
Appeal Decision

Site visit made on 10 March 2017

by Jonathan Tudor BA (Hons), Solicitor (non-practising)

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

Decision date: 07 April 2017

Appeal Ref: APP/J1860/W/16/3161680

The Express Inn, 91 Quest Hills Road, Malvern, Worcestershire WR14 1RN

- 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 Styles (Fatydam2 Ltd) against the decision of Malvern Hills District Council.
 - The application Ref 16/00994/FUL, dated 27 June 2016, was refused by notice dated 24 October 2016.
 - The development proposed is to erect a building consisting of two flats with off-road parking for the new properties and existing public house.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The description of the development in the heading above has been taken from the planning application form. However, in part E of the appeal form it is stated that the description of the development has not changed but, nevertheless, a different wording has been entered, which appears to have been taken from the Council's decision notice. Neither of the main parties has provided written confirmation that a revised description of development has been agreed. Accordingly, I have used the one given in the original application.

Main Issues

3. The main issue is the effect of the proposed development on the living conditions of future occupiers, with particular regard to private outdoor living space, noise and disturbance and privacy.

Reasons

4. The appeal site is a rectangular parcel of land which currently forms the car park of the adjoining public house, The Express Inn, which is to the east on the corner of Quest Hills Road and Howsell Road. Beyond the car park to the west are mostly semi-detached two-storey residential dwellings. It is proposed to construct a house divided into two self-contained two-bedroom flats on the ground and first floor, respectively.
5. Policy SWDP 21 of the South Worcestershire Development Plan (SWDP)¹ indicates, amongst other things, that development should be designed to

¹ Adopted February 2016

provide an adequate level of privacy. Its reasoned justification states that there should be no detrimental impact on the amenity of existing or new occupants resulting from the development. Policy SWDP 31 of the SWDP says that development proposals should be designed in order to avoid adverse impacts from pollution, including cumulative ones, on human health and wellbeing. Its reasoned justification explains that pollution can take many forms and includes noise, vibration, fumes and light, all of which can have detrimental impacts on the environment and the quality of life.

6. National policy as expressed in paragraphs 17, 56 and 57 of the National Planning Policy Framework (the Framework)², which is a material consideration when determining planning applications, also emphasises the importance of high quality design which should secure a good standard of amenity for future occupants of land and buildings.
7. The proposal would offer a very limited outdoor area to the rear of the flats which would be mostly taken up by bin and cycle storage. There would be no private garden or reasonably sized sitting-out area or obvious space for other items such as a clothes line. Whilst, as noted by the appellant, the SWDP does not prescribe minimum areas for private amenity space, that does not imply that it is not a relevant factor in assessing whether the design would provide suitable living conditions for occupants. Ultimately, that is a matter of professional planning judgement which it is legitimate for the Council's planning officers to exercise, based on the policies within the SWDP.
8. The appellant considers that the ground floor flat has a reasonable amount of amenity space to the front, side and rear. I do not share that view, as the small area to the front is also taken up by two paths leading to the separate entrances of the flats and would not be private. The space to the west of the building is a narrow access around the side to the small area at the rear, which backs onto the car park. Those areas do not amount to sufficient usable outdoor amenity space. The appellant suggests that the first floor flat would not need access to an external clothes line as a condensing tumble dryer would be fitted. Whilst that may be, given that the proposed two-bedroom flats could be occupied by small families, I consider that the level of provision of outdoor amenity space is inadequate.
9. The public house car park to the rear of the new building would be retained, albeit with a reduced number of parking spaces for patrons, with an access immediately adjacent to the eastern elevation of the flats. Therefore, occupants of the flats would be in close proximity to vehicles from customers of the public house using the car park. Such vehicle movements and the noise associated with them would be likely to continue until late into the evening. There would also be noise from customers leaving the public house and crossing the car park to their vehicles. In some cases, especially later at night, that would be likely to consist of loud conversations.
10. As the western elevation of the building would not contain windows, the appellant submits that noise from vehicles would not be noticed. It is further suggested that because the four parking spaces to the immediate rear of the flats would be reserved for occupants, the nearest cars of patrons would be up to 13 metres away to the rear of the car park. I do not find either of those arguments persuasive as the noise from cars entering the car park and driving

² Published 2012

to the rear would still be heard through the front and rear windows and doors of the flats, even if appropriately glazed. It is also likely that future occupants may wish to have the option of opening their windows especially during warmer times of the year, which would expose them to greater noise levels.

