
Appeal Decision

Site visit made on 24 January 2017

by Andrew McGlone BSc MCD MRTPI

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

Decision date: 30 January 2017

Appeal Ref: APP/N4720/W/16/3163055

38 Commercial Road, Kirkstall, Leeds, West Yorkshire LS3 3AQ

- 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 Leo Sawrij Ltd against the decision of Leeds City Council.
 - The application Ref 16/01586/FU, dated 7 March 2016, was refused by notice dated 24 May 2016.
 - The development proposed is extension to form 4 flats.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are: (i) the effect of the proposed development on the living conditions of the occupants in the ground, first, second and third floor flats of 40 Commercial Road, with regards to outlook, daylight and sunlight; (ii) whether the proposed refuse collection arrangements would lead to a severe effect on highway safety in Commercial Road; and (iii) whether the proposed parking arrangement would lead to a significant additional demand for car parking in the nearby car parks.

Reasons

Living Conditions

3. The appeal site is a two storey end terrace property in Kirkstall Town Centre. The adjoining property No 40 has been extended to the rear to form a flatted development which occupies the ground, first, second and third floors. There are multiple windows in the flank and rear elevations of No 40. Those in the rear are larger than those in the flank elevation.
4. The Council's Householder Design Guide Supplementary Planning Guidance (HDGSPG) originates after the Council's decision to grant planning permission to extend No 40 in 2004¹. The appellant accepts this point. I appreciate the HDGSPG is ultimately guidance and it is not a hard and fast rule, and that the proposal is not an extension to an existing home. Still, the proposal is an extension to an existing building and the application of the 45 degree rule is a very useful tool in assessing whether the development would affect the living conditions of neighbouring occupants.

¹ Council Application Ref: 24/245/04/FU

5. The proposed extension would extend beyond the south west facing rear elevation of No 40 and the three large windows that populate the ground, first and second floors in particular. Even though the rear most part would be narrower in width, the proposal would be taller than the built form of No 40. It is undisputed by the appellant that the proposal would not adhere to the 45 degree rule. As such, as the larger main windows serve a bedroom, the proposal would not, in this regard, ensure a satisfactory standard of outlook for the occupants of the ground, first and second floors. The proposal would as a result of its depth and height be a dominant form of development. However, I do consider that the occupants of the third floor flat would retain a satisfactory outlook as the roof plane of the proposal would angle away from their windows.
6. As a result of the orientation of the rear elevation of No 40 and the proposal's depth, siting and height, the development would significantly lessen the amount of sun and daylight that would be received during the afternoon and early evening. The effect would cause overshadowing which would be chiefly felt in the two windows nearest to the appeal site which serve the ground, first and second floor flats of No 40.
7. Turning now to the flank elevation of No 40, based on my observations, each of the windows in this elevation are cleared glazed. There is some dispute between the parties regarding the development at No 40 and I note that the parties have put forward evidence on a number of matters, but I must have regard to the specific circumstances as I now find them. Whilst the flank openings serve bathrooms and are secondary bedroom windows on the ground, first and second floors, they do contribute to the occupants living conditions.
8. The proposal would extend across and beyond each of the windows in the flank elevation of No 40. Thus, I am satisfied, in terms of these windows that the proposal would, due to its length, siting and height, significantly reduce outlook, daylight and sunlight. Occupants of the ground, first and second floor flats would be worst affected and they would largely have a view of a brick wall and overshadowing would occur. Whilst, the side windows, in particularly the secondary bedroom openings, to a certain extent, do not attract the same weight as a principal window in the rear elevation, the effect of the proposal would compound the harm that would arise in respect of the larger main rear facing windows in No 40. As set out in paragraph 17 of the National Planning Policy Framework (the Framework) it is a core planning principle that planning should always seek to secure a high quality design and a good standard of amenity for all existing and future occupants of land and buildings.
9. While I realise the flank windows in No 40 overlook third party land, I note that the appeal site is described as vacant and derelict in the 2004 delegated report². Furthermore, despite the appellant's contrary view, I am not of the opinion that the decision maker attributed a particular value to any of the windows in the flank elevation of No 40 when they considered the application. Although the windows do have a bearing on the development proposed, it is a firm planning principle that each application must be considered on its own merits. While, the flank windows have not, in themselves, been the sole determining factor in terms of this issue, the proposal would still cause harm.

