that is now taken.
33. For the reasons given above I conclude that the development would not give rise to unacceptable levels of on-street parking in the area and would not be harmful to highway safety. There would therefore be no conflict with Policy T2 of the DMP which allows for the parking requirements for any given development to be assessed against its specific circumstances.

Other Matters

34. The development would make a contribution to the supply of housing in the area, albeit a very modest one and would utilise previously developed land. The dwelling would be located within the centre of Shoreham and would therefore be accessible to everyday services and community facilities. The development's location would also mean that it would not be harmful to the openness of the Green Belt or the character and appearance of the Area of Outstanding Natural Beauty.
35. As the development would involve no external alterations and would involve the provision of a dwelling in the mixed use Shoreham High Street and Church Street Conservation Area (the CA), I consider that the CA's character and appearance would both be preserved. The premises are within the settings to various listed buildings, however, as the development would involve no external alterations the settings of those listed buildings would be preserved.
36. While all of the aforementioned matters weigh in favour of the development I find them to be outweighed by the harm that I have identified.

Conclusions

37. I have found that there would be no unacceptable effect upon on-street parking in the area nor any related harm to highway safety. However, there would be harm to the living conditions of the occupiers of the development and those of the occupiers of a neighbouring property and it has not been demonstrated that there would not be a risk of flooding for the development's occupiers. I consider the harm that I have identified could not be overcome by the imposition of reasonable planning permissions.
38. Having regard to my reasoning above, I find that the proposal does not comply with the development plan, taken as a whole, and does not represent sustainable development in the terms of the Framework. I therefore conclude that the appeal should be dismissed.

Grahame Gould

INSPECTOR