



Appeal Decision

Site visit made on 10 September 2019

by Darren Hendley BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18th September 2019

Appeal Ref: APP/M4510/W/19/3232221

285, 287, 289 Stanhope Street and 72 Dilston Road, Fenham, Newcastle Upon Tyne NE4 5JU

- 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 Mrs Saeeda Gohar against the decision of Newcastle City Council.
 - The application Ref 2019/0484/01/DET, dated 13 March 2019, was refused by notice dated 10 June 2019.
 - The development proposed is described as "proposed ground and first floor alterations, extensions as per detailed plans, elevations, sections etc to provide 3 no additional one bedroom self contained apartments at first floor level. To ground floor level 1 no extended and altered existing A1 retail/storage unit – Stanhope St."
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are (i) land stability and public safety; (ii) the effect of the proposal on the living conditions of the occupiers of 72 Dilston Road (No 72) by way of light, outlook and internal living space; (iii) the effect on the housing mix in the area; and (iv) whether suitable refuse storage provision would be provided.

Reasons

Land Stability and Public Safety

3. The appeal site is located in a defined Development High Risk Area, which reflects the historical legacy of coal mining. No Coal Mining Risk Assessment was submitted, though, as part of the planning application. Accordingly, the Coal Authority objected to the proposal.
4. There remains an absence of substantive information before me to establish the effect of the coal mining legacy of the area on the proposal as regards land stability and public safety. That there are already buildings on and around the site does not account for what the effects from coal mining might be on the proposal itself. The onus is on the appellant to demonstrate that such historical activities would not unacceptably adversely affect the proposal or that it can be satisfactorily mitigated in its design. I am not persuaded this has been adequately addressed.

5. In light of the limited nature of the evidence before me, it is also not a matter which could be addressed through the imposition of a planning condition without having the potential to nullify a permission. Hence, a condition would not be reasonable. The appellant also considers that Building Regulations could be utilised, if such problems arise. However, land stability and public safety are a planning matter and for my consideration, especially as the proposal would be in a high risk area.
6. I am, therefore, unable to conclude that the proposal would be acceptable as regards land stability and public safety. Consequently, it would not comply with Policy CS14 of the Core Strategy and Urban Core Plan for Gateshead and Newcastle upon Tyne 2010-2030 (2015) (CS) and with Policy POL6 of the Newcastle upon Tyne Unitary Development Plan (1998) (UDP) where they concern preventing negative impacts on residential amenity and wider public safety, including ground instability, as well as contaminated land related matters. It would also not accord with the National Planning Policy Framework (Framework) where it seeks to prevent development being put at unacceptable risk from, or being adversely affected by, unacceptable levels of land instability.

Living Conditions

7. The appeal site comprises properties that are in use as a shop with an apartment above and as a House in Multiple Occupation (HMO), which is No 72. Both have fairly modest sized rear yard areas. The site lies on the corner of Stanhope Street, Dilston Road and a rear access lane.
8. The proposal would involve a 2 storey extension on the Stanhope Street frontage of the site. It would project about halfway across the existing rear elevation of the appeal properties and up to the rear boundary of the site, leaving a narrow recessed area with an existing 2 storey outrigger. Limited rear yard space would be retained, even with the removal of a single storey element that is attached to the outrigger.
9. The recessed area would contain the sole windows for the lounge/kitchen of the proposed ground floor apartment in No 72 and, above, the lounge of a proposed first floor rear apartment. From the proposed layout, it would seem that this lounge would also be the bedroom. Due to the size and close siting of the proposed extension to the windows to these rooms, it would be overbearing and result in a severely restricted outlook.
10. Similarly, with the presence of the proposed extension and its location south of these windows, it would detrimentally affect light levels and be likely to make these rooms unduly gloomy. This would not be overcome by the morning light that would be available, as this would be short-lived when the path of the sun is considered with the size and the siting of the proposed extension.
11. The bedsit type accommodation in the proposed first floor rear apartment would be of a modest size. When this is combined with its restricted outlook and the effect on light, this would further add to the harm to the living conditions of its future occupiers.
12. The Council has also referred to potential adverse effects on the living conditions caused by the extension, if No 72 was not divided into apartments. As significant alterations would be needed to No 72 so that the proposed

apartments in the extension could be accessed, this appears to be an unlikely scenario. Nevertheless, it would not address the harm to the living conditions that I have identified. Nor would the extension to the property on the opposite side of the rear lane because this would not lessen these detrimental effects that would occur.