² Council Application Ref: 24/245/04/FU

10. With regards to the appeal decision at 67 Westwood Green³, I note that this scheme was considered to have been designed to ensure the outlook and light to the main windows in adjacent properties would not be unduly obstructed. This is not the case with the proposal for the reasons that I have set out above.
11. Accordingly, on this issue, I therefore conclude that the proposed development would significantly affect the living conditions of the occupants in the ground, first and second floor flats of No 40, with regards to outlook and daylight. The proposal would not accord with Policies H6 and P10 of the Leeds Core Strategy (Core Strategy), saved Policy GP5 of the Leeds Unitary Development Plan (Review 2006) Volume 1: Written Statement (LUDP), the HDGSPG and paragraph 17 of the Framework. Together these policies, amongst other things, seek to ensure neighbouring occupants retain satisfactory living conditions with regards to outlook, daylight and sunlight.

Highway Safety

12. Commercial Road is a busy arterial highway which connects the site to Leeds City Centre. The appeal site is near to the traffic light controlled junction of Commercial Road, Bridge Road, Abbey Road and Kirkstall Lane. A regular bus service adds to the mixture of vehicles and pedestrians who use Commercial Road, while there are cycle lanes along both sides of the carriageway.
13. An internal bin store would be formed in the flank elevation of the site. This area is of a limited size sufficient for three bins. Nevertheless it is unclear what the collection arrangements would be or currently are for neighbouring properties on Commercial Road. The plans appear to indicate that bins would be moved onto Commercial Road using an existing side access. Given this, I do have concerns regarding the collection arrangement. Refuse vehicles would need to collect bins on Commercial Road in close proximity to the busy traffic light controlled junction. This would mean vehicles and cyclists in particular would need to manoeuvre around it. This poses a real risk of a severe accident occurring given the mix of transport modes that use this busy highway. As a result, if refuse vehicles collect bins on Commercial Road next to the site, I consider that this would pose a significant risk to highway safety.
14. For these reasons, I conclude on this issue that the proposed refuse collection arrangements would lead to a severe effect on highway safety in Commercial Road. The proposal would therefore not accord with Policy T2 (i) of the Core Strategy and Policy GP5 of the LUDP; which together seek to, amongst other things, ensure the safety on the highway network.
15. Despite the Council's second reason for refusal referring to HDG2 of the HDGSPG, this is concerned with the effect of development on the living conditions of neighbours. It is therefore not relevant to highway safety.

Parking Provision

16. I concur with the Council that the site is in a sustainable location, given the proximity of a variety of transport modes and the facilities and services in the town centre. .
17. While the appeal scheme would not provide any off-street parking, adjacent to the flank elevation of the site is a surface car park that is accessed off Savins

³ Appeal Decision Ref: APP/T0355/D/12/2180491

Mill Way. Undoubtedly occupants and any visitors would due to its proximity and pedestrian connection onto the footway on Commercial Road, use this car park. Despite the retail park behind, I consider that users of the retail park would be drawn to the larger and more convenient car park next to the retail units which is physically and visually separate from the smaller car park adjacent to the appeal site. While I recognise the adjacent car park may be used by other users, and the proposal would lead to a greater demand for each space, there were no signs advertising any limitation on its use.

18. Aside to the increased demand, given that there are no limitations on the car park's use, and the site is sustainably located, I do not consider that this would translate into a harmful situation, as the proposal is for four flats that would be occupied by single tenants or students who may not always be car owners.
19. For these reasons, I conclude on this issue that the proposed parking arrangements comply with Policies H6 and T2 (v) of the Core Strategy and the Parking Supplementary Planning Document. These jointly seek, amongst other matters, to ensure sufficient easily accessible parking provision is provided.
20. Although the Council's second reason for refusal refers to HDG2 of the HDGSPG, as this refers to living conditions, it is not relevant to the consideration of off-street parking provision.

Conclusion

21. I have found no harm from the appeal scheme in relation its parking arrangement and I recognise the proposal would provide four flats by re-using a vacant commercial property in the town centre. These are outweighed, however, by the harm that I have found in relation to the scheme's impact upon living conditions and highway safety.
22. For the reasons set out above, I conclude that the appeal should be dismissed.

Andrew McGlone

INSPECTOR