
Appeal Decision

Site visits made on 25 October and 14 November 2017

by Grahame Gould BA MPhil MRTPI

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

Decision date: 29th November 2017

Appeal Ref: APP/R3650/W/17/3180188

4 to 5 Hampton Terrace, Beacon Hill Road, Hindhead GU26 6NR

- 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 and Mrs Lanzetta against the decision of Waverley Borough Council.
 - The application Ref WA/2017/0875, dated 28 April 2017, was refused by notice dated 29 June 2017.
 - The development proposed is conversion of existing restaurant to 3 No. one bedroom flats.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are the effect of the development on: the living conditions for its occupiers, with particular regard to outlook, light and privacy; and the provision of restaurants in the area.

Reasons

Living Conditions

3. The development would involve the conversion of the ground floor of 4 to 5 Hampton Terrace (Nos 4 and 5) into three, one bedroom flats. The first floor of Nos 4 and 5 is in residential occupation and these premises form part of a terrace that primarily has commercial accommodation at ground floor level with residential accommodation above.
4. Flat 3 would occupy the front two thirds or so of No 4 and its bedroom would have a side window that would face towards the two storey side elevation of 3 Hampton Terrace (No 3). There would be only around a two metre gap between Flat 3's bedroom window and No 3's side elevation. Given the very limited physical separation that there would be between the bedroom window and the neighbouring elevation, I consider that the users of Flat 3's bedroom would experience an unacceptably restricted outlook. The proximity of No 3's elevation to this bedroom window would also mean that this bedroom would receive very limited levels of natural light. I therefore consider that Flat 3's bedroom would provide an oppressive environment that would be harmful to the living conditions for the occupiers of Flat 3.

5. Flat 1 would extend across the rear third of the premises and its bedroom would look out onto a rear external space. The application plans suggest that the external space immediately outside Flat 1's bedroom is available to the occupiers of Nos 4's and 5's first floor accommodation. The users of Flat 1's bedroom could potentially experience a loss of privacy when the external space was being used and that might necessitate the installation of some form of external privacy screening, for example a fence. If an external privacy screen was to be installed then that would be likely to affect the receipt of natural light to and outlook from Flat 1's bedroom.
6. I consider that it would be important for there to be good levels of natural lighting and outlook via Flat 1's bedroom window because this flat's lounge would have one comparatively small rear facing lounge window. Although Flat 1's lounge would have a second window that would face towards No 3's side elevation and that would mean that limited levels of natural light would be received via it, while the outlook from this window would be severely compromised. The environment within Flat 1's lounge could therefore result in greater use being made of its bedroom.
7. For the appellants it has been submitted that it should not be possible for the occupiers of the first floor residential accommodation to install privacy screening because of the 'rights of light' that would be available to the occupiers of Flat 1. However, I am doubtful as to whether those rights would be available to the occupiers of Flat 1 because of the prescriptive nature of these rights and Flat 1 would be a new dwelling. I therefore attach limited weight to this aspect of the appellants' case.
8. I therefore consider that there would be potential for the receipt of natural light to and the outlook from Flat 1's bedroom window to be compromised, with the result that the occupiers of Flat 1 could be subjected to unacceptable living conditions.
9. The Council contends that because the front windows serving the lounge/kitchen areas of Flats 2 and 3 would face directly onto Beacon Hill Road that the occupiers of these flats would be afforded limited privacy. However, in many streets of terraced houses it is common for windows serving lounges to front directly onto streets, with little or no physical separation between those windows and pavements. There would therefore be nothing exceptional about the relationship of the front windows of Flats 2 and 3 with the street. While Nos 4 and 5 are situated in a quite busy street, I consider that the front rooms of Flats 2 and 3 would not be subject to any unusual losses of privacy.
10. For the reasons given above I conclude that the development would provide living conditions within Flat 1 and part of Flat 3 that would be unacceptable for the occupiers of those flats. The development would therefore be contrary to paragraph 17 (the fourth core planning principle) of the National Planning Policy Framework (the Framework) because it would not secure a good standard of amenity (living conditions) for all future occupants of the building. In this respect the Framework, unlike earlier versions of national policy, does not include references to market preferences being exercised to determine what would be acceptable or unacceptable living conditions.
11. The first reason for refusal cites conflict with saved Policies D1 and D4 of the Waverley Borough Local Plan of 2002 (the Local Plan). However, I consider

that not to be the case because while those policies address the safeguarding of the living conditions of the occupiers of dwellings adjoining new development they do not refer to the protection of the living conditions for the occupiers of new development.

12. The Local Plan is in the process of being replaced and conflict with Policy TD1 of the emerging Local Plan has been cited. I consider that there would be conflict with Policy TD1 because the development would not provide an environment that would meet the needs of its users. However, that conflict is not determinative given the current status of the emerging Local Plan.

Restaurant Provision

13. Saved Policy LT2 of the Local Plan, amongst other things, seeks to secure the retention of food establishments as 'visitor related facilities'. In the context of development that would involve the loss of a visitor related facility Policy LT2 states that consideration will be given to: the viability of the premises; the availability of alternative premises in the same settlement; and the merits of the proposed development and the compliance/conflict with other Local Plan policies. Paragraph 28 of the Framework promotes the establishment of strong rural economies and in that respect supports the retention of community facilities in villages.
14. The appellants have submitted that the restaurant at Nos 4 and 5 has experienced trading difficulties for a number of years, with the result that in the last five years the freehold has been offered for sale by three different agents without success. Limited evidence with respect to the level of enquiries yielded by the marketing exercise has been provided, with no marketing reports from any of the agents having been submitted. However, two sets of marketing details from the last of the instructed agents have been submitted and those details show that at some stage since February 2014, when that agent was first instructed, the asking price was substantially reduced. I consider the significant lowering of the asking price to be indicative of there having been limited market interest in the premises.
15. There also appears to have been a very recent change of circumstances at the premises with the restaurant having quite recently ceased trading. I say that because I was originally scheduled to undertake a site visit on 25 October 2017. On that day no one was present to enable me to gain access to the interior of the premises. However, it was evident from the street that the restaurant was still trading, with there being laid tables. However, by the time of my return visit on 14 November the restaurant had ceased trading. As this is a seasonally busy period for the restaurant trade I consider the recent closure of the restaurant provides some indication of it being unable to sustain a viable level of trade and that is consistent with the longer term trading difficulties that have been referred to by the appellants.
16. While being mindful of the limitations of the viability and marketing evidence that is available, I consider it likely that this is an unsustainable location for the continued operation of a restaurant at Nos 4 and 5. I therefore conclude that there would be no unacceptable loss of restaurant provision in the area. I therefore find that there would be no unacceptable conflict with Policy LT2 of the Local Plan and paragraph 28 of the Framework.

Conclusion

17. While I have found that there be would no unacceptable loss of restaurant provision in the area, I consider that the development would provide unacceptable living conditions for some of its occupiers. I therefore conclude that the appeal should be dismissed.

Grahame Gould

INSPECTOR