13. I conclude that the proposal would have an unacceptable effect on the living conditions of the occupiers of No 72 by way of light, outlook and internal living space. As such, it would not comply with 'Saved' Policies H2 and H4 of the UDP in this regard where they concern ensuring satisfactory daylight, sunlight and outlook, and good standards of outlook and natural light, amongst other matters. It would also conflict with the Framework where it sets out to ensure a high standard of amenity for existing and future users.

Housing Mix

14. The site is found in a location where the predominant form of residential accommodation is terraced housing. There are some apartments, in particular, along parts of Dilston Road and above the shops on Stanhope Street. Whilst there is a mix of housing types, the majority of the terraced housing seems to provide for a high concentration of family type accommodation and I do not have empirical evidence to the contrary.
15. Moreover, as the appeal properties are in use as an HMO and a flat above the shop, they do not obviously constitute family accommodation. Whilst No 72 may, overall, be of a family size, this does not reflect its current residential use. With regard to the potential for it to be used for family accommodation, there is not the evidence before me that indicates this would be likely to occur. As a result, the proposal would not result in a significant imbalance in the community, in relation to this type of accommodation.
16. I conclude that the proposal would not be unacceptable as regards the effect on the housing mix in the area. Hence, it would comply with Policy CS9 of the CS which states that existing communities will be sustainable places of quality and choice, to be achieved by preventing the loss of family homes, through sub-division, change of use or redevelopment, amongst other considerations.

Refuse Storage

17. The layout of the proposal would result in a walk of over 30 metres for the occupants of the apartments in order to dispose of refuse in the storage area. This would involve utilising the proposed shared entrance on Dilston Road and then walking along the Stanhope Street frontage to the designated area to the rear.
18. With the short stretches of walking that would be involved around the site, I do not, though, see this as an onerous task. When living in first floor apartment accommodation it would seem to me that there would be some expectation that refuse would have to be periodically disposed of a distance away from the accommodation and that this would need to be done on a responsible basis. Although I understand from the submissions that the distance would be in excess of the usual standards that the Council apply, it would not be significantly further so as to cause undue concern.
19. The Council has referred to the potential to allow access from the apartments to the yard area where the refuse storage would be sited. This is, however,

not part of the proposal for my consideration and, as I have set out, I find that the proposed arrangements are not unacceptable and so do not constitute poor design.

20. I conclude that the proposal would not be unacceptable in respect of whether suitable refuse storage provision would be provided. Thus, it would comply with 'Saved' Policies EN1.1 and H4 of the UDP in this regard, where they concern high standards of design and the character and quality of the local environment. Similarly, it would comply in this regard with the Framework where it concerns avoiding poor design, the character and quality of an area and the way it functions.

Other Matters

21. The proposal would accord with the Government's objective of significantly boosting the supply of homes, as is set out in the Framework. The appellant also states that the proposal would make the accommodation and the commercial unit more viable, and contribute towards local regeneration. In the context of the proposal, though, these are modest benefits and they attract limited weight. The same applies concerning that it would be accessible to local services.
22. In respect of character and appearance matters, the proposed extension would match the existing building and be in keeping with the Stanhope Street frontage. The proposal would also not be unacceptable with regard to highway safety matters, with the on-street parking available and, as I have set out, it would also not be unacceptable by way of housing mix and refuse storage. These matters attract neutral weight.
23. Whilst the Framework also supports making the effective use of land, this is not unqualified, including with regard to land instability and amenity, where the unacceptable harm would arise. This attracts significant weight in my decision. A number of development plan policies that I have been referred to that are not in dispute do not alter my views. There were no local neighbour objections to the planning application, albeit one was raised during the appeal. Nonetheless, I have determined the proposal on its merits and which in this case is not favourable.
24. The appellant, whilst not making an application for costs, has suggested that a discretionary case could be made in relation to the reasons for refusal concerning the coal mining legacy of the area and refuse storage. I see no basis for such a claim, when the Planning Practice Guidance is applied.

Conclusion

25. I have considered all matters that have been raised, but the benefits that would arise would not outweigh the harm caused by the proposal with regard to land stability and public safety, and the effect on living conditions. These matters are decisive. The proposal conflicts with the development plan as a whole and there are no material considerations to outweigh this conflict. Hence, the appeal should be dismissed.

Darren Hendley

INSPECTOR