11. Furthermore, though the appellant has latterly suggested off-the-shelf folding parking barriers, it is unclear what practical arrangements could be put in place to ensure that the residents' parking spaces were not occupied by public house customers. Moreover, the occupants of the respective flats would still be subject to noise from vehicles used by occupants of the 'other flat' using the two parking spaces to the immediate rear reserved for that flat. Whilst the appellant suggests that the car park is not well used, at the time of my site visit (12:05), though I recognise it is only a snapshot, there were six or seven vehicles parked in it.
12. I accept that much residential housing in urban areas is in proximity to roads and subject to some noise, but the appeal site and proposal would supplement that with additional noise into the night generated close to the side and rear of the proposed flats from a public house car park. Overall, therefore, I consider that noise and disturbance emanating from the access and car park would have an adverse effect on occupiers of the flats, which I do not consider could be resolved by condition.
13. A 1.5 metre fence would separate the two bedrooms and the small courtyard to the rear of the ground floor flat from the car park. Though the car park does slope slightly down to the north, the height of the fence would not be sufficient. People walking to their cars or bicycles, particularly at the southern end, which would include occupiers of the first floor flat, would be able to see over the fence. Therefore, the privacy of occupiers of the ground floor flat using their bedrooms and the small outdoor area would be harmed. It would not be reasonable to expect occupiers to have curtains or blinds closed much of the time. Occupiers of the ground floor flat would also have the perception of being overlooked due to the proximity of the car park.
14. The appellant expresses the view that most flats built in South Worcestershire do not have much or any private amenity space and that many are close to footpaths or busy roads, though limited specific examples are provided. A planning permission for a development at 58 Quest Hills Road³ is cited, by the appellant, as an example of a more cramped development. However, it appears from the information and plan supplied by the Council that the consent related to a pair of semi-detached houses with larger private gardens and no equivalent car parking or movement issues. Therefore, I do not see that a direct comparison can be made between that permission and the appeal before me.
15. Another planning permission in the area at Sheffield House, 36 Court Road⁴ is referred to by the appellant. As I observed on my site visit, that development does have a pleasant and reasonably sized communal garden and patio area to the front and some ground floor terraces to the rear, though they are not private and can be seen from the street. Whilst there is parking to the rear it is at a lower ground level and a reasonable distance from the three-storey

³ 07/00311/FUL

⁴ 15/00038/FUL

block. In any case, that parking area is reserved for the residents of the flats rather than being shared with a public house.

16. That consent was for a change of use of an existing building to form six two-bed flats. Therefore, the design constraints in relation to that conversion and re-use of a building would have been different from a new build property. It seems to me, therefore, that there are differences between that proposal and the appeal scheme. It was also approved prior to the adoption of the SWDP and would, therefore, have been decided under a previous development plan. Moreover, I do not have full details of the circumstances that led to that scheme being accepted. In any event, I have considered the appeal proposal on its own merits.
17. The Council advises that it can demonstrate a 6.7 year housing land supply, which has not been disputed. Therefore, as it has more than a 5 year housing land supply, policies that may affect the supply of housing in the recently adopted SWDP are considered up-to-date and must be afforded full weight. Planning applications must be determined in accordance with the development plan unless material considerations indicate otherwise.⁵
18. The factors above lead me to conclude that the proposed development would harm the living conditions of future occupiers, with particular regard to lack of private outdoor living space, noise and disturbance and privacy. It follows that it would, therefore, conflict with Policies SWDP 21 and SWDP 31 of the SWDP, insofar as they seek to ensure that development is designed to provide an adequate level of privacy and avoids other adverse effects on the living conditions of occupiers in terms of health and well-being from noise and disturbance or other factors. It would also be contrary to similar objectives expressed in paragraphs 7, 56 and 57 of the Framework.

Other Matters

19. In addition to the issues already discussed, some local residents and other parties have raised further matters. They include the proposed reduction in the number of parking spaces in the car park for public house customers. There is concern that it would increase the number of cars parked on the street. The Highway Authority and the District Council are satisfied on that aspect and whilst I have considered it, I see no reason to disagree with their assessment. In any case, I have dismissed the appeal on other grounds.

Conclusion

20. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Jonathan Tudor

INSPECTOR

⁵ s.38(6) Planning and Compulsory Purchase Act 2004 and s.70(2) Town and Country Planning Act 1990